AGENDA
ADJOURNED REGULAR MEETING
CITY OF BANNING
BANNING, CALIFORNIA

September 10, 2018
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey Street

The following information comprises the agenda for the August 28, 2018, adjourned regular meeting of the City Council, Banning Housing Authority, and 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 – Merle Malland, Police Chaplain
- Pledge of Allegiance
- Roll Call – Council Members Andrade, Franklin, Peterson, Welch, Mayor Moyer

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS, CORRESPONDENCE, PRESENTATIONS, AND APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

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

IV. PRESENTATIONS

1. Proclamation of Rail Safety Month.....**1**

V. APPOINTMENTS

1. Appointment of Community Development Block Grant Ad Hoc Committee Members **3**

VI. CONSENT ITEMS

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

Motion: Approve Consent items 1 through 10: Items ___, ___, ___, to be pulled for discussion. *(Resolutions require a recorded majority vote of the total membership of the City Council)*

1. Minutes – Regular Meeting – 7/24/2018 ..... **5**
2. Minutes – Special Meeting – 7/24/2018 (Closed Session)..... **31**
3. Minutes – Regular Meeting – 8/28/2018 ..... **33**
4. Contracts Signed Under City Manager Authority for July and August **35**
5. Update Policy B-31 Administrative Procedures - Acquisitions, Leasing and Dispositions of City-Owned Real Property **39**
6. Update on Downtown Ad Hoc Committee Recommendation to Research Micro-Business Incubator **87**
7. Resolution 2018-97, Approving the Termination of a Development Agreement with All American Racing, LLC **111**
8. Resolution 2018-106, Establishing a Pre-Approved General Construction Management and Inspection Services Vendor List for Fiscal Year 2018/2019 through Fiscal Year 2020/2021 ..... **181**
9. Resolution 2018-108, Accepting Community Development Block Grant (CDBG) Funds for Fiscal Year 2018/2019 ..... **215**
10. Resolution 2018-109, Amending Resolutions 2018-72 and 2018-107 to Reschedule the Public Hearing for the Consideration of Rate Adjustments for the Collection, Transportation and Disposal of Solid Waste to September 11, 2018 ..... **245**

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

VII. PUBLIC HEARING

1. Resolution 2018-114, Accepting the 2018 Edward Byrne Memorial Justice Assistance Grant **267**
   (Staff Report – Robert Fisher, Interim Police Chief)

Recommendation**: Adopt Resolution 2018-114, accepting grant funds provided by the Office of Justice Programs in the amount of $11,604 for the Police Department to purchase additional Puma belt recorders.**

2. Ordinance 1530, Zone Text Amendment 18-97502 to Amend Various Sections of the Zoning Ordinance **291**
(Staff Report – Patty Nevins, Community Development Director)

Recommendation: **Ordinance 1530 pass its first reading.**

Mayor asks the City Clerk to read the title of Ordinance 1530

"Ordinance 1530, an Ordinance of the City of Banning, California, Making Findings Pursuant to CEQA and Adopting Zoning Text Amendment 18-97502, Amending Various Sections of the City's Zoning Ordinance (Title 17 of the Banning Municipal Code) Relating to Alcohol Beverage Sales, Retail Auto Part Sales, Tattoo Establishments, Chain Link Fencing, Public Utility Facilities, Freeway Oriented City Identification Signs, Home Occupation Permits, and Design Review Approval Authority:

Motion: **I move to waive further reading of Ordinance 1530**
(Requires a majority vote of the Council)

Motion: **I move that Ordinance No. 1530 pass its first reading.**

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORTS OF OFFICERS

1. Resolution 2018-115, Approving City Manager Employment Agreement with Doug Schulze **357**
(Staff Report – Robert Meteau, Deputy Human Resources Director)

Recommendation: **Adopt Resolution 2018-115, approving an Employment Agreement with Doug Schulze for the position of City Manager.**

2. Policy B-33, Reference Validation of Private Parties Doing Business with the City of Banning..... **391**
(Staff Report – Ted Shove, Economic Development Manager)

Recommendation: **Approve Policy B-33, reference validation of private parties doing business with the City.**

3. Resolution 2018-111, Co-Op Agreement with Riverside County Flood Control and Water Conservation District (RCFCWCD) for the Banning Master Drainage Plan Line H Stage 1 Project **401**
(Staff Report – Art Vela, Public Works Director)

Recommendation: **Adopt Resolution 2018-111, approving a Cooperative Agreement with RCFCWCD for the Banning Master Plan Line H Stage 1 Project**

4. Resolution 2018-117, Amending Professional Services Agreement with Christy White Associates..... **431**
(Staff Report – Rochelle Clayton, Interim City Manager)

Recommendation: **Adopt Resolution 2018-117, approving the 1st Amendment to the Professional Services Agreement with Christy White Associates.**

RECESS REGULAR MEETING AND CALL TO ORDER A MEETING OF THE BANNING HOUSING AUTHORITY

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

I. CONSENT ITEMS

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

Motion: Approve Consent item 1: Item ___, to be pulled for discussion. *(Resolutions require a recorded majority vote of the total membership of the Housing Authority)*

1. Resolution 2018-03 HA, Approving the Purchase of an Affordability Covenant in the Form of a Regulatory Agreement for 1323 E. Christie Street – Habitat for Humanity San Gorgonio Pass Area **525**
(Staff Report – Ted Shove, Economic Development Manager)

Recommendation**: Adopt Resolution 2018-03 HA, approving the purchase of an Affordability Covenant in the form of a Regulatory Agreement for 1323 E. Christie Street (APN 541-052-007), by Habitat for Humanity San Gorgonio Pass Area**

ADJOURN BANNING HOUSING AUTHORITY MEETING AND CALL TO ORDER A SCHEDULED MEETING OF THE BANNING UTILITY AUTHORITY

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

I. CONSENT ITEMS

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

Motion: Approve Consent items 1 through 2: Items ___, ___, to be pulled for discussion. *(Resolutions require a recorded majority vote of the total membership of the Utility Authority)*

1. Notice of Completion for Project 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1" **565**
2. Notice of Completion for Project 2017-17W, "Repair of Wells and Pumps" **577**

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

II. REPORTS

REPORTS OF OFFICERS

1. Resolution 2018-05 UA, Approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. and to Discuss Options for Maintenance and Operations if the City of Banning's Wastewater Treatment Plant **583**
   (Staff Report – Art Vela, Public Works Director)

Recommendation**: Adopt Resolution 2018-05 UA: 1) Approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. 2) Authorizing the Interim City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement. 3) Authorizing the Interim City Manager to execute the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services. Inc.**

2. Resolution 2018-11 UA, Approving the Award of a Contract for the Design of Altitude Valves at San Gorgonio and Southwest Reservoirs to Michael Baker International of Temecula, CA **643**
   (Staff Report – Art Vela, Public Works Director)

Recommendation**: Adopt Resolution 2018-11 UA, approving the award of a Contract for the Design of Altitude Valves for the San Gorgonio and Southwest Reservoirs in the amount of $55,225.**

3. Resolution 2018-13 UA, Approving the Award of a Professional Services Contract for the Design of Well C-8 to Hazen and Sawyer of Palm Desert, CA in the amount of $671,296 and Establishing a $25,000 Project Contingency..... **753**
(Staff Report – Art Vela, Public Works Director)

Recommendation**: Adopt Resolution 2018-13 UA: 1) Approving an Agreement with Hazen and Sawyer of Palm Desert, CA for the Design and Inspection Services for the City of Banning Well C-8, Project 2018-02W in the amount of $671,296. 2) Authorizing the Interim City Manager or her designee to execute the Agreement with Hazen and Sawyer. 3) Establishing a $25,000 Project Contingency and Authorizing the Interim City Manager to execute Amendments to the Agreement within the Contingency Amount**

ADJOURN BANNING UTILITY AUTHORITY MEETING AND RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL

BANNING UTILITY AUTHORITY (BUA) – Next Meeting, September 25, 2018, 5:00 p.m.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

IX. DISCUSSION ITEMS

1. Downtown Ad Hoc Committee Recommendations **903**
(Staff Report – Ted Shove, Economic Development Manager)

Recommendation**: Discuss and consider the recommendations of the Downtown Ad Hoc Committee and provide staff direction and prioritization for proposed action items.**

2. Police Recruitment and Retention **963**
(Staff Report – Robert Fisher, Interim Police Chief)

Recommendation**: Discuss and consider providing direction to staff regarding the recruitment and retention of police officers.**

3. Planning Commissioner Resignation/Recruitment..... **967**

Recommendation**: Discuss and consider providing direction to staff regarding the recruitment and appointment of a new Planning Commissioner.**

X. ITEMS FOR FUTURE AGENDAS

New items –

Pending Items – City Council

1. Mills Act – Additional Information
2. Fee Waiver Update (November)
3. Assembly Bills – Staff Analysis
4. Council Refresher on Directing Staff
5. Website Redesign
6. Classify Internet/Wi-Fi as Infrastructure
7. Street Naming Policy to Honor Land Owners
8. Refuse Theft Ordinance
9. Contingency Plan for Residents During Emergencies
10. Appraisals Update
11. Ordinance Update - Planning Commissioners to Serve by District

XI. ADJOURNMENT

NOTICE: Any member of the public may address this meeting of the Mayor and City 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]

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.

BANNING, CA
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PROCLAMATION

WHEREAS, *California ranks #1 in the nation in both Trespassing and Grade Crossing Deaths. There are more than 10,000 highway-rail grade crossings located within 52 counties, and more than 400 cities in California, and this state has the highest number of fatality related highway-rail grade crossing incidents in the United States. Last year in California there were a total of 148 highway grade-crossing incidents including 98 trespasser fatalities and 32 highway-rail crossing fatalities, all of which could have been avoided if trespassers and drivers were obeying the laws; and*

WHEREAS, *Amtrak, Burlington Northern Santa Fe Railway, Metrolink, and Union Pacific Railroad run through the City of Riverside with a total number of 65 grade crossings; and*

WHEREAS, *the Riverside County Transportation Commission and Metrolink place a priority on safety by improving at-grade crossings with features such as flashing warning devices, gates, raised center medians, striping, signing, and pavement markings. Amtrak, BNSF Railway, Metrolink, and Union Pacific Railroad stride toward the implementation of Positive Train Control; and*

WHEREAS, *the Southern California Rail Safety Team, comprised of multiple rail operators and governmental agencies, including BNSF Railway, Amtrak, Union Pacific Railroad, Metrolink, the Federal Railroad Administration, the California Public Utilities Commission, California Operation Lifesaver, and law enforcement agencies, work to improve railroad safety and to educate people of the dangers of not obeying the signs and signals around railroad property; and*

WHEREAS, *the See Tracks? Think Train campaign by Operation Lifesaver, and its federal partners aims to help reduce pedestrian and driver injuries and fatalities around railroad tracks by highlighting behaviors that put people at great risk; and*

WHEREAS, *California Operation Lifesaver supports the See Tracks? Think Train effort by conducting on-the-ground law enforcement trainings, safety presentations, and public awareness activities to help reduce train related incidents; and*

WHEREAS, *September is back-to-school month for most children in California and because many of these children must cross railroad tracks to get to and from school, it is important to reinforce the rail safety message with children and their caretakers.*

NOW, THEREFORE, *I, George Moyer, Mayor of the City of Banning, California, do hereby proclaim September 2018, as*

Rail Safety Month

and on behalf of the City Council, commend local, state, and federal government, industry, and citizen efforts to improve railroad crossing safety and strongly urge all Californians to be cautious and safe around all railroad tracks and property.

IN WITNESS WHEREOF, *I have set my hand and caused the seal of the City of Banning, California to be affixed this 10th day of September, 2018.*

ATTEST:

Sonja De La Fuente, Deputy City Clerk

George Moyer, Mayor

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CITY OF BANNING

M E M O R A N D U M

DATE: September 10, 2018

TO: Honorable Mayor and City Council

CC: Sonja De La Fuente, Deputy City Clerk

FROM: Ted Shove, Economic Development Manager

RE: **AD-HOC Committee Request**

The Community Development Department requests the City Council appoint a committee at the September 10, 2018 meeting, consisting of a least two members from the City Council and the Economic Development Manager, to review and recommend 2019-2024 Public Participation Plan, HUD-CPD five year funding priorities, and FY 2019/20 Community Development Block Grant ("CDBG") program applications. Below is a schedule of important dates that are necessary in order to ensure that the City meets Riverside County Economic Development Agency's application deadline.

- **September 10, 2018** – Council to appoint ad hoc committee.
- **September 17-20, 2018** – ad hoc committee to receive briefing on program applications, public participation plan requirements, and requirements for five year funding priorities
- **September 26, 2018** – CDBG applications due to the City.
- **October 3-9, 2018 -** Committee review of applications.
- **October 23, 2018** – Five year funding priorities, public participation, and FY 19-20 applications – consideration and approval.
- **December 14, 2018** – City approved HUD-CPD priorities, FY 19-20 applications, minute order, and resolution due to the EDA.

2019-2024 Five Year Consolidated Plan

In addition to reviewing and recommending **FY 2019-20 CDBG** program applications, the ad hoc committee will also be requested to weigh in on and champion the development of the public participation component for Riverside County's 2019-2024 Five Year Consolidated Plan

("Plan"). The Plan establishes funding priorities for cooperating cities use of CDBG funding and requires community outreach via assessment tools (i.e. surveys, public hearings, workshops, town hall/community meetings, outreach to residents and businesses). Input received will also be considered for the City's five year Housing and Urban Development, community Planning and Development ("HUD-CPD") funding priorities. The recommended HUD-CPD funding priorities must be ratified by the City Council and be included in the submission to the County with the program materials and approved funding plan for FY 2019-2020.

About the Program

The CDBG program is a flexible program that provides communities with resources to address a wide range of unique community development needs. Beginning in 1974, the CDBG program is one of the longest continuously run programs that is Federally funded by the U.S. Department of Housing and Urban Development ("HUD"). The CDBG program provides annual grants on a formula basis to 1209 general units of local government and States.

The CDBG program works to ensure decent affordable housing, to provide services to the most vulnerable in our communities, and to create jobs through the expansion and retention of businesses. CDBG is an important tool for helping local governments tackle serious challenges facing their communities. The CDBG program has made a difference in the lives of millions of people and their communities across the Nation.

Eligible Activities

Over a 1, 2, or 3-year period, as selected by the grantee, a percentage of CDBG funds must be used for activities that benefit low- and moderate-income persons. In addition, each activity must meet one of the following national objectives for the program: benefit low- and moderate-income persons, prevention or elimination of slums or blight, or address community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community for which other funding is not available.

More information may be found by visting the following website address:

http://portal.hud.gov/hudportal/HUD?src=/program_offices/comm_planning/communitydevelopment/programs

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

07/24/2018
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Moyer on July 24, 2018, at 5:21 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade
Council Member Franklin
Council Member Peterson
Council Member Welch
Mayor Moyer

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Rochelle Clayton, Interim City Manager
Kevin Ennis, City Attorney
Tom Miller, Electric Utility Director
Patty Nevins, Community Development Director
Suzanne Cook, Deputy Finance Director
Robert Meteau, Deputy Human Resources Director
Marie Calderon, City Clerk
Laurie Sampson, Executive Assistant
Leila Lopez, Office Specialist

The Invocation was given by Reverend Bill Dunn with St. Stephen's Episcopal Church. Council Member Andrade led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

The City Attorney indicated four items were discussed in Closed Session. 1) PUBLIC EMPLOYEE APPOINTMENT: City Manager – Pursuant to Government Code Section 54957. A status report was provided and direction given to the City's negotiator. 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Paragraph (1) of Subdivision (d) of Section 54956.9) Name of Case: City of Banning v. Go Green Calming Solutions, et al., Case No. RIC 1806731. Direction was given to legal counsel.

PUBLIC COMMENTS / CORRESPONDENCE / PRESENTATIONS / APPOINTMENTS

PUBLIC COMMENTS

Ellen Carr with Tender Loving Critters provided information regarding scheduling an appointment with Animal Action League for low cost spay or neuter services. They will be in the City on August 14th and 15th. They can be reached at 760-366-1100. She provided

information regarding animal control services now that the County of Riverside has been contracted by the City (see Exhibit "A").

Inge Schuler read a prepared statement (see Exhibit "B").

Don Smith agreed with everything Inge Schuler shared. He shared a recent experience with Riverside County Animal Control and advised they handled the matter professionally and successfully. In regard to hiring police officers, he encouraged hiring reserves and putting them through the academy, much like the City did with linemen.

Val Westholder mentioned that she received a 34-day utility bill and would like to know why. She also requested an update on the audit.

Seeing no further comments, the Mayor closed Public Comment.

CORRESPONDENCE

There was no correspondence.

CONSENT ITEMS

1. Minutes – Regular Meeting – 7/10/2018

Recommendation: Approve the Minutes from July 10, 2018 Regular Meeting of the Banning City Council.

2. Minutes – Special Meeting – 7/10/2018 (Closed Session)

Recommendation: Approve the Minutes from the July 10, 2018 Special Meeting of the Banning City Council.

3. Minutes – Special Meeting – 7/12/2018 (Closed Session)

Recommendation: Approve the Minutes from the July 12, 2018 Special Meeting of the Banning City Council (Closed Session).

4. Minutes – Special Meeting – 7/16/2018 (Closed Session)

Recommendation: Approve the Minutes from the July 16, 2018 Special Meeting of the Banning City Council (Closed Session).

5. Cash, Investments, and Reserve Report for the Month of June 2018

Recommendation: Receive and file Cash, Investments, and Reserve Report for the Month of June 2018.

6. Accounts Payable and Payroll Warrants Issued in the Month of June 2018

Recommendation: Ratify Accounts Payable and Payroll Warrants Issued in the Month of June 2018.

7. Resolution 2018-102, Approving the City of Banning Electric Utility Power Content Label for Calendar Year 2017

Recommendation: Adopt Resolution 2018-102.

The Mayor opened the Consent Items for public comment. Seeing none, closed public comment.

Motion Franklin/Peterson to approve Consent Items 1 through 7. Motion carried, 5-0.

ANNOUNCEMENTS & REPORTS

CITY COUNCIL COMMITTEE REPORTS

Council Member Welch had nothing to report.

Council Member Andrade had nothing to report.

Council Member Franklin reported on the following:

- RCTC met a couple of weeks ago. The City's Short Range Transit Plan was approved for the upcoming year. The Measure A projected amount of $560,000 was approved. The lawsuit regarding the Highway 60 truck climbing lane was settled, so it is anticipated construction will begin next year and it will be about a two-year process.
- She thanked everyone who participated in the Backpack Giveaway. The Cops vs. Clergy basketball game was on the same day and the Clergy won this year (70-62).
- The League of California Cities Division Meeting was held on July 23rd and the Mayor will report.
- The 2x2 with the School Board met and discussed the City Council participating in an Adopt-A-School program. If there is interest, guidelines would be developed.

Council Member Peterson asked Interim City Manager Clayton to comment on the Utility Audit. She advised the Purchase Order had been issued for the contract with Christy White Associates. It took some time because their insurance was not in compliance with the City's requirements. However, she has discovered that their insurance is still not in compliance and a request had been submitted to Christy White Associates to provide the accurate insurance, and once that is received, they can begin work. An entrance interview is already scheduled for the beginning of August and hopefully the appropriate insurance is received prior to that meeting so the City can proceed.

Mayor Moyer reported on the following:

- The Finance Committee met and discussed several issues.
- The League of California Cities Division Meeting was held on July 23rd. They discussed what CalPERS will be doing over the next several years, which raised several financial concerns.

REPORT BY CITY ATTORNEY

City Attorney Ennis had nothing to report.

REPORT BY CITY MANAGER

Interim City Manager Clayton reported on the following:

- The contact information for Animal Control can be found on the City's Website.
- Utility bills may vary between 28 and 34 days, according to City policy.
- The meeting with Christy White Associates is scheduled for August 9th, pending receipt of required insurance.
- The City of Banning was awarded the Achievement Award for Excellence in Procurement by the National Procurement Institute. She advised the Purchasing Manager, Jennifer McCoy worked diligently with all departments to implement several control measure. The trophy should be received within 30 days and it can be brought to a future Council Meeting.

REPORTS OF OFFICERS

1. Consideration of Development Impact Fee Credit 2 Year Time Extension Request from Pardee Homes

Community Development Director Patty Nevins presented the Staff Report as contained in the Agenda packet.

Council Member Peterson commented that he does not agree with "force majeure" clause, as he does not believe there were unforeseen events that occurred. Heread the clause in the contract for the public.

The Mayor opened the item for public comment.

Inge Schuler commented on the agreement and that she believes this is just a settlement agreement. She feels Pardee should have been on the ball and the City needs to stand up and listen to the people.

Ellen Carr commented that it sounds like Pardee owes the City money, let them pay.

Frank Burgess expressed his support of Council Member Peterson's comment. He asked questions related to the agreement and shared his concern with the City charging 2006 fees in 2018. He does not want the City giving away seven million dollars.

John Hagan is against extending this, as he believes they have broken the clause by not starting when they were supposed to.

Don Smith commented on the contract and advised the City waived some fees for the first 500 units to entice Pardee to start as soon as possible during the period of time when the contract was written, however that period of time is over. He advised the Council's decision to extend should only take place if the City feels it needs to entice them to get the project started immediately.

Jerry Westholder expressed concern with the City waiving fees now, as he does not believe it would be the logical thing to do.

Chris with Pardee advised the force majeure is for unforeseen events and explained what happened. He explained that several delays were caused by the Development Agreement. They are requesting two additional years, as Tentative Maps take a lot of money. Additionally, they do not want to burden City staff.

Jeff with Pardee explained that many issues are yet to be worked out. They will work with the City moving forward, as they have been. They are not able to build a shopping center without good tenants. They are hopeful for commercial development and housing.

Diego Rose questioned the lack of planning by the developer over the last six years.

David Ellis indicated he is excited to see development in the City. He does not believe an "Act of God" has not caused this problem. He recommended the Council not move forward with this as requested by the developer.

Seeing no further comments, the Mayor closed public comment.

Mayor Moyer asked for clarification regarding the current map and the number of approved homes. Director Nevins advised 264 with 487 additional lots.

Council Member Peterson advised the project would move forward if the recommendation by the Council was not in their favor. He asked Chris with Pardee if they would still be able to pull the required permits with the fee waivers within the allotted period of time, but the extension would make it easier on them and City staff. He confirmed they would. There was discussion between Council Member Peterson and Chris regarding the matter.

Council Member Franklin explained that what was done was an effort to help the economy of the City when it needed a jumpstart and advised the City has not experienced the economic benefit Beaumont received because development has only taken place in Beaumont since that time, but Banning has experienced certain repercussions from the

development in Beaumont such as traffic, etc. Even if it was not Pardee's intent, the City has been harmed and for that reason she is unable to agree to another extension. Chris explained they wanted to move forward as well, but due to the lawsuit, they have also incurred damages and had to fight hurdles and that there are shared burdens.

Council Member Franklin asked if staff would be able to process 500 permits if pulled. Director Nevins advised it is possible, but they would have to commence construction as well to receive the credit.

Council Member Andrade shared her excitement for the project to begin and advised she would like this project to move forward. Chris advised they are looking at a 30-day timeframe.

Council Member Welch would like the project to move ahead, but what bothers him the most is the concessions that were made.

Mayor Moyer advised that he has trouble extending anything when Banning has been second fiddle.

Motion Franklin/Welch to approve Option 3 - not concur with the invocation of the "force majeure" section of the Development Agreement under the facts stated and direct staff to inform Pardee that an extension of the deadline for DIF Credits must be obtained, if at all, under other provisions of the Agreement, such as by formal amendment. Motion carried 5-0.

2. Resolution 2018-27 Approving a Consultant Services Agreement with Albert A. Webb Associates for Peer Review Services in Connection with the Banning Quarry Environmental Assessment.

Community Development Director Patty Nevins presented the Staff Report as contained in the Agenda packet.

Council Member Peterson commented that he believes the mining reports have been violated through the years and asked why it has been allowed to remain open when things have not been remediated. He read from a report from 2017. He expressed his concern with spending money on someone to analyze reports. Director Nevins explained the applicant will reimburse the City's costs. Council Member Andrade clarified that the City would ultimately not be paying for the services. Director Nevins confirmed and advised Council Member Peterson she would go back to see if there were any outstanding issues.

Council Member Andrade asked about shutting down the plant because of permits and Director Nevins advised the City does an annual inspection and a Code Enforcement officer also goes out there. At one point a stop work order was issued due to lack of permit and the situation was resolved.

Council Member Franklin would like a timeline to show how long it takes to review reports and asked if their permits are still valid. Director Nevins confirmed.

The Mayor opened the item for public comment.

Inge Schuler commented on reports from 2012 with the same offenses and violations. She believes the City has ignored these reports and shared her support of Council Member Peterson's comments. She advised that it is the quality of life that invites people into the City.

David Ellis advised he has lived next to the mine for 40 years and the last five years of reports tell of the problems. He feels nothing has been done to correct the issues and the problems need to be corrected, as they are a danger to the City. He would like them to be a good neighbor.

Jerry Westholder discussed five years of mining reports and would like this handled legally, as he believes they are in violation.

Seeing no further comments, the Mayor closed public comment.

The Mayor advised that any unpermitted work was stopped a couple of years ago and without these documentation the City won't get the reclamation plans it needs and it isn't costing the City anything.

Council Member Peterson asked if there would be a mitigated negative declaration (MND). Director Nevins advised that if they are able to mitigate any impact they could potentially do a mitigated negative declaration. If not, there needs to be an environmental impact report (EIR). Director Nevins indicated funding for an EIR has been requested in anticipation of them not being able to do a MND.

Council Member Franklin thought that some things have been corrected. Director Nevins advised she is not aware of what was done prior to her arrival, but that last time something was found that needed to be corrected a stop work order was issued and they did come in and received a permit.

Motion Peterson/Welch to adopt Resolution 2018-27, approving a Professional Services Agreement between the City of Banning and Albert A. Webb Associates to provide peer review services to the City of Banning for the review of a Draft Environmental Impact Report ("DEIR") and associated documents for the Banning Quarry project. Motion carried 5-0.

3. Resolution No. 2018-107, Amending Resolution 2018-72 to Reschedule the Public Hearing for the Consideration of Rate Adjustments for the Collection, Transportation and Disposal of Solid Waste Services to September 11, 2018

Interim City Manager Rochelle Clayton presented the Staff Report as contained in the Agenda packet.

The Mayor opened the item for public comment. Seeing none, closed public comment.

Motion Andrade/Welch to adopt Resolution 2018-107, adjusting the Public Hearing date to the Regular City Council Meeting on September 11, 2018 at 5:00 p.m. Motion carried 5-0.

4. City Policy No. B-32 on Agreements

Interim City Manager Rochelle Clayton presented the Staff Report as contained in the Agenda packet.

The Mayor opened the item for public comment. Seeing none, closed public comment.

Motion Franklin/Peterson to adopt City Policy B-32 on Agreements, including Leases, Memorandums of Understanding and Contracts. Motion carried 5-0.

The Mayor recessed the meeting at 7:12 P.M. and reconvened at 7:20 P.M.

5. City Policy No. A-35 on Review of Existing Policies for Necessary Revisions

Interim City Manager Rochelle Clayton presented the Staff Report as contained in the Agenda packet.

Council Member Peterson asked about policies dating back to 1974. Interim City Manager Clayton explained the Employee Handbook is from 1974, but there are a handful of policies dating back to 1978, a few from the 80's, and a majority of them are from the 90's. Council Member Peterson asked if everything will be brought up to date or will they review every five years going forward. Interim City Manager Clayton would like to review all of the policies, make sure they are in compliance, and update as necessary. All outdated policies are planned to be updated this fiscal year. Some policies are obsolete and will be deleted and several will be combined so there are fewer policies going forward. An RFP will be issued for personnel policies to be updated in one fell swoop.

The Mayor opened the item for public comment. Seeing none, closed public comment.

Motion Andrade/Franklin to review City Policy No. A-35 on the Review of Policies for necessary updates and revisions. Motion carried 5-0.

6. Riverside County Grand Jury Report to the City of Banning

Interim City Manager Rochelle Clayton presented the Staff Report as contained in the Agenda packet.

Council Member Peterson expressed his disagreement with the response to Finding No. 6, as he feels Council Member Andrade was properly trained. Also in the regard to the response to Finding No. 7, he would like a date when the report will be on the City's website.

Interim City Manager Clayton suggested October 1st In regard to the response to Recommendation 7.

Council Member Franklin recommended 90 days from the election for training to be completed.

The Mayor opened the item for public comment. Seeing none, closed public comment.

Motion Welch/Peterson to approve the Letter of Response to the Grand Jury to formally respond to the Grand Jury regarding its recommendations including recommended changes from Council. Motion carried 5-0.

DISCUSSION ITEMS

1. Review and Discuss Sending a Letter to Congressman Raul Ruiz, M.D. Requesting Legislative Assistance for the Substitution of Census Tract 438.13 in Place of Census Tract 442 as a Designated Opportunity Zone

Interim City Manager Clayton presented the Staff Report as contained in the Agenda packet.

At the request of the Mayor, Pete Pitassi provided additional explanation for the benefit of the public.

The Mayor opened the item for public comment. Seeing none, closed public comment.

Motion Peterson/Franklin to send a letter to Congressman Raul Ruiz, M.D. requesting legislative assistance for the substitution of Census tract 438.13 in place of Census Tract 442 as a Designated Opportunity Zone. Motion carried 5-0.

The Mayor recessed the Regular meeting and called to order a regular meeting of the Banning Utility Authority

Board Members Present: Andrade, Franklin, Peterson, Welch, and Chairman Moyer

REPORTS

REPORTS OF OFFICERS

1. Resolution 2018-05 UA, Approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. for an Adjustment in Compensation and to Extend the Term of the Agreement

Interim City Manager Rochelle Clayton presented the Staff Report as contained in the Agenda packet along with a PowerPoint presentation (see Exhibit "C").

The Mayor asked about the 720 hours annually to do landscaping at prevailing wage rates and why the City has them do that. Interim City Manager Clayton explained they do various tasks during their 40 hours per week.

Board Member Peterson asked how many hours per week they are there. Interim City Manager Clayton believed they are there 40 hours per week. There was discussion regarding hours and what is contracted and what City employees do. Board Member Peterson would like to table the item and bring back details of every hour the City is paying for.

Utility Authority Counsel Ennis directed the Board to page 330 regarding prevailing wage rates.

Board Member Peterson questioned the amount of the contract and what work is actually being done, and advised he's not concerned with prevailing wage.

The Chairman would like to see the entire contract so they can see the total scope of services rendered.

Board Member Andrade advised that Council Member Peterson had supplied her with a memo that went to the Budget & Finance Committee on July 16th regarding Suez (see Exhibit "D"). She expressed some of her concerns and and would like more information prior to making a decision.

Interim City Manager Clayton explained that staff is requesting approval for one year and during that time will do a full comprehensive analysis.

Board Member Peterson advised that he knows two individuals who are willing to come here and do this work immediately, so no time would be needed for recruiting. He also doesn't believe the City would need to buy equipment. Interim City Manager Clayton pointed out that there are five positions that would need to be filled.
The Chairman opened the item for public comment.

Don Smith commented on the sewer plant operation and that when the City was operating the plant they decided to contract with United Water because they needed their expertise, especially their technical engineering expertise. To his knowledge the sewer plant hasn't had a deficiency in 22 years. He cautioned about doing it cheaper and risking quality and success.

Seeing no further comments, the Chairman closed public comment.

Motion Peterson/Andrade to table the item until September. Motion carried 5-0.

The Chairman adjourned the Banning Utility Authority meeting and the next meeting will be held on September 10, 2018.

The Mayor reconvened the regular meeting.

ITEMS FOR FUTURE AGENDAS

None

ADJOURNMENT

By common consent the meeting was adjourned at 8:13 P.M. in memory of Geraldine "Gerry" Van Wormer.

Minutes Prepared by:

_____

Sonja De La Fuente, Deputy City Clerk

These Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website: https://banninglive.viebit.com/player.php?hash=Eh6zbwIdYY66 or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

Exhibit "A"

to the July 24, 2018, Regular Meeting Minutes

Public Comments
Ellen Carr 7/24/18

EXHIBIT "A"
TO Minutes of the
July 24, 2018, Regular Meeting Minutes

Banning Police Department
125 E. Ramsey Street, Banning, CA 92220 (951) 922-3170

Animal Control

Animal Shelter Bulletin Board

Phone calls to Animal Control:

For pick-up of loose dogs: Call 951-358-7387

Officers are available Monday through Friday 8 am to 4 pm

Weekend and after hours: Call 951-358-7387.

A stand-by officer is on duty during all off hours.

Caller will speak to a live person after hours on a recorded line. Information will be taken and the officer on-duty will be paged. Calls will be handled on a case by case basis to determine if officer will be dispatched out after hours or the next business day.

Dead animal removal: Call 951-358-7387 removals will be conducted during normal business hours.

Animal neglect and abuse: Call 951-358-7387. These calls are handled as a priority.

After hour calls for neglect and abuse: Call 951-358-7387. Caller will speak to a live person after hours on a recorded line. Information will be taken and the officer on-duty will be paged. Calls will be handled on a case by case basis to determine if officer will be dispatched out after hours or the next business day.

Licenses can be obtained from either the San Jacinto or Western Riverside Shelters.

San Jacinto Valley animal Campus

581 S Grand Ave

San Jacinto CA 92585

951-358-7387

Western Riverside County/ City Animal Shelter

6851 Van Buren Blvd

Jurupa Valley CA 92059 phone number: 951-358-7387

Dog License Fees;

City of Banning

Type of License	1 Year	2 Year	3 Year	Late Fee *
Altered Dogs	$17	$34	$49	$25
Unaltered Dogs	$100	$200	$300	$25
Altered Dog, owned by Senior Citizen 60+	$12	$24	$36	$25

Exhibit "B"

to the July 24, 2018, Regular Meeting Minutes

Received 7/24/18
Public Comments

EXHIBIT "B"
TO Minutes of the
July 24, 2018, Regular Meeting Minutes

July 25, 2018, City Council meeting

Public Comment - Inge Schuler

Several days ago, I noticed that in the eastbound direction on W Westward Avenue, starting at Sunset Avenue, and repeated at the intersection with 22nd Street, new speed limit sign have been installed. The previous limit of 35 mph has been raised to 40 mph. This issue was discussed at a previous City Council meeting, and after several comments from citizens, including Don Smith and me, we were assured that the above mentioned limit would remain at 35 mph. What has changed?

A decades old absurd state law is suddenly rediscovered to defy all logic. It requires cities to set speed limits based on how fast people are already driving, regardless of whether that speed is safe. The law was passed to prevent cities from setting speed traps aimed at sticking drivers with pricey tickets.

Simple physics cannot be ignored: A pedestrian hit by a car traveling at 20 mph has an 80% chance of survival, but someone hit by a car traveling at 40 mph has just a 10% chance. There are two schools on W Westward Avenue between Sunset and San Gorgonio, one at each end.

This absurd law to determine speed limits is in contradiction with California law that requires cities and counties to develop so called Complete Streets that are designed to safely accommodate all users, including cyclists, transit riders, pedestrians, and the disabled – not just motorists.

The next logical step would be to change the state law that bars cities from setting speed limits for safe travel, rather than just fast travel. Assembly Bill 2363 is a baby step forward.

Lower speed limits alone will not make streets safer. There needs to be public information about the risks of speed as well as traffic enforcement in speed prone corridors. Streets also need to be engineered for safety. The streets don't belong just to drivers; they belong to everyone.

Here is a job for our local leaders of government to push for sanity. Do something!

Inge Schuler
Banning

Exhibit "C"

to the July 24, 2018, Regular Meeting Minutes

EXHIBIT "C"
TO Minutes of the
July 24, 2018, Regular Meeting Minutes

IN HOUSE OPERATION AND MAINTENANCE OF THE BANNING WASTEWATER TREATMENT/RECLAMATION PLANT

JULY 24, 2018

BACKGROUND

- THE BUDGET AND FINANCE COMMITTEE EXPRESSED INTEREST IN THE IN-HOUSE OPERATION AND MAINTENANCE OF THE WASTEWATER TREATMENT/RECLAMATION PLANT
- STAFF PERFORMED A **LIMITED** SURVEY OF FOUR AGENCIES: CITY OF REDLANDS, CITY OF SAN BERNARDINO, CITY OF COACHELLA AND EASTERN MUNICIPAL WATER DISTRICT.
  - *SURVEY DID NOT CONSIDER DIFFERENCES IN BENEFIT PACKAGES, DEDUCTIBLES (E.G. SOCIAL SECURITY, PERS CONTRIBUTIONS, ETC.)*

	HOURLY RATES				ESTIMATED FULLY BURDENED ANNUAL SALARIES		
POSITION	AVERAGE LOW	AVERAGE MEDIAN	AVERAGE HIGH	COB FULLY BURDEN FACTOR	AVERAGE LOW	AVERAGE MEDIAN	AVERAGE HIGH
Chief Plant Operator	$46.07	$51.69	$57.67	70.00%	$162,892.91	$182,781.14	$203,931.73
O&M Tech 3	$31.86	$35.46	$39.31	70.00%	$112,670.22	$125,393.63	$138,993.09
O&M Tech 2	$28.72	$31.98	$35.45	70.00%	$101,560.11	$113,083.05	$125,345.90
O&M Tech 1	$24.60	$27.33	$30.27	70.00%	$86,983.83	$96,654.79	$107,034.72
O&M Tech 1/OIT*	$20.97	$23.27	$25.76	70.00%	$74,164.95	$82,297.75	$91,071.45
					$538,272.02	**$600,210.36**	**$666,376.88**

*OIT: OPERATOR IN TRAINER

	LOW	AVERAGE	HIGH
SUEZ CONTRACT	$747,148	$747,148	$747,148
FULLY BURDENED SALARIES	$538,272	$600,210	$666,377
SAVINGS	**$208,876**	**$146,938**	**$80,771**

- IT IS EXPECTED THAT SALARY SAVINGS WOULD BE CLOSE TO THE AVERAGE AMOUNT.
- ADDITIONAL EXPENSES THAT SHOULD BE CONSIDERED:
  - ADMIN/TECHNICAL/ENGINEERING STAFF SUPPORT PROVIDED BY SUEZ. THIS SERVICE WOULD BE PROVIDED PERIODICALLY BY CONSULTANTS
  - SUEZ PROVIDES OWN FLEET/EQUIPMENT (2 TRUCKS, 1 LOADER). CITY WOULD HAVE TO PROCURE/MAINTAIN FLEET/EQUIPMENT
  - SOFTWARE LICENSES

CONCLUSION

- SAVINGS COULD BE REALIZED BY IN-HOUSE O&M OF WASTEWATER TREATMENT/RECLAMATION PLANT.
- ADDITIONAL TIME SHOULD BE SPENT UNDERSTANDING PROS/CONS OF OPTIONS.
- IF CITY COUNCIL IS INTERESTED IN THE IN-HOUSE OPTION STAFF CAN GATHER ADDITIONAL INFORMATION AND REPORT BACK TO COUNCIL.
- STAFF RECOMMENDS APPROVAL OF SUEZ CONTRACT EXTENSION WITH OPTION TO RENEW FOR A SECOND YEAR.

Exhibit "D"

to the July 24, 2018, Regular Meeting Minutes

EXHIBIT "D"
TO Minutes of the
July 24, 2018, Regular Meeting Minutes

CITY OF BANNING
BUDGET & FINANCE COMMITTEE REPORT

TO: **BUDGET & FINANCE COMMITTEE**

FROM: **Art Vela, Director of Public Works**
Rochelle Clayton, Deputy City Manager

MEETING DATE: **July 16, 2018**

SUBJECT: **Discuss the SUEZ Contract extension and fiscal impacts related to Prevailing Wage requirements**

BACKGROUND:

On December 12, 2017 staff presented to the Budget and Finance Committee ("Committee") a request to extend the Operations and Maintenance (O&M) contract with SUEZ for O&M services at the City of Banning Wastewater Treatment Plant. The existing contract is set to expire on September 30, 2018. At that time the Committee recommended that the extension be for two years.

Recently, the City of Banning and SUEZ entered into a discussion related to the applicability of prevailing wages to the O&M contract. The subject came up from other discussions that had ensued between SUEZ and other agencies that they provide similar services too.

Prevailing Wage requirements apply to construction, alteration, demolition, installation, repair and maintenance work done under contract and paid in whole or in part of public funds.

City staff, including legal counsel, and SUEZ analyzed the O&M tasks performed under the City of Banning O&M contract that are subject to prevailing wage requirements, which were identified and detailed in Attachment No. 1. SUEZ utilized the list of tasks to perform a comparison of the cost impact for the City of Banning O&M contract based upon the difference between SUEZ's existing wage rates and the published prevailing wage rates for the job classifications necessary to perform the tasks identified. Details of the wage rate comparison are shown in Attachment No. 2.

FISCAL IMPACT:

Applying prevailing wage rates to the identified tasks increases the costs of the O&M contract by $42,987.96 for a total annual cost of $747,159.96. The increase represents a 6.1% increase.

RECOMMENDATION:

In order to comply with prevailing wage requirements, staff request that the Committee consider and vote on recommending to City Council that the contract extension be approved, for two years, and to include the increase to the contract related to prevailing wages.

ATTACHMENTS:

1. Prevailing Wage Tasks
2. Wage comparison

How many years have the contracted - 20 years -

Why no RFP -

Wage Comparison

Name	FLSA	Job Code	Job Title	Projected Annual PW Hours	Annual PTO Hours*	Annual Reg Hours	SUEZ Annual Base Rate	SUEZ Annual Fringe (35%)	SUEZ Total Wages	Hourly Rate	Job Category	PW Rate	Annual PW Wages	SUEZ Annual Wages	Annual PTO	Applicable PW Fringe	SUEZ Fringe Credit	Adjusted Fringe Due	Adjusted Annual Fringe	SUEZ Annual Frindge	Total PW Wages	VARIANCE
Holub,John T	N	NNC007	O&M Tech III	378	280	1338	$ 73550.05	$ 25742.52	$ 99292.57	$ 35.36	Laborer Group 1	$ 33.19	$ 13,366.31	$ 47,312.48	$ 9,900.97	$ 20.54	$ 6.34	$ 14.20	$ 5,367.60	$ 30,911.32	$ 106,858.67	$ 7,566.11
Holub,John T				60							Plumber/Pipefitter	$ 51.44	$ 3,086.40			$ 22.86	$ 6.34	$ 16.52	$ 991.20		$ 4,077.60	$ 4,077.60
Holub,John T				24						$ 35.36	Painting	$ 29.82	$ 848.64			$ 15.23	$ 6.34	$ 8.89	$ 213.36		$ 1,062.00	$ 1,062.00
Lomeli,Ronnie	N	NNC006	O&M Tech II	192	280	1608	$ 60639.90	$ 21223.97	$ 81863.87	$ 29.15	Laborer Group 1	$ 33.19	$ 6,372.48	$ 46,879.31	$ 8,163.06	$ 20.54	$ 0.16	$ 20.38	$ 3,912.96	$ 23,445.84	$ 88,773.66	$ 6,909.79
Duarte,Jose	N	NNC005	O&M Tech I	192	280	1608	$ 45600.05	$ 15960.02	$ 61560.07	$ 21.92	Laborer Group 1	$ 33.19	$ 6,372.48	$ 35,252.34	$ 6,138.47	$ 20.54	$ 6.46	$ 14.08	$ 2,703.36	$ 20,573.15	$ 71,039.81	$ 9,479.74
Vacancy	N	NNC005	O&M Tech I	192	280	1608	$ 43,680.00	$ 15288.00	$ 58968.00	$ 21.00	Laborer Group 1	$ 33.19	$ 6,372.48	$ 33,768.00	$ 5,880.00	$ 20.54	$ 6.46	$ 14.08	$ 2,703.36	$ 17,678.57	$ 66,402.41	$ 7,434.41
																						$ 36,529.64

***Column F** Assumption used = 15 vacation days + 7 sick days + 13 Holidays = 35 days of PTO = 280 hours

NO OVERTIME WAS ASSUMED IN THESE CALCULATIONS

Maintena... Task List
Banning Project

	Type of work	Discription of Task	Frequency		O&M Tech III John	O&M Tech Jose	O&M Tech II Ronnie	OIT Vacant
					Task Duration			
	PM	Boiler Inspection and Safety Checks	Weekly		.5 hr			
	PM	Secondary Return Pump Packing lubrication	Weekly		.25 hr (x-3)			
	PM	Primary Effluent Pumps Packing Service	Monthly		1.0 hr (x-3)			
	PM	Gas System Manometer - Zero Check	Monthly		.25 hr (x-5)			
	PM	Boiler Hot Water Pump Service/Lube	Quarterly		1.0 hr (x-2)			
	PM	Air Blower Service	Quarterly		1.5 hr (x-2)			
	PM	Sump Pump Checks and Pit Cleaning	Quarterly		1.0 hr (x-3)			
	PM	Grit Tank Center Drive Checks/Inspection	Quarterly		1.0 hr			
	PM	Headworks Gate Valve Lubrication	Quarterly		1.0 hr			
	PM	Bar Screen Drive Lube Change	Annual		3.0 hr			
	PM	Grit Classifier Cone Inspection	Bi-annual		1.5 hr			
	PM	Clarifier Center Drive Checks	Weekly		.5 hr (x-5)			
	PM	Clarifier Center Drive Lube Change	Annual		1.5 hr (x-5)			
	PM	Grit Pump Seal Water line Service	Weekly		.7 5 hr			
	PM	Grit Pump Ops Inspection Service	Quarterly		1.0 hr (x-2)			
	PM	Grit Conveyor Screw Inspection	Quarterly		1.0 hr			
	PM	Digester Mixing Pumps Seal Water Service	Quarterly		.75 hr (x-4)			
	PM	Lab Exhaust Fan Service	Annual		1.0 hr			
	PM	Equipment Motor Lubrication	Annual		1.0 hr (x-6)			
	PM	Primary Effluent Pump Motor Lubrication	Quarterly		1.0 hr (x-3)			
	PM	Sludge Bed Gate Valve Lubrication	Quarterly		1.0 hr			
	PM	Trickling Filter Lubrication Change	Annual		2.0 hr (x-2)			
	PM	Process Water Pump Motor Lube	Quarterly		.5 hr			
	PM	Case Loader Oil Change	Annual		1.5 hr			
	PM	Flame Arrestor Service	Annual		.75 hr (x-7)			
	PM	Gas Flow Meter removal (for calibration)	Annual		1.0 hr (x-3)			
	PM	Gas Flow Meter replace (after calibration)	Annual		1.0 hr (x-3)			
	PM	Heat Exchanger Cleaning	Annual		3.0 hr (x-2)			
	PM	Bar Screen Ops Service/Lube	Monthly		.5 hr			
*	PM	Landscape	Monthly		20 Hr	40 hrs		
	PM	Painting (as needed, 2 hr per mo max)	Monthly		2 hrs			
	PM	Estimated Corrective Maint	Monthly		5 hrs			
	CM	Assist John with PM/CM	Monthly			16 hrs	16 hrs	16 hrs
Total					70 hrs/mo	56 hrs/mo	16 hr/mo	16 hrs/mo

	Monthly HRs	Annual
Laborer Group 1	2	24
Laborer Group 1	3	36
Laborer Group 1	3	36
Laborer Group 1	1.25	15
Laborer Group 1	0.5	6
Laborer Group 1	0.75	9
Laborer Group 1	0.75	9
Laborer Group 1	0.25	3
Laborer Group 1	0.25	3
Laborer Group 1	0.25	3
Laborer Group 1	0.25	3
Laborer Group 1	10	120
Laborer Group 1	0.625	7.5
Laborer Group 1	3	36
Laborer Group 1	0.5	6
Laborer Group 1	0.25	3
Laborer Group 1	0.75	9
Laborer Group 1	0.083333333	1
Laborer Group 1	0.5	6
Laborer Group 1	0.75	9
Laborer Group 1	0.25	3
Laborer Group 1	0.333333333	4
Laborer Group 1	0.125	1.5
Laborer Group 1	0.125	1.5
Laborer Group 1	0.4375	5.25
Laborer Group 1	0.25	3
Laborer Group 1	0.25	3
Laborer Group 1	0.5	6
Laborer Group 1	0.5	6
Lanscaping	20	240
Painting	2	24
Electrician/Plumber	5	60
Laborer Group 1		

		Monthly	Annual
John	Laborer Group 1	31.5	377.8
	Lanscaping	20	240
	Painting	2	24
	Electrician/Plumbe	5	60
Jose	Landscaping	40	480
	General Laborer 1	16	192
Ronnie	General Laborer 1	16	192
OIT	General Laborer 1	16	192

~~158~~ 142 hrs

158 hrs per mo. → 1,896 ANNUAL

1757 ANNUAL

425.00 per hour

24 · 365 = 8,760 hrs

746,725 ÷ 8760 = 85.29

146 1757

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

07/24/2018
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Moyer on July 24, 2018, at 4:30 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade
Council Member Franklin
Council Member Peterson
Council Member Welch
Mayor Moyer

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Rochelle Clayton, Interim City Manager
Kevin Ennis, City Attorney
Robert Meteau, Deputy Human Resources Director
Marie Calderon, City Clerk

CLOSED SESSION

Mayor Moyer opened the closed session items for public comments. Seeing none, closed public comment.

City Attorney Kevin Ennis listed the items on the closed session agenda, which included:

1. PUBLIC EMPLOYEE APPOINTMENT: City Manager – Pursuant to Government Code Section 54957

2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Paragraph (1) of Subdivision (d) of Section 54956.9) Name of Case: City of Banning v. Go Green Calming Solutions, et al., Case No. RIC 1806731

The Meeting convened to closed session at 4:30 p.m. and reconvened to open session at 5:18 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 5:18 p.m.

Minutes Prepared by:

_____

Sonja De La Fuente, Deputy City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

08/28/2018
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Deputy City Clerk De La Fuente on August 28, 2018, at 5:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: None

COUNCIL MEMBERS ABSENT: Council Member Andrade
Council Member Franklin
Council Member Peterson
Council Member Welch
Mayor Moyer

ADJOURNMENT

Due to a lack of quorum the meeting was adjourned to an Adjourned Regular Meeting of the City Council to be held on Monday, September 10, 2018, at 5:00 p.m. in the Council Chamber. At that Adjourned Regular Meeting, the City Council will then consider the items listed on this agenda and items added to this agenda and posted at least 72 hours in advance of date of that Adjourned Regular Meeting.

Minutes Prepared by:

_____
Sonja De La Fuente, Deputy City Clerk

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CITY OF BANNING
CITY COUNCIL REPORT

TO:	**CITY COUNCIL**
FROM:	**Rochelle Clayton, Interim City Manager**
PREPARED BY:	**Laurie Sampson, Executive Assistant**
MEETING DATE:	**September 10, 2018**
SUBJECT:	**Receive and File Contracts Approved Under the City Manager's Signature Authority for the Months of July and August 2018.**

RECOMMENDATION:

Receive and file Contracts approved under the City Manager's signature authority for the Months of July and August 2018.

BACKGROUND:

City Council requested regular reports of contracts signed under the City Manager's signature authority of $25,000 or less.

ATTACHMENT:

1) List of Contracts approved by City Manager

Reviewed and Approved by:

Rochelle Clayton, Interim City Manager

ATTACHMENT 1

List of Contracts

CONTRACTS, CHANGE ORDERS AND SOLE SOURCES APPROVED WITHIN CITY MANAGER SIGNATURE AUTHORITY (JULY 1, 2018 - JULY 31, 2018)

City Manager Approval	Vendor Name	Description of Item/Service	Contact Award Total	Department/Division
5-Jul-2018	G&G Environmental Compliance, Inc.	Industrial Waste Program Management, FOG & NPDES Inspections & Environmental Compliance Services	$ 25,000.00	PW - Water/Wastewater
6-Jul-2018	Dell Computer Corp.	Computers & IT Supplies	$ 25,000.00	City Manager - IT
6-Jul-2018	Home Depot	Building Maintenance Materials	$ 15,000.00	PW - P/M
6-Jul-2018	Haaker Equipment Company	Water Inventory Supplies and Commodities	$ 15,000.00	PW - Water/Wastewater Inventory
6-Jul-2018	Staples Business Advantage	Office Supplies	$ 25,000.00	City Wide
6-Jul-2018	Amazon Business	City Wide Miscellaneous Supplies	$ 8,000.00	ASD - Purchasing
12-Jul-2018	Z&T Ventures (Service Scape)	Emergency Tree Removal - Sylvan Park (Project #EM1901)	$ 19,800.00	PW - P/M

CONTRACTS, CHANGE ORDERS AND SOLE SOURCES APPROVED WITHIN CITY MANAGER SIGNATURE AUTHORITY (AUG 1, 2018 - AUG 30, 2018)

City Manager Approval	Vendor Name	Description of Item/Service	Contact Award Total	Department/Division
7-Aug-2018	Mercury Disposal	Battery Recycling Servies	$ 1,000.00	Public Works
8-Aug-2018	Center Electric	Electric Repairs for Water/Wastewater Pumps	$ 25,000.00	PW - Water/Wastewater
14-Aug-2018	Prudential Overall Supply	Citywide Uniform Service	$ 22,000.00	City Wide
15-Aug-2018	Fastenal	Tools, Hardware and Misc. Items	$ 2,000.00	Community Services
15-Aug-2018	Leslie's Pool Supplies	Pool Chemicals and Supplies	$ 5,000.00	Community Services
15-Aug-2018	Fun Express	Party and Misc. Supplies	$ 5,000.00	Community Services
15-Aug-2018	All Star Elite Sports	Youth Sports Uniforms, Staff and Event Apparel	$ 5,000.00	Community Services
21-Aug-2018	Corner Keystone Construction	Board Ups and Clean Ups	$ 15,000.00	Police Dept.
21-Aug-2018	LEAF	Printer Maintenance Service	$ 2,500.00	Community Services
21-Aug-2018	Shred-It USA, LLC	Document Shreddign Service	$ 3,070.00	City Wide
21-Aug-2018	United Rotary Brush Corporation	Street Sweeper Brushes	$ 1,850.00	PW - Streets
21-Aug-2018	Vision Security	Electric Strike Keyless Entries	$ 6,731.86	Electric Utilities
22-Aug-2018	Pacific Arlarm	Alarm Monitoring Services	$ 14,468.52	City Wide
27-Aug-2018	Cintas Corporation	First Aid Supplies and Refills	$ 5,000.00	Community Services
29-Aug-2018	Al's Kubota	Tractor Repair	$ 2,256.77	PW - Water/Wastewater
29-Aug-2018	Elite Equipment	Pavement Breaker	$ 1,289.78	PW - Water/Wastewater
29-Aug-2018	Megger	Battery Replacement	$ 2,500.00	Electric Utilities
29-Aug-2018	H&L Charter	Bus Trip	$ 1,400.00	Community Services
30-Aug-2018	R.F. McDonald Co.	Sodium Hyproclorite Feed Pump	$ 4,493.18	PW - Water/Wastewater
30-Aug-2018	Waterline Technologies, Inc.	Pool Repairs as needed	$ 5,000.00	Community Services

CITY OF BANNING
CITY COUNCIL REPORT

TO:	**CITY COUNCIL**
FROM:	**Rochelle Clayton, Interim City Manager**
PREPARED BY:	**Ted Shove, Economic Development Manager**
MEETING DATE:	**September 10, 2018**
SUBJECT:	**Update Policy B-31 Administrative Procedures – Acquisitions, Leasing, and Dispositions of City-Owned Real Property**

RECOMMENDED ACTION:

That the Council approve revisions to Policy B-31 Administrative Procedures - Acquisitions, Leasing, and Dispositions of City-Owned Real Property.

BACKGROUND:

On July 11, 2017, the City Council adopted Policy B-31 of Administrative Procedures for Acquisitions, Leasing, and Dispositions of City-Owned Real Property. The policy established procedures for transactions of City-owned property, including the surplus and sale of real property deemed "no longer needed" or for economic opportunity, by the City.

Two legislative bills were enacted in 2014 that amended sections of the California Government Code that require additional outreach (affordable housing) and reporting (economic opportunities). The enacted bills are summarized below:

- **Municipalities Can Create Economic Opportunities by Selling Property Below Fair Market Value** (SB 470; Government Code 52200) - SB 470 permits cities and counties to sell or lease former redevelopment property sites for less than fair market value if the sale or lease will create economic opportunity and the total consideration is not less than fair market value. The municipality can also offer financial assistance for the acquisition, planning and financing of land assembly and development to create economic opportunity. "Economic opportunity" means entering into development agreements that will create or retain permanent jobs or increase property tax revenues by 15%, create

affordable housing, implement a sustainable communities strategy or promote transit priority projects. One objective of this bill is to restore to cities some of the economic development tools that were lost when redevelopment agencies were dissolved under prior legislation.

- **Public Land for Public Benefit** (AB 2135; Government Code 54220) AB 2135 amended Government Code Section 54220 and strengthened affordable housing's Right of First Refusal (ROFR) when local agencies, including cities and counties and special districts such as transportation authorities and school districts, dispose of publicly-held land. Ensuring the development of affordable homes near high quality transit stops and stations is a critical best practice to ensure equitable development and increase transit ridership.

The above enacted legislation was analyzed and the provisions were incorporated into the City's existing policy in redline and clean versions, as attachments to this report. Policy B-31 was revised to address both economic opportunities (SB 470) and affordable housing (AB 2135) legislation in the following ways:

- Economic Opportunities
    - Outlines determination for 'economic opportunity';
    - Details procedures for determining if transaction is exempt from CEQA and Planning Commission conformance with the City's General Plan; and
    - Adds procedures for periodic reporting of the approved subsidy.

- Affordable Housing
    - Expands conditions to sale for non-economic opportunities within the surplus process and includes pre-surplus procedural notifications to organizations serving the region for the development of:
        - Affordable housing;
        - Parkland, recreational, or open space purposes; or
        - School facilities.

JUSTIFICATION:

With the recent enactment of amendments to state law that governs local government agencies' ability to sell real property, the City's Policy B-31 was amended to reflect those

changes. The addition of these revisions to the policy provide clarity to the required level of detail, conformance with state law, and transparency by outlining a step by step process that is verifiable for surplusing real property held by the City.

Staff recommends approval for updating Policy B-31.

FISCAL IMPACT:

None.

OPTIONS:

1. Approve as recommended
2. Reject updated Policy B-31 and provide staff with alternative direction.

ATTACHMENTS:

1. Updated Policy B-31 – Acquisitions, Leasing, and Dispositions of City-owned Real Property (redline Version)
2. Updated Policy B-31 – Acquisitions, Leasing, and Dispositions of City-owned Real Property (clean version)

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Updated Policy B-31 Acquisitions, Leasing, and Dispositions of City-owned Real Property (redline version)

City of Banning Acquisitions, Leasing, and Dispositions of City-Owned Real Property		POLICY NO: B—31 ORIGINATING DEPARTMENT: Community Development Reference: Administrative
SUPERCEDES: ~~None~~B-31 (6/2017)	EFFECTIVE DATE: 9/10/2018	PAGES 21
APPROVED BY CITY MANAGER: Rochelle Clayton		

Policy Purpose:

This policy addresses the City's need to acquire, lease, and dispose of real property in order to provide services to the community now and in the future.

It is the purpose of this policy to provide guidance for the acquisition, lease, and disposition of City-owned real property. A cautious, deliberate, and flexible decision-making process is needed to manage the City's real property assets.

Definitions:

Surplus Real Property	Land and buildings that are owned by the City of Banning and determined surplus by their use agency and City Council.
Developable Property	Land that can be independently improved.
Undevelopable	Land that can only be developable with the consolidation of adjacent Property land.
Solicited Offers	An offer formally requested by the City of Banning to acquire or lease City-owned property.
Unsolicited Offers	An offers to acquire or lease City-owned property received with no formal initial solicitation by the City of Banning.

Policy Statement:

In all real property transactions, consideration must be given to the City's near and long-term goals and the public benefit derived from the use. Using an approach that will best accomplish the City's objectives given the circumstances at the time should be the guiding principle. It is the City's policy to manage its real property assets to further City goals.

1. Establishment of a Real Property Accounting Fund

The City shall establish a ~~fund to~~fund to fund normally associated sales and real estate property marketing costs. The fund will be identified as the Real Property Fund. The City Council shall have the discretion to reallocate funds in the Real Property Fund to the City's general fund.

2. Acquisition of Real Property for Municipal Purposes

Real property shall be acquired for current or future municipal purposes, and/or to benefit the community. The City shall acquire real property in accordance with:

A. Offers to purchase real property shall only be made after direction has been provided by the City Council that identifies the amount of funds available and the purpose of the acquisition. Once a budget appropriation has been approved, authority to make offers to purchase real property is delegated to the City Manager up to the appropriation limit for the purpose identified when funds were appropriated.

B. The City shall require a qualified appraiser to determine Fair Market Value ("FMV"). The FMV shall be provided to City Council prior to its final decision to purchase real property.

C. Every effort shall be made to acquire real property through negotiations, reserving the use of eminent domain for those circumstances when immediate possession is required and the parties have reached impasse (property cannot be acquired through negotiation at cost approximating current market value).

D. A high priority will be given to acquiring undeveloped land needed to meet City goals. Developed land should be acquired in reasonable proximity to the time the property is desired for City purposes.

E. Prior to the acquisition of real property and in conjunction with escrow instructions, a professional title search and preliminary Title Report shall be completed.

F. The City shall comply with requirements of the California Environmental Quality Act.

G. The City may choose to be represented by a broker or other third party professionals in acquiring real property due to the complexity of the transaction, market conditions and other circumstances at the time. The selection of a real estate broker to provide real estate services shall be subject to the City's adopted procurement procedures for professional services.

The Policy shall not apply to acquisition of real property when accepted by donation, dedication via the development review process and/or in-lieu of fees, right-of-ways, easements, or by property exchange.

3. Lease of City-Owned Real Property

Real property held for future use may be leased when deemed appropriate and approved by the City Council. Property leased to outside entities should be based on the current market rent except when Council finds there is a public purpose for leasing at a lower rate.

A. Revenue from the leasing of City-owned property shall be deposited into the Real Property Fund.

4. Disposition of Surplus Property

Real property that is no longer needed for current or future municipal purposes, which does not provide a direct benefit to the community, shall be considered surplus property. Disposing of surplus property shall be done in a manner to maximize the benefit to the community and should be done whenever real estate market conditions are favorable to the City. Disposition of City-owned real estate shall be done as follows:

A. The City Council, by resolution, shall declare City-owned property as surplus property and authorize sale/lease of property in compliance with the requirements of Government Code Section 54220 related to the sale of surplus land. The decision by City Council to declare City-owned property surplus shall be made during a public hearing. Public notice of the hearing shall include mailed notices to surrounding residents and/or property owners not less than ten (10) calendar days before the public hearing. Mailed notices shall be sent to a minimum of a 500 foot radius for properties of less than one acre and not less than 1000 feet for properties greater than one acre.

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B. Upon declaration of surplus real property, the City shall determine if the property is to be sold to private parties for economic development purposes pursuant to Government Code Sections 52200 et seq. or not to be disposed of for those purposes. If it is the intent of the City Council to sell the property for economic development purposes, the following requirements will be met:

a. *Determine if the purpose of the sale is for "economic opportunity."* The City must determine if the sale of the property would fall within one of the following (the definition of "economic opportunity" under Section 52200.2):

(i) an agreement that creates, retains, or expands new jobs, in which the City Council finds that the agreement will create or retain at least one full-time equivalent, permanent job for every $35,000 of City investment in the project after full capacity and implementation;

(ii) an agreement that increases property tax revenues to all property tax collecting entities, in which the City Council finds that the agreement will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the City;

(iii) an agreement that creates affordable housing, if a demonstrated affordable housing need exists in the community, as defined in the approved housing element or regional housing needs assessment;

(iv) a project that meet the goals set forth in Chapter 728 of the Statutes of 2008 (Sustainable Communities and Climate Protection Act of 2008) and have been included in an adopted sustainable communities strategy or alternative planning strategy or a project that specifically implements the goals of those adopted plans; or

(v) a transit priority project, as defined in Section 21155 of the Public Resources Code (part of CEQA).

b. *Determine if the property was acquired through eminent domain.* The sale of a property acquired through eminent domain cannot be less than fair market value, unless the property was transferred from a successor agency, after a "finding of completion" has been issued by the State Department of Finance: (i) pursuant to the Long Range Property Management Plan, or (ii) as a housing asset. *Section 52200.6.*

c. *Engage a real estate appraisal or expert to determine fair market value of the property.* In order to ensure that subsequent steps in the process are handled properly, the City should determine the current fair market value of

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the property. This will be important to provide confidence in the proposed sales price and satisfy the terms required in other steps below.

d. *Negotiate a term sheet regarding a proposed Purchase and Sale agreement.* Before proceeding further with the transaction, negotiate a term sheet regarding the proposed sale terms.

e. *Present the term sheet to the City Council in closed session for direction on price and terms of the sale.* The City Council is permitted to meet in closed session to provide direction to its negotiators regarding price and terms of the proposed sale of the property. This is necessary to make sure the Council in generally in agreement as to the proposed sale, the entity to which the property will be sold and the price and terms of the sale.

f. *Prepare and negotiate a Purchase and Sale Agreement for the property sale.* The Purchase and Sale Agreement should contain standard terms, a draft of the deed by which the property is to be conveyed and related contingencies to closing.

g. *Prepare a Summary Report.* The City must prepare a report (the "Summary Report") containing both of the following: *Section 52201(a)(2)*

(i) a copy of the proposed sale agreement; and

(ii) a summary that describes and specifies all of the following:

i. the cost of the agreement to the City, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City, plus the expected interest on any loans or bonds to finance the agreements;

ii. the estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the general plan or zoning;

iii. (A) the estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the sale; (B) the sale price; (C) if the sale price is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the City shall provide as part of the summary an explanation of the reasons for the difference;

iv. an explanation of why the sale of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation.

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h. *Determine if the sale is exempt from CEQA or requires preparation of an environmental document.* If the sale is in connection with the development of a specific project or a well-developed plan for the construction of a particular facility or use, then the sale must be considered as part of the "whole of the action" leading to the impacts of that anticipated development and environmental review needs to be done on the whole project prior to the sale of the property. If, however, the sale of the property is not connected to, and the City is not pre-committed to approve, a specific project on the site, then the City may be able to defer environmental review until plans for the subsequent use of the property are proposed. In the latter situation, the approval of the sale of the land may be exempt from CEQA. Check with the Community Development Department and the City Attorney's office for specific advice.

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i. *Determine if additional Planning Commission review for consistency with the City's General Plan is necessary.* The Planning Commission is required to review acquisition and sale of City property to make sure those actions are consistent with the City's General Plan. *Gov. Code Section 65402.* City Staff must determine whether the disposition has already been reviewed by the Planning Commission in some other action or the matter should be submitted for Planning Commission review.

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j. *Post a notice of public hearing and make report(s) available for inspection before the City Council meeting.* Before presenting the purchase and sale agreement to the City Council for approval, a notice for a City Council public hearing on the sale must be published in a newspaper of general circulation in the community at least once per week for at least two successive weeks. *Section 52201(a)(1).* The City must make the Summary Report available for public inspection no later than the time of publication of the first notice of the hearing. *Section 52201(a)(2).* As further discussed below, if applicable, the City should post and make available the Initial Report required by Section 53083 at the same time.

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k. *Approve the Purchase and Sale Agreement by City Council Resolution.* The sale of property must be approved by a City Council resolution adopted after the public hearing. *Section 52201(a)(1).* (The resolution should include a finding under CEQA and a finding which explains how the sale meets the definition of the "economic opportunity" discussed above.)

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l. *Determine if the City is providing a subsidy in connection with the property sale.* Section 52200.6(b) provides that the creation of an "economic opportunity" under Section 52200 *et seq.* is subject to the provisions of Section 53083, which relates to the grant of economic development subsidies. Therefore, the City must also determine if the property sale transaction contains an "economic development subsidy" component.

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i. Under Section 53083, an "economic development subsidy" refers to any expenditure of public funds or loss of revenue of $100,000 or more, for the purpose of stimulating economic development within the City's jurisdiction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits. "Economic development subsidy" does not include expenditures of public funds by, or loss of revenue for the purpose of providing housing affordable to persons and families of low or moderate income, as defined in Health and Safety Code Section 50093.

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Because Section 52201(a) already requires a public hearing for the property sale, the City does not have to hold a separate public hearing for the economic development subsidy. *Section 53083(b)*

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ii. Initial Report. The City must prepare a report (the "Initial Report"). The Initial Report must be made available to the public and through the City Internet website, before the approval of the economic development subsidy and for the entire term of the economic development subsidy. The Initial Report must contain the following information:

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1. the name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable;

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2. the start and end dates and schedule, if applicable, for the economic development subsidy;

3. a description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy;

4. a statement of the public purposes for the economic development subsidy;

5. projected tax revenue to the local agency as a result of the economic development subsidy; and

6. estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

iii. Fifth Year Report. Within the term of each economic development subsidy but not later than five years after the action granting the economic development subsidy, the City must: (i) issue a report (the

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"Fifth Year Report") and make it available to the public and through the City's website, and (ii) hold a public hearing (at a regularly scheduled City Council meeting) to consider any written or oral comments on the information contained in the Fifth Year Report. The Fifth Year Report must contain the information required in the Initial Report and also contain the following information:

1. the name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

2. the start and end dates and schedule for the economic development subsidy.

3. a description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

4. the net tax revenue accruing to the local agency as a result of the economic development subsidy.

5. the net number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

iv. Tenth Year Report. For an economic development subsidy with a term of 10 years or more, the City must, at the conclusion of economic development subsidy: (i) issue a report that contains the information updated from the Fifth Year Report, and make it available to the public and through the City's website, and (ii) hold a public hearing (at a regularly scheduled City Council meeting) to consider any written or oral comments on the information contained in the report.

v. Limitations. This policy does not include procedures that may be applicable to the development of real property (e.g. zoning requirements, California Environmental Quality Act) or prevailing wage-related requirements as may be required by Federal and/or State law.

~~A.~~

C. If no City use is identified, City Manager shall: a. Provide a written notification letter with an offer to sell or lease the property for a period of 35 years or more

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to a "Preferred Entity" for the development of [Govt Code Section 54222 (a)-(c)]:

a. Affordable housing; or
b. Parkland, recreational use, or open-space purposes; or
c. School facilities.

All notices shall be sent by first-class mail and shall include the location and a description of the property. Priority shall be given to the development of the property to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

The Preferred Entities will have sixty (60) days (notification period) to notify the City of their interest in entering into negotiations for the acquisition of the property. At the conclusion of the sixty (60) day notification period, if a Preferred Entity has contacted the City Manager and expressed an interest in acquiring the property the parties will begin good faith negotiations at reaching an acceptable offer to both parties.

D. Preferred Entity Sales Process

If the City receives notification of the intent to purchase or lease from a Preferred Entity, the City shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If needed to achieve the public purpose, the sales price may be below the fair market value. If the terms cannot be agreed upon after a period of not less than 90 days, the land may be sold at fair market on the open market.

If the surplus property is zoned for residential development, and more than one Preferred Entity makes an offer to purchase or desires to enter into a long term lease (35 years or more) for the surplus property, the City shall give first priority to the Preferred Entity that agrees to comply with the affordable housing requirements or proposes to provide the greatest number of units at the deepest level of affordability.

If a Preferred Entity proposes to use the surplus property to develop low or moderate income housing, no less than twenty-five percent (25%) of the total housing units developed on the parcel(s) shall be available at affordable prices for rental for lower income households or for-sale property to moderate income households for at least fifty-five (55) years.

If the site cannot be used for an affordable housing development, and if the property is already being used for a park or a recreational purpose, or if the land

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is designated for park and recreational use in the local general plan and will be developed for that purpose, first priority shall be given to a Preferred Entity that intends to use the site for a park or a recreational purpose.

A Preferred Entity may provide a payment period of up to 20 years for the property. The payment period for land sold for an affordable housing use may exceed 20 years but may not exceed the period of affordability.

E. Market Rate Surplus Land Sales

a. If no City use is identified and there are no bids submitted by a Preferred Entity, the City Manager may post a sign on the property notifying the public of the City's intent to surplus the property, post the surplus property on the City's website, advertise the property in a local newspaper for a minimum of two consecutive weekends, post the property on various on-line services, notify parties which have expressed an interest in acquiring the property, and/or utilize additional sales methods as outlined in Section 4D.

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b. If surplus property is sold or entered into a long term lease (35 years or more) and the new owner proposes to use the property for the development of ten (10) or more residential uses, then the entity (or its successor-in-interest) shall provide no less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental or for-sale property.

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(i) An affordable housing restriction documenting the 15% of the total number of units constructed shall be provided to be affordable for ownership housing to a household earning no more than 100% of the Area Median Income (AMI), but can be sold to a household earning up to 120% of the AMI; or at an affordable rent, for a household at 60% of the AMI. The affordable housing restriction shall be recorded at the time of transfer or the execution of the long-term lease. Ownership restrictions shall include an equity sharing agreement that requires the owner to share future appreciation with the City. The amount attributed to the City shall be the difference between the market price and the affordable price.

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c. If surplus property is sold for a use other than residential development, an affordable housing restriction shall be recorded as described above.

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d. The affordable housing restriction shall run with the land for fifty-five (55) years and shall be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction. If the property is entered into a long term lease of thirty five (35) or more years the affordable housing restriction shall run for the term of the lease including any extension to the original lease or subsequent lease of the property but not to exceed a total of fifty five (55) years from the date of the original recording of the affordable housing restriction.

F. Exceptions and Exemptions

The following are exceptions to the guidelines provided in Section D and Section E above and are exempt from the Affordable Restriction required under this Policy.

a. If a property is not contiguous to land used for a park, recreation, open-space, or low and moderate income housing purposes; and is either: (a) less than five thousand (5,000) square feet in size; (b) less than the legal residential lot size in the City; or (c) has no record of access and is less than ten thousand (10,000) square feet in size.

b. Staff may request an exemption from this policy to meet another City goal and prioritize the sale of the surplus property for parks, schools, or other reasons, such as economic development. Any exemptions shall be approved by City Council.

~~B. Determination on Value of Land – The City shall evaluate the benefits of sale of surplus property based on relevant factors including: (a) the value of the property based on an appraisal or broker's opinion of value, as appropriate, which is not more than six (6) months old at the time the property is presented to the City Council to complete the sale of a property, except that an appraisal will not be needed on the property that does not exceed $50,000.00 in value; (b) prevailing economic conditions and recent applicable trends, and (c) any special benefits to the community accrued from the sale, or exchange.~~

~~C. The City shall comply with any applicable state or federal laws for disposal of certain types of properties (e.g., parks, roads, private deed restrictions, affordable housing).~~

~~D.~~G. The City may use any of the following methods or combination thereof to maximize the benefit to the community. Methods of disposition should be determined on a case-by-case basis and may include:

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- Auction
- Negotiated Sale
- Exchange
- Lease
- Sealed Bids

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by the City Council prior to negotiation, setting forth the amount of the discount and the justification for it. The purpose of this requirement is to demonstrate to the community that the City is not making a gift of public assets.

~~E.~~H. Solicitation of Offers by Invitation for Bids

a. Invitation for Bids – If determined that it is in the best interest of the City to sell or lease surplus real estate with regard to price only, the City Manager or designee shall invite competitive sealed bids for such real estate. All Invitations for Bids shall:
   ~~i.~~(i) Be expressly conditioned on Council approval of the sale of the real estate to the successful bidder;
   ~~ii.~~(ii) Provide that bids will be evaluated solely on the basis of the price and relevant terms not related to price as stated in the bid;
   ~~iii.~~(iii) Require that each bid be received by the City Manager or designee no later than a specifically stated date and hour; and
   ~~iv.~~(iv) Require that a deposit in accordance with this policy accompany each bid.

b. Solicitation – All Invitations to Bid shall be initiated:
   ~~i.~~(i) Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site;
   ~~ii.~~(ii) The date of publication shall be at least 10 days before the due date;
   ~~iii.~~(iii) All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice; and
   ~~iv.~~(iv) Alternatively, electronic transmissions including, but not limited to, the issuance of solicitation documents and the receipt of responses thereto are permitted.

c. Acceptance or Rejection of Bids – Once the date and hour for the receipt of bids has passed and the bids have been evaluated, the sale of the real estate will be recommended to Council if the bid has met minimum pricing requirements, the bidder has complied with the conditions of this

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section and offers the highest price for the City-owned real estate. No other criteria shall be considered in evaluating bids solicited under this section.

~~F.~~I. Solicitation of Offers by Request for Proposals

a. Request for Proposals – If the City Manager determines that it is in the best interest of the City to sell or lease surplus real estate with regard to factors other than price, but which may include price, the City Manager shall request proposals for the real estate. All Requests for Proposals shall:

~~i.~~(i) Be expressly conditioned on Council approval of the sale of the real estate to the successful proposer;

~~ii.~~(ii) Set forth in detail the factors upon which the proposals received pursuant to that request will be evaluated;

~~iii.~~(iii) Require that each proposal be received by the City Manager's designee no later than a specifically stated date and hour;

~~iv.~~(iv) Require, if deemed necessary by the City, additional information such as proposed future redevelopment plan schematics, drawings or other relevant information;

~~v.~~(v) Require that each proposal be accompanied by a deposit in accordance with this policy; and

~~vi.~~(vi) Clearly state the requirements of this policy.

b. Solicitation – All Requests for Proposals shall be solicited:

~~i.~~(i) Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site;

~~ii.~~(ii) The date of publication shall be at least 10 days before the due date;

~~iii.~~(iii) All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice; and

~~iv.~~(iv) Alternatively, electronic transmissions including, but not limited to, the issuance of solicitation documents and the receipt of responses thereto are permitted.

c. Evaluations of Proposals, Factors – Each offeror proposal may be evaluated based on any or all of the following factors listed below provided such factors are enumerated in the Request for Proposal:

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~~i.~~(i) The proposed use of the real estate;
~~ii.~~(ii) The financial ability of the proposer to develop the real estate based on the proposed use;
~~iii.~~(iii) The experience of the proposer in the development and use of properties for uses similar to the proposed use;
~~iv.~~(iv) The effect of the proposed use on other properties;
~~v.~~(v) The compatibility of the proposed use with the City's Master Plan;
~~vi.~~(vi) The price the proposer offers to pay for real estate;
~~vii.~~(vii) The anticipated tax revenue based on the proposed use; and
~~viii.~~(viii) Such other evaluation factors the City may deem appropriate to the proposal.

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d. Proposal Evaluations –

~~i.~~(i) After the Purchasing Officer has reviewed each vendor's proposal to determine that they are complete, the proposals are then forwarded to the Department and/or committee members for evaluation;
~~ii.~~(ii) During the period of evaluation and prior to Award, possession of proposals and accompanying information is limited to personnel responsible for participating in the evaluation;
~~iii.~~(iii) Any communications with vendors must be approved in advance through the Purchasing Officer handling the bid process;
~~iv.~~(iv) Recommendation for Award must be in written form and must address how each vendor has met or failed to meet the evaluation criteria stated in the RFP; and
~~v.~~(v) All areas of non-conformity with any terms, conditions, or listed specifications must be clearly stated in the evaluation.

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e. Negotiation -

~~i.~~(i) When all proposals are determined to be non-responsive, all must be rejected and a new RFP shall be issued;
~~ii.~~(ii) Negotiation is permitted during an informal quote process and when only one bid resulting from an IFB is received during the competitive bid process; and
~~iii.~~(iii) The negotiation process is also permitted during the RFP process. When written evaluations support it, the Purchasing Officer may authorize negotiation with each

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vendor whose proposal can reasonably be expected to be amended to meet the needs of the City.

f. Acceptance or Rejection of proposals – Once the date and hour for receipt of proposals has passed and the proposals have been evaluated, the offeror whose proposal complies with the conditions in this policy and determined to be in the best interest of the City, and a real estate sales contract has been negotiated, the proposed sale will be contingent upon final approval by the City Council.

5. Acceptance of Unsolicited Offers

A. Unsolicited offers, to purchase or lease City real property may be accepted or rejected by the City Manager in his or her discretion based upon what is in the best interest of the City. Council shall be notified of any unsolicited offer and its disposition by the City Manager. Before disposition, the property must be declared surplus and the final purchase agreement must be approved by the City Council.

B. Unsolicited offers shall be evaluated using the evaluation factors listed under the Solicitation of Offers by Request for Proposal section of this policy. If an unsolicited offer is made to purchase City-owned real estate, the City Manager shall evaluate the offer and determine the appropriate review process based on the following factors:

a. If the subject real estate is deemed independently developable, the offeror has complied with this policy, and the offer is deemed potentially to be in the best interest of the City, the City Manager shall notify Council of the unsolicited offer. Provided authorization is granted by Council to entertain the offer, the City Manager shall publicly solicit additional offers following the Solicitation of Offers by Request for Proposal process outlined in this policy for a minimum of sixty (60) days. All proposals shall then be reviewed using Section F of this policy.

b. If the subject real estate is a parcel that is not independently developable without the consolidation of adjacent land, only offers from adjacent land owners, or the contract purchasers of the adjacent land, will be accepted. The City Manager shall provide Council with notice of the unsolicited offer. If the offer is recommended as in the best interest of the City and subject land is undevelopable as is, the City Manager shall notify any landowner immediately adjacent to the

subject City real property, providing notice and soliciting additional offers. When additional offers are received within thirty (30) days of notice being sent, evaluation of offers shall be consistent with this policy. In the event that no additional offers are received from adjacent landowners, the City Manager may enter into final negotiations to address critical factors of the offer, including price, and proposed use have been resolved, and then initiate the requisite other necessary approved processes for final decision-making by the City Council.

c. Requiring Deposit from Offeror – Unsolicited offers to purchase City-owned real estate will not be evaluated until the offeror submits a deposit in accordance with this policy.

d. Any unsolicited offer shall provide detailed written information with that offer consistent with the Evaluation of Proposals section in Section F(d) above. If any unsolicited offer is determined not to be complete in regard to the level of detail, the City Manager may request additional information from the offeror, and reject such proposal if the City Manager determines that further consideration of the submittal unsolicited proposal is not warranted.

6. Deposit

A deposit in the form of certified funds or a cashier's check in an amount equal to five (5) percent of the proposed purchase price or $100.00, whichever is greater, shall be required at the time such offer, bid or proposal. At the time the City Manager and the selected offeror enters into a contingent real estate sales contract, the deposit shall be increased to ten (10) percent. The proceeds of the certified funds or cashier's check shall be applied to the purchase price of the City –owned real estate if the Council accepts the offer, bid or proposal. The City may retain or release the proceeds of the deposit based on terms it outlines in any solicitation issued by the City. However, the City shall not forfeit or waive any other remedies or rights the City may have otherwise by retaining the proceeds of the deposit. At the time either the City Manager determines a proposal not to be responsive and responsible, or if the Council either accepts an offer, bid or proposal or rejects an offer, bid or proposal, the deposit submitted by each unsuccessful offeror, bidder, or proposer shall be returned to that offeror, bidder or proposer as soon as possible.

7. The City Manager may approve other rules and process related to the disposition or real estate as outlined above, as determined in the best interest of the City to

effectuate the intent of this real estate disposition policy. Such rules and processes shall not be inconsistent with this disposition policy.

8. The City Manager shall develop appropriate mechanisms for public input and participation in the development of recommendations to dispose of real estate, as well as in any land use planning upon which the real estate sale is contingent. This shall include consultation with the civic association which represents the neighborhood in which the property is located, if any.

9. All solicited and unsolicited offers shall be considered proprietary and protected information until such time that a recommendation to sell the real estate to a specific buyer is placed on the regular City Council agenda and acted upon by Council.

10. In the case of a public entity or non-profit City-related entity, including but not limited to the Banning Unified School District, County of Riverside, the City, at the direction of City Council, may decide to forgo a competitive sale process for the disposition of City property, and negotiate the sale of City property with those entities.

11. In recognition that the City may decide it is in the City's best interest to lease a surplus City property long term and not sell it, notwithstanding the use of the words "purchase", "sale", "sold" in this policy, the term "lease" or "leased" may be substituted to effectuate the guidelines for a lease transaction.

12. Costs associated with the disposition of property shall come from proceeds of the sale or charged to the fund which owns the property. Unless otherwise directed by the City Council, net proceeds from disposition of surplus property owned by the General Fund Reserve shall be placed into the Real Property Fund and documented. Proceeds from the sale of land or facilities originally purchased with monies from a specific fund shall be returned to that fund, except when a fund no longer exists, it will be at the direction of the City Council.

13. Sales of real property shall be on an all-cash basis or on other terms at the discretion of the City Council and in the best interest of the City.

14. Broker Representation – The City may represent itself in real estate transactions; however, the City may from time to time authorize a brokerage agreement for the disposition of property. In such cases, the brokerage fee shall be as specified in the agreement between the City and the broker. The selection of a real estate broker to provide real estate services shall be subject to the City adopted procurement procedures for professional services.

15. Records and Reporting

A. City-owned Real Estate and Surplus Real Estate – The Community Development Department shall prepare and maintain records and that enumerate:
   a. All parcels of City –owned real estate; and
   b. All City-owned real estate that any City officer reports is no longer needed for municipal or public purposes, the City Manager recommendations for the disposal of such real estate in accordance with this policy.

B. Upon determining that specific City-owned property is no longer needed for municipal or public purposes, the City Manager shall report such real estate with recommendation for the disposal of such to City Council.

16. Leasing of City-Owned Real Property

A. Criteria for Leasing - City property shall be considered for leasing when one or more of the following criteria apply:

   a. The property is not required for current municipal use, but is to be held for possible future use and can be leased as an interim measure.

   b. The property can only be leased because of legal restraints. For example, property held under restricted funds, grants or as dedicated parks.

   c. The City requires substantial control over development, use and reuse of the property.

d. The property has the immediate potential of a high return to the City because of its high demand and type of use, such as commercial and industrial land.

e. The property can be efficiently utilized by a provider of services needed by the City.

f. The property can be leased to promote a substantial economic development opportunity.

B. Lessee Selection for New Leases - Competitive offers for lease of City property shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as Request for Proposals (RFPs). – A marketing subscription system, direct advertising, use of a Multiple Listing Service (MLS), listing with a broker, posting the property and any other appropriate means.

In certain limited situations, the City may exclusively consider a single proposal for lease of City property. Potential lessees wishing to exclusively negotiate with the City must submit for City staff review a business case with sufficient justification as to how it is capable of optimizing the use of the property and return to the City, thereby negating the need for a competitive process. This information will be included when the lease transaction is presented for City Council approval.

Leasehold proposals shall be evaluated in terms of:

a. The degree to which the proposed use is in compliance with the City's strategic plan for the property.
b. In terms of the amount of consideration offered in the form of rent.
c. In terms of the financial feasibility of the proposal.
d. The capability, expertise and experience of the potential lessee with respect to the proposed leasehold development and operation.
e. If new development is proposed, a development plan that includes a description of the development team and its qualifications.
f. The details of each person or entity that will have an interest in the proposed lease
g. Special public benefits to be derived (if any).

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C. Rental Terms - Rental terms may be negotiated on the basis of fixed rates (flat rent leases) or percentages of the lessee's gross income derived from business conducted on the property, with a provision for a minimum rental (percentage leases).

D. Percentage Leases

Minimum Rent

The minimum rent component for a new percentage lease shall be set at no less than eighty percent (80%) of the fair market rent as defined above. In certain cases, a portion of the minimum rent may be abated for new construction or redevelopment on the leasehold. The minimum rent shall be adjusted upward throughout the duration of the lease at intervals of not more than every five (5) years to reflect no less than eighty percent (80%) of the average annual rent actually paid or accrued during the three (3) years preceding the adjustment. In no event shall the adjusted minimum rent be less than the minimum rent in existence immediately preceding the adjustment.

E. Flat Rate Leases

Market Rate Adjustments

Flat rate leases shall provide for upward adjustment of rent every ten (10) years to current fair market rent. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment.

Consumer Price Index Adjustments

Flat rate leases shall provide for upward adjustment of rent in the interval term between market rate adjustments by changes in the consumer price index. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment. The index used for consumer price index adjustments will be the All Urban Consumers index for Los Angeles - Riverside - Orange County, California with a base year of 1982-84. If the U.S. Department of Labor indices are no longer published, another substitute index generally recognized as authoritative will be used. Flat rate leases may include pre-determined periodic increases to rent instead of consumer price index adjustments. These periodic increases would occur at least every five (5) years.

F. Appraisal Assumptions

City leases shall include a definition of the fair market value to be used to adjust rent and identification of the premise for that value. In establishing the fair market value of leased property, any appraisal shall consider the property as a fee simple absolute estate and as vacant and available for lease

or sale for the authorized purposes of the lease at the commencement of the rental period under review.
Rates established for purposes of periodic percentage rental adjustments shall not consider any abatement as may be appropriate in a "new" development of vacant land. It shall also be assumed that all required regulatory approvals to permit the use authorized in the lease have been obtained.

G. Lease Term

Long-Term Lease

A lease in excess of one (1) year requires a resolution passed by a majority vote of all members of the City Council.

The City may consider information in determining if a longer lease term is warranted, such as if the proposed leasehold development is expected to generate above average returns to the City or significantly improve the quality of the property.

H. Lease Amendments

Amendments to leases require City Council approval. The City's agreement to an amendment may be contingent upon updating sections of the lease to incorporate current City standard lease provisions and an adjustment to fair market rent.

I. Subleases

A lessee may sublease all or part of the leased property to a qualified sub-lessee subject to approval by the City. No sublease shall be approved which would be detrimental to the City's rights under the master lease or for a use that is not consistent with uses allowed by the master lease. The City Manager may authorize subleases which meet these conditions and which do not require amendment of the master lease. Unless special circumstances exist, leases shall provide for the City to receive a minimum of fifty percent (50%) of the incremental gross rental revenues due to the lessee from subleases.

J. Leasehold Improvements

Leasehold improvements installed by lessees shall be removed at the lease termination without cost to the City, or will revert to the City, at the City's

option. All leasehold improvements and alterations require prior written approval of the City Manager.

K. Maintenance and Utilities Responsibility

City leases shall require the lessee to maintain all improvements on the property at its own expense and be responsible for the cost of all utilities, unless otherwise authorized by the City Council.

L. Security Deposits

The standard security deposit for a new lease agreement shall be equivalent to one (1) month's rent. The security deposit may take the form of cash, an instrument of credit or a faithful performance bond. For a lessee making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

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ATTACHMENT 2

Updated Policy B-31 Acquisitions, Leasing, and Dispositions of City-owned Real Property (clean version)

City of Banning Acquisitions, Leasing, and Dispositions of City-Owned Real Property		POLICY NO: B—31 ORIGINATING DEPARTMENT: Community Development Reference: Administrative
SUPERCEDES: B-31 (6/2017)	EFFECTIVE DATE: 9/10/2018	PAGES 21
APPROVED BY CITY MANAGER: Rochelle Clayton		

Policy Purpose:

This policy addresses the City's need to acquire, lease, and dispose of real property in order to provide services to the community now and in the future.

It is the purpose of this policy to provide guidance for the acquisition, lease, and disposition of City-owned real property. A cautious, deliberate, and flexible decision-making process is needed to manage the City's real property assets.

Definitions:

Surplus Real Property	Land and buildings that are owned by the City of Banning and determined surplus by their use agency and City Council.
Developable Property	Land that can be independently improved.
Undevelopable	Land that can only be developable with the consolidation of adjacent Property land.
Solicited Offers	An offer formally requested by the City of Banning to acquire or lease City-owned property.
Unsolicited Offers	An offers to acquire or lease City-owned property received with no formal initial solicitation by the City of Banning.

Policy Statement:

In all real property transactions, consideration must be given to the City's near and long-term goals and the public benefit derived from the use. Using an approach that will best accomplish the City's objectives given the circumstances at the time should be the guiding principle. It is the City's policy to manage its real property assets to further City goals.

1. Establishment of a Real Property Accounting Fund

The City shall establish a fund to fund normally associated sales and real estate property marketing costs. The fund will be identified as the Real Property Fund. The City Council shall have the discretion to reallocate funds in the Real Property Fund to the City's general fund.

2. Acquisition of Real Property for Municipal Purposes

Real property shall be acquired for current or future municipal purposes, and/or to benefit the community. The City shall acquire real property in accordance with:

A. Offers to purchase real property shall only be made after direction has been provided by the City Council that identifies the amount of funds available and the purpose of the acquisition. Once a budget appropriation has been approved, authority to make offers to purchase real property is delegated to the City Manager up to the appropriation limit for the purpose identified when funds were appropriated.

B. The City shall require a qualified appraiser to determine Fair Market Value ("FMV"). The FMV shall be provided to City Council prior to its final decision to purchase real property.

C. Every effort shall be made to acquire real property through negotiations, reserving the use of eminent domain for those circumstances when immediate possession is required and the parties have reached impasse (property cannot be acquired through negotiation at cost approximating current market value).

D. A high priority will be given to acquiring undeveloped land needed to meet City goals. Developed land should be acquired in reasonable proximity to the time the property is desired for City purposes.

E. Prior to the acquisition of real property and in conjunction with escrow instructions, a professional title search and preliminary Title Report shall be completed.

F. The City shall comply with requirements of the California Environmental Quality Act.

G. The City may choose to be represented by a broker or other third party professionals in acquiring real property due to the complexity of the transaction, market conditions and other circumstances at the time. The selection of a real estate broker to provide real estate services shall be subject to the City's adopted procurement procedures for professional services.

The Policy shall not apply to acquisition of real property when accepted by donation, dedication via the development review process and/or in-lieu of fees, right-of-ways, easements, or by property exchange.

3. Lease of City-Owned Real Property

Real property held for future use may be leased when deemed appropriate and approved by the City Council. Property leased to outside entities should be based on the current market rent except when Council finds there is a public purpose for leasing at a lower rate.

A. Revenue from the leasing of City-owned property shall be deposited into the Real Property Fund.

4. Disposition of Surplus Property

Real property that is no longer needed for current or future municipal purposes, which does not provide a direct benefit to the community, shall be considered surplus property. Disposing of surplus property shall be done in a manner to maximize the benefit to the community and should be done whenever real estate market conditions are favorable to the City. Disposition of City-owned real estate shall be done as follows:

A. The City Council, by resolution, shall declare City-owned property as surplus property and authorize sale/lease of property in compliance with the requirements of Government Code Section 54220 related to the sale of surplus land. The decision by City Council to declare City-owned property surplus shall be made during a public hearing. Public notice of the hearing shall include mailed notices to surrounding residents and/or property owners not less than ten (10) calendar days before the public hearing. Mailed notices shall be sent to a minimum of a 500 foot radius for properties of less than one acre and not less than 1000 feet for properties greater than one acre.

B. Upon declaration of surplus real property, the City shall determine if the property is to be sold to private parties for economic development purposes pursuant to Government Code Sections 52200 et seq. or not to be disposed of for those purposes. If it is the intent of the City Council to sell the property for economic development purposes, the following requirements will be met:

a. *Determine if the purpose of the sale is for "economic opportunity."* The City must determine if the sale of the property would fall within one of the following (the definition of "economic opportunity" under Section 52200.2):

(i) an agreement that creates, retains, or expands new jobs, in which the City Council finds that the agreement will create or retain at least one full-time equivalent, permanent job for every $35,000 of City investment in the project after full capacity and implementation;

(ii) an agreement that increases property tax revenues to all property tax collecting entities, in which the City Council finds that the agreement will result in an increase of at least 15 percent of total property tax resulting from the project at full implementation when compared to the year prior to the property being acquired by the City;

(iii) an agreement that creates affordable housing, if a demonstrated affordable housing need exists in the community, as defined in the approved housing element or regional housing needs assessment;

(iv) a project that meet the goals set forth in Chapter 728 of the Statutes of 2008 (Sustainable Communities and Climate Protection Act of 2008) and have been included in an adopted sustainable communities strategy or alternative planning strategy or a project that specifically implements the goals of those adopted plans; or

(v) a transit priority project, as defined in Section 21155 of the Public Resources Code (part of CEQA).

b. *Determine if the property was acquired through eminent domain.* The sale of a property acquired through eminent domain cannot be less than fair market value, unless the property was transferred from a successor agency, after a "finding of completion" has been issued by the State Department of Finance: (i) pursuant to the Long Range Property Management Plan, or (ii) as a housing asset. *Section 52200.6.*

c. *Engage a real estate appraisal or expert to determine fair market value of the property.* In order to ensure that subsequent steps in the process are handled properly, the City should determine the current fair market value of

the property. This will be important to provide confidence in the proposed sales price and satisfy the terms required in other steps below.

d. *Negotiate a term sheet regarding a proposed Purchase and Sale agreement.* Before proceeding further with the transaction, negotiate a term sheet regarding the proposed sale terms.

e. *Present the term sheet to the City Council in closed session for direction on price and terms of the sale.* The City Council is permitted to meet in closed session to provide direction to its negotiators regarding price and terms of the proposed sale of the property. This is necessary to make sure the Council in generally in agreement as to the proposed sale, the entity to which the property will be sold and the price and terms of the sale.

f. *Prepare and negotiate a Purchase and Sale Agreement for the property sale*. The Purchase and Sale Agreement should contain standard terms, a draft of the deed by which the property is to be conveyed and related contingencies to closing.

g. *Prepare a Summary Report.* The City must prepare a report (the "Summary Report") containing both of the following: *Section 52201(a)(2)*

(i) a copy of the proposed sale agreement; and

(ii) a summary that describes and specifies all of the following:

i. the cost of the agreement to the City, including land acquisition costs, clearance costs, relocation costs, the costs of any improvements to be provided by the City, plus the expected interest on any loans or bonds to finance the agreements;

ii. the estimated value of the interest to be conveyed, determined at the highest and best uses permitted under the general plan or zoning;

iii. (A) the estimated value of the interest to be conveyed, determined at the use and with the conditions, covenants, and development costs required by the sale; (B) the sale price; (C) if the sale price is less than the fair market value of the interest to be conveyed or leased, determined at the highest and best use, then the City shall provide as part of the summary an explanation of the reasons for the difference;

iv. an explanation of why the sale of the property will assist in the creation of economic opportunity, with reference to all supporting facts and materials relied upon in making this explanation.

h. *Determine if the sale is exempt from CEQA or requires preparation of an environmental document.* If the sale is in connection with the development of a specific project or a well-developed plan for the construction of a particular facility or use, then the sale must be considered as part of the "whole of the action" leading to the impacts of that anticipated development and environmental review needs to be done on the whole project prior to the sale of the property. If, however, the sale of the property is not connected to, and the City is not pre-committed to approve, a specific project on the site, then the City may be able to defer environmental review until plans for the subsequent use of the property are proposed. In the latter situation, the approval of the sale of the land may be exempt from CEQA. Check with the Community Development Department and the City Attorney's office for specific advice.

i. *Determine if additional Planning Commission review for consistency with the City's General Plan is necessary.* The Planning Commission is required to review acquisition and sale of City property to make sure those actions are consistent with the City's General Plan. *Gov. Code Section 65402.* City Staff must determine whether the disposition has already been reviewed by the Planning Commission in some other action or the matter should be submitted for Planning Commission review.

j. *Post a notice of public hearing and make report(s) available for inspection before the City Council meeting.* Before presenting the purchase and sale agreement to the City Council for approval, a notice for a City Council public hearing on the sale must be published in a newspaper of general circulation in the community at least once per week for at least two successive weeks. *Section 52201(a)(1).* The City must make the Summary Report available for public inspection no later than the time of publication of the first notice of the hearing. *Section 52201(a)(2).* As further discussed below, if applicable, the City should post and make available the Initial Report required by Section 53083 at the same time.

k. *Approve the Purchase and Sale Agreement by City Council Resolution.* The sale of property must be approved by a City Council resolution adopted after the public hearing. *Section 52201(a)(1).* (The resolution should include a finding under CEQA and a finding which explains how the sale meets the definition of the "economic opportunity" discussed above.)

l. *Determine if the City is providing a subsidy in connection with the property sale.* Section 52200.6(b) provides that the creation of an "economic opportunity" under Section 52200 *et seq.* is subject to the provisions of Section 53083, which relates to the grant of economic development subsidies. Therefore, the City must also determine if the property sale transaction contains an "economic development subsidy" component.

i. Under Section 53083, an "economic development subsidy" refers to any expenditure of public funds or loss of revenue of $100,000 or more, for the purpose of stimulating economic development within the City's jurisdiction, including, but not limited to, bonds, grants, loans, loan guarantees, enterprise zone or empowerment zone incentives, fee waivers, land price subsidies, matching funds, tax abatements, tax exemptions, and tax credits. "Economic development subsidy" does not include expenditures of public funds by, or loss of revenue for the purpose of providing housing affordable to persons and families of low or moderate income, as defined in Health and Safety Code Section 50093.

Because Section 52201(a) already requires a public hearing for the property sale, the City does not have to hold a separate public hearing for the economic development subsidy. *Section 53083(b)*

ii. Initial Report. The City must prepare a report (the "Initial Report"). The Initial Report must be made available to the public and through the City Internet website, before the approval of the economic development subsidy and for the entire term of the economic development subsidy. The Initial Report must contain the following information:

1. the name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable;

2. the start and end dates and schedule, if applicable, for the economic development subsidy;

3. a description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy;

4. a statement of the public purposes for the economic development subsidy;

5. projected tax revenue to the local agency as a result of the economic development subsidy; and

6. estimated number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

iii. Fifth Year Report. Within the term of each economic development subsidy but not later than five years after the action granting the economic development subsidy, the City must: (i) issue a report (the

"Fifth Year Report") and make it available to the public and through the City's website, and (ii) hold a public hearing (at a regularly scheduled City Council meeting) to consider any written or oral comments on the information contained in the Fifth Year Report. The Fifth Year Report must contain the information required in the Initial Report and also contain the following information:

1. the name and address of all corporations or any other business entities, except for sole proprietorships, that are the beneficiary of the economic development subsidy, if applicable.

2. the start and end dates and schedule for the economic development subsidy.

3. a description of the economic development subsidy, including the estimated total amount of the expenditure of public funds by, or of revenue lost to, the local agency as a result of the economic development subsidy.

4. the net tax revenue accruing to the local agency as a result of the economic development subsidy.

5. the net number of jobs created by the economic development subsidy, broken down by full-time, part-time, and temporary positions.

iv. Tenth Year Report. For an economic development subsidy with a term of 10 years or more, the City must, at the conclusion of economic development subsidy: (i) issue a report that contains the information updated from the Fifth Year Report, and make it available to the public and through the City's website, and (ii) hold a public hearing (at a regularly scheduled City Council meeting) to consider any written or oral comments on the information contained in the report.

v. Limitations. This policy does <u>not</u> include procedures that may be applicable to the development of real property (e.g. zoning requirements, California Environmental Quality Act) or prevailing wage-related requirements as may be required by Federal and/or State law.

C. If no City use is identified, City Manager shall: a. Provide a written notification letter with an offer to sell or lease the property for a period of 35 years or more

to a "Preferred Entity" for the development of [Govt Code Section 54222 (a)-(c)]:

a. Affordable housing; or
b. Parkland, recreational use, or open-space purposes; or
c. School facilities.

All notices shall be sent by first-class mail and shall include the location and a description of the property. Priority shall be given to the development of the property to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

The Preferred Entities will have sixty (60) days (notification period) to notify the City of their interest in entering into negotiations for the acquisition of the property. At the conclusion of the sixty (60) day notification period, if a Preferred Entity has contacted the City Manager and expressed an interest in acquiring the property the parties will begin good faith negotiations at reaching an acceptable offer to both parties.

D. Preferred Entity Sales Process

If the City receives notification of the intent to purchase or lease from a Preferred Entity, the City shall enter into good faith negotiations to determine a mutually satisfactory sales price or lease terms. If needed to achieve the public purpose, the sales price may be below the fair market value. If the terms cannot be agreed upon after a period of not less than 90 days, the land may be sold at fair market on the open market.

If the surplus property is zoned for residential development, and more than one Preferred Entity makes an offer to purchase or desires to enter into a long term lease (35 years or more) for the surplus property, the City shall give first priority to the Preferred Entity that agrees to comply with the affordable housing requirements or proposes to provide the greatest number of units at the deepest level of affordability.

If a Preferred Entity proposes to use the surplus property to develop low or moderate income housing, no less than twenty-five percent (25%) of the total housing units developed on the parcel(s) shall be available at affordable prices for rental for lower income households or for-sale property to moderate income households for at least fifty-five (55) years.

If the site cannot be used for an affordable housing development, and if the property is already being used for a park or a recreational purpose, or if the land

is designated for park and recreational use in the local general plan and will be developed for that purpose, first priority shall be given to a Preferred Entity that intends to use the site for a park or a recreational purpose.

A Preferred Entity may provide a payment period of up to 20 years for the property. The payment period for land sold for an affordable housing use may exceed 20 years but may not exceed the period of affordability.

E. Market Rate Surplus Land Sales

a. If no City use is identified and there are no bids submitted by a Preferred Entity, the City Manager may post a sign on the property notifying the public of the City's intent to surplus the property, post the surplus property on the City's website, advertise the property in a local newspaper for a minimum of two consecutive weekends, post the property on various on-line services, notify parties which have expressed an interest in acquiring the property, and/or utilize additional sales methods as outlined in Section 4D.

b. If surplus property is sold or entered into a long term lease (35 years or more) and the new owner proposes to use the property for the development of ten (10) or more residential uses, then the entity (or its successor-in-interest) shall provide no less than fifteen percent (15%) of the total number of units developed on the parcel(s) at affordable prices for rental or for-sale property.

(i) An affordable housing restriction documenting the 15% of the total number of units constructed shall be provided to be affordable for ownership housing to a household earning no more than 100% of the Area Median Income (AMI), but can be sold to a household earning up to 120% of the AMI; or at an affordable rent, for a household at 60% of the AMI. The affordable housing restriction shall be recorded at the time of transfer or the execution of the long-term lease. Ownership restrictions shall include an equity sharing agreement that requires the owner to share future appreciation with the City. The amount attributed to the City shall be the difference between the market price and the affordable price.

c. If surplus property is sold for a use other than residential development, an affordable housing restriction shall be recorded as described above.

d. The affordable housing restriction shall run with the land for fifty-five (55) years and shall be enforceable against any owner (or its successor-in-interest) who violates the covenant or restriction. If the property is entered into a long term lease of thirty five (35) or more years the affordable housing restriction shall run for the term of the lease including any extension to the original lease or subsequent lease of the property but not to exceed a total of fifty five (55) years from the date of the original recording of the affordable housing restriction.

F. Exceptions and Exemptions

The following are exceptions to the guidelines provided in Section D and Section E above and are exempt from the Affordable Restriction required under this Policy.

a. If a property is not contiguous to land used for a park, recreation, open-space, or low and moderate income housing purposes; and is either: (a) less than five thousand (5,000) square feet in size; (b) less than the legal residential lot size in the City; or (c) has no record of access and is less than ten thousand (10,000) square feet in size.

b. Staff may request an exemption from this policy to meet another City goal and prioritize the sale of the surplus property for parks, schools, or other reasons, such as economic development. Any exemptions shall be approved by City Council.

G. The City may use any of the following methods or combination thereof to maximize the benefit to the community. Methods of disposition should be determined on a case-by-case basis and may include:

- Auction
- Negotiated Sale
- Exchange
- Lease
- Sealed Bids

Discounts will not be negotiated unless an extraordinary need or circumstance is recognized by the City Council prior to negotiation, setting forth the amount of the discount and the justification for it. The purpose of this requirement is to demonstrate to the community that the City is not making a gift of public assets.

H. Solicitation of Offers by Invitation for Bids

a. Invitation for Bids – If determined that it is in the best interest of the City to sell or lease surplus real estate with regard to price only, the City Manager or designee shall invite competitive sealed bids for such real estate. All Invitations for Bids shall:

(i) Be expressly conditioned on Council approval of the sale of the real estate to the successful bidder;

(ii) Provide that bids will be evaluated solely on the basis of the price and relevant terms not related to price as stated in the bid;

(iii) Require that each bid be received by the City Manager or designee no later than a specifically stated date and hour; and

(iv) Require that a deposit in accordance with this policy accompany each bid.

b. Solicitation – All Invitations to Bid shall be initiated:

(i) Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site;

(ii) The date of publication shall be at least 10 days before the due date;

(iii) All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice; and

(iv) Alternatively, electronic transmissions including, but not limited to, the issuance of solicitation documents and the receipt of responses thereto are permitted.

c. Acceptance or Rejection of Bids – Once the date and hour for the receipt of bids has passed and the bids have been evaluated, the sale of the real estate will be recommended to Council if the bid has met minimum pricing requirements, the bidder has complied with the conditions of this section and offers the highest price for the City-owned real estate. No other criteria shall be considered in evaluating bids solicited under this section.

I. Solicitation of Offers by Request for Proposals

a. Request for Proposals – If the City Manager determines that it is in the best interest of the City to sell or lease surplus real estate with regard to factors other than price, but which may include price, the City Manager shall request proposals for the real estate. All Requests for Proposals shall:

(i) Be expressly conditioned on Council approval of the sale of the real estate to the successful proposer;
(ii) Set forth in detail the factors upon which the proposals received pursuant to that request will be evaluated;
(iii) Require that each proposal be received by the City Manager's designee no later than a specifically stated date and hour;
(iv) Require, if deemed necessary by the City, additional information such as proposed future redevelopment plan schematics, drawings or other relevant information;
(v) Require that each proposal be accompanied by a deposit in accordance with this policy; and
(vi) Clearly state the requirements of this policy.

b. Solicitation – All Requests for Proposals shall be solicited:
(i) Formal bids shall be posted at City Hall and shall be published at least once in a newspaper of general circulation as required by State law, and, if applicable, in appropriate trade publications and on the City's Web site;
(ii) The date of publication shall be at least 10 days before the due date;
(iii) All formal bids shall be sealed and shall be publicly opened and read at the date, time, and place indicated in the published notice; and
(iv) Alternatively, electronic transmissions including, but not limited to, the issuance of solicitation documents and the receipt of responses thereto are permitted.

c. Evaluations of Proposals, Factors – Each offeror proposal may be evaluated based on any or all of the following factors listed below provided such factors are enumerated in the Request for Proposal:
(i) The proposed use of the real estate;
(ii) The financial ability of the proposer to develop the real estate based on the proposed use;
(iii) The experience of the proposer in the development and use of properties for uses similar to the proposed use;
(iv) The effect of the proposed use on other properties;
(v) The compatibility of the proposed use with the City's Master Plan;
(vi) The price the proposer offers to pay for real estate;
(vii) The anticipated tax revenue based on the proposed use; and

(viii) Such other evaluation factors the City may deem appropriate to the proposal.

d. Proposal Evaluations –

(i) After the Purchasing Officer has reviewed each vendor's proposal to determine that they are complete, the proposals are then forwarded to the Department and/or committee members for evaluation;

(ii) During the period of evaluation and prior to Award, possession of proposals and accompanying information is limited to personnel responsible for participating in the evaluation;

(iii) Any communications with vendors must be approved in advance through the Purchasing Officer handling the bid process;

(iv) Recommendation for Award must be in written form and must address how each vendor has met or failed to meet the evaluation criteria stated in the RFP; and

(v) All areas of non-conformity with any terms, conditions, or listed specifications must be clearly stated in the evaluation.

e. Negotiation -

(i) When all proposals are determined to be non-responsive, all must be rejected and a new RFP shall be issued;

(ii) Negotiation is permitted during an informal quote process and when only one bid resulting from an IFB is received during the competitive bid process; and

(iii) The negotiation process is also permitted during the RFP process. When written evaluations support it, the Purchasing Officer may authorize negotiation with each vendor whose proposal can reasonably be expected to be amended to meet the needs of the City.

f. Acceptance or Rejection of proposals – Once the date and hour for receipt of proposals has passed and the proposals have been evaluated, the offeror whose proposal complies with the conditions in this policy and determined to be in the best interest of the City, and a real estate sales contract has been negotiated, the proposed sale will be contingent upon final approval by the City Council.

5. Acceptance of Unsolicited Offers

A. Unsolicited offers, to purchase or lease City real property may be accepted or rejected by the City Manager in his or her discretion based upon what is in the best interest of the City. Council shall be notified of any unsolicited offer and its disposition by the City Manager. Before disposition, the property must be declared surplus and the final purchase agreement must be approved by the City Council.

B. Unsolicited offers shall be evaluated using the evaluation factors listed under the Solicitation of Offers by Request for Proposal section of this policy. If an unsolicited offer is made to purchase City-owned real estate, the City Manager shall evaluate the offer and determine the appropriate review process based on the following factors:

a. If the subject real estate is deemed independently developable, the offeror has complied with this policy, and the offer is deemed potentially to be in the best interest of the City, the City Manager shall notify Council of the unsolicited offer. Provided authorization is granted by Council to entertain the offer, the City Manager shall publicly solicit additional offers following the Solicitation of Offers by Request for Proposal process outlined in this policy for a minimum of sixty (60) days. All proposals shall then be reviewed using Section F of this policy.

b. If the subject real estate is a parcel that is not independently developable without the consolidation of adjacent land, only offers from adjacent land owners, or the contract purchasers of the adjacent land, will be accepted. The City Manager shall provide Council with notice of the unsolicited offer. If the offer is recommended as in the best interest of the City and subject land is undevelopable as is, the City Manager shall notify any landowner immediately adjacent to the subject City real property, providing notice and soliciting additional offers. When additional offers are received within thirty (30) days of notice being sent, evaluation of offers shall be consistent with this policy. In the event that no additional offers are received from adjacent landowners, the City Manager may enter into final negotiations to address critical factors of the offer, including price, and proposed use have been resolved, and then initiate the requisite other necessary approved processes for final decision-making by the City Council.

c. Requiring Deposit from Offeror – Unsolicited offers to purchase City-owned real estate will not be evaluated until the offeror submits a deposit in accordance with this policy.

d. Any unsolicited offer shall provide detailed written information with that offer consistent with the Evaluation of Proposals section in Section F(d) above. If any unsolicited offer is determined not to be complete in regard to the level of detail, the City Manager may request additional information from the offeror, and reject such proposal if the City Manager determines that further consideration of the submittal unsolicited proposal is not warranted.

6. Deposit

A deposit in the form of certified funds or a cashier's check in an amount equal to five (5) percent of the proposed purchase price or $100.00, whichever is greater, shall be required at the time such offer, bid or proposal. At the time the City Manager and the selected offeror enters into a contingent real estate sales contract, the deposit shall be increased to ten (10) percent. The proceeds of the certified funds or cashier's check shall be applied to the purchase price of the City –owned real estate if the Council accepts the offer, bid or proposal. The City may retain or release the proceeds of the deposit based on terms it outlines in any solicitation issued by the City. However, the City shall not forfeit or waive any other remedies or rights the City may have otherwise by retaining the proceeds of the deposit. At the time either the City Manager determines a proposal not to be responsive and responsible, or if the Council either accepts an offer, bid or proposal or rejects an offer, bid or proposal, the deposit submitted by each unsuccessful offeror, bidder, or proposer shall be returned to that offeror, bidder or proposer as soon as possible.

7. The City Manager may approve other rules and process related to the disposition or real estate as outlined above, as determined in the best interest of the City to effectuate the intent of this real estate disposition policy. Such rules and processes shall not be inconsistent with this disposition policy.

8. The City Manager shall develop appropriate mechanisms for public input and participation in the development of recommendations to dispose of real estate, as well as in any land use planning upon which the real estate sale is contingent. This shall include consultation with the civic association which represents the neighborhood in which the property is located, if any.

9. All solicited and unsolicited offers shall be considered proprietary and protected information until such time that a recommendation to sell the real estate to a specific buyer is placed on the regular City Council agenda and acted upon by Council.

10. In the case of a public entity or non-profit City-related entity, including but not limited to the Banning Unified School District, County of Riverside, the City, at the direction of City Council, may decide to forgo a competitive sale process for the disposition of City property, and negotiate the sale of City property with those entities.

11. In recognition that the City may decide it is in the City's best interest to lease a surplus City property long term and not sell it, notwithstanding the use of the words "purchase", "sale", "sold" in this policy, the term "lease" or "leased" may be substituted to effectuate the guidelines for a lease transaction.

12. Costs associated with the disposition of property shall come from proceeds of the sale or charged to the fund which owns the property. Unless otherwise directed by the City Council, net proceeds from disposition of surplus property owned by the General Fund Reserve shall be placed into the Real Property Fund and documented. Proceeds from the sale of land or facilities originally purchased with monies from a specific fund shall be returned to that fund, except when a fund no longer exists, it will be at the direction of the City Council.

13. Sales of real property shall be on an all-cash basis or on other terms at the discretion of the City Council and in the best interest of the City.

14. Broker Representation – The City may represent itself in real estate transactions; however, the City may from time to time authorize a brokerage agreement for the disposition of property. In such cases, the brokerage fee shall be as specified in the agreement between the City and the broker. The selection of a real estate broker to provide real estate services shall be subject to the City adopted procurement procedures for professional services.

15. Records and Reporting

A. City-owned Real Estate and Surplus Real Estate – The Community Development Department shall prepare and maintain records and that enumerate:
    a. All parcels of City –owned real estate; and
    b. All City-owned real estate that any City officer reports is no longer needed for municipal or public purposes, the City Manager recommendations for the disposal of such real estate in accordance with this policy.

B. Upon determining that specific City-owned property is no longer needed for municipal or public purposes, the City Manager shall report such real estate with recommendation for the disposal of such to City Council.

16. Leasing of City-Owned Real Property

A. Criteria for Leasing - City property shall be considered for leasing when one or more of the following criteria apply:

    a. The property is not required for current municipal use, but is to be held for possible future use and can be leased as an interim measure.

    b. The property can only be leased because of legal restraints. For example, property held under restricted funds, grants or as dedicated parks.

    c. The City requires substantial control over development, use and reuse of the property.

    d. The property has the immediate potential of a high return to the City because of its high demand and type of use, such as commercial and industrial land.

    e. The property can be efficiently utilized by a provider of services needed by the City.

    f. The property can be leased to promote a substantial economic development opportunity.

B. Lessee Selection for New Leases - Competitive offers for lease of City property shall be solicited from the open market place. This may be accomplished through a number of marketing techniques, such as Request for Proposals (RFPs). – A marketing subscription system,

direct advertising, use of a Multiple Listing Service (MLS), listing with a broker, posting the property and any other appropriate means.

In certain limited situations, the City may exclusively consider a single proposal for lease of City property. Potential lessees wishing to exclusively negotiate with the City must submit for City staff review a business case with sufficient justification as to how it is capable of optimizing the use of the property and return to the City, thereby negating the need for a competitive process. This information will be included when the lease transaction is presented for City Council approval.

Leasehold proposals shall be evaluated in terms of:

a. The degree to which the proposed use is in compliance with the City's strategic plan for the property.
b. In terms of the amount of consideration offered in the form of rent.
c. In terms of the financial feasibility of the proposal.
d. The capability, expertise and experience of the potential lessee with respect to the proposed leasehold development and operation.
e. If new development is proposed, a development plan that includes a description of the development team and its qualifications.
f. The details of each person or entity that will have an interest in the proposed lease
g. Special public benefits to be derived (if any).

C. Rental Terms - Rental terms may be negotiated on the basis of fixed rates (flat rent leases) or percentages of the lessee's gross income derived from business conducted on the property, with a provision for a minimum rental (percentage leases).

D. Percentage Leases

Minimum Rent

The minimum rent component for a new percentage lease shall be set at no less than eighty percent (80%) of the fair market rent as defined above. In certain cases, a portion of the minimum rent may be abated for new construction or redevelopment on the leasehold. The minimum rent shall be adjusted upward throughout the duration of the lease at intervals of not more than every five (5) years to reflect no less than eighty percent (80%) of the average annual rent actually paid or accrued during the three (3) years preceding the adjustment. In no event shall the adjusted minimum rent be less than the minimum rent in existence immediately preceding the adjustment.

E. Flat Rate Leases

Market Rate Adjustments

Flat rate leases shall provide for upward adjustment of rent every ten (10) years to current fair market rent. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment.

Consumer Price Index Adjustments

Flat rate leases shall provide for upward adjustment of rent in the interval term between market rate adjustments by changes in the consumer price index. In no event shall the adjusted rent be lower than the rent in existence immediately preceding the adjustment. The index used for consumer price index adjustments will be the All Urban Consumers index for Los Angeles - Riverside - Orange County, California with a base year of 1982-84. If the U.S. Department of Labor indices are no longer published, another substitute index generally recognized as authoritative will be used. Flat rate leases may include pre-determined periodic increases to rent instead of consumer price index adjustments. These periodic increases would occur at least every five (5) years.

F. Appraisal Assumptions

City leases shall include a definition of the fair market value to be used to adjust rent and identification of the premise for that value. In establishing the fair market value of leased property, any appraisal shall consider the property as a fee simple absolute estate and as vacant and available for lease or sale for the authorized purposes of the lease at the commencement of the rental period under review.
Rates established for purposes of periodic percentage rental adjustments shall not consider any abatement as may be appropriate in a "new" development of vacant land. It shall also be assumed that all required regulatory approvals to permit the use authorized in the lease have been obtained.

G. Lease Term

Long-Term Lease

A lease in excess of one (1) year requires a resolution passed by a majority vote of all members of the City Council.

The City may consider information in determining if a longer lease term is warranted, such as if the proposed leasehold development is expected to

generate above average returns to the City or significantly improve the quality of the property.

H. Lease Amendments

Amendments to leases require City Council approval. The City's agreement to an amendment may be contingent upon updating sections of the lease to incorporate current City standard lease provisions and an adjustment to fair market rent.

I. Subleases

A lessee may sublease all or part of the leased property to a qualified sub-lessee subject to approval by the City. No sublease shall be approved which would be detrimental to the City's rights under the master lease or for a use that is not consistent with uses allowed by the master lease. The City Manager may authorize subleases which meet these conditions and which do not require amendment of the master lease. Unless special circumstances exist, leases shall provide for the City to receive a minimum of fifty percent (50%) of the incremental gross rental revenues due to the lessee from subleases.

J. Leasehold Improvements

Leasehold improvements installed by lessees shall be removed at the lease termination without cost to the City, or will revert to the City, at the City's option. All leasehold improvements and alterations require prior written approval of the City Manager.

K. Maintenance and Utilities Responsibility

City leases shall require the lessee to maintain all improvements on the property at its own expense and be responsible for the cost of all utilities, unless otherwise authorized by the City Council.

L. Security Deposits

The standard security deposit for a new lease agreement shall be equivalent to one (1) month's rent. The security deposit may take the form of cash, an instrument of credit or a faithful performance bond. For a lessee making a substantial investment in improvements, the security deposit will be refunded upon completion of the improvements.

CITY OF BANNING
CITY COUNCIL REPORT

TO:	**CITY COUNCIL**
FROM:	**Rochelle Clayton, Interim City Manager**
PREPARED BY:	**Ted Shove, Economic Development Manager**
MEETING DATE:	**September 10, 2018**
SUBJECT:	**Receive and File – Update on Downtown Ad Hoc Committee Recommendation to Research Micro Business Incubator**

RECOMMENDED ACTION:

Receive and file update on Downtown Ad Hoc Committee recommendation to research Micro-business incubator.

GOAL STATEMENT:

Economic Development, Goal #3: Business attraction, retention, and job development. The concept presented in March to the Council had the potential to reuse under-utilized City property that could encourage new business and job creation by reducing the impediments to business entry for area residents.

BACKGROUND:

In the summer of 2017, the City Council appointed Councilmembers Franklin and Andrade to a Downtown ad hoc Committee ("Committee"), to evaluate existing design criteria and aesthetic features and return to the City Council with recommendations for changes and updates. Since then, the Committee has met with staff, residents, and downtown business owners a number of times, seeking improvement ideas for the downtown core.

On March 13, 2018, the Committee made its first recommendation and the Council concurred. Staff was directed to further investigate a micro business incubator that could be located on one of three City-owned sites in the downtown core. Staff connected with SteelCraft, a developer of this concept and has developed a location in Long Beach with two additional locations underway (Bellflower, Garden Grove). The concept being developed by SteelCraft involves aligning shipping containers and converting the interior surfaces to small kitchens. These small kitchens could be rented out to new start up restauranteurs and other craft-making artists for a monthly fee. The shipping containers

had simple, community reflective exterior treatments similar to murals or protrusions that generally camouflaged the shipping container itself. The site location, grouping multiple restaurant concepts in one location would lend itself to reducing barriers to entry for a startup business by lower startup costs, rotation of concepts, reduced marketing, and greater consumer attraction.

Based upon initial dialogue with SteelCraft, general project parameters for a Banning specific operation were processed through the City's Pre-Application Conference (Attachment 1) to gain a preliminary understanding of approval conditions. Staff then re-connected with SteelCraft and a few commercial developers currently active in the San Gorgonio Pass region.

While SteelCraft is refining their site selection requirements, they are exclusively focused in areas that are defined as having high household incomes ($70,000+), high education levels (45%+ Bachelor's degree), and large employment bases with high daytime population and foot traffic within a 1 to 3 mile radius. They were open to revisiting Banning in about 3-5 years.

SteelCraft indicated typical site development requires about an initial capital outlay of $1 Million (including $300-400k in improvements). When the proposed project was presented to SteelCraft and regionally active commercial developers, there was no interest in continuing negotiations based upon preliminary site criteria for the concept and the demographic profile within the San Gorgonio Pass region.

There was some preliminary interest to manage the operation, but strictly tenant management and not the ongoing financial requirements.

FISCAL IMPACT:

None.

OPTIONS:

1. Receive and file.

ATTACHMENTS:

1. City of Banning – Pre-Application Conference – Initial Conditions of Approval

Approved by

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

City of Banning
Pre-Application Conference
Initial Conditions of Approval

CITY OF BANNING

T R A N S M I T T A L

PLANNING DEPARTMENT
99 E. Ramsey Street, P.O. Box 998, Banning CA 92220 / Phone #951.922.3125
Fax # 951.922.3128 / E-Mail: scalderon@ci.banning.ca.us

Pre-Application Conference
Thursday, May 17, 2018 at 10:00 a.m.
Small Conference Room

DATE TRANSMITTED: 4/25/2018 **DATE DUE: 5/9/2018**

TO: See Circulation List on Reverse Side

PROJECT NUMBER: PAC 18-06

ADDRESS/APN: 3 proposed sites (see map)

APPLICANT: City of Banning, Economic Development

CONTRACT PLANNER: Marie Gilliam

PROJECT DESCRIPTION: Seeking comments for placement of Micro-Incubator made of steel shipping containers – 3 proposed sites.

Refer to STEEL CRAFT at www.steelcraftlb.com

COMMENTS REQUIRED: ***Please review the attached application and provide your comments and / or conditions in the space below as soon as you have completed your review. Please return to the Planning Department by Wednesday, May 9, 2018.***

APPROVED ☐	*APPROVED WITH ATTACHED COMMENTS/CONDITIONS* ☐	*RESUBMITTAL REQUESTED* ☐
SIGNATURE:		
DEPARTMENT : Planning	*DATE: 5-17-18*	

PLANNING DEPARTMENT COMMENTS:

There are currently two possible options to accommodate a proposal of this nature: 1) As a temporary use, or 2) as a permanent use.

Option 1 Temporary Use: If the proposal is for a temporary use, the Municipal Code requires approval of a Temporary Use Permit. A copy of submittal requirements and Code Section 17.108 are attached for your information. This is a staff level review and there is no charge for the process. There is no directly applicable language or use in the Code, however. A liberal interpretation of portions might be possibly be made, but considering the nature of the interpretation necessary, it is likely the Planning Commission and/or City Council would have to make such a call. Limitations of a TUP would restrict the activity to 60 days per **Sections 17.108.020 (C)**. If **Section 17.108.020 (D)** is applied, the use could be limited to two "events" per year not exceeding three consecutive days.

Option 2: Permanent Use: The Municipal Code does not presently allow a development of the type envisioned. A zoning code text amendment or interpretation of the current code by the Planning Commission and/or City Council to allow the use would be necessary. Commercial design and development standards might be applied to this type of use or unique standards specific to this type of development might be determined necessary as part of a ZTA.

The current Code allows conversion of a "storage unit" to an office in the GC and HSC zones with approval of a CUP and Design Review. While not entirely analogous, this is the closest comparison that might be made, and might serve as a model for entitlements needed after a ZTA or code interpretation. These would require public hearings and fees for Design Review (currently $4,904) and an Environmental Assessment (currently $3,124.00). Depending on the size, intensity and characteristics of the proposal, preparation of a Negative Declaration or a Mitigated Negative Declaration might be necessary. These can entail supporting technical studies, and possibly engagement of an outside environmental consultant. Development impacts would also apply.

Prior to making any decision on the direction to go, it is recommended that concerted efforts be made to contact the Planning Departments and agencies that have approved such uses to determine how they have been handled in terms of entitlements and development standards, and any issues or problems that may been encountered. This could better inform Banning in considering the appropriateness of these uses for the local community.

DATE: May 23, 2018

CITY OF BANNING

T R A N S M I T T A L

PLANNING DEPARTMENT
99 E. Ramsey Street, P.O. Box 998, Banning CA 92220 / Phone #951.922.3125
Fax # 951.922.3128 / E-Mail: scalderon@ci.banning.ca.us

Pre-Application Conference
Thursday, May 17, 2018 at 10:00 a.m.
Small Conference Room

DATE TRANSMITTED: 4/25/2018 **DATE DUE: 5/9/2018**

TO: See Circulation List on Reverse Side

PROJECT NUMBER: PAC 18-06

ADDRESS/APN: 3 proposed sites (see map)

APPLICANT: City of Banning, Economic Development

CONTRACT PLANNER: Marie Gilliam

PROJECT DESCRIPTION: Seeking comments for placement of Micro-Incubator made of steel shipping containers – 3 proposed sites.

Refer to STEEL CRAFT at www.steelcraftlb.com

COMMENTS REQUIRED: ***Please review the attached application and provide your comments and / or conditions in the space below as soon as you have completed your review. Please return to the Planning Department by Wednesday, May 9, 2018.***

APPROVED ☐	*APPROVED WITH ATTACHED COMMENTS/CONDITIONS* ☑	*RESUBMITTAL REQUESTED* ☐
SIGNATURE: [signature]		
DEPARTMENT: Water + Sewer	*DATE:* 5-17-18	

COMMENTS:

DATE: *April 25, 2018*

CIRCULATION LIST:

TO:

BUILDING DIVISION	X-H	POLICE DEPARTMENT	X-H
ENGINEERING DIVISION	X-H	COMMUNITY SERVICES	X-H
FIRE SERVICES	X-H	RISK MANAGEMENT	X-D
PLANNING DIRECTOR	X-H	ELECTRIC DEPARTMENT	X-H
CITY MANAGER	X-H	WATER DIVISION	X-H
ED MANAGER	X-H	ALUC	
ADMIN. SERVICES		SO. CAL. GAS TRANS.	
SCE TRANSMISSION		SO. CAL. GAS DISTRIB.	
BANNING SCHOOL DISTRICT		BEAUMONT SCHOOL DISTRICT	
CODE ENFORCEMENT	X-H		

TRIBAL CIRCULATION:

AUGUSTINE BAND OF CHAUILLA INDIANS	
CABAZON BAND OF MISSION INDIANS	
CAHUILLA BAND OF INDIANS	
CHUILLA INDIANS / TORRES MARTINES DESSERT	
FORT MOHAVE INDIAN TRIBE	
SOBOBA BAND OF LUISENO INDIANS	
MORONGO BAND OF MISSION INDIANS	
NATIVE HERITAGE COMMISSION	
TRIBAL HISTORIC PRESERVATION OFFICE	
PECHANGA BAND OF LUISENO INDIANS	
SAN MANUEL BAND OF MISSION INDIANS	
SANTA ROSA BAND OF CAHUILLA INDIANS	
THE ROMONA BAND OF CAHUILLA INDIANS	
TWENTY-NINE PALMS BAND OF MISSION INDIANS	

Legend: X-D Digital Circulation
X-H Hardcopy Circulation

Water and Sewer Comments:

Water and sewer laterals are existing at the western-most site. Grease interceptor would be needed for sewer and a backflow protection device for the water.

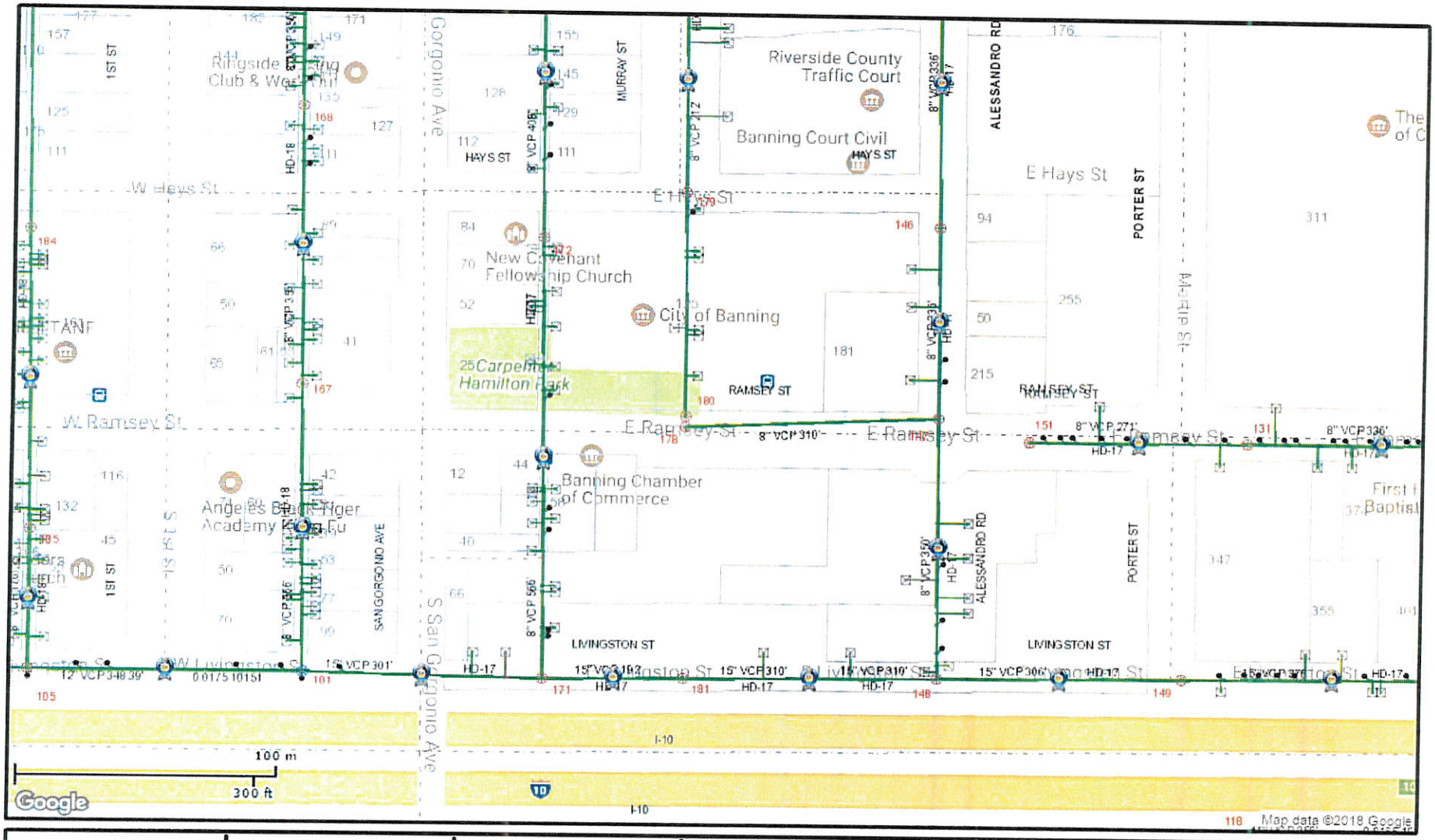
For the middle site along San Gorgonio, water laterals are available, but new meters and backflows would be required. A new sewer lateral connection would be needed, but relatively easy to do since the sewer main runs along the alley in the back. Grease interceptor would be needed.

For the largest site, along Livingston, water and sewer are available out on the street, down the middle of the site, lined up with Alessandro Rd., and sewer running north and south between the MetroPCS and Socal Gas buildings. New connections may be needed if existing wyes and laterals are in poor condition (to be determined). Backflows are needed for water services and grease interceptors for sewer connections.

Maps of existing water and sewer infrastructure are attached.

Luis Cardenas
951-922-3143
lcardenas@ci.banning.ca.us

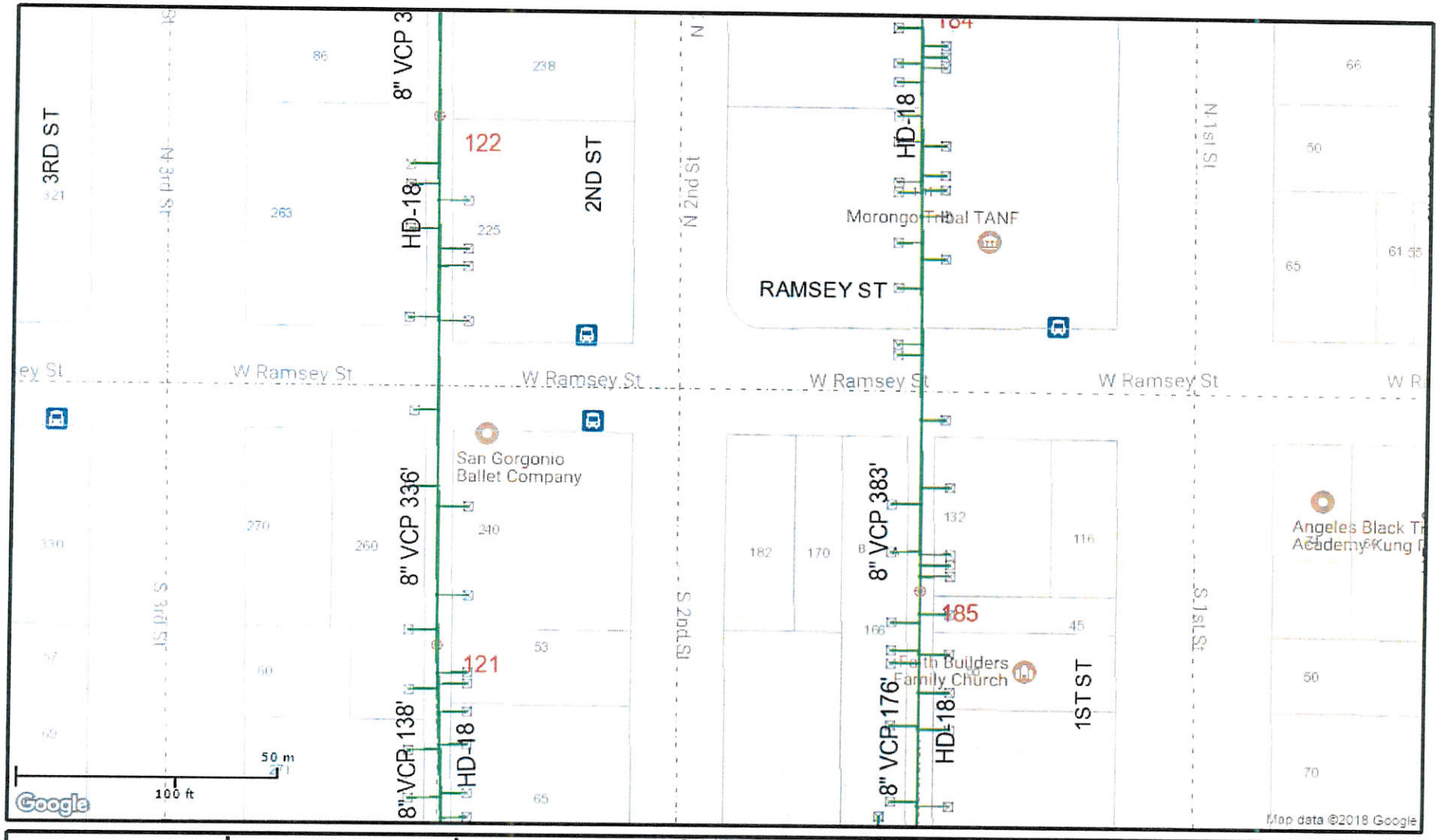
Sewer



1" = 188 ft		05/17/2018	N W E S	BANNING CA Proud History Prosperous Tomorrow

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

Sewer



1" = 94 ft		05/17/2018	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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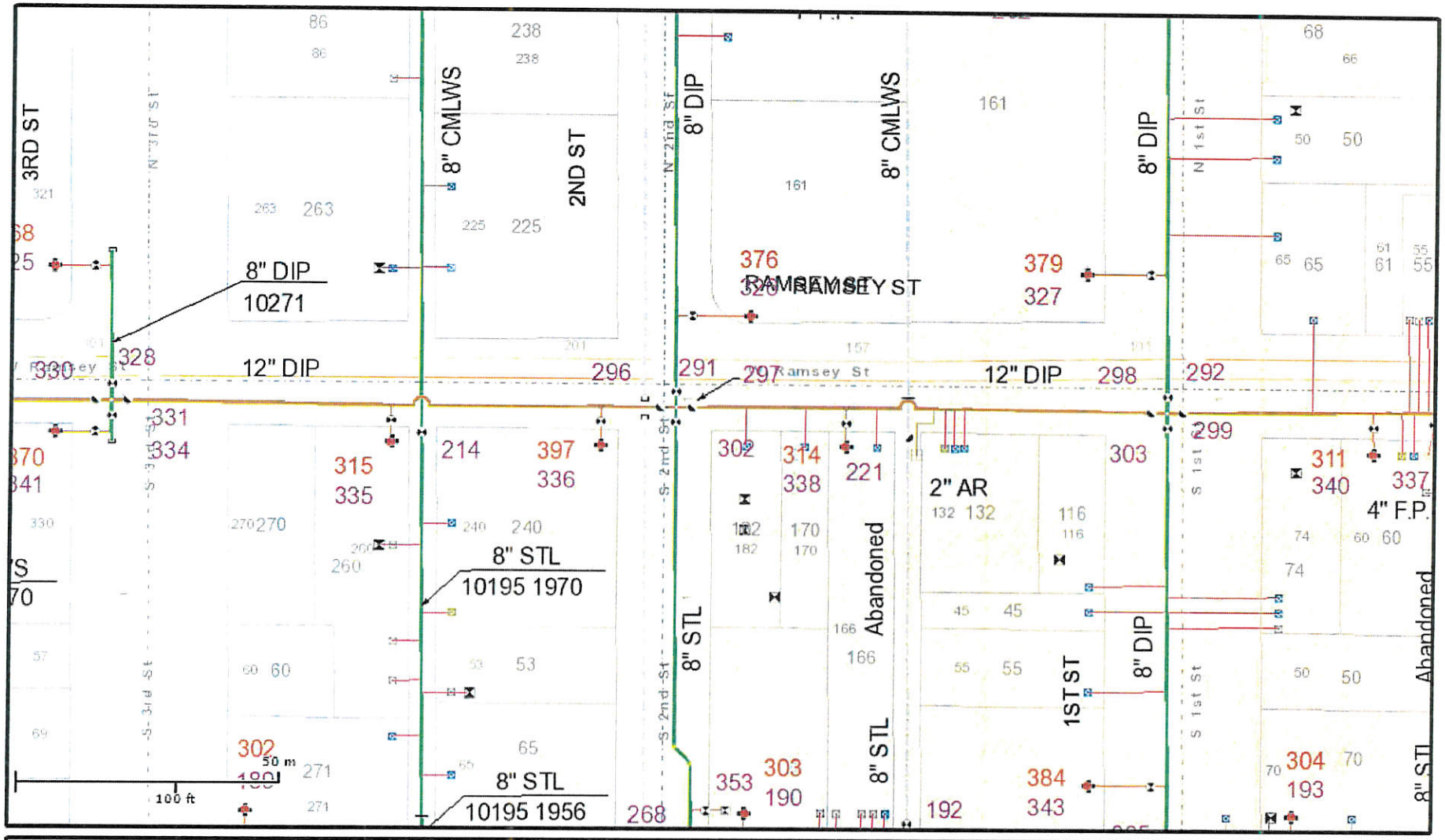
Water



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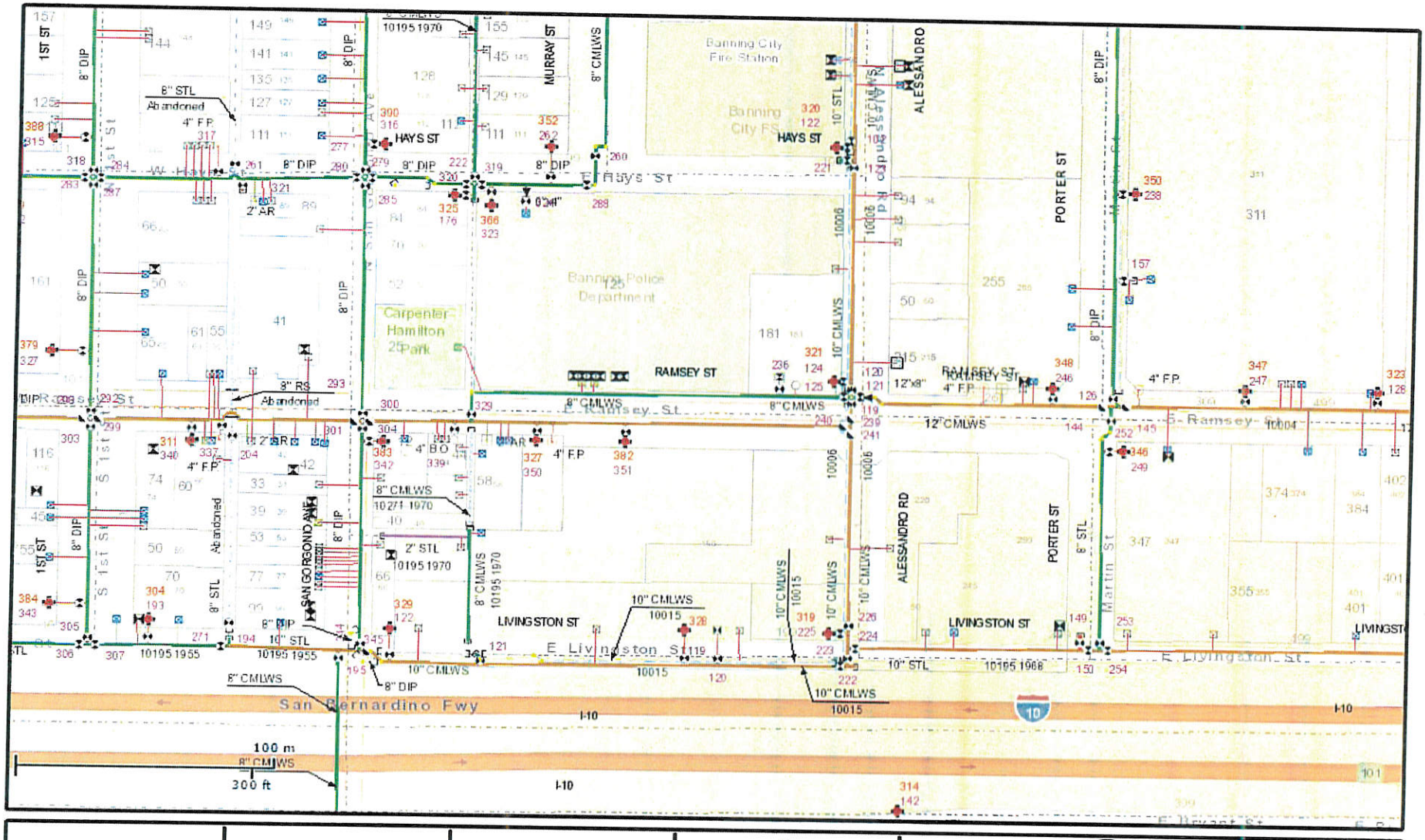
Water



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City of Banning

Building and Safety

Conditions of Approval

PAC# 18-06
Name: City of Banning Economic Development
Address: 3 different sites. See attached map.

Date: 4/26/2018

REQUEST:

The following comments are required at time of plan check submittal

1. The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.

2. Site development and grading shall be designed to provide access to all entrances and exterior ground floor exits and access to normal paths of travel, and where necessary to provide access. Paths of travel shall incorporate (but not limited to) exterior stairs, landings, walks and sidewalks, pedestrian ramps, curb ramps, warning curbs, detectable warnings, signage, gates, lifts and walking surface material. The accessible route(s) of travel shall be the most practical direct route between accessible building entrances, site facilities, accessible parking, public sidewalks, and the accessible entrance(s) to the site. California Building Code (CBC) 11A and 11B.

    a. City of Banning enforces the State of California provisions of the California Building Code disabled access requirements. The Federal ADA standards differ in some cases from the California State requirements. It is the building owner's responsibility to be aware of those differences and comply accordingly.
    b. Disabled access parking shall be located on the shortest accessible route. Relocate parking spaces accordingly.

3. Multi-family buildings on the site shall be accessible/adaptable per California Building Code (CBC), Chapters; 11A and 11B.

4. Commercial buildings on the site shall be accessible per California Building Code (CBC) 11B.

5. Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, 11B and 31B.

6. Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.

7. Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.

CITY OF BANNING

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PLANNING DEPARTMENT
99 E. Ramsey Street, P.O. Box 998, Banning CA 92220 / Phone #951.922.3125
Fax # 951.922.3128 / E-Mail: scalderon@ci.banning.ca.us

RECEIVED
MAY 03 2018
By

Pre-Application Conference
Thursday, May 17, 2018 at 10:00 a.m.
Small Conference Room

DATE TRANSMITTED: 4/25/2018 **DATE DUE: 5/9/2018**

TO: See Circulation List on Reverse Side

PROJECT NUMBER: PAC 18-06

ADDRESS/APN: 3 proposed sites (see map)

APPLICANT: City of Banning, Economic Development

CONTRACT PLANNER: Marie Gilliam

PROJECT DESCRIPTION: Seeking comments for placement of Micro-Incubator made of steel shipping containers – 3 proposed sites.

Refer to STEEL CRAFT at www.steelcraftlb.com

COMMENTS REQUIRED: ***Please review the attached application and provide your comments and / or conditions in the space below as soon as you have completed your review. Please return to the Planning Department by Wednesday, May 9, 2018.***

APPROVED ☑	*APPROVED WITH ATTACHED COMMENTS/CONDITIONS* ☐	*RESUBMITTAL REQUESTED* ☐
SIGNATURE: Mesa		
DEPARTMENT: Community Services	*DATE:* 5/2/18	

CITY OF BANNING

Electric Utility

May 7, 2018

RE: Pre-Application Conference 18-06

ADDRESS / APN: 3 proposed sites

APPLICANT: City of Banning, Economic Development

Contract Planner: Marie Gilliam

PROJECT DESCRIPTION: Seeking comments for placement of Micro-Incubator made of steel shipping containers -3 proposed sites.

Electric Utility Comments:
The new electric service (line extension) to any one of the proposed site will be required to be underground. The underground infrastructure (substructures & conduits) would be the developer responsibility and will be installed per electric utility design.
The electric utility charges for line extensions, and are based on time & material. In the areas of the proposed sites the cost can range from $500.00 to $30,000 depending on the customers loading and service size.

In order for the City of Banning Electric Utility to complete a service plan, the developer shall be responsible for the following:

1. Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. These plans are required in electronic format. We currently use AutoCad2016. Plans should consist of a plot plan, site plan, one line diagram of proposed electrical main service panel and a sheet showing load calculations by an electrical engineer. Additional sheets may be required upon request.
2. Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing electric service.

Obtaining the described information outlined above in a timely matter is critical for design, planning, and ordering of materials for this project.

The C.O.B. Electric Utility shall be responsible for:

1. Reviewing plans submitted by customer.
2. Design an electrical utility plan for the installation of substructures and conduit by developer.
3. Providing a cost estimate for installing an underground electrical system for this project.
4. Inspecting all trenches prior to backfilling. 24-hour prior notice is required before inspection.
5. Install electrical apparatus including primary conductors, terminations, metering, and transformer to provide electrical service for this project.

Note: This letter is intended to provide general information for electrical service, and therefore may not be entirely inclusive of all responsibilities of the customer or the City.

CITY OF BANNING

T R A N S M I T T A L

Proud History
Prosperous Tomorrow

PLANNING DEPARTMENT
99 E. Ramsey Street, P.O. Box 998, Banning CA 92220 / Phone #951.922.3125
Fax # 951.922.3128 / E-Mail: scalderon@ci.banning.ca.us

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TO: See Circulation List on Reverse Side

PROJECT NUMBER: PAC 18-06

ADDRESS/APN: 3 proposed sites (see map)

APPLICANT: City of Banning, Economic Development

CONTRACT PLANNER: Marie Gilliam

RECEIVED
CITY OF BANNING
APR 25 2018
PUBLIC WORKS
DEPARTMENT

PROJECT DESCRIPTION: Seeking comments for placement of Micro-Incubator made of steel shipping containers – 3 proposed sites.

Refer to STEEL CRAFT at www.steelcraftlb.com

COMMENTS REQUIRED: ***Please review the attached application and provide your comments and / or conditions in the space below as soon as you have completed your review. Please return to the Planning Department by Wednesday, May 9, 2018.***

APPROVED ☐	*APPROVED WITH ATTACHED COMMENTS/CONDITIONS* ☑	*RESUBMITTAL REQUESTED* ☐
SIGNATURE: Kevin		
DEPARTMENT: P.W./Engineering	*DATE:* 5/17/18	

See attached COA.

MEMORANDUM
CITY OF BANNING

DATE: May 17, 2018

TO: Patty Nevins, Community Development Director

FROM: Kevin Sin, Senior Civil Engineer

SUBJECT: Engineering Conditions of Approval for PAC No. 18-06 (Micro-Incubator – 3 proposed sites)

The Department of Public Works recommends the Conditions of Approval listed herein for the abovementioned project. Unless stated otherwise, all conditions shall be completed by the applicant at no cost to any government agency.

The Applicant may contact the Engineering Division at (951) 922-3130 for compliance with the following conditions:

A. General Requirements

1. 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.

2. 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:

   - Fire Marshal (access)
   - Public Works Department (grading permits, street improvement permits)
   - Riverside County Flood Control & Water Conservation District (storm drain)
   - California Regional Water Quality Control Board Colorado River Basin (RWQCB)
   - South Coast Air Quality Management District (SCAQMD)

   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.

3. The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California 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 in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar film. 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. Rough Grading Plans (All Conditions of Approval shall be reproduced on last sheet of set)	1" = 40' horizontal
b. Clearing Plans (Include construction fencing plan)	1" = 50' horizontal
c. Erosion Control & SWPPP, WQMP (Note: a, b, c & d shall be reviewed and approved concurrently)	1" = 40' Horizontal
d. Storm Drain Plans	1" = 40' Horizontal
e. Street Improvement Plans	1" = 40' Horizontal 1" = 4' Vertical
f. Precise Grading Plans	1" = 40' Horizontal
g. Landscaping Plans	1" = 20 Horizontal

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.

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.

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.

4. Upon completion of construction, the Developer shall furnish the City with reproducible record drawings on Mylar film 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 files submitted to the City, revised to reflect the "As-Built" conditions.

B. Street Improvements

5. All street improvements including street lighting, curb and gutter, driveway approaches, sidewalk, parkway, asphalt concrete paving, traffic signs and striping, and any transitions shall comply with City of Banning standards. Street lights shall be installed offset of the existing street lights.

6. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.

7. All required public improvements for the project shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.

C. Grading and Drainage

8. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by

Riverside County Flood Control and Water Conservation District (RCFCD), RCFCD Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.

9. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred three-hour during event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.

10. If the site is located in a Flood Area as identified in Flood Insurance Rate Map dated August 28, 2008 the developer is responsible for providing a certification by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

11. 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. The project shall accept and convey storm flows from the adjacent property to the north and west.

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

    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.

    The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any permit issuance.

    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.

    The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):

    - Temporary Soil Stabilization (erosion control).
    - Temporary Sediment Control.
    - Wind Erosion Control.
    - Tracking Control.
    - Non-Storm Water Management.
    - Waste Management and Materials Pollution Control.

    All erosion and sediment control BMPs proposed by the applicant shall be designed using the CASQA BMP handbook and approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.

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.

13. 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 California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.

14. 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.

15. Prior to the issuance of any building permit(s), a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity.

16. Prior to the issuance of a building permit, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.

G. Trash/Recycling

17. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler, Waste Management of the Inland Valley at 1-800-423-9986, for disposal of construction debris.

18. The developer shall participate in the City's recycling program by providing two trash receptacles, one for regular trash and one for recycling, within the covered trash enclosure. The covered trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.

H. Fees

19. Plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid at the time of submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal.

20. Public Works Inspection fees shall be paid prior to issuance of any permits in accordance with the fee schedule in effect at time of time of scheduling.

21. Water and sewer 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.

CAL FIRE – RIVERSIDE UNIT
RIVERSIDE COUNTY FIRE DEPARTMENT
CITY OF BANNING
OFFICE OF THE FIRE MARSHAL
99 E. Ramsey, Banning, CA 92220 - 951-922-3167
www.rvcfire.org

DATE: 5/17/18

PAC No. 18-06

ADDRESS: TBD

CONTRACT PLANNER: Marie Gilliam

APPLICANT: City of Banning Economic Development

PROJECT DESCRIPTION: Proposed development of steel micro-incubator shipping containers.

This letter is in regard to the fire protection conditions concerning the above referenced case. The Fire Department requires the listed fire protection measures be provided in accordance with the City of Banning Municipal Code and/or the Riverside County Fire Department Fire Protection Standards. Final conditions will be addressed when complete buildings plans are reviewed:

- Fire Department approval is based upon the 2016 CBC requirements for Group B occupancies or as determined by a California licensed Architect. It is prohibited to use, process or store any materials in the occupancy that would classify it as a Group H occupancy.
- Current Codes to use: 2016 CA Fire Code, 2016 CA Building Code. In reviewing this project whether it is considered temporary or permanent structures or use, the Codes are applied the same.
- For commercial areas, approved standard fire hydrants shall be located within 400 ft. of all exterior portions of the buildings. Minimum fire flow shall be 1500 GPM for 2-hour duration at 20 PSI.
- Prior to building plan approval and construction, applicant/developer shall furnish two copies of the water system fire hydrant plans to Fire Department for review and approval. Plans shall be signed by a registered civil engineer, and shall confirm hydrant type, location, spacing, and minimum fire flow. Once plans are signed and approved by the local water authority, the originals shall be presented to the Fire Department for review and approval.
- Prior to issuance of building permits, the water system for fire protection must be provided as approved by the Fire Department and the local water authority. Applicant would be required to contact the Water Department and request a fire flow test.

- Blue dot retro-reflectors pavement markers on private streets, public streets and driveways to indicated location of the fire hydrant. 06-05 (located at www.rvcfire.org)

- Fire Apparatus access road shall be in compliance with the Riverside County Fire Department Standards. Access lanes will not have an up, or downgrade of more than 15%. Access lanes will be designed to withstand the weight of 80 thousand pounds over 2 axles. Access will have a turning radius capable of accommodating fire apparatus. Access lane shall be constructed with a surface so as to provide all weather driving capabilities.

- Any turn-around requires a minimum 38-foot turning radius. All structures shall be accessible from an approved roadway to within 150 feet of all portions of the exterior of the first floor.

- The minimum dimension for access roads and gates is 20 feet clear and unobstructed width and a minimum vertical clearance of 13 feet 6 inches in height.

- Fire alarm and rack storage plans must be submitted and approved prior to commencing that phase of work.

- Display address in a prominent location on the address side of building(s) and/or rear access if applicable. All addressing must be legible, of a contrasting color, and adequately illuminated to be visible from street at all hours.

- Fire Department Access shall be provided to within 150' of all exterior portions of the structure. Any gates will require a minimum 20' wide access with emergency access with KNOX padlock or key switch

- Commercial kitchens must be equipped with a Fire Suppression system UL 300. Prior to installation, the applicant/developer shall furnish two copies of the fire suppression system plans to Fire Department for review and approval. Exception: If the unit is not used for cooking, no UL 300 would be required.

All questions regarding the meaning of these conditions should be referred to the City of Banning, Office of the Fire Marshal.

Michelle Devoux
Fire Safety Specialist/Office of the Fire Marshal
CAL FIRE/Riverside County Fire Department
Proudly serving the City of Banning
Direct: 951-922-3167 | Mobile: 951-442-0770
99 E. Ramsey St., P.O. Box 998, Banning, CA 92220
michelle.devoux@fire.ca.gov |mdevoux@ci.banning.ca.us

■ Leadership ■ Competence ■ Integrity ■ Safety ■ Customer Service ■

The Office of the Fire Marshal is committed to provide professional fire and life safety engineering, permitting and inspection services for our citizens and emergency responders through exemplary customer service, leadership, education, analysis, innovation and partnership with the development and business community

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CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Ted Shove, Economic Development Manager**

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-97 for the Termination of a Development Agreement with All American Racing, LLC**

RECOMMENDED ACTION:

That the Council adopt Resolution 2018-97, approving the termination of a development agreement with All American Racing, LLC.

BACKGROUND:

On August 14, 2001, the City Council conditionally approved an Unclassified Use Permit 01-47501 ("UUP") to All American Racing, LLC., for the development of a drag racing facility. The project was to consist of a drag racing strip, grandstands, concession stands, restrooms, and parking spaces. The project was to be located on two parcels, consisting of approximately 60 acres [APNs: 532-130-008 (40 acres) and 532-130-018 (20 Acres, Banning Airport)]. The UUP was eventually revoked in 2008 and appealed to Riverside County Superior Court. The revocation was overturned as the Court determined that the grounds for revocation were unclear to support such an action. The City Council then considered the revocation of the UUP on March 22, 2011 and then again on April 12, 2011 where Resolution 2011-27 was approved, terminating the UUP and development agreement with All American Racing, LLC.

All American Racing, LLC initially filed for status as a Limited Liability Company on February 15, 2000. However, the LLC is not active and currently listed as 'suspended' by the Franchise Tax Board ("FTB"). Banning Airport Associates was identified as a Successor-in-interest to All American Racing, LLC. Their business entity has also been suspended by the FTB.

JUSTIFICATION:

The Development Agreement in question required entitlements and specific milestones. In 2011, the City Council made findings that milestones were not met for this project and

subsequently terminated the UUP and Development Agreement. However, Resolution 2011-27 did not authorize the execution of a formal Certificate of Termination of Development Agreement ("Certificate"). Since the Development Agreement was recorded against the properties intended for development, a Certificate is required acknowledging the City's authority to terminate the development agreement. In July 2018, one of the two properties (40 acre parcel) sold to a new entity that is underway with preliminary environmental review prior to formally applying for entitlements for the site. The other property (20 acres) is owned by the City of Banning is part of the Banning Airport Land Plan.

Staff recommends approval for the Termination of the Development Agreement with All American Racing, LLC. By approving Resolution 2018-97, the Termination of Development Agreement would be formally recognized on property title where previously recorded for both properties.

FISCAL IMPACT:

Approving the termination of the development agreement with All American Racing, LLC. will have no fiscal impact.

OPTIONS:

1. Approve as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2018-97
2. California Secretary of State Website Search- All American Racing, LLC, Banning Airport Associates
3. Recorded Development Agreement (All American Racing, LLC and the City of Banning)
4. City Council – Staff Report and Resolution 2011-27
5. City Council – Minutes from 4/12/2011, Approving Resolution 2011-27
6. Certificate of Termination of Development Agreement (Estes Terminals of California, LLC)

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution 2018-97

RESOLUTION 2018-97

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE TERMINATION OF A DEVELOPMENT AGREEMENT WITH ALL AMERICAN RACING, LLC.

WHEREAS, on October 7, 2003, the Planning Commission recommended approval to the City Council for a Development Agreement with All American Racing, LLC. by Planning Commission Resolution No. 2003-03, which proposed to develop a drag racing strip, grandstands, concessionaire facilities, restrooms, and parking on two parcels of land: 1 – a 40 acre parcel with Assessor's Parcel No. 532-130-008, and 2 a 20 acres parcel owned by the City with Assessor's Parcel No. 532-130-018 (part of the Banning Airport); and

WHEREAS, the City Council considered Planning Commission Resolution No. 2003-03 and adopted Ordinance No. 1308, approving Development Agreement 03-1504; and

WHEREAS, on January 28, 2008, the Planning Commission revoked the associated Unclassified Use Permit ("UUP") for the intended operation on the basis of: the UUP expired, and the use that commenced, was discontinued and subject to revocation under Banning Municipal Code; and

WHEREAS, on February 6, 2008 Banning Airport Associates (successor in interest to All American Racing, LLC) appealed the UUP revocation to the Riverside County Superior Court; and

WHEREAS, pursuant to the Court's ruling, the City Council conducted a duly noticed public re-hearing of the revocation of the UUP on March 22, 2011 and continued the hearing until April 12, 2011; and

WHEREAS, on April 12, 2011 the City Council considered findings upholding the revocation of the UUP and the termination of the Development Agreement.

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

1. Resolution No. 2018-94 is approved terminating the development agreement with All American Racing, LLC.

2. The City Council authorizes the Interim City Manager for the City of Banning to execute Certificates of Termination of Development Agreement for both properties previously included in the Development Agreement with All American Racing, LLC on behalf of the City of Banning in the form that is approved by the City Attorney.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-97, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Franklin, Peterson, Welch and Mayor Moyer

NOES: None

ABSTAIN: None

ABSENT: None

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

California Secretary of State Website Search All American Racing, LLC, Banning Airport Associates

Skip to Main Content | Skip to Footer

Alex Padilla
California Secretary of State

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed throughMonday, August 6, 2018. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

200004810036 ALL AMERICAN RACING LLC

Registration Date:	02/15/2000
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	FTB SUSPENDED
Agent for Service of Process:	CORPORATION SERVICE COMPANY WHICH WILL DO BUSINESS IN CALIFORNIA *
Entity Address:	453 E. HOME ST RIALTO CA 92376
Entity Mailing Address:	*
LLC Management	Member Managed

Document Type	File Date	PDF
REGISTRATION	02/15/2000	

* Indicates the information is not contained in the California Secretary of State's database.

Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

Modify Search | New Search | Back to Search Results

Business Entities (BE)

Online Services

File LLC Statement of Information

Business Search - Entity Detail

The California Business Search is updated daily and reflects work processed throughMonday, August 6, 2018. Please refer to document **Processing Times** for the received dates of filings currently being processed. The data provided is not a complete or certified record of an entity. Not all images are available online.

200511610025 BANNING AIRPORT ASSOCIATES, LLC

Registration Date:	04/22/2005
Jurisdiction:	CALIFORNIA
Entity Type:	DOMESTIC
Status:	FTB SUSPENDED
Agent for Service of Process:	(AGENT RESIGNED 04/07/2010) *
Entity Address:	4525A MACARTHUR BLVD NEWPORT BEACH CA 92660
Entity Mailing Address:	*
LLC Management	One Manager

Document Type	File Date	PDF
AMENDMENT	04/07/2010	
SI-NO CHANGE	02/14/2007	
SI-COMPLETE	08/29/2005	
REGISTRATION	04/22/2005	

* Indicates the information is not contained in the California Secretary of State's database.

Note: If the agent for service of process is a corporation, the address of the agent may be requested by ordering a status report.

- For information on checking or reserving a name, refer to **Name Availability**.
- If the image is not available online, for information on ordering a copy refer to **Information Requests**.
- For information on ordering certificates, status reports, certified copies of documents and copies of documents not currently available in the Business Search or to request a more extensive search for records, refer to **Information Requests**.
- For help with searching an entity name, refer to **Search Tips**.
- For descriptions of the various fields and status types, refer to **Frequently Asked Questions**.

ATTACHMENT 3

Recorded Development Agreement

(All American Racing, LLC and the City of Banning)

RECORDING REQUIRED BY AND
WHEN RECORDED RETURN TO:

City Clerk
City of Banning
P. O. Box 998
Banning, CA 92220

This document is recorded at the request of the City of Banning Pursuant to Govt. Code Section 6103. No fee shall be charged therefor.

DOC # 2004-0086353
02/05/2004 08:00A Fee:NC
Page 1 of 73
Recorded in Official Records
County of Riverside
Gary L. Orso
Assessor, County Clerk & Recorder

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DEVELOPMENT AGREEMENT BETWEEN CITY OF BANNING AND ALL AMERICAN RACING, LLC

M
VG

(See following pages)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION

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DEVELOPMENT AGREEMENT BETWEEN THE CITY OF BANNING AND ALL AMERICAN RACING, LLC

This DEVELOPMENT AGREEMENT ("Agreement") is entered into between THE CITY OF Banning, a municipal corporation ("City") and All American Racing, LLC ("Developer").

1. RECITALS. The Agreement is entered into with reference to the following facts:

1.1 Code Authorization. City is authorized pursuant to Government Code Sections 65864 through 65869.5 to enter into development agreements with persons having legal or equitable interests in real property for the purpose of establishing certainty for both City and Developer in the development process. City enters into the Agreement pursuant to the provisions of the Government Code, the Banning Ordinance Code, Chapter 22A and applicable City policies. The parties acknowledge:

(1) This Agreement is intended to assure adequate public facilities at the time of development.

(2) This Agreement is intended to assure development in accordance with City's Capital Improvement Plans.

(3) This Agreement is intended to provide certainty in the development approval process, use(s), density, and intensity of property.

(4) This Agreement will allow City to realize extraordinary and significant supplemental benefits in addition to those available through the existing regulatory process.

1.2 Developer. Developer has a legal or equitable interest in the real property located in City of Banning, County of Riverside, California, described on Exhibit "A" attached hereto ("Property"). The Property consists of approximately 60 (sixty) acres.

1.3 Interest of Developer. Developer hereby represents that it has an equitable and legal interest in the Property and is authorized to enter into this Agreement.

1.4 Planning Commission - Council Hearings. On October 7, 2003, the Planning Commission of the City ("Planning Commission"), after giving notice pursuant to Government Code Sections 65090 and 65091, held a public hearing to consider the Owner's application for this Agreement. The Planning Commission thereafter adopted Planning Commission Resolution No. 2003-03 on October 7, 2003 recommending the project to the City Council. On October 14, 2003 the Council of the City of Banning ("Council"), after providing notice as required by law, held a public hearing to consider the Owner's application for the Agreement.

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1.5 Council Findings. The Council finds that this Agreement is consistent with the General Plan as well as all other applicable ordinances, plans, policies and regulations of the City.

1.6 City Ordinance. On October 28, 2003 the Council adopted Ordinance No. 1308 approving this Agreement. The adopted ordinance becomes effective on November 12, 2003.

2. DEFINITIONS.

2.1 "Developer" means the person, persons, or entity having a legal or equitable interest in the Property and includes the "Developer's" successors in interest.

2.2 "Property" is the real property described in Exhibit "A."

2.3 "Project" is the development of the property as set forth in Exhibits "A, B, C, D, & E" which include the following:

Exhibit Designation	Description
A	Property Legal Description
B	Unclassified Use Permit 00-47501 and Conditions of Approval
C	Lease Agreement
D	License Agreement
E	FAA Letters dated 7-31-02 and 8-2-02

All of the above listed Exhibits are hereby incorporated in this Agreement and made a part hereof.

4. GENERAL PROVISIONS.

4.1 Property Subject to the Agreement. Until released pursuant to the provisions of Section 9.3 below, no property shall be released from this Agreement until "Developer" has fully performed its obligations arising out of the Agreement.

4.2 Duration of Agreement. The term of the Agreement shall commence on, and the effective date of the Agreement shall be, the effective date of City Ordinance No. 1308 as set forth in Section 1.6 above and the term shall extend for a period concurrent

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with Unclassified Use Permit (UUP) 00-47501(term of the agreement) following the effective date unless the Agreement is earlier terminated or its term modified in the manner provided in this Agreement.

4.3 Assignment. Owner shall have the right to transfer or assign the Property, in whole or in part, to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement provided, however, the rights of Owner under this Agreement may not be transferred or assigned unless the written consent of the City is first obtained and any transfer or assignment of the rights under this Agreement shall include in writing the assumption of the duties, obligations and liabilities arising from this Agreement if the City grants written consent to transfer the rights. Such transfer or assignment does not relieve Owner of any duty, obligation or liability to City unless by the prior written consent of the City.

During the term of this Agreement, any approved assignee or transferee of the rights under this Agreement shall observe and perform all of the duties and obligations of Developer contained in this Agreement as such duties and obligations pertain to the portion of the Property transferred or assigned. Any and all approved successors and assignees of Owner shall have all of the same rights, benefits, duties, obligations and liabilities of Developer under this Agreement. Upon assignment or transfer of the rights of Developer under this Agreement, the obligations of Owner and the transferee or assignee shall be joint and several.

4.4 Amendment or Cancellation of Agreement. This Agreement may be amended from time to time or canceled by the mutual consent of the parties but only in the same manner as its adoption by an ordinance as set forth in Government Code Section 65868 and Banning Ordinance Code, Chapter 22A. The term "Agreement" or "Development Agreement" shall include any amendment properly approved and executed.

4.5 Enforcement. Notwithstanding Government Code Section 65865.4, this Agreement is enforceable by any party to the Agreement in any manner provided by law. The remedies provided in Section 8.4 of this Agreement shall not include and City shall not be liable for any action in damages or any costs or attorney's fees resulting from any dispute, controversy, action or inaction, or any legal proceeding arising out of this Agreement.

4.6 Hold Harmless. Developer agrees to and shall hold City, its officers, agents, employees, consultants, special counsel and representatives harmless from liability: (1) for damages, just compensation, restitution, judicial or equitable relief arising out of claims for personal injury, including health, and claims for property damage which may arise from the direct or indirect operations of the Developer or their contractors, subcontractors, agents, employees or other persons acting on their behalf which relates to the Project and (2) from any claim that damages, just compensation, restitution, judicial or equitable relief is due by reason of the terms of or effects arising from this Agreement. Developer agrees to pay all costs for the defense of the City and its officers, agents, employees, consultants, special counsel and representatives regarding any action for

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damages, just compensation, restitution, judicial or equitable relief caused or alleged to have been caused by reason of Developer's actions in connection with the Project or any claims arising out of this Agreement. This hold harmless Agreement applies to all claims for damages, just compensation, restitution, judicial or equitable relief suffered or alleged to have been suffered by reason of the events referred to in this paragraph or due by reason of the terms of, or effects, arising from this Agreement regardless of whether or not the City prepared, supplied or approved this Agreement, plans or specifications, or both, for the Project. The Developer further agrees to indemnify, hold harmless, and pay all costs for the defense of the City, including fees and costs for special counsel to be selected by the City, regarding any action by a third party challenging the validity of this Agreement or asserting that damages, just compensation, restitution, judicial or equitable relief is due to personal or property rights by reason of the terms of, or effects arising from this Agreement. City may make all reasonable decisions with respect to its representation in any legal proceeding.

4.7 Binding Effect of Agreement. To the extent not otherwise provided in Section 4.3 of this Agreement, the burdens of the Agreement bind and the benefits of the Agreement inure to the parties' successors in interest.

4.8 Relationship of the Parties. The contractual relationship between City and Developer arising out of the Agreement is one of independent developer and City. Developer is not hereby made an agent of the City. Further, this Agreement does not create any third party beneficiary rights.

4.9 Notices. All notices, demands and correspondence required or permitted by the Agreement shall be in writing and delivered in person or mailed by first class or certified mail, postage prepaid, addressed as follows:

If to City, to:
City of Banning
P.O. Box 998
Banning, CA 92220
Att: City Attorney

If to Owner:
All American Racing, LLC
P.O. Box 197
Banning, CA 92220

A party may change its address by giving notice in writing to the other party. Thereafter, notices, demands and correspondence shall be addressed and transmitted to the new address. Notice shall be deemed given upon personal delivery or, if mailed, two (2) business days following deposit in the United States mail.

5. DEVELOPMENT OF THE PROPERTY.

5.1 Rules, Regulations and Policies. The rules, regulations and official policies governing the permitted use(s) of the Property, with respect to and only with

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respect to the permitted uses, density, and intensity of use of the Property shall be those rules, regulations and policies applicable to the Property as of the effective date of this Agreement, and those standards and conditions as set forth in UUP 00-47501 and Lease Agreement Exhibits B through C hereof.

5.2 In connection with this Agreement, and pursuant to the requirements of California Environmental Quality Act (CEQA), the City has prepared a Negative Declaration, and certified that this document is adequate, that it satisfies the requirements of CEQA, the CEQA Guidelines and applicable local ordinances and regulations, and that it fully and adequately analyzes the scope and impact of this Agreement.

5.3 Permitted Use, Density and Intensity of Use; Rate and Amount of Growth. This Agreement shall vest with respect to the subject Property only the permitted use(s) of land, density and intensity of use set forth in Exhibit E hereto, and consistent with all other requirements as set forth in Exhibits B through D.

The right to regulate the rate and amount of growth is not abrogated by the City. The City hereby retains the police power to provide for change in regulations, ordinances, policies and plans relating to moratoria, building permit allocations, timing and sequencing of development and the financing and provision of adequate public facilities at the time of development. No vested rights as to any requirements in this subparagraph either as to existing or future regulations, ordinances, policies and plans are hereby conferred.

5.4 Design and Construction Standards and Specifications. The design and construction standards and specifications for buildings and structures in the Project shall be subject to applicable design standards and guidelines in effect at the time that any development approval shall be sought for the Project or any unit or structure contained within the Project. They shall also be subject to the restrictions set forth in Exhibits B through E hereof. Specific reference is made to the Conditions of Approval included in Exhibit D and such conditions shall be controlling over any other design and construction standard in conflict therewith.

5.5 Reservations and Dedications of Land for Public Purposes. Minimum reservations and dedications of land for public purposes shall be as set forth in Exhibit "E" incorporated herein.

5.6 Future Discretionary Approvals. This Agreement shall except as provided herein not prevent the City when considering requests for discretionary approvals subsequent to the effective date of this Agreement, from applying new rules, regulations, and policies which are applicable to the Property, including but not limited to, changes in the general plans, specific plan, community plan, subdivision and/or building regulations, nor shall this Agreement prevent the City from denying or conditionally approving any subsequent applications for land use entitlements based on such existing or new rules, regulations and/or policies, provided however, that such new rules, regulations, and official policies are of general application to all development within the City and are not

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imposed solely with respect to the subject property. In addition, this Agreement shall not prevent the City from exercising its police power to protect the health, safety and welfare of the public. This police power, exercised in accordance with Section 5.14 of this Agreement, is paramount to any rights or obligations created or existing between the parties.

5.7 Processing Fees. All fees and charges intended to cover City costs associated with processing development of the Property, including but not limited to fees and charges for applications, processing, inspections, plan review, plan processing and/or environmental review, which are existing or may be revised or adopted during the term of this Agreement, shall apply to the development of the Property.

5.8 Additional Fees. Anything contained herein to the contrary notwithstanding, no fees adopted by the City, and which become applicable to development projects at the discretion of the City, subsequent to the effective date of this Agreement shall apply to the Project.

This section shall not be construed to limit the authority of City to charge normal and customary application, processing, and permit fees for land use approvals, building permits, and other similar permits and entitlements which fees are designed to reimburse City's expenses attributable to such application, processing and permitting and are in force and effect on a City-wide basis at such time as said approvals, permits, or entitlements are granted by the City. This section does not act as a limit on the amount of any fee that is applicable to the Project hereunder.

5.9 Moratoriums. Moratoriums enacted by the City for the public health, safety and welfare which are imposed on the Property or Project shall toll the time periods set forth in this Agreement.

5.10 City to Receive Construction Contract Documents. Developer shall furnish City, upon written request, copies of any public facilities construction contracts and supporting documents relating to the Project.

5.11 Conditions of any Discretionary Approval to the Property. The requirements imposed as conditions of any discretionary approval received through the City's existing regulatory process shall be governed by the term of those approvals except to the extent this Agreement modifies such conditions, but in no event shall such conditions be affected by the termination, cancellation, rescission, revocation, default of expiration of this Agreement. Specific reference is made to the California Environmental Quality Act ("CEQA") and nothing contained herein shall be construed as abrogating any of the City's obligations for environmental review of the Project under CEQA, or, from requiring Developer to provide such environmental mitigation as may be required for the Project.

6. DEVELOPMENT PROGRAM.

6.1 Extraordinary and Significant Benefits.

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(1) Notwithstanding any provision of this Agreement, or of law, to the contrary and as partial consideration for the parties entering into this Agreement, the parties agree that Developer is obligated to provide to the City the following enumerated extraordinary and significant benefits:

(a) To develop the Project in compliance with plans, specifications and conditions as stated in UUP 00-47501 pursuant to the design and construction standards set forth in Exhibit B and the other exhibits incorporated herein.

6.2 Public Improvements, Facilities and Services. Developer agrees to provide the following public improvements, facilities and services required for the development of the Property, as set forth in the conditions of approval for UUP 00-47501.

7. ANNUAL REVIEW

This Agreement shall be subject to automatic annual review.

Consistent with the provision of Banning Ordinance Code, Chapter 22A, Developer, or its successor in interest shall annually on
the date hereof, submit a report documenting its good faith compliance with this Agreement. Such review shall thereafter be processed as required by Banning Ordinance Code section 22A-7, including a notice public hearing before the Planning Commission.

7.1 Review Letter. If Developer is found to be in compliance with the Agreement after annual review, City shall, upon written request by Owner issue a Review Letter to Developer (the "Letter") stating that based upon information known or made known to the City Council, the City Planning Commission and/or the City Planning Director, the Agreement remains in effect and Owner is not in default. Owner may record the Letter in the Official Records of the County of Riverside.

8. DEFAULT.

8.1 Events of Default. Developer is in default under this Agreement upon the happening of one or more of the following events or conditions:

(a) If a warranty, representation or statement made or furnished by Developer to the City is false or proves to have been false in any material respect when it was made.

(b) A finding and determination made by the City following a periodic review under the procedure provided for in Government Code S 65865.1 that upon the basis of substantial evidence the Developer has not complied in good faith with one or more of the terms or conditions of this Agreement, UUP 00-47501 or any other agreement existing between Developer and City

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(c) Any other event, condition, act or omission which materially interferes with the intent and objectives of this Agreement.

8.2 Procedure upon Default.

(a) Upon the occurrence of default, City shall give Developer (the "defaulting party") thirty (30) days written notice specifying the nature of the alleged default and, when appropriate, the manner in which said default may be satisfactorily cured. After proper notice and expiration of said thirty (30) day cure period without cure, City may terminate or amend this Agreement in accordance with the procedure adopted by the City. Failure or delay in giving notice of default shall not constitute a waiver of any default, nor shall it change the time of default.

(b) City does not waive any claim of defect in performance by Developer, if on periodic review the City does not propose to modify or terminate this Agreement.

(c) Non-performance shall not be excused because of a failure of a third person.

(d) An express repudiation, refusal or renunciation of the contract, if the same is in writing and signed by the Developer, shall be sufficient to terminate this Agreement and a hearing on the matter shall be held as required by Government Code section 65868 or its successor statute. Developer is required to provide the extraordinary and significant benefits specified in Section 6.(1)a, regardless of any such termination.

(e) Adoption of a law or other governmental activity making performance by the applicant unprofitable or more difficult or more expensive does not excuse the performance of the obligation by the Developer.

(f) All other remedies at law or in equity which are not consistent with the provisions of this Agreement or are available to the parties to pursue in the event there is a breach.

8.3 Damages. In no event shall Developer be entitled to any contractual damages against City. Developer's remedies are limited to damages for violation of any statutory or constitutional right which Developer may have prior to and independent of this Agreement. Owner is otherwise limited to an action for specific performance of any obligations of City specifically set forth herein.

8.4 Institution of Legal Action. In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default or breach, to specifically enforce any covenants or agreements set forth in the Agreement or to enjoin any threatened or attempted violation of the Agreement, or to obtain any remedies consistent with the purpose of the Agreement. Legal actions shall be instituted in the Superior Court of the County of Riverside, State of California, or in the Federal District Court in the Central District of California.

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8.5 Arbitration Procedures. Prior to commencement of any legal or equitable action hereunder, if an alleged breach of this Agreement is not resolved in writing within thirty (30) days of the receipt of the Notice of Non-Breach, or if a dispute among the parties shall arise and not be resolved to the satisfaction of the concerned parties within a reasonable period of time (not to exceed 30 days), the matter shall be submitted to arbitration, upon the request of either Party. The party requesting the arbitration shall present a list of 5 arbitrators from a recognized arbitration\mediation organization to the other party. The parties shall thereafter have ten days within which to meet and select an arbitrator from the list. Failing to agree on an arbitrator, each party shall take turns striking arbitrators from the list until one arbitrator remains. The parties agree that such arbitration shall be conducted pursuant to the American Arbitration Association's Commercial Arbitration Rules. The provisions of California Code of Civil Procedure section 1283.05 are deemed incorporated therein. Each party shall bear one-half the initial outlay for the arbitration fee. If the arbitration or legal action is brought because of a breach of this Agreement, The prevailing party shall be entitled to reasonable attorneys' fees and costs of action.

9. ENCUMBRANCES AND RELEASES ON PROPERTY.

9.1 Discretion to Encumber. This Agreement shall not prevent or limit Developer, in any manner, at Developer's sole discretion, from encumbering the Property or any improvement on the Property by any mortgage, deed of trust or other security device securing financing with respect to the Property or its improvement.

9.2 Entitlement to Written Notice of Default. The mortgagee of a mortgage or beneficiary of a deed of trust encumbering the Property or any part thereof and their successors and assigns shall, upon written request to City, be entitled to receive from City written notification of any default by Developer of the performance of Developer's obligations under the Agreement which has not been cured within thirty (30) days following the date of default.

9.3 Releases. City agrees that upon written request of Developer and payment of all fees and performance of the requirements and conditions required of Owner by this Agreement to the Property, or any portion thereof, City may execute and deliver to Owner appropriate release(s) or further obligation imposed by this Agreement in form and substance acceptable to the Riverside County Recorder or as may otherwise be necessary to effect the release.

10. MISCELLANOUS PROVISIONS.

10.1 Rules of Construction. The singular includes the plural, the masculine gender includes the feminine, "shall" is mandatory "may" is permissive.

If there is more than one signer of this Agreement, their obligations are joint and several.

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10.2 Entire Agreement, Waivers and Amendments. This Agreement constitutes the entire understanding and agreement of the parties with respect to the matters set forth in this Agreement. This Agreement supersedes all negotiations or previous agreements between the parties respecting this Agreement. All waivers of the provision of this Agreement must be in writing and signed by the appropriate authorities of City or of Developer. All amendments to this Agreement must be in writing signed by the appropriate authorities of City and Developer, in a form suitable for recording in the Official Records of Riverside County, California. Within ten (10) days following the effective date of this Agreement, a copy of this Agreement shall be recorded in the Official Records of Riverside County, California. Upon the completion of performance of this Agreement or its revocation or termination signed by the appropriate agents of Developer and City shall be recorded in the Official Records of Riverside County, California.

10.3 Project as a Private Undertaking. It is specifically understood by the Parties that:

(a) the Project is a private development,
(b) City has no interest in or responsibilities for or duty to third parties concerning any improvements to the Property until City accepts the improvements pursuant to the provisions of this Agreement or in connection with subdivision map approvals, and
(c) Developer shall have the full power and exclusive control of the Property subject to the obligations of Owner set forth in this Agreement.

10.4 Incorporation of Recitals. The Recitals set forth in Section I of this Agreement are part of this Agreement.

10.5 Captions. The captions of this Agreement are for convenience and reference only and shall not define, explain, modify, construe, limit, amplify or aid in the interpretation, construction or meaning of any of the provisions of this Agreement.

10.6 Consent. Where the consent or approval of a party is required in or necessary under this Agreement, the consent or approval shall not be unreasonably withheld.

10.7 Covenant of Cooperation. The parties shall cooperate with, deal with each other in good faith, and assist each other in the performance of the provisions of this Agreement.

10.8 Recording. The City Clerk shall cause a copy of this Agreement to be recorded with the Office of the County Recorder of Riverside County, California, within ten (10) days following the effective date of this Agreement.

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IN WITNESS THEREOF, this Agreement has been executed by the City of Banning, acting by and through its Mayor, pursuant to Ordinance No. 1308 authorizing such execution, and by the Developer.

Dated: 11-26-03

THE CITY OF BANNING

Arthur L. Welch, Mayor

ALL AMERICAN RACING, LLC

Andy Moracco, President

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STATE OF CALIFORNIA,
COUNTY OF RIVERSIDE, SS

On November 26, 2003, before me, Virginia L. Sorenson, a Notary Public in and for said County and State, personally appeared ARTHUR L. WELCH, known to me, to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same in his authorized capacity, and that by his signatures on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

VIRGINIA L. SORENSON
COMM. #1302981
Notary Public-California
RIVERSIDE COUNTY
My Comm. Exp. April 30, 2005

Virginia L. Sorenson
Virginia L. Sorenson, Notary Public

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Order: Robert Loera Comment:

EXHIBIT A
DEVELOPMENT AGREEMENT

LEGAL DESCRIPTION

20 Acres of property Assessor Parcel Number 532-130-018

The North half of the Southwest quarter of the Southeast quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Base and Meridian, according to the Official Plat thereof.

40 Acres of property Assessor Parcel Number 532-130-008

The Southeast quarter of the southwest quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Meridian, according to the official plat thereof.

Description: Riverside,CA Document-Year.DocID 2004.86353 Page: 15 of 73
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EXHIBIT B
DEVELOPMENT AGREEMENT

CITY OF BANNING

P.O. BOX 998
BANNING CA 92220
FAX (909) 922-3128

DEPARTMENT OF
PLANNING
(909) 922-3125

August 31, 2001

Mr. Andy Marocco
C/O All American Racing LLC
PO Box 2201
Rialto, CA 92377

RE: UNCLASSIFIED USE PERMIT 01-47501 – REQUEST TO ESTABLISH A PROFESSIONAL DRAG RACING FACILITY ON PROPERTY GENERALLY LOCATED APPROXIMATELY 1300 FEET EAST OF THE NORTHEAST CORNER OF HATHAWAY STREET AND WESTWARD AVENUE. APN'S 532-130-008 & 018.

Dear Mr. Marocco:

At its meeting held on August 14, 2001, the Banning City Council approved the above referenced project subject to the attached conditions of approval.

The City Council has adopted California Code of Civil Procedure Section 1094.6 which defines the time period in which judicial review may be requested for certain final administrative decisions and orders under California Code of Civil Procedure Section 1094.5. Pursuant to California Code of Civil Procedure Section 1094.6(f) the city clerk shall provide notice to any party to a final decision indicating that the time within which judicial review must be sought is governed by California Code of Civil Procedure Section 1094.6.

If you have any questions or need any additional information, I can be reached at (909) 922-3125.

Roger Derda
Community Development Director

Attachment: U.U.P. 01-47501 – Final Conditions of Approval

Description: Riverside,CA Document-Year.DocID 2004.86353 Page: 16 of 73
Order: Robert Loera Comment:

ATTACHMENT 4

City Council

Staff Report and Resolution 2011-27

CITY COUNCIL
PUBLIC HEARING

DATE: April 12, 2011

TO: Honorable Mayor and City Council

FROM: Dave Aleshire, City Attorney

SUBJECT: PUBLIC HEARING AND RESOLUTION NO. 2011-27 FOR THE REVOCATION OF UNCLASSIFIED USE PERMIT 01-47501 AND TERMINATION OF DEVELOPMENT AGREEMENT 03-1504 (FOR A DRAG RACING FACILITY) – APN 532-130-008 & 018

RECOMMENDATION:

That the City Council hold a public hearing, consider the staff report, take public comment and at the close of the hearing adopt Resolution No. 2011-27 making findings for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504.

BACKGROUND/DISCUSSION:

This is a continued public hearing from the March 22, 2011 City Council meeting. Due to the volume of information and an effort to conserve and use less paper, a complete copy of the City Council staff report dated March 22, 2011 is available for public review in the City Clerk's office.

At the March 22nd meeting, the City Council held a public hearing, considered the staff report from the City Attorney, took public comments, including comments from the applicant, discussed the findings, and directed the City Attorney to bring back the resolutions detailing the findings as discussed by the City Council for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504.

This matter involves the City's revocation of Unclassified Use Permit 01-47501 ("UUP") issued to All-American Racing, LLC, whose rights were assigned to Banning Airport Associates, and Andy Marocco (collectively, "BAA") and termination of Development Agreement 03-1504 ("Development Agreement") permitting the development of a drag racing facility ("Project") on several parcels of property near the Banning Municipal Airport. The UUP was issued in 2001, but after almost eight years, the Project had not been constructed and no grading of the property occurred. In its resolution finding that no use or construction had commenced, or if it had, the use or construction was discontinued for at least six months, the City revoked the UUP and terminated the Development Agreement, whose term was concurrent with the UUP, in March 2008.

Shortly thereafter, BAA filed a lawsuit, including an administrative writ of mandate, declaratory relief, and inverse condemnation actions, against the City for revocation of the UUP and termination of the Development Agreement. After a hearing on the writ of mandate, the Riverside County Superior Court remanded the matter back to the City for a re-hearing and to

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make proper findings to support its decision revoking the UUP and terminating the Development Agreement.

As indicated earlier, the City Council held a public hearing on March 22, 2011, considered the staff report from the City Attorney, took public comments, including comments from the applicant, discussed the findings, and directed the City Attorney to bring back the resolution detailing the findings as discussed by the City Council for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504. These findings are contained in the Resolution attached to this Staff Report.

FISCAL DATA:

The fiscal impact related to this matter is covered under the City Attorney's contract.

APPROVED BY:

Andy Takata
City Manager

PREPARED BY:

Lona Laymon
Assistant City Attorney

RECOMMENDED BY:

Dave Aleshire
City Attorney

REVIEWED BY:

Zai Abu Bakar
Community Development Director

Attachment:

1. City Council Resolution 2011-27

ATTACHMENT 1

Resolution No. 2011-27

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RESOLUTION NO. 2011-27

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA REVOKING UNCLASSIFIED USE PERMIT 01-47501 AND TERMINATING DEVELOPMENT AGREEMENT 03-1504

WHEREAS, on August 14, 2001, the City Council ("City Council") of the City of Banning ("City") conditionally approved Unclassified Use Permit 01-47501 ("UUP) to All-American Racing, LLC ("AAR"), whose successor in interest is Banning Airport Associates ("BAA"), for the development of a drag racing facility consisting of a drag racing strip, grandstands, concession stands, restrooms, and parking spaces (the "Project") to be located approximately 1,300 feet to the east of the northeast corner of Westward Avenue and Hathaway Street on two parcels of land: (i) a 40-acre parcel with Assessor's Parcel No. 532-130-008, and (ii) a 20-acre parcel owned by the City with Assessor's Parcel No. 532-130-008 which is subject to Federal Aviation Administration ("FAA") approval for any sale, lease, or transfer of interest (collectively, the "Site") (Administrative Record ("AR") at pp. 00418-00435); and

WHEREAS, on January 28, 2008, the Planning Commission of the City conducted a public hearing regarding revocation of the UUP, and based on all public testimony and the administrative record before it, approved Resolution 2008-05 revoking the UUP on two alternative grounds: (i) the UUP was expired under Banning Municipal Code Sections 9116.8 and 9116.10 since BAA failed to commence a use or construction within the timeframe permitted, and (ii) the use that commenced, if any, was discontinued, and subject to revocation, pursuant to Banning Municipal Code Section 9116.11 (Administrative Record ("AR") at pp. 02671-02678, 02680-02698); and

WHEREAS, in Resolution 2008-05, the Planning Commission made findings that the UUP was extended four times between 2002 and 2006 and no further extensions were permitted under the Banning Municipal Code; that the four extensions were given because no use or construction was commenced on the Site, even though BAA completed Barbour Street in 2004; that two grading permits were issued but nothing beyond clearing and grubbing was done at the Site under those grading permits; that clearing and grubbing work did not constitute evidence of use or construction; that the groundbreaking ceremony was not considered construction; and that the term of the Development Agreement was concurrent with the UUP and expired upon the expiration or revocation of the UUP (AR at pp. 02675-02677); and

WHEREAS, on February 6, 2008 BAA appealed the revocation of the UUP and termination of the Development Agreement to the City Council (AR at pp. 02700); and

WHEREAS, after a public hearing on March 11, 2008, the City Council approved Resolution 2008-34 denying BAA's appeal and affirming all of the findings in Planning Commission Resolution 2008-05 to revoke the UUP and terminate the Development Agreement (AR at pp. 02703-02709); and

WHEREAS, on April 16, 2008, BAA filed a writ of administrative mandate to reverse the City's decision to revoke the UUP and terminate the Development Agreement and a

complaint for inverse condemnation in the Riverside County Superior Court (Case No. RIC 497338) (the "Court"); and

WHEREAS, after a review of the briefs each submitted by the City and BAA and the administrative record, and after oral arguments from both the City and BAA at a hearing on December 23, 2010 on the writ of mandate portion of the case, the Court granted BAA's writ of mandate because it found that the findings in City Council Resolution 2008-34 were unclear to support the revocation of the UUP, but the Court did not rule on the merits of either side's arguments; and

WHEREAS, the Court did not make other findings of fact at the hearing, but remanded the matter back to the City for the City to make proper findings to support its decision at a re-hearing to be conducted within 120 days of the Court's ruling by April 22, 2011, and further instructed that no new evidence outside the administrative record was to be considered unless pursuant to Section 1094.5(e) of the Code of Civil Procedure; and

WHEREAS, pursuant to the Court's ruling, the City Council conducted a duly noticed public re-hearing of the revocation of the UUP on March 22, 2011, permitted public comment, including comment by BAA, considered the recommendations contained in the staff report and the evidence of the administrative record; and

WHEREAS, at the March 22, 2011 hearing, BAA argued that the 2008 hearing to terminate the Development Agreement and revocation of the UUP was based on false facts and that the true facts are as follows: (i) Barbour Street improvements were paid in part by AAR, (ii) the City was involved in the groundbreaking ceremony for the Project because several City Council members went to the ceremony, (iii) Barbour street constituted commencement of use, (iv) two grading permits were issued and they initiated grading in 2006; (v) the burrowing owl issue impacted the purchase of the property; (vi) the UUP was vested because substantial work was done for the Project and grading commenced at the Site; and (vii) the Development Agreement had no timelines so was not subject to termination due to inactivity; and

WHEREAS, the City Council members discussed the evidence presented and directed the City Attorney to bring back a resolution making findings to support reaffirming the Council's prior action; and

WHEREAS, on April 12, 2011 the City Council considered findings upholding the revocation of the UUP and termination of the Development Agreement.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY FIND, DECLARE, AND RESOLVE, based upon substantial evidence taken from the existing administrative record as a whole, including the testimony contained therein, and without considering any new evidence, as follows:

SECTION 1. FINDINGS OF FACT

1. The foregoing recitals are true and correct and are incorporated by reference into the findings herein.

2. On August 22, 2000, the Banning Community Redevelopment Agency ("Agency") approved a 90-day exclusive negotiating agreement with AAR to negotiate the terms of the development of the Project. (AR at pp. 00062-00072.)

3. AAR applied for a UUP for the Project at the Site. As part of the application, AAR conducted various traffic, noise, and environmental studies. (AR at pp. 00106-00165, 00221-00247, 00248-0030000314-00331.) A Mitigated Negative Declaration was prepared for the Project in connection with the UUP. (AR at pp. 00564-00569.) On August 14, 2001 the City Council conditionally approved the UUP and notified AAR that it could challenge the UUP approval or any condition. (AR at. p. 00886.) It did not.

4. The UUP contained the following conditions of approval, among others, in pertinent part:

> Planning Condition of Approval 1: "All conditions of approval attached to Unclassified Use Permit No. 01-47501 must be met within the time frames stipulated in each condition for each phase of development. ***In the event the subject Unclassified Use Permit is not exercised consistent with the time frame identified for each condition, the permit shall become subject to revocation.***
>
> If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval. All conditions of approval for each phase of development must be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; ***otherwise, the approval shall expire and become null and void.***" (AR at p. 00428 [Emphasis added].)
>
> Planning Condition of Approval 2: "Non-compliance to provisions of Unclassified Use Permit 01-47501 may result in the City initiating procedures to revoke the subject Unclassified Use Permit. Further, if during the term of the permit the City determines based upon substantial evidence that the permit activity is exercised as to be detrimental to the public health or safety, or so as to be a nuisance to other businesses in the general area, the permit shall be subject to revocation as outlined in Article 21 (Revocation of Permits) of the Banning Ordinance Code." (AR at p. 00428.)
>
> Engineering Condition of Approval B(1): "Construct the street improvements on Barbour Street extension, consisting of new curb, gutter, sidewalk, handicap ramps, driveway approach, streetlights, etc. ..." (AR at p. 00432.)
>
> Engineering Condition of Approval C(1): "Prepare Street Improvement Plans per the City of Banning standard for Westward Avenue, fronting the subject property and pay all applicable plan check fees." (AR at p. 00433.)
>
> Engineering Condition of Approval C(2): "Construct the street improvements consisting of curb, gutter, sidewalk, driveway approach, and streetlights on Westward Avenue, fronting the subject property. ..." (AR at p. 00433.)

Engineering Condition of Approval D(1): "Dedicate additional right-of-way to ensure a total of 30' right-of-way along Barbour Street and Scott Street, east of the subject property." (AR at p. 00433.)

Engineering Condition of Approval D(2): "Prepare street improvement plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights. ..." (AR at p. 00433.)

5. Pursuant to Banning Municipal Code Section 9116.8, which was in effect at the time the UUP was issued, a conditional use permit[1] expires under the following two circumstances:

> "A Conditional Use Permit shall be exercised by the commencement of construction or other appropriate evidence of use, as determined by the Planning Commission or its designee, within one year from the date of approval unless otherwise specified within the C.U.P. Upon the expiration of one year without such commencement of use, the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147, § 1(part).)
>
> "If after commencement of any related construction, work is discontinued, before completion, for a period of one year, then the Conditional Use Permit shall become null and void and of no further force or effect without further action by the City. (Ord. No. 1147, § 1(part).)" (AR at p. 00007.)

6. Pursuant to Banning Municipal Code Section 9116.10, which was in effect at the time the UUP was issued, a permit may be extended up to three times only. Section 9116.10 states, in relevant part:

> "The Community Development Director may, upon an application being filed thirty days prior to expiration and for good cause, grant preliminary extension of the time within which the C.U.P. is to be exercised pursuant to Section 9116.8 above. Such period shall not exceed twelve months from the date the extension is approved. ***In no instance shall more than three extensions be granted.*** ..." (AR at p. 00008 [emphasis added].)

7. Pursuant to Banning Municipal Code Section 9116.11, which was in effect at the time the UUP was issued, a permit for which construction or use already commenced may be revoked under certain circumstances. Section 9116.11 states, in relevant part:

> "...A revocable conditional use permit may be revoked or modified and an irrevocable conditional use permit may be modified by the commission if any one (1) of the following findings can be made:
> (a) That circumstances have changed so that one (1) or more of the findings contained in Section 9116.6 (Findings) can no longer be made;

[1] The City had a policy of treating unclassified use permits in the same manner as conditional use permits, per Banning Municipal Code Section 9112.

(b) That the Conditional Use Permit was obtained by misrepresentation or fraud;
(c) ***That the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months;***
(d) ***That one or more of the conditions of the Conditional Use Permit have not been met;***
(e) That the use is in violation of any statute, ordinance, law, or regulation; or
(f) That the use permitted by the Conditional Use Permit is detrimental to the public health, safety or welfare or constitutes a nuisance. (Ord. No. 1147, § 1(part).)" (AR at pp. 00008-00009 [emphasis added].)

8. On May 28, 2002, the City, FAA, and AAR entered into a Memorandum of Understanding ("MOU") for the City to lease the 20-acre parcel to AAR for 5 years with options for renewal at a rate of $12,500 per year paid to the City. (AR at pp. 000897-00903, 00905-00908.) The FAA informed the City that while a 5-year lease of the 20-acre parcel to operate a racing facility was permissible, a permanent lease (including a 20-year lease as contemplated in the MOU) for drag strip racing or any other non-aeronautical purposes was not viable or permitted by the FAA. (AR at pp. 00919-00920.)

9. By May 2002, AAR had not commenced construction of the Project at the Site. Because the UUP was set to expire on August 14, 2002, AAR requested an extension of the UUP. The Planning Commission of the City granted a one-year extension to August 14, 2003. (AR at pp. 00913, 00916-00918, 00932-00936.)

10. On October 22, 2002, in a desire to move the Project forward and assist AAR, the City Council adopted Resolution 2002-111 approving a lease agreement with AAR of the 20-acre parcel ("Lease Agreement"), a license agreement for the City to use an adjacent lot for parking facilities ("License Agreement"), and a reimbursement agreement ("Reimbursement Agreement") wherein the City would reimburse AAR for constructing offsite street improvements of Barbour Street near the Site for an amount of $125,000.00 in two phases, $62,500.00 each: (i) after completion of Barbour Street offsite improvements, and (ii) after completion of onsite improvements for the racing facility. (AR at pp. 00945-00946, 01009-01019.)

11. Eight months later, construction still had not begun for Barbour Street or on the Site. Nonetheless, on August 5, 2003, the Planning Commission granted a second extension of the UUP to August 14, 2004 (AR at pp. 01402-01411, 01412-01419), even though a grading permit had been issued on July 24, 2003. (AR at p. 01396.)

12. On November 26, 2003 in good faith, the City entered into Development Agreement 03-1504 ("Development Agreement") with AAR, the term of which would be concurrent with the UUP (AR at pp. 01669-016670), and with the provision that a failure to comply with any condition of approval of the UUP or a term of the Development Agreement was a default whereby the Development Agreement could be terminated. (AR at p. 01674.) As reflected in the Development Agreement, the City appreciated that the Project was an ambitious undertaking and was willing to work with AAR to make the Project a reality.

13. By April 2004, AAR completed Barbour Street improvements, per UUP Engineering Condition of Approval (B)(6). The City accepted the improvements (AR at p. 01768) and issued AAR a check for $62,500.00, per the Reimbursement Agreement. (AR at p. 01789-01790.)

14. After Barbour Street improvements were completed, a dispute arose over whether AAR was required to install landscaping for Barbour Street. A cost support agreement ("Cost Support Agreement") was executed by the City, AAR, and the Agency, whereby the Agency would reimburse AAR up to $25,000.00 for landscaping, in addition to the $125,000.00 under the Reimbursement Agreement. (AR at pp. 01780-01784.)

15. On July 30, 2004, after Barbour Street improvements were completed, AAR requested another extension of the UUP. The City granted its third extension of the UUP to August 14, 2005 since, according to the City, no use or construction had commenced on the Site. (AR at p. 01786.) The City understood that AAR was encountering difficulties with acquisition of the 40-acre parcel but continued to partner with them in moving forward with the Project.

16. On January 21, 2005, AAR informed the City that it had finally entered into escrow to purchase the 40-acre parcel. (AR at p. 01811.)

17.

18. In August 2005, with the City's approval, AAR assigned and transferred all of its rights to the Project, including the Development Agreement and the UUP, to BAA. (AR at pp. 02010-02017.) City hoped that BAA's and Tom Searles' experience and expertise could turn the Project around and finally bring it to completion.

19. On August 9, 2005, with new ownership pending and despite not seeing any grading, use, or construction on the Site, the City granted its fourth extension of the UUP to August 14, 2006. The City understood the magnitude of the Project and knew AAR was dealing with difficult financial and site assembly issues. (AR at pp. 01820-01821.)

20. On September 22, 2005, because the grading permit from July 2003 expired, BAA applied for and was granted a new grading permit based on revised grading plans to make the drag strip below grade. (AR at p. 02188.)

21. On December 13, 2005, desiring to partner with BAA, which was allegedly more experienced with large-scale and complex development projects, the City and BAA entered into a Master Agreement, which provided for the following: (i) an agreement to enter into a purchase and sale agreement for the City to convey the 20-acre parcel to BAA; (ii) the City's assistance in property acquisition and Site assembly; (iii) BAA's purchase of additional property for a master planned business park surrounding the Site; (iv) termination of the Lease Agreement, License Agreement, Reimbursement Agreement, and Cost Support Agreement (AR at pp. 02204-02205); and (v) a requirement that BAA modify the UUP and obtain a new environmental analysis under CEQA for the additional business park to the Project. (AR at p. 02212).

22. On June 2, 2006, after still seeing no progress on the Project notwithstanding the passage of 9 months since the new ownership, the City sent a letter requiring BAA to commence grading pursuant to its grading permit on the 40-acre parcel, enter into a purchase agreement for the 20-acre parcel and deposit funds into escrow, and apply for a modification of the UUP to expand the use to include a business park. (AR at pp. 02242-02243.)

23. The purchase and sale agreement for the sale of the 20-acre parcel was finally executed on July 25, 2006 (AR at pp. 02256-02277) and escrow opened on August 4, 2006. (AR at p. 02299.)

24. On July 27, 2006, BAA held a groundbreaking ceremony at the Site. (AR at p. 2285-A.)

25. Two issues stalled closing of escrow for the 20-acre parcel: (i) the FAA land release was not completed until November 30, 2006 (AR at p. 02299); and (ii) burrowing owls were found on the 20-acre parcel, and the California Department of Fish and Game did not authorize the parties to proceed until relocation of the burrowing owls was completed on February 20, 2007. (AR at pp. 02290, 02297.)

26. The delays in the FAA land release and the burrowing owl relocation extended escrow into its eighth month. However, as the City realized the FAA land release and burrowing owls were beyond the control of BAA, the City permitted BAA's deposit of escrow funds and purchase of the 20-acre parcel to be delayed until April 13, 2007, or the City would have the right to terminate the Master Agreement. (AR at pp. 02298-02299.)

27. By April 13, 2007, escrow of the 20-acre parcel still had not closed, but the City nonetheless agreed, in good faith, to extend escrow until May 14, 2007 so that the City could obtain a final appraisal report and BAA could deposit an additional $163,750.00 into escrow. (AR at p. 02308.)

28. On May 17, 2007, the City informed BAA that no major grading was occurring at the 40-acre parcel and that BAA was in violation of the second grading permit issued on September 22, 2005, despite being granted four extensions of the UUP. (AR at p. 02325.) According to the grading plans submitted by AAR, over 240,000 cubic yards of dirt were required to be displaced (AR at p. 01237), and there was little more than clearing, grubbing, and preliminary grading activity by May 2007.

29. By June 2007, BAA still had not deposited the required funds into escrow for the purchase of the 20-acre parcel, despite begin given two extensions. On June 26, 2007, the City sent BAA a Notice of Default for failure to make a timely deposit of $163,750.00 into escrow and gave BAA 30 days until July 26, 2007 to cure its default. (AR at p. 02333.)

30. By July 27, 2007, no deposit was made, as required in the June 26, 2007 Notice of Default. The City gave BAA one ***final*** chance and notified BAA that it was required to make the deposit immediately and close escrow by August 25, 2007 or the City would terminate the Purchase and Sale Agreement. (AR at p. 02345.)

31. BAA failed to make the deposit until September 11, 2007 (AR at p. 02404). Pursuant to its July 27, 2007 letter, the City issued a Notice of Termination. (AR at pp. 02405-02407.)

32. The City held a hearing for the termination of the Master Agreement and Purchase Agreement on September 14, 2007. After the City discussed ways the Project could be salvaged and provided a final opportunity for BAA to proceed forward with the Project, the hearing was continued to October 23, 2007. (AR at pp. 02422-02426.)

33. On October 23, 2007, two years after entering into the Master Agreement with BAA, over one year after entering into the purchase and sale agreement, and almost a year after the FAA's release of the 20-acre parcel, the City Council finally terminated the Master Agreement and Purchase Agreement for BAA's failure to deposit the funds into escrow. (AR at pp. 02475-02478, 02479-02482.)

34. On November 27, 2007, over six years after issuing the UUP in 2001, granting four extensions of the UUP and issuing two grading permits, entering into a Development Agreement and a Master Agreement, and partnering with two developers, little more than clearing and grubbing of the Site had been done and construction of the Project had not begun. As a result, the City informed BAA that the UUP had expired on August 14, 2006 and became null and void for failure to commence a use or construction at the Site, that BAA exhausted all permissible extensions under Banning Municipal Code Section 9116.10 (AR at p. 02590), and the term of the Development Agreement was concurrent with the UUP and was therefore expired.

35. On December 10, 2007, the City provided notice to BAA that a hearing to revoke the UUP and terminate the Development Agreement would be before the Planning Commission on January 11, 2008 (AR at p. 02593), but subsequently provided notice that the hearing was continued to January 28, 2008 (AR at pp. 02645, 02647.)

36. On January 28, 2008, the Planning Commission terminated the Development Agreement and revoked the UUP. (AR at p. 02691-02698.) The Planning Commission found that not all of the conditions of approval were completed within the term of the UUP. The Planning Commission further found that no construction had occurred on the site because (i) Barbour Street improvements were constructed but were offsite, and (ii) the clearing and grubbing of brush and groundbreaking ceremony were not considered construction. No use of the UUP was commenced because no drag racing facility was built.

37. BAA appealed the Planning Commission's decision to the City Council, which affirmed the Planning Commission's decision on March 11, 2008 to terminate the Development Agreement and revoke the UUP. (AR at p. 02703-02709.)

SECTION 2. CONCLUSIONS OF LAW

1. BAA failed to complete all of the conditions of approval under the UUP by the time the UUP was revoked by the Planning Commission on January 28, 2008 and when the decision was affirmed by the City Council on March 11, 2008. Completion of the conditions did not require ownership of the 20-acre parcel. BAA had possession or

control of the 40-acre parcel, and several conditions BAA was required to complete were offsite and did not require ownership of either the 20-acre or 40-acre parcel. Also, the City urged BAA on several occasions to begin construction activity at the Site, but the conditions of approval were never completed. This finding is supported by the following facts:

a. Some of the conditions of approval that BAA was required to complete during the term of the UUP and prior to the issuance of a certificate of occupancy included the following offsite conditions: (i) Engineering Condition of Approval B(1): Construct street improvements for Barbour Street (AR at p. 01416); (ii) Engineering Condition of Approval C(1): Prepare street improvement plans for Westward Avenue where it fronts the Site (AR at p. 01417); (iii) Engineering Condition of Approval C(2): Construct street improvements at Westward Avenue where it fronts the Site (AR at p. 01417); (iv) Engineering Condition of Approval D(1): Dedicate additional right-of-way along Barbour Street to Scott Street (AR at p. 01417) (v) Engineering Condition of Approval D(2): Prepare street improvement plans and construct full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights (AR at p. 01417).

b. BAA completed Barbour Street improvements by April 2004, thereby completing Engineering Condition of Approval B(1).

c. By June 2006, although clearing and grubbing occurred on the Site, the City did not consider such activities as grading operations. On June 2, 2006, after seeing no progress on the Project, the City sent a letter requiring BAA to "commence grading operations on the [40-acre parcel], and proceeding diligently thereafter without extended interruption," to enter into a purchase agreement for the 20-acre parcel, and to apply for a modification of the UUP to expand the use to include a business park. (AR at p. 02243.)

d. Other than completion of Engineering Condition of Approval B(1) for Barbour Street improvements, there is no evidence in the Administrative Record that any other offsite condition of approval listed above, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417); was completed.

2. Because BAA failed to complete all of its conditions of approval on August 14, 2006, the UUP expired on its own, as no more than three extensions of the UUP were allowed under Banning Municipal Code Section 9116.10. In its desire to work with BAA to move the Project forward, and realizing that several difficult issues arose for such a complex development, the City gave BAA four extensions to complete its conditions of approval between 2001 and 2006, but BAA failed to complete its conditions of approval

within the timeframe of the UUP. In the later stages, additional time was provided when AAR partnered with a new developer and transferred its interests to BAA, but ultimately this did not improve the records of nonperformance. This finding is supported by the following facts:

a. Pursuant to Banning Municipal Code Section 9116.10, a permit may be extended for a period not to exceed 12 months up to a maximum of three extensions only.

b. The City granted BAA four extensions of the UUP, one more than the three maximum extensions. (AR at pp. 00913, 00916-00918, 00932-00936, 01402-01411, 01412-01419, 01786, and 01820-01821.) The fourth and last extension provided that the UUP expired on August 14, 2006.

c. Also, under Planning Condition of Approval 1 of the UUP, "***all*** conditions of approval for each phase of development ***must*** be met on or before their respective expiration date, or, the project proponent may request an amendment to the conditions at least thirty (30) days prior to the expiration date; ***otherwise, the approval shall expire and become null and void.***" (AR at p. 00428 [Emphasis added].)

d. As provided in facts supporting Finding No. 1 above, BAA failed to complete the conditions of approval under the UUP, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417).

e. After assuming the rights and obligations of AAR under the UUP, Development Agreement, and Master Agreement, BAA was required to purchase the 20-acre parcel from the City. Although the FAA land release and burrowing owl issues stalled the purchase of the 20-acre parcel until after February 20, 2007, the City gave BAA four additional extensions between April to August 2007 to deposit funds into escrow pursuant to the Purchase and Sale Agreement, but BAA failed to do so. (AR at pp. 02298-02299, 02345.)

f. BAA was required to commence grading on the 40-acre parcel, which BAA owned and did not have FAA or burrowing owl issues tied with it, pursuant to a grading permit issued on September 22, 2005 but BAA failed to do any substantial grading work on the 40-acre parcel except for clearing and grubbing and preliminary grading work. (AR at pp. 02344.)

3. BAA did not commence a use on the Site because a racing facility was never built and the Site was never used for drag racing.

4. BAA did not commence construction on the Site because the work done by BAA – Barbour Street improvements, clearing and grubbing of brush and other preliminary

grading activity, and the groundbreaking ceremony – was either offsite or did not constitute construction. The City urged BAA in writing to commence construction on numerous occasions, but BAA could not commence construction or otherwise move the Project forward beyond preliminary grading over the eight-year period the UUP was in existence. Under Banning Municipal Code Section 9116.8, commencement of construction or use shall be "determined by the Planning Commission or its designee." Here, the Planning Commission or its designee, the Community Development Director, exercised discretion and determined that completion of Barbour Street, clearing and grubbing of the Site, and the groundbreaking ceremony were insufficient to constitute a use or construction of the UUP. This finding is supported is by the following facts:

a. BAA completed Barbour Street improvements in April 2004. (AR at p. 01768.) However, the construction of Barbour Street was completely ***offsite*** and no construction of the Project commenced on either the 20-acre or the 40-acre parcels.

b. Even after completion of Barbour Street improvements in April 2004, the Planning Commission granted two more extensions of the UUP because it did not consider the Barbour Street improvements as construction on the Site. (AR at pp. 01786, 01820-01821.)

c. Two grading permits were issued: one on July 24, 2003 (AR at p. 01396), and a second on September 22, 2005 (AR at p. 02188). By October 2004, only clearing and grubbing work and "what appears to be preliminary grading or other excavation activities" occurred. (AR at p. 01794.) Per the grading plans submitted by BAA, 240,000 cubic yards of dirt were required to be moved at the Site and graded. (AR at p. 01237.) There is no evidence in the Administrative Record that any grading occurred beyond the clearing and grubbing and preliminary grading mentioned herein.

d. By June 2006, although clearing and grubbing occurred on the Site, the City did not consider such activities as grading operations. On June 2, 2006, the City requested BAA to "commence grading operations on the [40-acre parcel], and proceeding diligently thereafter without extended interruption." (AR at p. 02243.) However, the only evidence of grading by BAA in the record consists of minor clearing and grubbing i.e., removing brush, plants, rocks, and debris from the top soil. There was no substantial movement of any dirt for grading purposes on the Site.

e. The groundbreaking ceremony was held on or about July 27, 2006. (AR at p. 2285-A.)

f. Some grading or construction equipment was stored on the Site, but no actual construction took place at the Site after the groundbreaking ceremony. In the City's July 27, 2007 letter to BAA requiring it to deposit funds into escrow for the 20-acre parcel, the City required that "BAA ***commence[d] construction*** on the raceway project within ninety (90) days of the purchase of the subject property

and complete[d] such construction within two (2) years of the purchase." (AR at pp. 02344 [emphasis added].)

g. No building permit was ever issued.

5. A vested right in a permit is created when there is a use, construction, or other activity (such as a building permit) showing that the permittee acted on the permit. (*Avco Community Developers, Inc. v. South Coast Reg'l Comm'n* (1972) 17 Cal.3d 785.) Because there was no use or construction on the Site, the UUP expired on its own under Banning Municipal Code Section 9116.8, which provides that a permit expires if a use or construction is not commenced within a year. BAA did not have a vested right in the UUP because there was no use or construction on the Site, no building permit was issued, and BAA did not otherwise act on the UUP,. Also, assuming that a groundbreaking ceremony is considered construction (which it is not), because the construction was discontinued for at least one year since July 27, 2006, the UUP expired on its own under Banning Municipal Code Section 9116.8, which provides that a permit expires if construction is discontinued at least one year. As the construction on the Site was never completed, BAA did not have a vested right in the UUP.

Assuming either grading or the groundbreaking ceremony are considered construction at the Site (which they are not), the construction ceased or was abandoned for at least six months and the UUP is properly revoked under Banning Municipal Code Section 9116.11(c). Thus, even if BAA can argue that it has a vested right in the UUP because there is use or construction (which is not the case), the UUP is subject to revocation because the most recent evidence of any activity on the Site was in May 2007, and the UUP was originally revoked on January 28, 2008. This finding is supported is by the following facts:

a. Pursuant to Banning Municipal Code Section 9116.8, a conditional use permit expires without further action by the City "***upon the expiration of one year without such commencement of use***" or "***if after commencement of any related construction, work is discontinued, before completion, for a period of one year.***" (AR at p. 00007 [emphasis added].)

b. As provided in facts supporting Finding No. 4 above, BAA completed Barbour Street improvements offsite, cleared and grubbed the Site and conducted other preliminary grading. However, the City did not consider any of those activities as construction on the Site. (*See Avco, supra,* where issuance of a grading permit, construction of street improvements, and expenditures of $2 million dollars for a development project was not considered a vested right because no building permit was issued for property which did not comply with laws requiring a permit.)

c. BAA held a groundbreaking ceremony on July 27, 2006 at the Site. (AR at p. 02285-A.)

d. No other construction work began within a year after the groundbreaking ceremony on July 27, 2006. In the City's July 27, 2007 letter to BAA requiring it

to deposit funds into escrow for the 20-acre parcel, the City required that "BAA ***commence[d] construction*** on the raceway project within ninety (90) days of the purchase of the subject property and complete[d] such construction within two (2) years of the purchase." (AR at pp. 02344 [emphasis added].)

e. Pursuant to Banning Municipal Code Section 9116.11(c), a conditional use permit can be revoked when a finding can be made "that the use for which the Conditional Use Permit was granted had ceased or was suspended for six (6) or more consecutive calendar months." (AR at pp. 00008-09.)

f. The most recent evidence of ***any*** activity on the Site, whether construction, grading, or otherwise, was documented in May 2007. On May 17, 2007, the City sent a letter informing BAA that it was not controlling dust from preliminary grading by watering or other approved measures in violation of the grading plan. (AR at p. 02325.)

g. No further evidence of activity existed after May 17, 2007.

h. The UUP was originally revoked after a public hearing on January 28, 2008, more than eight consecutive months after the most recent evidence of activity of preliminary grading ceased.

6. BAA failed to complete all of the conditions of approval within the timeframe provided under the UUP, and the UUP is properly revoked under Banning Municipal Code Section 9116.11(d). Again, even if BAA can argue that it has a vested right in the UUP because there is use or construction (which is not the case), the UUP is subject to revocation by the City because BAA did not complete one or more conditions of approval under the UUP. BAA had until August 14, 2006 to complete its conditions, including, but not limited to, construction of Westward Avenue improvements and street dedications. Even assuming BAA had until January 28, 2008 to complete its conditions, BAA failed to do so. This finding is supported is by the following facts:

a. Pursuant to Banning Municipal Code Section 9116.11(d), a conditional use permit can be revoked when a finding can be made "that one or more of the conditions of the Conditional Use Permit have not been met." (AR at pp. 00008-09.)

b. Under Planning Condition of Approval 1, "If no time frame is specified, the approval shall be for a period of one (1) year from the date of the City Council's approval. All conditions of approval for each phase of development must be met on or before their respective expiration date." (AR at p. 00428.)

c. As provided in facts supporting Finding No. 1 above, BAA failed to complete the conditions of approval under the UUP, including submission of street improvement plans and construction of Westward Avenue where it fronts the Site (AR at p. 01417); dedication of additional right-of-way along Barbour Street to Scott Street (AR at p. 01417); and preparation of street improvement plans and construction of full-width street consisting of curb, gutter, sidewalk, driveway

approach, handicap ramp, street signs and streetlights along Barbour Street to Scott Street (AR at p. 01417).

7. At the March 22, 2011 hearing, BAA argued that the City relied on "false facts" from its assistant City Attorney at the 2008 hearing to terminate the Development Agreement and revocation of the UUP, including: (i) Barbour Street improvements were paid by the Agency; (ii) the City had no involvement in the groundbreaking ceremony for the Project; (iii) Barbour street did not constitute commencement of use; (iv) no grading occurred; and (v) the burrowing owl issue did not impact the purchase of the 20-acre parcel. The facts BAA alleged were false facts that the City considered at the hearing on January 28, 2008 are irrelevant in determining whether the UUP should be revoked. Some costs for Barbour Street improvements were paid by the City or Agency and that the remaining costs were paid by AAR. A groundbreaking ceremony at the Site was held, some preliminary grading occurred between 2006 and 2007 and that the burrowing owl issue delayed the purchase of the 40-acre parcel until after February 20, 2007. However, no construction activity occurred after the groundbreaking ceremony, no grading activity occurred after May 2007, and the purchase of the 20-acre parcel was never completed because BAA failed to timely deposit funds into escrow, even after the City gave BAA several months of extensions from April 2007 to August 2007. These findings are supported by the following facts:

   a. The City paid $62,500.00 as reimbursement to AAR for Barbour Street improvements. (AR at p. 01789-01790.) The Agency paid up to $25,000.00 for the landscaping costs of Barbour Street improvements. (AR at p. 01780-01784.) AAR paid the remainder of the costs of Barbour Street improvements.

   b. An invitation to the groundbreaking ceremony suggested that the City and BAA were involved in the ceremony, but the groundbreaking ceremony was sponsored by the City of Banning's Chamber of Commerce. Although some members of the City Council were present in their individual (but unofficial) capacity, the City did not sponsor the event. (AR at p. 2285-A.)

   c. No other construction work began after the groundbreaking ceremony on July 27, 2006. (AR at pp. 02344 [emphasis added].)

   d. The most recent evidence of any grading activity on the Site was in May 2007, when the City sent a letter informing BAA that it was not controlling dust from preliminary grading by watering or other approved measures in violation of the grading plan. (AR at p. 02325.) No further evidence of onsite activity exists after May 2007.

   e. The California Department of Fish and Game authorized the parties to proceed with the sale of the 20-acre parcel upon completion of the relocation of the burrowing owls on February 20, 2007. (AR at pp. 02290, 02297.)

   f. After resolution of the burrowing owl and FFA-land release issues, the City gave BAA until April 13, 2007 to deposit funds into escrow for the sale of the 20-acre

parcel. (AR at pp. 02298-02299.) However, when funds were not deposited, the City extended the deadline for BAA to deposit escrow funds to May 14, 2007. (AR at p. 02308.) Again, when funds were not deposited, the City for a third time extended the deadline for BAA to deposit escrow funds to July 26, 2007. (AR at p. 02333.) A fourth and final extension was given by the City for BAA to deposit the funds by August 25, 2007. (AR at p. 02345.) The funds were not deposited until September 11, 2007. (AR at p. 02404).

8. In good faith and with expectations that the Project would successfully generate economic development for the community, the City entered into the Development Agreement. However, because the term of the Development Agreement is concurrent with the UUP under Section 4.2, the expiration or revocation of the UUP serves to terminate the Development Agreement. This finding is supported by the following facts:

   a. Section 4.2 of the Development Agreement provides: "Duration of Agreement. The term of the Agreement shall commence on, and the effective date of the Agreement shall be, the effective date of City Ordinance No. 1308 as set forth in Section 1.6 above ***and the term shall extend for a period concurrent with Unclassified Use Permit (UUP) 00-47501 [sic] (term of the agreement) following the effective date unless the Agreement is earlier terminated or its term modified in the manner provided in this Agreement.***" (AR at pp. 01669-01670 [emphasis added].)

   b. If the UUP is revoked, the term of the Development Agreement ends, and the Development Agreement is terminated.

SECTION 3. CONCLUSIONS

Based on the whole record, including the March 22, 2011 Staff Report, the comments of BAA at the March 22, 2011 hearing, the recommendations of the City Attorney and Community Development Director, the summary of factual data above, the findings above, and the Administrative Record, the City Council hereby revokes the UUP based on the following grounds:

   a. The UUP expired on its own terms on August 14, 2006 because the UUP already was extended four times and no further extensions were permitted under Banning Municipal Code Section 9116.10.

   b. Pursuant to Banning Municipal Code Section 9116.8, the UUP expired on its own terms because no use or construction commenced within one year of approval or extension thereof.

   c. Pursuant to Banning Municipal Code Section 9116.8, the UUP expired on its own terms because, assuming that construction commenced on the Site, said construction activity was discontinued for at least one year after approval or extension thereof.

d. Pursuant to Banning Municipal Code Section 9116.11(c), use of the Site ceased or was abandoned for six or more consecutive months.

e. The City acted in good faith giving the developer numerous extensions, even beyond the three extensions permitted by Code, but when the new developer could not accomplish anything more than the old, the City Council lost confidence in the Project.

f. Because BAA did not have a vested right and pursuant to Banning Municipal Code Section 9116.11(d), BAA failed to meet one or more of the conditions of approval within the timeframe provided under the UUP, the City Council had the discretion to revoke said UUP.

In revoking the UUP, the City Council further determines and finds that BAA did not have vested rights in the UUP because no use or construction commenced on the Site. The various studies and reports completed by AAR or BAA, the issuance of grading permits, the clearing and grubbing of brush, and the groundbreaking ceremony did not amount to a vested right under the UUP, such that the UUP expired on its own terms, per Banning Municipal Code Sections 9116.8 and 9116.10. Even assuming, *arguendo*, such activities are considered use or construction that gave BAA a vested right in the UUP, the UUP is revoked because BAA failed to complete one or more conditions of approval and use of the Site was abandoned for six or more consecutive months, per Banning Municipal Code Section 9116.11.

Furthermore, the City Council hereby terminates the Development Agreement based on Section 4.2 of the Development Agreement, which provides that the term of the Development Agreement is concurrent with the UUP. Because the UUP is revoked, the Development Agreement is also terminated and no longer in force or effect.

SECTION 4.

Any challenge to this Resolution, and the findings set forth therein, must be filed within the 90-day statute of limitations set forth in Code of Civil Procedure § 1094.6 and Section 4708(c) of the Carson Municipal Code.

PASSED, APPROVED and ADOPTED this 12th day of April 2011.

_____
Barbara Hanna, Mayor

APPROVED AS TO FORM AND LEGAL CONTENT:

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

foregoing Resolution No. 2011-27, 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 2011.

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

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

ATTACHMENT 5

City Council Minutes from 4/12/2011

Approving Resolution 2011-27

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/12/11
REGULAR MEETING

A regular meeting of the Banning City Council and a Joint Meeting of the Banning City Council, Community Redevelopment Agency and the Banning Utility Authority was called to order by Mayor Hanna on April 12, 2011 at 5:05 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Councilmember Robinson
Mayor Hanna

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Andrew Takata, City Manager
David J. Aleshire, City Attorney
June Overholt, Administrative Services Director
Zai Abu Bakar, Community Development Director
Fred Mason, Electric Utility Director
Leonard Purvis, Police Chief
Jeff Stowells, Battalion Chief
Heidi Meraz, Community Services Director
Kahono Oei, City Engineer
Michelle Green, Deputy Finance Director
Marie A. Calderon, City Clerk

The invocation was given by Pastor Steve Braun, Banning Foursquare Church. Councilmember Machisic invited the audience to join him in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

City Attorney stated that the City Council met in closed session and there were three items of potential litigation that were listed and we had added a fourth item. A status report was given on each of those matters and there was no action taken. Also added to the agenda a litigation matter that has actually been filed which involves the Fields Property and a status report was given with respect to that matter and no action was taken.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS/APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

Dorothy McLean of Banning representing Pass Area Supporting Service Persons addressed the Council regarding a donation drive that culminates April 20th but they are collecting things through April 15th. She went over the various locations where donations could be dropped off for the troops. The items that they would like are batteries, honey, foot warmers, baby wipes, foot powder, single serving size of snacks, crackers, games, sun block, saline spray, lip balm, zip lock bags, toiletries, etc. and nothing breakable or perishable and no chocolate. Monetary donations are needed to pay for postage. It costs $12.95 for a box to be shipped. Checks can be made payable to Pass 2 and mailed to P. O. Box 47, Banning. On Wednesday, April 20th from 9 a.m. to noon they will be open to receive donations at the Calimesa Senior Center, 908 Park Ave. You can email sandybleier@verizon.net. They would like to have the names and addresses of service men and women who are serving overseas that are from Cabazon to Calimesa so that they can be included in the mailing. For more information you can call Sandy Bleier at 951-80-7085.

David Kealey, 1314 Laguna Seca Ct. and Monty Hammer, 10300 Pumphouse Rd. addressed the Council in regards to promoting the Art Hop to be held on May 7th. He said that Wikipedia gives Geocashing as the topic they are talking about as an outdoor sporting activity in which the participants use a Global Positioning System (GPS) receiver or telephones to hide and seek a container called a "geocaches" or a "caches" anywhere in the world. It is a high-tech hide and seek game and there are currently geocaches in more than 100 countries in the world and there are 1.4 million active geocaches. Over 5 million people register as geocachers and in the last 30 days 4 million people have signed saying that they have found a geocache. What they have displayed on the screen is the Art Hop Meet and Greet and this was an announcement that was sent out through Geocaching.com to all 4 million of those geocachers in the world. They do expect to have anywhere between 25 and 50 people attending this event. It will be held at the San Gorgonio Inn Parking Lot from 9 to 10 a.m. They hope to hide 50 new caches that morning. Active-Fire & DASHON are promoting this event and what is being said is: "This hide is in advance of the Art Hop Meet and Greet Event that Active-Fire & DASHON are planning for May 7th. There will a community Art Hop on San Gorgonio Street between Ramsey and Williams in Banning. You can come out and attend the geocaching event and find 50 new caches along with all of the others that are already in the area and stroll through the Art Hop.

Katryn Robinson, 1474 N. San Gorognio addressed the Council stating that this is a follow-up to the Art Hop as well and this event being held on Saturday, May 7th is just going to be amazing and there will be many events going on. This will take place in the downtown area and if you look around this room you will see beautiful art work from Banning High School students and this will be on display, as well as, many other art objects in here as well as the downtown area. There will a Bark & Art and if you have a pet and you want to bring your well-behaved pet down on a lease there will be art activities for the pets to do. Ramona Animal Shelter and Beaumont Animal Care will be out to do licensing and vaccination clinics. They will also have a recycling fair for such items as expired prescriptions, batteries, electronics, telephones and also personal papers or documents that need to be shredded. It will be a fun day from 10:00 a.m. to 6:00 p.m.

Charlene Sakurai, 4985 Bermuda Dunes addressed the Council stated that they had a Passcom meeting today and the Emergency Preparedness Director for Loma Linda brought the Mobile Telemedicine Unit to the hospital today and it is the only one in the world. It was designed by Mercedes and was all paid for by grants and it was a two-year project just to get it built. It is designed to take to disasters or fires and it was taken to the Esperanza Fire. They have x-ray capability and they can also satellite directly into the E.R. at Loma Linda. At the Esperanza Fire they treated 35 firefighters and did one minor surgery. They have direct contact with the physicians, surgeons, nurses, x-ray technicians and everything right at the hospital. They have been invited to come to the Disaster Expo but may not be able to come because of scheduling issues but she would encourage everyone to take a good look at this. Also, there are on-going young artist's workshops at the Banning Center for the Arts and there are two different classes every Saturday morning. The first class is for the Very Young Artists (Kindergarten and First Grade) from 9:00 to 9:45 a.m. and the cost is $25.00 for the month. The second class is for the Young Artists (2nd through 6th Grade) at the cost is $35.00 for the month. They will be in session the day of the Art Hop.

Michale Cashe, 981 E. Charles Street addressed the Council stating that she saw earlier on the agenda that the Council was going to speak about the speaker cards and it was taken off. She said even if it was a ruling, according to the Brown Act or the First Amendment she still fills that it wouldn't give each one of us the right to speak on a discrimination act and that it could violate that and make it unconstitutional. Please do consider that and she is totally against the speaker cards.

CONSENT ITEMS

Mayor Hanna said that City staff wanted to remove Consent Item No. 8. Councilmember Botts asked to remove Consent Item No. 6 for discussion.

1. Approval of Minutes – Joint Meeting – 03/22/11

Recommendation: That the minutes of the joint meeting of March 22, 2011 be approved.

2. Approval of Minutes – Regular Meeting – 03/22/11

Recommendation: That the minutes of the regular meeting of March 22, 2011 be approved.

3. Resolution No. 2011-24, Awarding the Bid for the Replacement of the City Yard Office Building HVAC Units.

Recommendation: That the City Council adopt Resolution No. 2011-24, awarding the bid for the Replacement of the City Yard Office Building HVAC Units to Arrowhead Mechanical, Inc., dba Arrowhead Sheet Metal of San Bernardino, CA, in the amount not to exceed $37,900 including taxes.

4. Resolution No. 2011-25, Awarding the Bid for the Repair/Replacement of the City Yard Office Building HVAC Duct Work System.

Recommendation: That the City Council adopt Resolution No. 2011-25, Awarding the bid for the Repair/Replacement of the City Yard Office Building HVAC Duct Work System to Leading Edge Air Conditions of Cathedral City, CA, in the amount not to exceed $28,950.00 including taxes.

5. Resolution No. 2011-26, Authorizing Examination of Sales and Use Tax Records.

Recommendation: That the City Council adopt Resolution No. 2011-26, authorizing specific individuals to examine confidential sales and use tax records.

7. Resolution No. 2011-30, Authorizing acceptance of funding from the State of California Department of General Services California 9-1-1 Emergency Communication's Office and the California Geographical Information System Services to purchase equipment to enhance the police department's communication center.

Recommendation: That the City Council adopt Resolution No. 2011-30, authorizing acceptance of funding from the State of California Department of General Services California 9-1-1 Emergency Communication's Office in the amount of $48,000.00 and the California Geographical Information System Services in the amount of $7,500.00 for the purchase of new equipment and software for the police department's communication center.

9. Report of Investments for February 2011

Recommendation: That the City Council receive and place these required monthly Reports of Investments on file.

Motion Machisic/Botts to approve Consent Items 1, 2, 3, 4, 5, 7 and 9. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

6. Resolution No. 2011-28, Pertaining to Any Consideration for the Pass and Redistricting.

Councilmember Botts said that this deals with redistricting for the County and the process is moving very fast as he understands so his only point is that if we approve this item he would hope that we could send out copies of that tomorrow to the redistricting committee at the County, as well as, the Supervisors.

Councilmember Robinson said that he talked to the City Manager about adding fire services to this resolution because we do have a contact with the County and Beaumont and also to bring to light that ten years ago Beaumont was at 9,500 population and they are now recorded at 37,000 so this Pass area is changing day by day and it is very important that we all work together heavily.

Mayor Hanna said that the mayors and city managers from Beaumont, Calimesa and Banning get together on a monthly basis and we agreed at our last meeting that we wanted to go forward with this as well as to invite Morongo to join us.

Motion Botts/Robinson to approve Consent Item No. 6 adopting Resolution No. 2011-28 with the change to language to add fire services. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

8. Approve Amendment to 1st Amendment with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department.

City Manager said as you know we use them to do a lot of our internal affairs investigations with the police and since we have had an issue arise in regards to discrimination he would need to add an additional $25,000 to that amount to make the total $110,000.00. He would also like the Council to give authority to the Administrative Services Director to do the correct appropriation either through savings for the next six months or through the reserves.

Motion Botts/Franklin to approve Consent Item No. 8 to amend the current limit on compensation for services with Norman A. Traub Associates for Investigation Services for the City of Banning Police Department to $110,000.00 and giving authority to the Administrative Services Director to do the correct appropriation. Mayor Hanna opened the item for public comments. There were none. **Motion carried, all in favor.**

PUBLIC HEARINGS

1. Public Hearing and Resolution No. 2011-27 for the Revocation of Unclassified Use Permit #01-47501 and Termination of Development Agreement 03-1504 (for a Drag Racing Facility)–APN 532-130-008 & 018.
(Staff Report – David J. Aleshire, City Attorney)

Mayor Hanna said this was listed as a public hearing at our last meeting and we actually closed the public hearing and she would ask for a staff report on this item.

City Attorney gave the staff report as contained in the agenda packet. He said that there was resolution that went out in the agenda packet and there were some corrections that needed to be made and they have distributed to the Council as a revised resolution and the recitals were not significantly changed. At this time he went over what was contained in the resolution. He said that they think there is sufficient evidence of record to reaffirm the prior action and this resolution states those grounds. The applicant is in attendance and this is not a public hearing item and he would like to make public comment on the intended action.

Mayor Hanna said this is not a public hearing and will be opening this item for public comments and you have a maximum of five minutes.

Andy Maracco addressed the Council stating that first thing that he would like to do as a proponent of the Drag City Project is to object to the new information that was put into the packet because he was just given a copy by the City Clerk. He said he received a copy on Thursday so it has changed dramatically. That is not due process for letting a proponent know what those facts are. He said he will point out since he is limited by time that he can show the Council a very distinct contradiction in how the City sees things and misinterprets and this is

just one example of many. He said that Item No. 27 on page 7 of the Resolution says, "On May 17, 2007, the City informed the BAA (Banning Airport Associates) that no major grading was occurring at the 40-acre parcel and that BAA was in violation of the second grading permit issued..." However, if you go to page 14, No. d. which is part of the Conclusions of Law it states, "The most recent evidence of any grading activity on the site was in May 2007..." You have many issues here. Were we grading or were we not grading? What proof does the City have that there was no grading? The City cannot provide any proof but we can provide the proof that we were grading so therefore all your decisions to kill this project two, three years ago were based on false facts just like you are going to try to revoke tonight. It should be stated for the record that you do know that as of now our UUP (Unclassified Use Permit) is valid; it was not revoked. You took an action to revoke it and it seemed to be revoked for three years except the judge disagreed with that and actually put it back in place giving you an opportunity to make the right decision which is A) make a settlement offer to help these guys defer their expenses on a project that you killed, or B) go to court and face bigger monetary damages. That is what he has given you a choice of and it is not much of a choice. Your best action you should have taken which your prior City Attorney should have you told you was let the project die on its own. If we didn't perform, we didn't perform and it would have cost the City nothing. But instead you interfered and took away a use permit which we can go over and try to go over in this forum but it is not going to work as far as trying to prove who is right or wrong. We know the facts are evident. We know that the judge agreed with us and if it goes further, the City is looking at some major damages but you are the City Council and you don't take it personal but the taxpayers will and that is not what we wanted. You were more concerned at the last meeting about your appearance at a groundbreaking and how it looked to the general public and how you were uncomfortable and how you didn't want to be there and you left as soon as you could. That was not the matter at hand. The matter at hand is the fact that you had a project to bring you revenue regardless of problems. This thing had a developer's agreement, it is vested and he doesn't care what the City Attorney is telling you at this moment but if you want to take the bad advice that your prior attorneys gave you which I believe you did fire for overbilling. You should have just let us fail if you didn't believe in us. The reality is we did have the ability to make it happen. This tonight I would really reconsider revoking anything because what you are telling the judge is he's wrong. So when I hear the City Attorney say there was no merit given and no decision was made; then why did judge put back our UUP into full effect. Because he knew what the City did was wrong. It is illegal and you all know that and the evidence is there. Facts have been twisted and circumvented to a degree that it doesn't let you know the full truth. It didn't have to be you guys that took the blame. It could have been the previous City Attorney who took the blame but now all the pressure is you on a City, as a City Council and everybody is watching you. This community is watching you. He believes that the Records Gazette just did a questionnaire on-line and 64% of the citizens want a drag strip. You are not listening to your constituents. You are just appealing to what you want to do. Start listening to your contingents and your developers who are working with you to make things happen. We didn't want to come here and lose $3.5 million dollars. He said he is really insulted by that fact that you thinks we are the ones that are at fault here. No, you still have a piece of land that you bought and you can sell; you lost no money. We lost everything and the trust with this City.

Mayor Hanna closed the public comment period seeing no one else coming forward.

Motion Botts/Machisic that the City Council adopt Resolution No. 2011-27, making findings for the revocation of Unclassified Use Permit 01-47501 and termination of Development Agreement 03-1504. Motion carried, all in favor.

Mayor Hanna recessed the regular meeting of the City Council and called to order a Joint Meeting of the Banning City Council, the Community Redevelopment Agency and the Banning Utility Authority.

REPORTS OF OFFICERS

1. Auditor's Report for Fiscal year 2009-2010
(Staff Report – June Overholt, Administrative Services Director)

Director Overholt went over and explained each the items that were given to the Council and those would include the General Financial Statements, Redevelopment Agency Financials, Management Letter, Audit Communication Letter and the Single Audit. She said that the one piece of the document that we actually created as part of the analysis is now called the "Management Discussion and Analysis Document." She said she wasn't here for the audit but she was able to add her touch to that piece of the audit and added some graphs and some charts that provided some additional comparison with the prior year and so as time permits they will continue to enhance that analysis and add on to what has been done in the past. But the bottom line with the Management Discussion and Analysis (MD&A) is that for those that don't want to read every single page of the audit that documents gives a nice overview of what is included within the Financial Statements and it provides a snapshot of the financial information in there. It is kind of an Executive Summary. At this time she turned the presentation over to Debra Harper, Audit Manager from Lance, Soll & Lunghard.

Debra Harper, Audit Manager addressed the Council at this time giving a brief summary on the financial audit for the City financials for Fiscal Year 2010. She started her power-point presentation at this time (see Exhibit "A").

City Manager said as you know we brought June Overholt on because she was going to be more of a hands on type of person and so some of those things that happened during the year where we had somebody that wasn't quite hands on were corrected. But he really wanted to thank not only June Overholt for being here and the changes that she is making but we really have to recognize Michelle Green. She has done a wonderful job during that time and she worked very hard and she has been doing payroll and accounts payable and has been trying to take care of all the accounting issues and he wanted to thank her for her work on the audit and

findings and some internal controls but he is really excited about this audit. He asked Ms. Harper if she was satisfied with management responses.

Ms. Harper said yes and she knows that these are just probably one time incidents and we have worked with the City of Banning for a long time and a lot of it is attributable to the shortage of staff but we have come around and came with different ways to actually correct them. So she thinks it is going to be great next year.

Councilmember Botts said he wanted to reiterate something that she said in one of the letters that there were no material misstatements and no disagreement with management and again, you issued an "unqualified opinion." Ms. Harper said that was correct.

City Manager asked her to explain "unqualified" versus "qualified."

Ms. Harper said a lot of times if you "qualify" an opinion then that would mean that you would have a material misstatement and that we don't agree and we want to qualify our opinion and say that it qualified because of these errors or these material misstatements. The fact that we are saying "unqualified" meaning that it is very clear and we don't have any reason to qualify the opinion.

Mayor Hanna opened the item for public comments.

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

John McQuown, City Treasurer had questions on pages 54 and 55.

Mayor Hanna said that staff will be responding to his questions. City Manager said in regards to the loan issues that will be coming back to the Council. Mayor Hanna said in regards to her understanding about facades was that it was a loan in the sense that if they sold within a certain period of time, five or ten years depending on the contract, they had to repay it but after that period of time it would become a grant in effect.

Motion Robinson/Botts that the City Council and Agency Board accept and place on file the auditor's reports from Lance, Soll & Lunghard, LLP for fiscal year ended June 30, 2010. Motion carried, all in favor.

2. FY 2010/11 Mid-Year Budget Review
(Staff Report – June Overholt, Administrative Services Director)

Director Overholt started her power-point presentation (see Exhibit "B") stating that she will briefly talk on some of the past strategies we have had to balance the budget to focus on the General Fund because that is the fund that is always at risk when times are difficult and would go over some of the other funds and their status and describe some of the future challenges that we are dealing and then some of the next steps. She pointed out that on page 101 of the agenda

packet there is a Fund Summary Status report and that lists the Sunset Grade Separation Fund and the Wilson Median and she observed that the beginning fund balance numbers were transposed and so what you should see is that the Sunset Grade Separation Fund has a beginning balance of $41,385 and the Wilson Street Median has the $373,366 and everything else is correct the way it is listed. So what that does to the ending balance it would show Sunset Grade with a negative ending balance of $54.00 and the Wilson Median with an ending balance of $375,216.

Councilmember Botts said he wanted to clarify for himself and the audience that if they looked at this and the perfect example is under Electric Funds in regards to the Public Benefit Fund and June has been using the word deficit and he said he uses that word and he is only concerned that he understands what that means. When we talk about the Federal Government and deficit spending they spend it and turn the printing presses on and just print money because they just don't have the money. If he understands this correctly, we do have the money where you call some of these deficits it is because we used fund balance money where you had revenue and an expense (plus or a minus) but where we called some deficits hundreds of thousands of dollars or millions of the money. We had the money to spend. It isn't in the classical sense, when we think of the Federal Government, that the money came from a fund balance and he would guess that was carryover money from previous years. He asked if he was looking at this correctly.

Director Overholt said she thinks that he has articulated it and looked at it correctly. When we look at the budget the goal is always to have any fund that is operational be structurally balanced because that means we have achieved on-going revenues covering on-going expenditures and tonight she described four funds that are not in that condition that are operational – the General Fund, Water, Wastewater and Electric. Operational funds are structurally balanced. In all of those situations we have reduced expenditures to try to bring them in line with our on-going revenues and we have gotten close but not a hundred percent and in some situations we have actually increased it through this mid-year discussion. We can only do that because we have either a rate stability fund that helps to navigate these moments or we have fund balance and all of those are just categories that we track separately because we are required by law and required through the audit requirements to track them separately but it is like a savings account, our equity to what we can spend.

Councilmember Botts said we call it our deficit spending and that is what he is struggling with and he wanted to make sure that we all understand it and the public as well.

Mayor Hanna said and the Rate Stability, for example, is something we each pay in our electric bill every month and that amount of money goes into this account and is that correct.

Fred Mason, Electric Utility Director said actually the Public Benefit is the only thing that we have an extra line on the bill. The Rate Stabilization when we have the excess power we sell it and back when the market was more in our favor we actually accrued millions of dollars that we have set a side for Rate Stabilization. What we previously had in the rates was a built in accrual to add to that and we have taken that out since 2007 because we had all this money

accrued and we said we are not going to continue adding to it so we actually reduced that component of the rate to not accrual additional money into the Rate Stabilization.

Mayor Hanna asked Mr. Mason in regards to the Solar Program we approved was that for the high school building. Mr. Mason said that was all of our projects of which we had 109. With the Public Benefit Fund basically what is shown in the budget is the amount we expect to get so the $684,000 dollars is what we have in the operational budget. As June mentioned we had money that had not been spent in previous years and that was the money we are using for the PV projects but we don't fund those until they are actually installed and that is why we had come and appropriated the funds mid-year.

Councilmember Machisic said several years ago we had some generous rebates on various appliances, solar panels, etc. and are we still generous in our rebates.

Mr. Mason said we have actually cut most of our rebates in half and we are allocating less money. A large portion of our public benefit budget, 55%, goes to low income assistance. The rest of it is for rebates and administrative costs.

Councilmember Franklin said she didn't know if the City Manager had a chance to bring this to you the program where people are able to buy either HV systems or energy saver systems and then they get it put on their tax bill. Is this something we are looking into and getting word out to the public?

Mr. Mason said that we actually have a participation agreement with WRCOG (Western Riverside Council of Governments) on that and we cannot put that word out until WRCOG says it is okay because they were doing things in regards to the this program and once they actually roll this out in the month of June then at that point we can start but we can't do it before then.

Councilmember Franklin said she had a couple of questions and when we talk about the different funds and we talk especially about water and we have done a lot of work in upgrading our older pipes and will that have a positive impact on our operations for next year.

Director Overholt said she did not know and that is a good question and perhaps this is something we want to ask Duane Burk on whether or not it is going to reduce our expenditure because we have more efficiency.

Councilmember Franklin wanted to know if she considered for good news the opening of the community college and what impact that is going to have on our future workforce which might help bring additional employers into our area.

Director Overholt said she just forgot to write it down and she is working on a staff report for the Council to enter into an agreement with the college regarding our television station. But from a finance standpoint usually those types of things are hard for us to put a tangible dollar amount to it so usually when she references them she knows it is going to help and be good for the economy and she knows it is going to feel good for us to see these improvements then once

she looks at the numbers that might never have a direct link to that college. It is difficult for her to create a direct tie to each one like that. If they are retail, then we have a direct tie and they sell something and we know that is new, different and better than we had before.

City Manager said that there are people like developers and manufacturers who look at the education component of your community and then if it is higher educated then you can get better jobs and usually better paying jobs at that point but we utilize that whenever we try to recruit businesses.

Councilmember Franklin said you mentioned that we will get an update in May and will you be giving us this information more often in the future.

Director Overholt said that was her goal and one of the challenges that was mentioned earlier is that when you don't have staff it does make it a little bit difficult to get everything done in the timeline that you want it done. But she is working on strategies because not only is she helping you but it helps her to be able answer your questions faster so we are tying to use the software that we have and have some report writing capabilities that will allow us to extract the information more quickly but that will probably take six months or so for us to get that fully implemented.

Councilmember Robinson asked if she would explain about the airport because it looked like we were getting a lot of money in and it did not turn out that way. There are some large adjustments under Airport Revenue and why it is that way.

Director Overholt said we reduced the revenue over $100,000 in the airport area and when we were going back to audit the revenues we realized that there was a keypunch error that had occurred and an extra zero was included so what should have been in the $12,000 range showed up as $120,000 so we had to make that correction.

Councilmember Machisic said last year the County Assessor indicted that he was going to reassess half the houses in Banning and do the other half this year. Have those results been reported back to you.

Director Overholt said she is not aware of a formal report that has told her that information but definitely what you see in this mid-year request is a reduction in our property tax revenue so that tells me that what he told you has had an impact on our revenues and it has occurred.

Councilmember Machisic said are you going to recommend through the City Manager another two-year budget year.

Director Overholt said she believes so. She believes that the two-year budget process has a great deal of usefulness and as we become more sophisticated in what we are able to provide to you we will try to forecast even a little bit further out so that it becomes an easier management tool in decision making but the two-year budget does provide that. What she is used to from her past experience is that when we bring the second year of a two-year budget it becomes a

stand alone budget. It is not a two-year rolling budget and she believes that was the City Manager's intent also.

Councilmember Machisic said in reading the local papers the inflation factor outside of fuel and food is about 3% and have you noticed any inflationary increase in our products that we are buying.

Director Overholt said she would have to look at that level of detail. Certainly what staff is doing is managing what it is purchasing so like each of us at home when you can't afford what you have budgeted for food then that means that you just don't buy as much food as you used to so that is what staff is doing to manage it. But she can certainly look at a few categories to see if we can see a trend in certain vendors that are increasing in their cost. She knows that on the flip side we are looking to see if can we talk to vendors and do a better job at asking for discounts.

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

Mayor Hanna said that the hospital may not be generating more for our electric utility because of the terrific efficiencies that they have incorporated into their new facility so she is not sure we can count on that. Also in regards to the water and wastewater rates one of our concerns mentioned when we were reviewing that very difficult proposal last year was that the consultant had assumed an increase in population and that the amount we had lost would be gained back over a certain period of time and she doesn't think that is happening yet and she doesn't think that is conservative to project that in the future. So when we have to review the water rates for the next year we should at least consider that. She also asked if the low income assistance was going to come back to the Council or not.

Mr. Mason said that the program obviously exists and he thinks the question you are asking is that staff had come forward to increase the B.E.A.R. rate to make up for the increased expenditures due to the disparity between the original rate and the new baseline rate and we were told by Council that was not something they wanted to do at this time so we don't have a plan to come forward unless you are giving us direction to come forward.

Mayor Hanna said if I understood you correctly a few moments ago you said that 55% of our public benefit is for low income assistance and that is just going to basically remain and we will not be able to do as much as the other types of assistance as John mentioned.

Mr. Mason said in fact it is increasing because more people are losing their jobs and he wouldn't be surprised if it exceeds 60% within the next 12 months.

Councilmember Botts said he ran into a person who is a pilot this weekend at an event who said he flew into Banning and said he comes here to buy gas because it is cheaper than most other areas. He thinks that we have had this discussion before and maybe prior to Mr. Takata being here. He doesn't know who manages that but the discussion has been that I guess we do sort of have to buy future for aviation fuel but at this point he would hope someone is looking at that

and it is great the pilot comes in and buys fuel but he trusts that we are making a few pennies on that and we are not subsidizing the general aviation community.

Director Overholt said that she had heard this rumor recently and so she put it on her list to talk to the Public Works Director. We rely on the staff on the field that work in the airport to manage the fuel to do the analysis and we can assist where they need help but their task and assignment is to make sure that they are charging the appropriate rates and they may be but we just need to confirm with them.

Councilmember Botts said so their task is to buy low and sell high and they are doing the analysis and not finance. Director Overholt said they are to sell appropriately and they are doing the analysis.

Mayor Hanna said what she believes happens is that they buy the fuel at whatever cost and may add some amount and they sell it until it is gone so when the price of fuel may have been high that we bought and when the price goes down they are still selling at the high and we have a few complaints about that and when it is low because the cost of fuel has gone up we are very competitive. Somehow she wants to be competitive and doesn't want to do this ignorant continuing whatever the rate is.

Director Overholt said she doesn't want to speculate on how we handle it and it is not an area that she has jumped into.

Councilmember Botts said he appreciates her thinking worldwide because world events really do impact us but the Wall Street Journal said this morning that the greatest reduction of gas and fuel purchase occurred in the last few weeks in the United States. So we might have gas prices going up to $5.00 or more and you can pick up a little bit but that consumption he thinks demonstrated by that article in the Journal said we could see significant reduction is purchases. At some point everyone is going to say I am not going to drive as much. So that is something we need to look at.

Motion Botts/Robinson that the City Council approve Resolution No.2011-31, Authorizing Revenue and Expenditure Line Item Adjustments Reflected in the Fiscal Year 2010-11 Mid-Year Review. Motion carried, all in favor.

Motion Robinson/Botts that the Banning Utility Authority Resolution No. 2011-07UA, Authorizing Revenue and Expenditure Line Item Adjustments in the Water and Wastewater Enterprises as Reflected in the Fiscal Year 2010-11 Mid-Year Review. Motion carried, all in favor.

Motion Botts/Robinson that the Agency Board approve CRA Resolution No. 2011-13, Authorizing Revenue and Expenditure Line Item Adjustments Reflected in the Fiscal Year 2010-11 Mid-Year Budget Review. Motion carried, all in favor.

Mayor Hanna adjourned the joint meeting of the Banning City Council, Community Redevelopment Agency and Banning Utility Authority and reconvened the regular City Council meeting.

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

City Council

Councilmember Robinson –

- He said that he and Councilmember Franklin attended a Highland Springs Avenue Improvement Task Force Meeting and we are looking at immediate ways to help reduce traffic congestion on Highland Springs all the way from First Avenue to Wilson Street. Things in the future will take more time and effort working through Caltrans but it was a very positive meeting. He hopes we are going to see some good things come out of meetings like that very soon. It is a meeting in cooperation with the City of Beaumont, Caltrans and Pardee.
- He asked the City Clerk not to copy the agenda for him any further. He doesn't see any reason to do that and can do it all on-line and would hope that the Council and any others that get the agendas from us will consider doing that also.
- He said that our City Engineer, Kahono Oei, received a commendation today from one of our local businesses on his professionalism in the way he dealt with a question that one of our businesses had and he thinks it is great that we hear those kinds of things happening with our City staff.
- He said that Citra Benhar was here and wanted to let everyone know that she is now going to State to represent the city of Banning in the spelling bee so congratulations to Citra and her family.

Councilmember Machisic –

- He wanted to report on WRCOG (Western Riverside Council of Governments) - Dave Willmon reported that the State was still tied up as far as the budget but did say one thing that was important that if the tax election is held in June it will be considered a continuing tax. If it is held after June, it is a new tax so that is important. On June 23, the WRCOG General Assembly will be held and the featured speaker is Condoleezza Rice former U.S. Secretary of State. There is an Annual WRCOG Report that you will all get a copy of and he is happy to report that the I-10 By-Pass has been increased to $1,748,000 for engineering. He also passed out a flyer to the Council that featured the Boys and Girls Club Clean-up of Roosevelt Williams Park. He also attended a Summit AB 2766 which deals with Subvention Funds and this involves a $6.00 dollar fee that they put on motor registration fees to fund various air pollution reduction efforts. At the April 6th conference at the Mission Inn they were invited to share their experiences and as you know in 2004 we built a compress natural gas fueling station that is used by a number of groups including two school districts, the county, Caltrans and AQMD (Air Quality Management District) and we have also received $125,000 just last year for energy efficient vehicles. So far the City has received $800,000 dollars in subvention funds and grants. Also Corona and Riverside who were on the panel with him shared some of their experiences and they offer rebates based on subvention funds. Rebates on purchase of fuel efficient cars and they pay $2,000 on a new car and $1,000 on a used car and they have to be approved and bought from dealers in those cities. They also subsidize transit fees for

college students and they are also starting to develop electric charging stations and they also provide money for pool rides by company employees.

Councilmember Botts –

- We regularly talk about these commissions that we participate in and John just talked about WRCOG and he said he is the representative for the Council to RCTC (Riverside County Transportation Commission) and RTA (Riverside Transit Agency) and this is both for the Council but also for the public that we get focused on Banning, Beaumont and the Pass but we have very, very strong regional and county-wide organizations that do a lot for us that are invisible. RCTC builds freeways with major projects on I-10, SR-60, I-215, SR-74 and I-15 and this comes from Measure A and we all voted to tax ourselves. He said that many of you have probably met Anne Mayer, Executive Director and she was just names Citizen of the Year by the California Transportation Commission for the outstanding job she does for transportation and for RCTC. She is an engineer and she used to run Caltrans District 8 and understands the challenges with Caltrans and does an incredible job for the Commission of which there are 28 cities they meet once a month and make decisions about transportation.

Councilmember Franklin –

- She wanted people to participate in the upcoming 6th Annual Disaster Preparedness Expo on April 30th from 10 a.m. to 2 p.m. at the Banning Community Center. In light of all the disasters happening around the world we really want people to understand how important it is to be able to take care of themselves where they are. She had a person asked her about how they were going to be able to leave the area and the reality is that we probably will not be leaving so we want people to know that they can prepare to be able to survive where they are now in their homes and in their neighborhoods. There will be approximately 28 booths inside which include a lot of our own City departments helping people prepare. There will be another 10 outside of the building and she will have more information at the next meeting but are really encouraging people to come out to make sure they find out how to be prepared. As a part of this we are still working with people in their neighborhoods and are having meetings on Thursdays throughout the city where people are getting one-on-one information about what they can do to prepare their own blocks where they live. If anyone has any questions, they can call the Fire Department or ask her and we will try to make sure people are getting help. She said that they are actually getting calls from other cities asking how they can get information from us to be prepared.

Mayor Hanna asked if the Council could be notified of these meetings so that we can all be aware of them and certainly there are meetings we can attend just to observe and hear the residents speak.

Mayor Hanna –

- She reported that she attended the CRA Annual Redevelopment Conference and it was very interesting and in her opinion just unlike the training institutes which are really for staff she thinks the conferences themselves are valuable for elected and would encourage to at least send one of us every year to that conference as long a redevelopment lives.

City Committee Reports – Nothing to report at this time.

ATTACHMENT 6

Certificate of Termination of Development Agreement

(City-owned land, APN: 532-130-018)

RECORDING REQUESTED BY:
AND WHEN RECORDED MAIL TO:

City of Banning
99 E Ramsey Street
Banning, California 92220
Attn: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

This instrument is exempt from recording fees pursuant to Government Code section 27383.

CERTIFICATE OF TERMINATION OF DEVELOPMENT AGREEMENT

This Certificate of Termination of Development Agreement (this "**Certificate**") is made as of this _____ day of _____, 2018 by and between THE CITY OF BANNING, a municipal corporation (the "**City**"), and Estes Terminals of California LLC, a Virginia limited liability company ("**Estes Terminals**"). The City and Estes Terminals are collectively the "Parties" and each a "Party" to this Certificate.

A. This Certificate applies to approximately 60 acres of property that is comprised of two parcels. The City owns one parcel of property generally described herein as the "**20 acres of property.**" Estes Terminals owns the other parcel of property generally described herein as the "**40 acres of property**."

B. WHEREAS the property generally described as the 20 acres of property and the property generally described as the 40 acres of property are collectively referred to herein as the "**Property**," and legally described as:

(1) 20 acres of property at Assessor Parcel Number 532-130-018:

The North half of the Southwest quarter of the Southeast quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Base and Meridian, according to the Official Plat thereof.

(2) 40 acres of property at Assessor Parcel Number 532-130-008:

The Southeast quarter of the southwest quarter of Section 11, Township 3 South, Range 1 East, San Bernardino Meridian, according to the official plat thereof.

C. WHEREAS, on August 14, 2001, the City Council of the City granted approval of Unclassified Use Permit 01-47501 ("**UUP**") to All American Racing, a limited liability company ("**Developer**") for the development of a drag racing facility as more fully described in the Development Agreement, as referenced herein.

D. WHEREAS, the City entered into that certain Development Agreement dated as of November 26, 2003, adopted pursuant to City Council Ordinance No. 1308 and recorded in the County Records on February 5, 2004 as Instrument No. 2004-0086353 (the "**Development Agreement**"), attached hereto as **Exhibit "A"**, with **Developer**, whereby Developer agreed to develop the Property, in accordance with the conditions set forth in the Development Agreement.

E. WHEREAS, on April 12, 2011, the City Council adopted Resolution No. 2011-27, attached hereto as **Exhibit "B"**, upholding the Planning Commission's revocation of the UUP and terminated the Development Agreement.

F. WHEREAS, the Parties are issuing this Certificate to confirm the termination of the Development Agreement with respect to the Property.

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties agree as follows:

1. Recitals. The Parties acknowledge and verify the foregoing recitals are true and correct.

2. Termination of Development Agreement. The Development Agreement was terminated as to the Property on April 12, 2011.

3. Indemnity. Except as to the sole negligence, active negligence or willful misconduct of the City, Estes Terminals expressly agrees to, and shall, indemnify, defend, release, and hold the City and its respective officials, officers, employees, agents, and contractors harmless from and against any action, liability, loss, damage, entry, judgment, order, lien, and costs and expenses which arises out of, or are related to, and to the extent any act or omission of Estes Terminals, or its officers, directors, employees, agents, or contractors, connected with the performance under this Certificate.

4. Construction. No presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or application of this Certificate.

5. Counterpart Originals. This Certificate may be executed in duplicate originals, each of which is deemed to be an original.

6. Authority. Each person executing this Certificate on behalf of his or her Party warrants that he or she is duly authorized to execute this Certificate on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Certificate.

IN WITNESS WHEREOF, the Parties have executed this Certificate as of the day and year first above written.

[signatures begin on next page]

ESTES TERMINALS OF CALIFORNIA, LLC,
a Virginia limited liability company

[Required Notarization]

By: _____

Print Name: Angela J. Maidment

Title: President

CITY:
THE CITY OF BANNING

[Required Notarization]

By: _____
George Moyer, Mayor

Attest:

By: _____
Sonja De La Fuente, Deputy City Clerk

Approved as to form:

By: _____
Kevin G. Ennis
City Attorney

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On _____, 2018, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public in and for said State

(SEAL)

STATE OF CALIFORNIA)
)
COUNTY OF RIVERSIDE)

On _____, 2018, before me, _____, Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

_____
Notary Public in and for said State (SEAL)

EXHIBIT "A"

Development Agreement

EXHIBIT "B"

Resolution No. 2011-27

CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**
Tammi Phillips, Management Analyst

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-106, Establishing a Pre-Approved General Construction Management and Inspection Services Vendor List for the Remainder of Fiscal Year 2019 through Fiscal Year 2021**

RECOMMENDED ACTION:

City Council adopt Resolution 2018-106 establishing a pre-approved professional construction management and inspection services vendor list for the remainder of the current fiscal year through fiscal year 2021.

BACKGROUND:

The Public Works Department is responsible for the management of capital improvement projects related to water, wastewater, streets and buildings. The Public Works Department staff that would typically be responsible for managing the design and construction contracts as well as the inspection of the projects are the same staff that are responsible for processing (e.g. preparing conditions of approval, plan checking, etc.) and inspecting private development projects, among other responsibilities. In preparation of an anticipated increase in workload related to private development (e.g. Atwell/Butterfield) and in an effort to not delay and properly manage the City's capital projects, a need for construction management and inspection services has been identified.

Subsequently, on April 27, 2018 and May 4, 2018 a publication was advertised in a local publication notifying qualified firms of the opportunity to submit a proposal and provide the City with On-Call Construction Management and Inspection Services. The request was also published on PlanetBids.com where forty-nine (49) firms were directly solicited.

The Request for Proposals closed on May 25, 2018, with ten (10) consultants responding with proposals.

A three-person evaluation committee consisting of City staff members evaluated the proposals based on qualifications, experience, the ability to provide the requested services and rates.

The services that were requested in the RFP include:

- Construction Management
- Construction Inspection

Listed below are the top five scoring consultants.

CONSULTANT	WEIGHTED SCORE
Falcon	1275
Wallace & Associates	1247.5
Interwest Consulting Group	1237.5
Transtech Engineers, Inc.	1235
TKE Engineering, Inc.	1185

JUSTIFICATION:

In anticipation of an increase in private land development activities, the Public Works Department has recognized a need of additional resources to provide dedicated professional construction management and inspection services for various construction projects that cannot be accommodated by current staff.

Establishing a pre-approved vendor list would expedite the process of obtaining these services as well as reduce the time spent by city staff preparing and evaluating formal RFPs and proposals.

FISCAL IMPACT:

Resolution 2018-106, if approved, creates an approved vendor list only, therefore there is no fiscal impact.

City staff will present future recommendations to award professional service agreements for the abovementioned services based on submittal of cost proposals from the approved vendors for individual capital improvement projects.

ALTERNATIVE:

Reject Resolution 2018-106. If rejected, staff can prepare project specific RFP's for construction management and inspection services which will require additional staff hours

to prepare RFPs and evaluate submitted proposals. A second option would be for staff to manage and inspect capital projects, although this will require staff to set aside work related to other duties (e.g. private land development, regulatory compliance programs, etc.).

ATTACHMENTS:

1. Resolution 2018-106
2. Request for Proposals
3. Publication Notice
4. Firms Directly Solicited

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution 2018-106

RESOLUTION 2018-106

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ESTABLISHING A PRE-APPROVED PROFESSIONAL CONSTRUCTION MANAGEMENT AND INSPECTION SERVICES VENDOR LIST FOR THE REMAINDER OF FISCAL YEAR 2019 THROUGH FISCAL YEAR 2021

WHEREAS, the Public Works Department is responsible for the management (planning, design and construction) of capital improvement projects related to water, wastewater, streets and buildings and has identified a need for professional construction management and inspection services in order to not delay and properly manage the City's capital improvement projects; and

WHEREAS, on April 27, 2018 and May 4, 2018 a publication was advertised in a local publication notifying qualified firms of the opportunity to submit a proposal and provide the City with On-Call Construction Management and Inspection Services; and

WHEREAS, the request was also published on PlanetBids.com where forty-nine (49) firms were directly solicited with ten (10) firms responding and submitting proposals; and

WHEREAS, an evaluation committee consisting of three City staff members evaluated the proposals based on qualifications, experience, the ability to provide the requested services and rates; and

WHEREAS, as part of the evaluation process, the top five firms were identified as having the ability to provide the requested services and as a result staff has recommended the approval of the following list of vendors:

Falcon
Wallace & Associates
Interwest Consulting Group
Transtech Engineers, Inc.
TKE Engineering, Inc.

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

The City Council adopts Resolution 2018-106 establishing a pre-approved professional Construction Management and Inspection Services vendor list established through a formal request for proposals for various construction management and inspection services for the remainder of the current fiscal year through fiscal year 2021.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-106, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

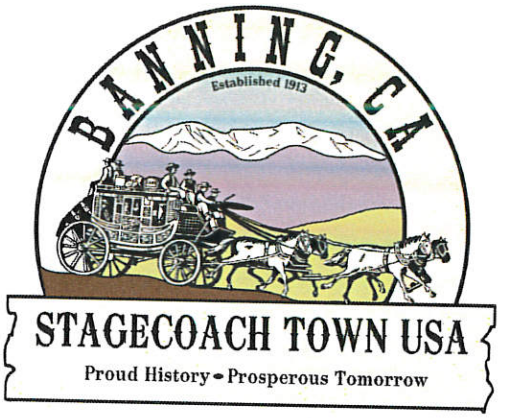
NOES:

ABSTAIN:

ABSENT:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2
Request for Proposal (RFP)



REQUEST FOR PROPOSAL

FOR

18-016

ON-CALL GENERAL CONSTRUCTION MANAGEMENT AND INSPECTIONS SERVICES

CITY OF BANNING

Public Works Department

99 East Ramsey Street

Banning, California 92220

Released on April 27, 2018

REQUEST FOR PROPOSAL (RFP) NO. 18-016

ON-CALL GENERAL CONSTRUCTION MANAGEMENT AND INSPECTIONS SERVICES

Dear Proposers:

The City of Banning (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for On-Call General Construction Management and Inspection Services.

NOTICE IS HEREBY GIVEN that online bid price and document submittal must be uploaded to the online bid system in accordance with the instructions included within bid documents for On-Call General Construction Management and Inspection Services, on or before the hour of 10:00 a.m. on May 18, 2018. It shall be the responsibility of the bidder to upload his proposal by the announced time. However, submittals may be submitted at any time prior to the deadline. (Submitted bids may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

BID DOCUMENTS: To obtain a copy of the bid documents, please visit http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view and download the bid documents, which include the complete Notice Inviting Bids document. Firms must also check the web site periodically for addenda information as failure to download any and all addenda, and acknowledge in the bid submittal, will result in bid disqualification.

Bids must be submitted electronically by visiting the City of Banning, Planetbids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions.

1. BACKGROUND

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Gorgonio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water

supplies and the memorable and inspiring scenic vistas of both Mt. San Gorgonio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	April 27, 2018
Deadline for Written Questions	May 4, 2018 by 3:00 p.m.
Responses to Questions Posted on Web	May 11, 2018 by 5:00 p.m.
Proposals are Due	May 18, 2018 by 10:00 a.m.
Interview (if held)	May 31, 2018
Approval of Contract	June 24, 2018 (Tentative)

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The City of Banning seeks Proposals from qualified firms to provide professional, on-call general construction management and inspection services to support various divisions within the Public Works department. Qualified firms shall have experience in construction equipment, materials, methods, and workmanship for the specific work to be performed on various projects. The Consultant shall be able to understand and interpret Plans and Specifications and shall be familiar with the Greenbook (Standard Specifications for Public Works Construction), International Building Code of 2016, Caltrans Standard Specifications, City Standards, and OSHA Construction Safety Orders. The Consultant shall be able to interact professionally with contractors, engineers, elected officials, property owners, business owners, and the public at large; coordinate with other city personnel; promote quality customer service; and respond promptly and courteously to requests.

The Consultant shall be responsible for providing complete project management and inspection services during pre-construction, construction, and after construction of the project (project closeout). Consultant shall provide coordination services with architects, engineers, geotechnical engineers/material testing consultant, inspectors, City-owned utilities, affected non-City-owned utility companies, City of Banning's staff and general contractors.

Field office facilities will not be provided by the City. The Consultant shall provide a trailer for his personnel (if required). All personal equipment (cell phones, computers, safety equipment, transportation, etc.) needed to conduct the proposed construction management and inspection services shall be provided by the Consultant as a part of his services.

The Scope of Work outlined below is typical of a large construction project, and not all projects managed under this contract will need all services mentioned. The services needed and budget will be negotiated for each individual project.

The following scope of work will become part of the Contract Agreement and must be listed and addressed on the proposal submitted to the City as follows:

3.1 CONSTRUCTION MANAGEMENT

TASK 1: PRE-CONSTRUCTION SERVICES

The Consultant shall be responsible for providing services during the pre-construction phase of the project, including, but not limited to:

Subtask 1A:

- Reviewing approved Plans and Specifications thoroughly prior to the Pre-Construction Meeting.
- Coordinating activities of pre-construction phase with utility companies
- Monitor Scheduling of activities during pre-construction phase

Subtask 1B:

- Conducting the pre-construction meeting with the Contractor and all stakeholders including preparation of meeting agenda and minutes; and distribute to all applicable entities (not just attendees) within three (3) working days.

TASK 2: SERVICES DURING CONSTRUCTION

The Consultant shall be responsible for providing services during construction throughout the duration of the project including, but not limited to:

Subtask 2A - Project Management:

- Implementation of Schedule: Review and monitor construction schedule which will be provided by the Contractor. Ensure Contractor complies with the Schedule and has ordered materials, supplies and performed work, etc. per his schedule. Consultant shall submit the final draft construction and project schedules to the City's Project Manager for approval. Prepare and maintain a project schedule identifying the critical path for expeditious project completion.
- Record Management: Maintain all files generated for the Project including daily reports, submittals, transmittals, O & M Manuals, warranties, etc. Ensure City Staff receives copies of items also. Handover all files to the City's Project Manager upon completion and per his approval. Show the proposed filing system to the City's Project Manager prior to the start of the job and obtain his approval, during pre-construction phase.
- Site Coordination between Contractor, City staff, Public Works and Consultant Inspector, City-appointed consultants, (material testing, inspection, architecture, engineering, etc.), and utility companies.

- Communication with Contractor, City's Project Manager, Public Works Inspector, Consultant Inspector and others, on a daily basis as required.
- Facilitate, coordinate, and oversee the ongoing daily actions required to completely provide the full level of intended services and ensure that the project meets all applicable Federal, State, and local requirements.
- Oversee and ensure that all measures of the specific project's scope of services are completed in a timely and professional manner with an emphasis on providing the City with a high quality project.
- Report directly to the City's Project Manager and act as a liaison between the City and all project stakeholders in order to accomplish the full project services intended by the City.
- Check all contract documents to ensure compliance.
- Review and approval of Contractor's monthly progress report and payment request. The monthly progress report from the Consultant shall be due to the City's Project Manager on the tenth (10th) of every month and shall contain at a minimum:
    - Overview of work accomplished during the previous month
    - Overview of work to be accomplished the following month
    - Updated schedule
    - Contractor work progress and completion percentage in a summary form and graphs
    - Problem areas, if any, with proposed corrective actions
    - Outstanding issues with deadline to resolve by date
    - Monthly progress photos (coordinate with Inspector Consultant)
    - Approve contractor payment request for partial breakdown of lump sum items
    - Combine with Inspector Consultant's daily reports and field inspections diaries and his required submittals with this package
    - Daily reports written by Consultant of activities he performed
- Prepare daily report of work completed by the Consultant and submit weekly to the City's Project Manager.

Subtask 2B - Construction Contract Administration

- Reviewing of contract documents at 100% completion for familiarity with project plans and specifications, prior to construction.
- Coordination of weekly site meetings with the Contractor, Inspection Consultant and City staff/consultants, and preparation and distribution of meeting agenda and

minutes within three (3) working days. Participation in all required conferences and progress meetings on a weekly basis.

- Establish and maintain project controls and provide administrative, management, and related services necessary to coordinate the work of the Contractor and all sub-contractors in order to facilitate timely completion of the project in accordance with contract documents and City objectives.
- Provide, manage, coordinate, and ensure timely completion/approvals in response to all Requests for Information (RFI), shop drawings, product data samples, submittals, Change Notice, Intend to File Change Notices, and Construction Change Orders (CCO), as well as review, negotiations and issuance of the CCO to the Contractor.
- Follow the established City procedures in processing CCO. Following is a brief outline of the City's procedures:
    - Review requests for CCO received from the Contractor.
    - Recommend necessary or desirable project changes to the City with Design Consultant's concurrence.
    - Assist the City with concurrence of the Design Consultant in CCO negotiations and negotiate price with the Contractor.
    - Submit recommendations to the City relative to change order requests.
    - Prepare the CCO, obtain project designer's concurrence, and obtain Contractor and Design Consultant's signature on the CCO forms for the City's consideration, review, and approval.
- Ensure that contractor's daily work effort is documented.
- Ensure adequate inspection coverage for the project, coordinate and oversee project Consultant Inspector(s).
- Provide administrative, management, and related services as required to coordinate work and to complete the project in accordance with the City's objectives for cost, time, and quality. The Consultant shall provide sufficient qualified personnel and management to carry out the requirements of the Project.
- Schedule and conduct pre-construction and construction progress meetings to discuss such matters as procedures, progress, problems, scheduling, and coordination and other project related items. General construction progress meetings will be required on a bi-weekly basis until the project is completed. Primary attendees will include: Utilities, Consultant Inspector, the City of Banning, and the Contractor. Prepare meeting agendas, and minutes for all meetings. The minutes shall be prepared and distributed to all attendees within three (3) working days after the meeting. The minutes shall include, but not be limited to, list of attendees with phone numbers and e-mail, synopsis of discussion items, any pertinent information, action items, and follow-up to the action items.

- Maintain continuous 24-hour telephone accessibility during construction activity for emergency use.
- Maintain the record copies of the following:
    - Plans, specifications, and contract documents with all changes and modifications.
    - Permits, SWPPP, etc.
    - Addenda(s), change order(s), shop drawings, product data, submittals, and samples, material certifications.
    - Progress payments, inventories, and applicable codes.
    - Contractor's reports, correspondence, certified payrolls, and accident reports.
    - Survey and layout data and certifications, photographs of as-built locations and depths.
    - List of addresses, telephone and license numbers of General Contractor, all sub-contractors, material suppliers, and utility agencies.
    - Daily reports (logs) of Consultant Inspector and Construction Manager.
- Determine whether the work of the Contractor is being performed in accordance with the requirements of the contract documents, and endeavor to guard the City against defects and deficiencies in such work. The Consultant shall make recommendations to the City's Project Manager regarding special inspection or testing of work not in accordance with the provision of the contract documents whether or not such work is then fabricated, installed or completed. The Consultant shall also inform the City of work that does not conform to the requirements of the contract documents. The Consultant shall review the Contractor's recommendations for corrective action on observed non-conforming work.
- Consult with the Design Consultant and City's Project Manager if any contractor requests interpretations of the meaning and intent of the PS&E, and shall assist in the resolution of questions or disputes which may arise.
- Identify and report potential contractor claims and recommend resolution.
- Prepare the weekly statement of working days and send to the Contractor on a weekly basis.
- Conduct interviews with the Contractor's and subcontractor's employees to ensure labor compliance (prevailing wage, benefits, etc.).
- Compare Certified Payrolls with Inspection Reports, employee interview forms, and the Prevailing Wage Rates, and verify proper payment in compliance with the project Specifications.

- Reviewing working days, contract time, and documenting time extensions. Documentation similar to the Caltrans Local Assistance Procedures Manual (LAPM) Exhibit 16-A, "Weekly Statement of Working Days," will be required in the project file.
- Enforcing Labor Compliance by preparing daily reports with required information, including work completed and pay items, monitoring Certified Payrolls and doing spot check labor surveys and interviews, to ensure Prevailing Wages.
- Provide regular monitoring (minimum monthly) of the approved estimates of Total Construction Cost, showing actual costs for activities in progress, and estimates for uncompleted tasks. The Consultant shall identify variances between actual and budgeted or estimated costs, and inform the City's Project Manager whenever Project costs exceed budgets or estimates.
- Maintain cost accounting records on authorized work performed under unit cost, additional work performed on the basis of actual costs of labor and materials, or other work requiring accounting records.
- The Consultant shall provide written documentation (e.g. memorandum, letter, email, etc.) to the Contractor, City's Project Manager, etc., regarding all important issues, decisions, and discussions within three (3) working days.
- The Consultant shall be required to document and submit weekly written progress reports to the City's Project Manager on multiple construction phases of the project, which shall include information on the Contractor and the Contractor's work, as well as the entire Project. The Consultant shall also keep a daily log containing a record of weather, the Contractor, work on the site, number of workers, craft or trades, equipment, subcontractors, work accomplished, problems encountered, and other similar relevant data as the Design Consultant may require. The consultant shall make log available to the City and submit weekly.
- Observe the contractor's check-out of utilities, operational systems and equipment for readiness, and assist in their initial start-up testing.
- Determine when the contractor's work or a designated portion thereof is complete. The Consultant shall prepare a list of incomplete or unsatisfactory items (punch list) and a schedule for their completion. The Consultant shall coordinate the correction and completion of the Work with appointed Inspector.
- Evaluate the completion of the work of the Contractor and make recommendations to the City's Project Manager when work is ready for final inspection. The Consultant shall assist the City's Project Manager in conducting final inspection and shall secure and transmit to the City's Project Manager required guarantees, affidavits, release, and waivers. The Consultant shall also deliver keys, manuals, and record drawings to the City's Project Manager.
- Coordinate close-out of the project; obtain necessary operation manuals, warranties, guarantees, and other applicable necessary information. Provide all

documentation in a well-organized (binders, folders, CDs, etc.) manner in electronic and hard copies.

- Obtain all releases and warranty bonds from the Contractor and sub-contractors. Provide all documentation in a well-organized (binder, folders, CDs, etc.) manner in electronic and hard copies. Prepare any required documents (N.O.T., etc).
- Deliver a final completed project to the City's Project Manager which is in compliance with the PS&E package, and all applicable codes, standards and requirements.
- Provide a redline set of any modified plans to the Design Consultant to prepare "drawings of record" and "As-Builts" on the Mylars.
- Maintaining well organized photographic/video records.
- Monitoring construction schedules throughout the course of construction.
- Tracking sub-contractors' work. Ensuring Contractor submits written request prior to substituting a subcontractor.

TASK 3: SERVICES DURING CONSTRUCTION CLOSE-OUT:

The Consultant shall be responsible for providing services during construction close-out:

Subtask 3A:

- Substantial and Final Completion services, including:
  - Site inspection to determine if facilities are complete and in compliance with Contract Documents and Plans.
  - Preparation of punch-list and inspection of punch-list corrective actions.
  - Recommendation to City as to release of Notice of Completion and final payment and retention to Contractor.
  - O&M Manual Submittal and Training Coordination with Contractor, and City staff, and O&M review.

Subtask 3B:

- Record Compilation and Submittal, including:
  - Preparation and submittal of a complete set of organized construction contract documentation, and all submittals, transmittals, etc. in filing format approved by the City's Project Manager.
  - Submittal of any record drawings made by Consultant and Contractor during construction.
- Obtaining Warranty and Lien Release Information from Contractor and organize in binders.

- Establishing an approved record file that supports: 1) adequacy of field control, 2) conformance to contract specifications, 3) payments to contractor. 4) daily reports of work done by the Consultant's and Consultant Inspector during this project. The file must be complete, organized, and maintained in a manner that permits inspection by the City at any time.
- Compile, on a disc and printed, all photos taken during the progress and final completion of said project.

Subtask 3C:

- Review As-Builts prepared by Contractor and Inspector Consultant and ensure they are accurate and signoff (with PE or SE stamp). Submit to Public Works Director/City Engineer for approval.

General Notes:

- The Consultant does not have authority to make changes or deviations from the Plans and Specifications, except as authorized by the Design Consultant and City's Project Manager.
- Endeavor to achieve satisfactory performance from each of the contractors and recommend courses of action to the Engineer when requirements of a contract are not being fulfilled and the non-performing party will not take satisfactory corrective action from the Consultant or Engineer.
- Perform warranty walk within one (1) year of the Notice of Completion and provide list of deficiencies (punch list).
- The extent of the duties, responsibilities, and limitations of authority of consultant as a representative of the City during the construction shall not be modified or extended without the written consent of the City's Project Manager.
- Review, keep log of and file all shop drawings, substitutions, RFI's submittals, etc. and route to the Design Consultant for approval.

3.2 CONSTRUCTION INSPECTION

- Thorough review of the plans and specifications and other project related documents prior to construction start up.
- Oversee the contractors and sub-contractor's daily operations to insure they comply with the contract specifications, plans and City Regulations and Ordinances.
- Inspect materials to be used in the work, verifying they meet the project specifications and document usage and quantities.
- Review submittals and materials certifications
- Review/inspect the Contractor's equipment to confirm it meets the project specifications, and document the specific type and amount of equipment used.

- Inspect the contractor's workmanship to verify that it meets the methods, tolerances, time requirements, temperature requirements etc., of the specifications, and document in daily inspection reports.
- Inspect and document that the work is performed and completed to the lines, grades, and elevations required by the project plans and specifications.
- Document the contractor workforce and weather conditions.
- Document daily contractor activities, including any description and explanation of downtime, damage to the work, any actions taken by others including private utilities, City forces, adjacent property owners, etc.
- Where possible final measure work as it's done by the contractor, calculate quantities and document.
- Conduct daily review/inspection of temporary traffic control devices and the maintenance of traffic throughout the construction influence area.
- Conduct periodic nighttime review/inspection of temporary traffic control devices and the maintenance of traffic throughout the construction influence area, as needed.
- Perform and document NPDES inspections at the required frequencies; suspend any work and/or reject any materials not conforming to the contract requirements;
- Measure quantities.

3.3 QUALITY CONTROL PLAN:

The Consultant shall have a Quality Control Plan in effect during the entire time work is in progress, and shall have total responsibility for the accuracy, completeness, and timeliness of all meeting notes, contract change orders, progress payments, labor compliance documentation, reports, and all other work performed under this contract, as listed in this RFP. The Consultant shall meet that responsibility throughout the implementation of a Quality Control Plan. Prior to beginning work, the Consultant shall submit to the City one copy of their Quality Control Plan.

4. PROPOSAL FORMAT GUIDELINES

Interested entities or Consultants are to provide the City of Banning with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, graphic exhibits and required City forms. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be

concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer's response:

- **Vendor Cover Letter**

A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the Consultant's office located nearest to Banning, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFP.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.

2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.

3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.

4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.

5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will

consider proposals that offer alternative service delivery means and methods for the services desired.

6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual. Include a resume for each designated individual.

Upon award and during the contract period, if the Consultant chooses to assign different personnel to the project, the Consultant must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's or entity's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

For private Proposers, provide at least three references that received similar services from your firm. The City of Banning reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project start and end dates
- Client project manager name, telephone number, and **e-mail address**.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have

performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Fee Proposal**

All Proposers are required to use the online rate form to submit pricing as specified for their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Additional pricing information can be submitted within your proposal. Proposals shall be valid for a minimum of 180 days following submission.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services with the City. The form of the Agreement is enclosed as an online attachment, but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement. See Section 13, below.

- **Checklist of Forms to Accompany Proposal**

As a convenience to Proposers, following is a list of the forms, included as online attachments to this RFP, which should be included with proposals:

(1) Ex Parte Communications Certificate

(2) Price Proposal (Online Rate Sheet)

(3) Disclosure of Government Positions

(4) Disqualifications Questionnaire

5. PROCESS FOR SUBMITTING PROPOSALS

- **Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.

- **Preparation of Proposal**

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Submission of Proposals**

Complete proposals must be submitted and received no later than the deadline.
Proposals will not be accepted after this deadline.
Proposals submitted in paper form, faxed or e-mailed will not be accepted.

Submit proposals electronically by visiting the City of Banning Planetbids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions. Financial Statements only can be delivered separately to the Purchasing Division in a sealed envelope marked confidential if preferred. The Financial Statement shall be to the attention of Jennifer McCoy in a sealed envelope identified on the outside with the Bidder's Business Name, Proposer Identity— with the RFP number and the due date. Be sure to label and deliver following same deadline requirements.

- **Inquiries**

Questions about this RFP must be directed in writing, via the City of Banning, Planetbids Vendor Portal: http://www.planetbids.com/portal/portal.cfm?CompanyID=33077.

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addendums, responses to questions received, and additional information will be posted to the Banning online bid system. Proposers should check the web page above regularly for new information. The City will endeavor to answer all written questions timely that are received no later than the deadline listed in the schedule of events. The City reserves the right not to answer all questions.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this

provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Banning, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with the City's Purchasing and Procedures Policy (Policy). The lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within a particular evaluation criterion may also be considered even if not specified below.

1. Qualifications of Entity and Key Personnel-------30%

Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

2. Approach to Providing the Requested Scope of Services-------20%

Includes an understanding of the RFP and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.

3. Price Proposal-----40%

Price Proposals will be evaluated on the basis of the Total Estimated Annual Price submitted in Appendix D.

4. Innovative and/or creative approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----10%

7. EVALUATION OF PROPOSALS AND SELECTION PROCESS

In accordance with its Policy, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. **Responsiveness Screening**

Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

B. **Initial Proposal Review**

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. **Interviews, Reference Checks, Revised Proposals, Discussions**

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for the Thursday, May 31, 2018 and will be conducted at City of Banning City Hall, 99 E. Ramsey St., Banning, CA 92220. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may

recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

8. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

9. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

10. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the ***"Ex Parte Communications Certificate"*** form (See Online Attachment) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

11. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

12. DISCLOSURE OF GOVERNMENTAL POSITION

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed

officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached ***"Disclosure of Government Positions"*** form. (See Online Attachment).

13 CONDITIONS TO AGREEMENT, IF ANY.

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as (See Online Attachment, ***"Professional Services Agreement Sample"***), to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation proposals and determining the lowest responsible bidder.

14. DISQUALIFICATIONS QUESTIONNAIRE

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. (See Online Attachment, ***"Disqualifications Questionnaire"***).

15. STANDARD TERMS AND CONDITIONS

Addendums

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addendums and additional information will be posted to the Banning Procurement Registry, http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Proposers should check this web page daily for new information.

Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

Insurance Requirements

City requires that licensees, lessees, and vendors have an ***approved*** Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

ATTACHMENT 3
Publication Notice

City of Banning

Request for Proposal No. 18-016 for On-Call General Construction Management and Inspection Services

NOTICE IS HEREBY GIVEN that online bid price and document submittal must be uploaded to the online bid system in accordance with the instructions included within bid documents for RFP No. 18-016 for On-Call General Construction Management and Inspection Services, on or before the hour of 10:00 a.m. on May 18, 2018. It shall be the responsibility of the offeror to upload his proposal by the announced time. However, submittals may be submitted at any time prior to the deadline. (Submitted bids may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

BID DOCUMENTS: To obtain a copy of the bid documents, please visit http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view and download the Bid Documents, which include the complete Notice Inviting Bids document. Firms must also check the web site periodically for addenda information as failure to download any and all addenda, and acknowledge in the bid submittal, will result in bid disqualification.

SEALED BIDS DUE: May 18, 2018 and Opened Publicly online only by 10:00 a.m. Only the Vendor names to be released.

Bids must be submitted electronically by visiting the City of Banning Planetbids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions.

If you have additional questions, please contact Jennifer McCoy, via online bid system.

City of Banning
99 E. Ramsey St.
P.O. Box 998
City Clerk's Office
Banning, CA 92220-0998
Phone: 951-922-3121

CITY OF BANNING, CALIFORNIA
Dated: 04/27/18 and 05/04/18

/s/ Jennifer McCoy
Purchasing Manager

ATTACHMENT 4
Firms Directly Solicited

RFP 18-016 ON-CALL CONSTRUCTION MANAGEMENT INSPECTION SERVICES
PROSPECTIVE VENDOR LIST

	Company Name	Contact Name	Phone	Email
1	Pacifica Services, Inc.	Jeffrey E. Camacho	626-405-0131	bdandp@pacificaservices.com
2	Michael Baker International	Debi Bright	858-614-5045	leads@mbakerintl.com
3	Annealta Group	Tim D'Zmura	714-625-5840	marketing@annealtagroup.com
4	Onvia, Inc.	Source Management	206-373-9500	sourcemanagement2@onvia.com
5	CONSTRUCTION BIDBOARD	N RIVERS	800-479-5314	PLANROOM@EBIDBOARD.COM
6	Wallace & Associates	Carl Wallace	951-966-7774	carl@wallace-cm.com
7	Jeff Oviedo & Associates	Jeff Oviedo	949-251-0702	joviedo@jogroup.com
8	EC & AM Associates	Ghazala Khan	909-595-1940	gkhan@gkandassociates.com
9	Kairos Construction	Christy Schlereth	760-908-4573	christy@kairosconstruction.org
10	RMA Group	Destani Fleury	909-989-1751	marketing@rmacompanies.com
11	ConstructConnect	Kurt Backscheider	800-364-2059 ext. 8059	kurt.backscheider@constructconnect.com
12	National Elevator Inspection Services, Inc.	Angela Malone	314-682-2611	angela.malone@us.bureauveritas.com
13	CMTS LLC	Marketing Group	310-390-9558	marketinggroup@cmtsinc.com
14	HR Green Pacific, Inc.	Steve R. Loriso	657-333-0987	sloriso@hrgreen.com
15	Engineering Resources of Southern California	Craig Brudin	909-890-1255	info@erscinc.com
16	Transtech Engineers, Inc.	Ahmad Ansari	909-595-8599	info@transtech.org
17	Southstar Engineering & Consulting, Inc.	Shannon Stewart	951-213-0000	shannons@southstareng.com
18	SA Associates	Shahnawaz Ahmad	626-821-3456	sahmad@saassociates.net
19	Dirtonu, Inc.	Amy Shillander	949-398-6733	ashillander@murowcm.com
20	MNS Engineers, Inc.	Miranda Patton	805-648-4840	bd@mnsengineers.com
21	FALCON Engineering Services, Inc	Maha Faqih	951-549-9600	tphillips@falcon-ca.com
22	IMS	CA RM	858-490-8811	cawr@imsinfo.com
23	KOA Corporation	Denise Martin	909-890-9693	dmartin@koacorp.com
24	Albert A. Webb Associates	Business Development	951-686-1070	info@webbassociates.com
25	Layne Christensen Company	MarkHoward	909-390-2833	mark.howard@layne.com
26	TRC Engineers, Inc.	LisaAnderson	909-256-8133	landerson@trcsolutions.com
27	CivilSource, Inc.	Amy Amirani	949-585-0477	Civil@civil-source.com
28	TELACU Construction Management	Daniel Clem	714-656-7315 ext. 308	dclem@telacu.com
29	Willdan Financial Services	Rebekah Smith	951-587-3500	RSmith@Willdan.com
30	Shay Enterprise	Tamara Shay	253-791-8388	tshayenterprise@gmail.com
31	Converse Consultants	Kathy Von Glahn	909-796-0544	kvonglahn@converseconsultants.com
32	Ninyo & Moore	Cherrie Bowman	858-576-1000	cbowman@ninyoandmoore.com
33	CSW Funding LLC	Wanda Rogers	619-303-6890	wlrogers@constructionserviceworkers.com
34	MHW Constructors / Stantec Construction Group	Randy Lovan	626-568-6048	randy.lovan@stantec.com
35	MTGL Inc.	Steven Koch	714-632-2999 ext. 2114	skoch@mtglinc.com

RFP 18-016 ON-CALL CONSTRUCTION MANAGEMENT INSPECTION SERVICES
PROSPECTIVE VENDOR LIST

	Company Name	Contact Name	Phone	Email
36	Griffin Structures, Inc.	Lynne Rue	949-497-9000 ext. 265	lrue@griffinstructures.com
37	Bogh Engineering Inc	Zachary Hisey	909-253-2435	zach@bogh.biz
38	Environmental Science Associates	Adrianne Bargeron	213-599-4300	abargeron@esassoc.com
39	AGC San Diego Chapter	Plan Room	858-558-7444	planroom@agcsd.org
40	Entram Corp	Samantha Ayres	888-888-0900	sayres628@gmail.com
41	LAE Associates, Inc.	FredAlamolhoda	714-993-2840	fredA@LAEassociates.com
42	PV Inc	KIM JONES	800-746-9554	shanti@gmail.com
43	TKE Engineering, Inc.	Candice Lucero	951-680-0440	clucero@tkeengineering.com
44	CSI Services, Inc.	Patrick Sweeney	877-274-2422 ext. 3	psweeney@csiservices.biz
45	PrimeSource PM, LLC	Karen McLaurin Buresh	424-903-0980	karen.buresh@primesourcepm.com
46	Vali Cooper & Associates	Debbie Martin	951-788-6028	debbie.martin@valicooper.com
47	Interwest Consulting Group	Michelle Marengo	714-899-9039	bids@interwestgrp.com
48	SCST, Inc.	Dan Marino	951-294-7306	dmarino@scst.com
49	The Seville Group, Inc.	Brandon Flores	626-395-7474 ext. 101	bflores@sgicm.com

CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Ted Shove, Economic Development Manager**

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-108, Accepting Community Development Block Grant Funds for Fiscal Year 2018-2019 in the Amount of $155,979 for the Lion's Park Expansion Project (5.BN.38-18)**

RECOMMENDED ACTION:

The City Council adopt Resolution 2018-108:

1. Accepting Community Development Block Grant ("CDBG") Funds for Fiscal Year 2018/2019 in the amount of $155,979 for the Lion's Park Expansion Project (5.BN.38-18);

2. Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations, and transfers related to the 2018/2019 CDBG funds in the amount of $155,979; and

3. Authorizing the Mayor to execute the Supplemental Agreement for the 2018/2019 CDBG Program.

BACKGROUND:

The submittal of the Lion's Park Expansion Project application for CDBG 2018/2019 program funding was approved by City council on October 24, 2017 under Resolution 2017-104. The execution of the 2018/2019 CDBG Supplemental Agreement is required in order for the City to obtain and utilize the CDBG funds.

JUSTIFICATION:

On an annual basis, the City of Banning has participated in the federally funded CDBG program. On October 24, 2017, the City Council adopted Resolution 2017-104 approving

the Lion's Park Expansion Project and application submittal to the Riverside County Economic Development Agency ("EDA") for consideration.

The City received a letter dated August 3, 2018 from the EDA confirming approval of the project and funding. In order to utilize Fiscal Year 2018/2019 CDBG program funds, the City is required to execute a Supplemental Agreement attached hereto by reference. The CDBG FY 2018/2019 funding will be allocated to the Lion's Park Expansion Project (5.BN.38-18), in the amount of $155,979.

The scope of work for the expansion project includes developing an additional 7.36 acres owned by the City. CDBG funds will specifically be used for the design and construction of two multipurpose fields, additional parking, lighting, landscaping, other park amenities, and project administration.

FISCAL IMPACT:

By approving the CDBG Supplemental Agreement, Fiscal Year 2018/2019, the City anticipates receiving $155,979 to fund a portion of the Lion's Park Expansion Project. Acceptance of these funds are restricted exclusively for this project.

OPTIONS:

1. Approve as recommended.
2. City Council may choose to take no action resulting in the loss of available funding.

ATTACHMENTS:

1. Resolution 2018-108
2. 2018/2019 CDBG Supplemental Agreement

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution 2018-108

RESOLUTION 2018-108

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ACCEPTING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR FISCAL YEAR 2018/2019 IN THE AMOUNT OF $155,979 FOR THE LIONS PARK EXPANSION PROJECT (5.BN.38-18)

WHEREAS, the City of Banning has been submitting applications for projects/activities under the Community Development Block Grant ("CDBG") program to the Riverside County Economic Development Agency ("EDA") annually; and

WHEREAS, the submittal of the Lion's Park Expansion project application for CDBG 2018/2019 program funding was approved by City Council on October 24, 2017 under Resolution 2017-104; and

WHEREAS, the project submitted herein meets the CDBG program guidelines and/or requirements; and

WHEREAS, the scope of work for the expansion project includes developing an additional 7.36 acres owned by the City. CDBG funds will specifically be used for the design and construction of two multipurpose fields, additional parking, lighting, landscaping, other park amenities, and project administration; and

WHEREAS, it is necessary that the project be approved by the City Council through resolution in order for the City and its residents to obtain and utilize the federally funded CDBG grant funds.

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

SECTION 1. The Banning City Council adopts Resolution 2018-108, accepting Community Development Block Grant Program Funds for Fiscal Year 2018/2019 in the amount of $155,979 for the Lion's Park Expansion Project (5.BN.38-18).

SECTION 2. The Interim City Manager is authorized to submit one City Project Fiscal Year 2018-2019 Community Development Block Grant program application to Riverside Economic Development Agency for approval by their Board.

SECTION 3. The Mayor is authorized to execute the Supplemental Agreement for the 2018/2019 Community Development Block Grant program.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-108, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

2018/2019 CDBG Supplemental Agreement

File No.: 5.BN.38-18

SUPPLEMENTAL AGREEMENT FOR THE USE OF 2018-2019 COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS

This Supplemental Agreement ("Agreement") is entered into this _____ day of _____, 2018, by and between the COUNTY OF RIVERSIDE, a political subdivision of the State of California, herein called, "COUNTY," and the **CITY OF BANNING**, herein called "CITY." COUNTY and CITY are collectively referred to as "Parties" and individually as "Party."

The COUNTY and CITY mutually agree as follows:

1. GENERAL. COUNTY and CITY have executed a Cooperation Agreement, dated July 20, 2017 ("Cooperation Agreement"), whereby CITY elected to participate with COUNTY, which has qualified as an "Urban County" for purposes of receiving Community Development Block Grant (CDBG) funds ("CDBG"), and to assist and undertake essential community development and housing assistance activities pursuant to the Housing and Community Development Act of 1974, Title 1, as amended, Public Law 93-383 hereinafter referred to as "Act." Said Cooperation Agreement, dated July 20, 2017, is incorporated herein by reference and made a part of this Agreement as if each and every provision was set forth herein.

2. PURPOSE. CITY promises and agrees to undertake and assist with the community development activities, within its jurisdiction, by utilizing the sum of **$155,979,** CDBG Entitlement Funds, as specifically identified in Exhibit(s) A, attached hereto, and is incorporated herein by this reference, for the following project(s) (collectively, the "Projects"):

5.BN.38-18 Lions Park Expansion Project, $155,979.

3. TERM OF AGREEMENT. The term of this Agreement for the implementation of the Project(s) shall be for a period of one (1) year from July 1, 2018 to termination on June 30, 2019.

4. COMPLETION SCHEDULE. CITY shall proceed consistent with the completion schedule set forth in Exhibit(s) A, attached hereto and incorporated herein.

5. EXTENSION OF TIME. In the event the Project(s) is not substantially completed by

the time set forth in the applicable completion schedule(s) due to a force majeure event (See Section 40 below), the COUNTY may consider extending the schedule for the completion of the project(s). Times of performance for other activities may also be extended in writing by COUNTY. If substantial progress toward completion in conformance with the completion schedule, as determined by COUNTY in its discretion, of the project(s) is not made during the term of this Supplemental Agreement, COUNTY may suspend or terminate this Supplemental Agreement pursuant to the termination procedures set forth in the section titled "Termination," and the entitlement funds associated with the Project(s) may be reprogrammed by the COUNTY after appropriate notice is provided to the City.

6. LETTER TO PROCEED. CITY shall not initiate nor incur expenses for the CDBG-funded Projects or activities covered under the terms of this Supplemental Agreement as set forth in Exhibit(s) A, attached hereto, prior to receiving written authorization from COUNTY to proceed.

7. NOTICES. Each notice, request, demand, consent, approval or other communication (hereinafter in this Section referred to collectively as "notices" and referred to singly as a "notice") which the CITY or COUNTY is required or permitted to give to the other party pursuant to this Agreement shall be in writing and shall be deemed to have been duly and sufficiently given if: (a) personally delivered with proof of delivery thereof (any notice so delivered shall be deemed to have been received at the time so delivered); or (b) sent by Federal Express (or other similar national overnight courier) designating early morning delivery (any notice so delivered shall be deemed to have been received on the next Business Day following receipt by the courier); or (c) sent by United States registered or certified mail, return receipt requested, postage prepaid, at a post office regularly maintained by the United States Postal Service (any notice so sent shall be deemed to have been received two days after mailing in the United States), addressed to the respective parties as follows:

COUNTY	CITY
Assistant County Executive Officer/ECD	Ted Shove, Economic Development Mgr.

Economic Development Agency	City of Banning
P.O. Box 1180	P.O. Box 998
Riverside, CA 92502	Banning, CA 92220

8. PAYMENT OF FUNDS.

A. COUNTY's Board of Supervisors shall determine the final disposition and distribution of all funds received by COUNTY under the Act consistent with Sections 2 and 3 of this Supplemental Agreement. COUNTY, through its Economic Development Agency, shall make payment of the CDBG funds to CITY as set forth in the attached Exhibit(s) A. It is the CITY's responsibility to monitor all project activities set forth in the attached Exhibit(s) A, and to ensure compliance with applicable federal regulations and the terms of this Supplemental Agreement.

B. CITY shall comply with timely drawdown of CDBG Entitlement funding by expeditiously implementing and completing the COUNTY-approved, CDBG-funded Projects. CITY acknowledges that CITY's drawdown performance directly impacts the COUNTY's overall program drawdown rate. If the CITY's unobligated CDBG fund balance, as of January 31, 2019, exceeds one hundred and seventy-five percent (175%) of the CITY's 2018-2019 CDBG allocation, the COUNTY may, in its sole discretion, take the necessary administrative actions to reduce the CITY's CDBG fund balance. Necessary actions include, but are not limited to, reprogramming the excess CDBG fund balance to other eligible activities as selected by COUNTY. COUNTY may, in its sole and absolute discretion, authorize CITY in writing, prior to January 31, 2019, to exceed the CDBG fund balance requirement.

C. CITY shall comply with timely drawdown of CDBG funds by submitting monthly requests for reimbursement or other COUNTY approved reimbursement schedules. All disbursements of CDBG funds will be on a reimbursement basis and made within thirty (30) days after the COUNTY has received the CITY's reimbursement request including documentation supporting expenditures.

D. All authorized obligations incurred in the performance of the Supplemental

Agreement for projects eligible under the following CDBG regulations must be reported in writing to COUNTY no later than June 1, 2019:

1. Acquisition [24 Code of Federal Regulations (CFR) 570.201 (a)]
2. Clearance Activities [24 CFR 570.201 (d)]
3. Interim Assistance [24 CFR 570.201 (f)]
4. Code Enforcement [24 CFR 570.202 (c)]

All public service activities [24 CFR 570.201 (e)] and other eligible activities under this Supplemental Agreement must be implemented, completed, and obligations reported in writing to the COUNTY by the CITY no later than the completion schedules set forth in the attached Exhibit(s) to this Supplemental Agreement. "CFR" as used herein refers to the Code of Federal Regulations.

9. RECORDS AND INSPECTIONS.

A. CITY shall establish and maintain financial, programmatic, statistical, and other supporting records of its operations and financial activities in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and 24 CFR Section 570.502 (a), as they relate to the acceptance and use of federal funds under this Agreement. Said records shall be retained for a period of four (4) years from the date that the activity or program funded with the CDBG Grant is closed out by the COUNTY and reported as complete in the Comprehensive Annual Performance and Evaluation Report (CAPER). Exceptions to the four (4) year retention period requirement, pursuant to 2 CFR 200.333 include the following:

i. if any litigation, claim, or audit is started prior to the expiration of the four (4) year period;

ii. when the CITY is notified in writing by the COUNTY, HUD, or other Federal agency to extend the retention period;

iii. records for real property and equipment acquired with CDBG funds must be retained for four (4) years after final disposition;

iv. when the records are transferred by the CITY to the COUNTY, HUD, or other Federal agency, the four (4) year period is not applicable.

B. CITY shall obtain an external audit in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Section 200.500). Audits shall usually be performed annually but not less frequently than every two years. Nonprofit institutions and government agencies that expend less than $750,000 a year in Federal awards are exempt from Federal audit requirements, but records must be available for review by appropriate officials of the Federal grantor agency or subgranting entity. The audit report shall be submitted to the COUNTY within 180 days after the end of the COUNTY'S fiscal year.

C. CITY shall maintain a separate account for the CITY'S CDBG Entitlement funds received as set forth in Exhibit(s) A, attached hereto.

D. Pursuant to 2 CFR 200.336, CITY shall, during the normal business hours, make available to COUNTY, the U.S. Department of Housing and Urban Development (HUD), or other authorized representative, for the examination and copying, all of its records and other materials with respect to matters covered by this Agreement and provide reasonable access to CITY staff for the purpose of interview and discussion related to the records and documents.

E. CITY shall not retain any program income as defined in 24 CFR 570.500. Said program income shall be used only for the activities that are the subject of this Agreement. Further, all provisions of this Agreement shall apply to such activities.

F. The CITY shall ensure that at least fifty-one percent (51%) of the persons benefiting from all CDBG-funded activities or projects designated as serving limited clientele [24 CFR 570.208(a)(2)(i)] are of low and moderate-income and meet the applicable household income guidelines. The CITY shall provide the required income certification and direct benefit documentation, in writing, to the COUNTY pursuant to the reporting requirement of each activity as set forth in Exhibit(s) A, attached hereto. In the event that CITY engages the services of a sub-contractor to implement CDBG-funded activities, the CITY must collect, in writing, all required

income certification and direct benefit documentation from subcontractors prior to submittal to the COUNTY pursuant to the reporting requirement of each activity as set forth in Exhibit(s) A, attached hereto.

10. COMPLIANCE WITH LAWS. CITY shall comply with all applicable federal, state, and local laws, regulations, and ordinances and any amendments thereto and the federal regulations and guidelines now or hereafter enacted pursuant to the Act. More particularly, CITY is to comply with those regulations found in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200), and 24 CFR Part 570. CITY is to abide by the provisions of the Community Development Block Grant Manual, prepared by COUNTY and cited in the above-mentioned Cooperation Agreement. CITY shall comply, if applicable, with Section 3 of the Housing & Urban Development Act of 1968 (12 U.S.C.A. Section 1701u), as amended, a copy of which is attached hereto as Exhibit "S", and incorporated herein by this reference. CITY shall adhere to the restrictions set forth in 24 CFR 570.200 (j) and 24 CFR Section 5.109, which is attached hereto as Exhibit "R," a copy of which is incorporated herein by this reference, pertaining to inherently religious activities. CITY shall comply with the Additional Federal Requirements, if applicable, attached hereto as Exhibit "AFR," and incorporated herein by this reference.

11. COOPERATION WITH HOUSING ACTIVITIES. CITY shall cooperate with COUNTY in undertaking essential community development and housing assistance activities, specifically urban renewal and public assistance housing, and shall assist COUNTY in implementing and undertaking the goals and strategies identified in the 2014-2019 Five Year Consolidated Plan, pursuant to 24 CFR Part 91 and other requirements of the Community Development Block Grant Program.

12. LEAD AGENCY FOR COMPLIANCE WITH THE CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA). Pursuant to Title 14 CCR Section 1501(d), the CITY is designated as the lead agency for the project(s) that are the subject matter of this Supplemental Agreement.

13. HOLD HARMLESS AND INDEMNIFICATION. In contemplation of the provisions of Section 895.2 of the California Government Code imposing certain tort liability jointly upon public entities solely by reason of such entities being parties to an agreement as defined by Section 895 of the Code, the Parties hereto, pursuant to the authorization contained in Section 895.4 and 895.6 of the Code, agree that each Party shall be liable for any damages including, but not limited to, claims, demands, losses, liabilities, costs and expenses including reasonable attorneys' fees, resulting from the negligent or wrongful acts or omissions of their employees or agents in the performance of this Agreement, and each Party shall indemnify, defend and hold harmless the other Parties from such claims, demands, damages, losses or liabilities for their negligence. The hold harmless and indemnification obligations set forth herein shall survive the termination and expiration of this Agreement.

14. INSURANCE. Without limiting or diminishing the CITY's obligation to indemnify or hold the COUNTY harmless, CITY shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage's during the term of this Agreement.

a. Workers' Compensation:

If the CITY has employees as defined by the State of California, the CITY shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than $1,000,000 per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside.

b. Commercial General Liability:

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury, and cross liability coverage, covering claims which may arise from or out of CITY'S performance of its obligations hereunder. Policy shall name the County of Riverside as

Additional Insured. Policy's limit of liability shall not be less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

c. Vehicle Liability:

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then CITY shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than $1,000,000 per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name the County of Riverside as Additional Insured.

d. General Insurance Provisions - All lines:

(i). Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

(ii). The CITY'S insurance carrier(s) must declare its insurance self-insured retentions. If such self-insured retentions exceed $500,000 per occurrence such retentions shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the Country's Risk Manager, CITY'S carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

(iii). CITY shall cause CITY'S insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified

original copies of Endorsements effecting coverage as required herein, and 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. *CITY shall not commence operations until the COUNTY has been furnished original Certificate (s) of Insurance and certified original copies of endorsements and if requested, certified original policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.*

(iv). It is understood and agreed to by the parties hereto that the CITY'S insurance shall be construed as primary insurance, and the COUNTY'S insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

(v). If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, there is a material change in the equipment to be used in the performance of the scope of or, the term of this Agreement, including any extensions thereof, exceeds five (5) years, the COUNTY reserves the right to adjust the types of insurance required under this Agreement and the monetary limits of liability for the insurance coverage's currently required herein, if; in the County Risk Manager's reasonable judgment, the amount or

type of insurance carried by the CITY has become inadequate.

(vi). CITY shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

(vii). The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the COUNTY.

(viii). CITY agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

15. INDEPENDENT CONTRACTOR. The CITY is, for purposes relating to this Supplemental Agreement, an independent contractor and shall not be deemed an employee of the COUNTY. It is expressly understood and agreed that the CITY (including its employees, agents and subcontractor's) shall in no event be entitled to any benefits to which the COUNTY employees are entitled, including but not limited to overtime, any retirement benefits, worker's compensation benefits, and injury leave or other leave benefits. There shall be no employer-employee relationship between the parties; and the CITY shall hold the COUNTY harmless from any and all claims that may be made against the COUNTY based upon any contention by a third party that an employer-employee relationship exists by reason of this Supplemental Agreement. It is further understood and agreed by the parties that the CITY in the performance of this Supplemental Agreement is subject to the control or direction of the COUNTY merely as to the results to be accomplished and not as to the means and methods for accomplishing the results.

16. NONDISCRIMINATION. CITY shall abide by 24 CFR Sections 570.601 and 570.602 of Title 24 of the Code of Federal Regulations which requires that no person in the United States shall on the grounds of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with Community Development funds.

CITY shall abide by and include in any subcontracts to perform work under this Supplemental Agreement, the following clause:

"During the performance of this Supplemental Agreement, CITY and its subcontractors

shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical disability, medical condition, marital status, age (over 40) or sex. CITY and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. CITY and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (California Government Code Section 12900 et seq.). The applicable regulations of the Fair Employment and Housing Commission are implementing California Government Code Section 12990 et seq., set forth in Chapter 1 of Division 4.1 of Title 2 of the California Administrative Code are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CITY and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement."

17. PROHIBITION AGAINST CONFLICTS OF INTEREST

A. CITY and its assigns, employees, agents, consultants, officers and elected and appointed officials shall become familiar with and shall comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Part 200) and the CDBG regulations prohibiting conflicts of interest contained in 24 CFR 570.611.

B. The Subrecipient shall maintain a written code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the award and administration of contracts supported by Federal funds.

C. No employee, officer or agent of the Subrecipient shall participate in the selection, or in the award, or administration of, a contract supported by Federal funds if a conflict of interest, real or apparent, would be involved.

D. No covered persons who exercise or have exercised any functions or responsibilities with respect to CDBG-assisted activities, or who are in a position to participate in a decision-making process or gain inside information with regard to such activities, may obtain a

financial interest in any contract, or have a financial interest in any contract, subcontract, or agreement with respect to the CDBG-assisted activity, or with respect to the proceeds from the CDBG-assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for a period of one (1) year thereafter. For purposes of this paragraph, a "covered person" includes any person who is an employee, agent, consultant, officer, or elected or appointed official of the Grantee, the Subrecipient, or any designated public agency.

E. CITY understands and agrees that no waiver of exception can be granted to the prohibition against conflict of interest except upon written approval of HUD pursuant to 24 CFR 570.611 (d). Any request by CITY for an exception shall first be reviewed by COUNTY to determine whether such request is appropriate for submission to HUD in the COUNTY'S sole and absolute discretion. In determining whether such request is appropriate for submission to HUD, COUNTY will consider the factors listed in 24 CFR 570.611 (d)(2).

F. Prior to the distribution of any CDBG funding under this Supplemental Agreement, CITY shall provide COUNTY, in writing, a list of all employees, agents, consultants, officers and elected and appointed officials who are in a position to participate in a decision making process, exercise any functions or responsibilities, or gain inside information with respect to the CDBG activities funded under this Agreement. CITY shall also promptly disclose to COUNTY any potential conflict, including even the appearance of conflict that may arise with respect to the CDBG activities funded under this Supplemental Agreement.

G. Any violation of this Section 14 shall be deemed a material breach of this Supplemental Agreement, and the Supplemental Agreement shall be immediately terminated by the COUNTY.

18. LOBBYING. CITY certifies to the best of its knowledge and belief, that:

a. No federally-appropriated funds have been paid or will be paid, by or on behalf of the CITY, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a

member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

b. If any funds other than federally-appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the CITY shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c. CITY shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into.

19. TERMINATION.

A. CITY. CITY may not terminate this Agreement except upon express written consent of COUNTY, pursuant to 2 CFR 200.339 (a)(3).

B. COUNTY. Notwithstanding the provisions of Paragraph 12a above, COUNTY may suspend or terminate this Supplemental Agreement upon a ten (10) day written notice to CITY of action being taken and the reason for such action including, but not limited to, the following reasons:

(1) In the event CITY fails to perform the covenants herein contained at such times and in such manner as provided in this Supplemental Agreement; and

(2) In the event there is a conflict with any federal, state or local law, ordinance, regulation or rule rendering any of the provisions of this Supplemental Agreement invalid or untenable; or

(3) In the event the funding from the Department of Housing and Urban Development referred to in Sections 1 and 2 above is terminated or otherwise becomes unavailable.

C. This Agreement may be terminated and/or funding suspended, in whole or in part, for cause in accordance with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR 200.339). Cause shall be based on the failure of the CITY to materially comply with either the terms or conditions of this Agreement. Upon suspension of funding, the CITY agrees not to incur any costs related thereto, or connected with, any area of conflict from which the COUNTY has determined that suspension of funds is necessary. CITY acknowledges that failure to comply with Federal statutes, regulations, or the terms and conditions of this Agreement may be considered by the COUNTY in evaluating future CDBG and non-CDBG funding applications submitted by CITY.

D. Upon suspension or termination of this Supplemental Agreement, CITY shall return any unencumbered funds which it has been provided by COUNTY. In accepting said funds, COUNTY does not waive any claim or cause of action it may have against CITY for breach of this Supplemental Agreement.

E. Reversion of Assets

1. Upon expiration or termination of this Supplemental Agreement, the CITY shall transfer to the COUNTY any CDBG funds on hand at the time of expiration of the Supplemental Agreement as well as any accounts receivable held by CITY which are attributable to the use of CDBG funds awarded pursuant to this Supplemental Agreement.

2. Any real property under the CITY'S control that was acquired or improved in whole or in part with CDBG funds (including CDBG funds provided to the CITY in the form of a loan) in excess of $25,000 is either:

(i) Used to meet one of the National Objectives pursuant to 24 CFR 570.208 until five years after expiration of this agreement, or for such longer period of time as determined to be appropriate by the COUNTY; or

(ii) Not used in accordance with Clause (i) above, in which event

the CITY shall pay the COUNTY an amount equal to the current market value of the property less any portion of the value attributable to expenditures of non-CDBG funds for the acquisition of, or improvement to, the property.

20. PUBLICITY. Any publicity generated by CITY for the Projects funded pursuant to this Supplemental Agreement will make reference to the contribution of the COUNTY, the Economic Development Agency, and the Community Development Block Grant Program in making the project possible.

21. PROGRAM MONITORING AND EVALUATION. CITY and its subcontractors shall be monitored and evaluated in terms of its effectiveness and timely compliance with the provisions of this Supplemental Agreement and the effective and efficient achievement of the CDBG National Objectives as set forth in Exhibit(s) A, attached hereto. Quarterly reports shall be due on the last day of the month immediately following the end of the quarter being reported. The quarterly written reports shall include, but shall not be limited to, the following data elements:

A. Title of program, listing of components, description of activities/operations.

B. The projected goals, indicated numerically, and also the goals achieved (for each report period). In addition, identify by percentage and description, the progress achieved towards meeting the specified goals and identify any problems encountered in meeting goals.

C. If the CDBG-funded activity meets a National Objective under 24 CFR 570.208 (a)(2)(i), CITY will report the following:

1) Total number of direct beneficiaries (clientele served) with household incomes at:

- Above 80% MHI
- Between 50% and 80% MHI (Low-Income)
- Between 30% and 50% MHI (Very Low-Income)
- Less than 30% MHI (Extremely Low-Income)

2) Total number and percent (%) of the clientele served that have household incomes at or below 80% MHI

3) Racial ethnicity of clientele

4) Number of Female-Headed Households

D. CITY shall report, in writing, and cause its subcontractors to report, in writing, beneficiary statistics monthly to the Economic Development Agency (EDA) on the pre-approved *Direct Benefit Form* and *Self-Certification Form* (certifying income, family size, and racial ethnicity) as required by HUD. Updated forms are to be provided to CITY by EDA should HUD implement changes during the term of this Supplemental Agreement. CITY and subcontractors will collect and provide all necessary data required by HUD pertaining to the Specific Outcome Indicators as identified in HUD's Community Planning and Development (CPD) Outcome Performance Measurement System.

22. PRIOR AUTHORIZATION. CITY shall obtain COUNTY's written approval from EDA prior to implementing the following "high risk" activities funded with CDBG assistance:

A. Construction of public facilities (project plans and specifications);

B. Acquisition of real property;

C. Historic Preservation;

D. Relocation; and

F. Economic Development

23. PRIOR COUNTY APPROVAL (CONSTRUCTION ACTIVITIES). CITY shall obtain COUNTY's written approval, through EDA, of the project plans, specifications, and construction documents prior to CITY'S construction of same for all projects consisting of CDBG-funded construction activities. The COUNTY neither undertakes nor assumes nor will have any responsibility or duty to CITY or to any third party to review, inspect, supervise, pass judgment upon or inform CITY or any third party of any matter in connection with the development or construction of the improvements, whether regarding the quality, adequacy or suitability of the plans, any labor, service, equipment or material furnished to the property, any person furnishing the same, or otherwise. CITY and all third parties shall rely upon its or their

own judgment regarding such matters, and any review, inspection, supervision, exercise of judgment or information supplied to CITY or to any third party by the COUNTY in connection with such matter is for the public purpose of assisting with a community development and housing activity pursuant to the Act, and neither CITY (except for the purposes set forth in this Agreement) nor any third party is entitled to rely thereon. The COUNTY shall not be responsible for any of the work of construction, improvement, or development of the property.

It is the responsibility of CITY, without cost to COUNTY, to ensure that all applicable local jurisdiction land use requirements will permit development of the property and construction of the improvements and the use, operation, and maintenance of such Improvements in accordance with the provisions of this Agreement. Nothing contained herein shall be deemed to entitle Sponsor to any local jurisdiction or County permit or other local jurisdiction or County approval necessary for the development of the Property, or waive any applicable local jurisdiction or County requirements relating thereto. This Agreement does not (a) grant any land use entitlement to CITY, (b) supersede, nullify, or amend any condition which may be imposed by the local jurisdiction in connection with approval of the development described herein, (c) guarantee to CITY or any other party any profits from the development of the Property, or (d) amend any local jurisdiction or County laws, codes or rules.

24. PRIOR COUNTY APPROVAL (AQUISITION ACTIVITIES). CITY shall obtain COUNTY's written approval and authorization to proceed, through EDA, of all CDBG-funded real property acquisition activities.

25. REAL PROPERTY ACQUIRED OR PUBLIC FACILITY CONSTRUCTED WITH CDBG FUNDS. When CDBG funds are used, in whole or in part, by CITY to acquire real property or to construct a public facility, CITY will comply with the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (2 CFR Section 200.311); National Environmental Policy Act of 1969 (42 U.S.C.A. §4321, et seq.); the California Environmental Quality Act (Cal. Pub. Resources Code §21000, et seq.); the Uniform

Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. A.§4630, et seq.); and the COUNTY's Five Year Consolidated Plan. In addition, the following is to occur:

a. Title to the real property shall vest in CITY;

b. The real property will be held by CITY, or the constructed facility will be maintained by the CITY, for a minimum period of five (5) years from the date the CDBG-funded activity is closed-out and reported as complete by the COUNTY through the Comprehensive Annual Performance and Evaluation Report (CAPER);

c. While held by CITY, the real property or the constructed facility is to be used exclusively for the purposes for which acquisition or construction was originally approved by COUNTY;

d. Written approval from COUNTY must be secured if the property or the facility is to be put to an alternate use that is consistent with the COUNTY'S Five Year Consolidated Plan or the applicable federal regulations governing CDBG funds;

e. Should CITY desire to use the real property or the constructed facility, prior to the completion of the mandatory five-year period, for a purpose not consistent with applicable federal regulations governing CDBG funds or to sell the real property or facility, then:

(1) If CITY desires to retain title, CITY will reimburse COUNTY the amount that represents the percentage of current fair market value that is identical to the percentage that CDBG funds initially comprised of monies paid to acquire the property or construct the facility; or

(2) If CITY sells the property or facility or is required to sell the property or facility, CITY shall reimburse COUNTY the amount that represents the percentage of proceeds realized by the sale that is identical to the percentage that CDBG funds initially comprised of monies paid to acquire the property or construct the facility. This percentage amount will be calculated after deducting all actual and reasonable cost of sale from the sale

proceeds.

26. ENTIRE AGREEMENT. This Supplemental Agreement, including any attachments or exhibits hereto constitutes the entire Supplemental Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. No oral understanding or agreement not incorporated herein shall be binding on any of the parties hereto. Each of the attachments and exhibits attached hereto is incorporated herein by this reference.

27. SEVERABILITY. Each paragraph and provision of this Supplemental Agreement is severable from each other provision, and if any provision or part thereof is declared invalid, the remaining provisions shall remain in full force and effect.

28. EMPLOYMENT OPPORTUNITIES TO BE CAUSED BY PROJECT. CITY agrees to notify in writing, and to cause any subcontractor implementing CDBG-funded Projects to notify, in writing, the Riverside County Workforce Development Center of any and all job openings that are caused by the CDBG-funded Projects under this Supplemental Agreement.

29. MINISTERIAL ACTS. The Assistant County Executive Officer/EDA or designee(s) are authorized to take such ministerial actions as may be necessary or appropriate to implement the terms, provisions, and conditions of this Supplemental Agreement as it may be amended from time-to-time by COUNTY.

30. PROJECT ELIGIBILITY. As to CITY or its claimants, COUNTY shall bear no liability for any later determination by the United States Government, the U.S. Department of Housing and Urban Development, or any other person or entity that CITY is or is not eligible under 24 CFR Part 570 to receive CDBG entitlement funds from the COUNTY.

31. SOURCE OF FUNDING. CITY acknowledges that the source of funding pursuant to this Supplemental Agreement is Community Development Block Grant funds (CFDA 14.218), and the Grant Award Number is B-18-UC-06-0506.

32. ASSIGNMENT. The CITY shall not make any assignment or transfer in any form with respect to this Supplemental Agreement, without prior written approval of the COUNTY.

33. INTERPRETATION AND GOVERNING LAW. This Supplemental Agreement and any dispute arising hereunder shall be governed by and interpreted in accordance with the laws of the State of California. This Supplemental Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Supplemental Agreement, all parties having been represented by counsel in the negotiation and preparation hereof.

34. WAIVER. Failure by a party to insist upon the strict performance of any of the provisions of this Supplemental 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 rights to insist and demand strict compliance by the other party with the terms of this Supplemental Agreement thereafter.

35. JURISDICTION AND VENUE: Any action at law or in equity arising under this Supplemental Agreement or brought by a party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Supplemental Agreement shall be filed only in the Superior Court of the State of California, located in Riverside, Calfornia, and the parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court or jurisdiction

36. USE OF PROPERTY. Whenever federal CDBG funds or program income are used, in whole or in part, for the purchase of equipment or personal property, the property shall not be transferred from its originally funded use, by CITY or the CITY'S subcontractor implementing the CDBG-funded activity, for a period of five (5) years from the close-out date of the grant from which CDBG assistance was provided. The CITY shall maintain a current inventory for COUNTY monitoring and review.

37. AUTHORITY TO EXECUTE. The persons executing this Supplemental Agreement or exhibits attached hereto on behalf of the parties to this Supplemental Agreement hereby warrant and represent that they have the authority to execute this Supplemental Agreement

and warrant and represent that they have the authority to bind the respective parties to this Supplemental Agreement to the performance of its obligations hereunder.

38. EFFECTIVE DATE. The effective date of this Supplemental Agreement is the date the parties sign the Supplemental Agreement. If the parties sign the Supplemental Agreement on more than one date, then the last date the Supplemental Agreement is signed by a party shall be the effective date.

39. COUNTERPARTS. This Supplemental Agreement may be signed by the different parties hereto in counterparts, each of which shall be an original but all of which together shall constitute one and the same agreement.

40. FORCE MAJEURE.

A. Performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war, insurrection, strikes, lock-outs, riots, floods, earthquakes, fires, casualties, acts of God, acts of the public enemy, epidemics, quarantine restrictions, freight embargoes, lack of transportation, governmental restrictions or priority, litigation, unusually severe weather, inability to secure necessary labor, material or tools, delays of any contractor, sub-contractor or supplier, acts of the other party, acts or failure to act of a public or governmental agency or entity, or any causes beyond the control or without the fault of the party claiming an extension of time to perform.

B. An extension of time for any such cause (a "Force Majeure Delay") 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 thirty (30) calendar days of knowledge of the commencement of the cause. Notwithstanding the foregoing, none of the foregoing events shall constitute a Force Majeure Delay unless and until the party claiming such delay and interference delivers to the other party written notice describing the event, its cause, when and how such party obtained knowledge, the date the event commenced, and the estimated delay resulting therefrom. Any party claiming a Force Majeure Delay shall deliver such written notice within thirty (30) calendar days after it obtains knowledge of the event.

41. MODIFICATION OF AGREEMENT. This Supplemental Agreement may be modified or amended only by a writing signed by the duly authorized and empowered representative of COUNTY and CITY respectively.

Remainder of Page Intentionally Blank

[Signatures on Following Page]

IN WITNESS WHEREOF, the COUNTY and the CITY have executed this Agreement as of the dates set forth below.

COUNTY OF RIVERSIDE,
a political subdivision of the
State of California

BY: _____
Michael Walsh,
Deputy Director

Date: _____

APPROVED AS TO FORM:
Gregory P. Priamos, County Counsel

By: _____
Amrit P. Dhillon,
Deputy County Counsel

CITY OF BANNING,
a general law city

BY: _____

Date: _____

ATTEST:

BY: _____
City Clerk

APPROVED AS TO FORM:

BY: _____
City Attorney

CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle, Interim City Manager**

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

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution No. 2018-109, Amending Resolution 2018-72 and 2018-107 to Reschedule the Public Hearing for the Consideration of Rate Adjustments for the Collection, Transportation and Disposal of Solid Waste Services to September 11, 2018**

RECOMMENDATION ACTION:

The City Council adopt Resolution 2018-109 amending the Public Hearing date to September 11, 2018 at 5:00 p.m.

BACKGROUND:

On June 26, 2018 under Resolution 2018-72, City Council approved a Proposition 218 ("Prop 218") notice for a Consumer Price Index (CPI) rate adjustment for five consecutive years beginning in 2018 and ending 2022. Staff was directed to mail Prop 218 notifications to rate payers and property owners providing public hearing information, explanation of rate adjustments, a proposed rate schedule and instructions for submitting a protest. A public hearing was scheduled for August 28, 2018 at 5:00 p.m. to announce the quantity of protests received.

It was later determined that City Council meetings would not be held in the month of August, 2018. As a result, on July 24, 2017 under Resolution 2018-107, staff requested to move the Public Hearing to September 11, 2018. During the meeting on July 24, 2017, it was decided that the September 11, 2018 meeting would be canceled and rescheduled to September 10, 2018 and that all scheduled agendas items would be considered at that time.

Following the meeting it was determined that notices to property owners and rate payers had already been printed reflecting that a public hearing would occur on September 11, 2018 at 5:00 p.m. Consequently, staff respectively requests to reschedule the Public Hearing and move it from September 10, 2018 to September 11, 2018 at 5:00 p.m. as reflected in the Prop 218 notices that were mailed on July 27, 2018.

JUSTIFICATION:

Prop 218 notifications were mailed to property owners and rate payers reflecting the Public Hearing is scheduled for September 11, 2018 at 5:00 p.m.

FISCAL IMPACT:

There is no fiscal impact related to adjusting the Public Hearing date.

ALTERNATIVES:

City Council may choose to reject staff's recommendation and select a different meeting date. This action would delay the implementation of rates and result in lost revenues. Additional funding would also need to be allocated in order to reprint and resend Proposition 218 notifications.

ATTACHMENTS:

1. Resolution 2018-109
2. Resolution 2018-72
3. Resolution 2018-107
4. Sample Notification Mailed to Property Owners and Rate Payers

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution No. 2018-109

RESOLUTION 2018-109

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING RESOLUTION 2018-72 AND 2018-107 TO RESCHEDULE THE PUBLIC HEARING FOR THE CONSIDERATION OF RATE ADJUSTMENTS FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE SERVICES TO SEPTEMBER 11, 2018

WHEREAS, on June 26, 2018 under Resolution 2018-72, the City Council authorized a public hearing notice for a proposed Consumer Price Index (CPI) rate adjustment for five consecutive years beginning in 2018 and ending 2022; in compliance with Proposition 218 ("Prop 218") approval process; and

WHEREAS, under Resolution 2018-72 a public hearing was scheduled for August 28, 2018 at 5:00 p.m. to announce the quantity of protests received; and

WHEREAS, later it was determined that City Council meetings would not be held during the month of August, 2018; therefore, under Resolution 2018-107 the Public Hearing was rescheduled to September 10, 2018 at 5:00 p.m.; and

WHEREAS, following the approval of Resolution 2018-107 it was determined that notices to property owners and rate payers had already been printed reflecting that the Public Hearing would occur on September 11, 2018 at 5:00 p.m.

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

SECTION 1. The Banning City Council adopts Resolution 2018-109 amending Resolution 2018-72 and 2018-107 to reschedule the Public Hearing for the consideration of rate adjustments for the collection, transportation and disposal of solid waste services to September 11, 2018 at 5:00 p.m.

SECTION 2. Except as herein amended. Resolution 2018-72 shall remain in full force and effect.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

_____

George Moyer, Mayor
City of Banning

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-109, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2
Resolution No. 2018-72

RESOLUTION 2018-72

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE RATE ADJUSTMENT FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE SERVICES AND TO PROCEED WITH THE PROPOSITION 218 NOTIFICATIONS, SETTING A PROPOSITION 218 PUBLIC HEARING AND DIRECTING STAFF TO PREPARE THE FIFTH AMENDMENT TO THE FRANCHISE AGREEMENT WITH WASTE MANAGEMENT

WHEREAS, the City of Banning entered into a Franchise Agreement ("Agreement") with Waste Management of the Inland Empire in July of 1993 for an eight-year period, Resolution No. 2001-35, extended the Agreement for an additional five years from July 1, 2001 to June 30, 2006, Resolution No. 2002-28 extended the Agreement for an additional five -year period from July 1, 2006 to June 30, 2011 and Resolution No. 2011-53, extended the Agreement for an additional ten years until June 30, 2021; and

WHEREAS, the Agreement allows for an annual Consumer Price Index (CPI) adjustment and requires that rate adjustments adhere to the requirements of Proposition 218; and

WHEREAS, a Proposition 218 process was administered in July of 2016 and approved by rate payers and City Council at a Public Hearing on August 28, 2016. The approval allowed for rates to be adjusted annually for five years (2016 to 2020) based on the CPI for the Los Angeles-Orange County-Riverside index for the March to February period and subsequently CPI adjustments were implemented in October 2016 for fiscal year 2017 and July 2017 for fiscal year 2018; and

WHEREAS, United State Department of Labor, Bureau of Labor Statistic has eliminated the Los Angeles-Orange County-Riverside index referenced in the Agreement and 2016 Proposition 218 Notice and replaced it with two new indexes: Los Angeles-Long Beach-Anaheim and Riverside-San Bernardino-Ontario and therefore the methodology for calculating the CPI adjustments must be revised as follows:

> Adjustment for fiscal year 2019: the CPI adjustment for fiscal year 2019 shall be made using the Los Angeles-Long Beach-Anaheim index for the March to February period. The CPI increase during this period is 3.33%.
>
> Adjustment for fiscal years following fiscal year 2019: the annual CPI adjustment shall be applied based on the Riverside-San Bernardino-Ontario index for the March to March period.

WHEREAS, in order to implement the new method for adjusting the rates based on the CPI a new Proposition 218 process must be administered, which will include the method described above and will include an annual CPI adjustment for five consecutive years beginning in 2018 and ending in 2022; and

WHEREAS, a public hearing will be scheduled for August 23, 2018 at 5:00 p.m.; and

WHEREAS, on August 23, 2018 a draft fifth amendment to the Agreement will be presented to City Council for approval to formally revise the methodology in which CPI rate adjustments are determined.

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

SECTION 1. The Banning City Council adopts Resolution 2018-72 approving a Prop 218 Notice for an annual CPI adjustment for five consecutive years beginning in 2018 and ending in 2022 and approving a method for establishing the annual CPI adjustment the service rates for the collection, transportation and disposal of solid waste.

SECTION 2. The City Manager or her designee is authorized to proceed with the Proposition 218 notification and public hearing process related to the proposed rate adjustment.

SECTION 3. The City Manager or her designee is authorized to make necessary budget adjustment, appropriations and transfers related to the Proposition 218 notification and public hearing process.

SECTION 4. The City Manager or her designee is authorized to proceed with the preparation of the fifth amendment of the Agreement to adjust the method for implementing a Consumer Prices Index rate adjustment.

PASSED, APPROVED AND ADOPTED this 26 day of June, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

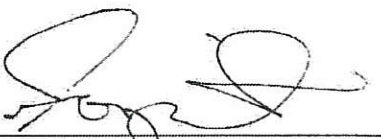
I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-72, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26th day of June, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Franklin, Peterson, Welch, and Mayor Moyer

NOES: None

ABSTAIN: None

ABSENT: None



Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 3
Resolution No. 2018-107

RESOLUTION 2018-107

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING RESOLUTION 2018-72 TO RESCHEDULE THE PUBLIC HEARING FOR THE CONSIDERATION OF RATE ADJUSTMENTS FOR THE COLLECTION, TRANSPORTATION AND DISPOSAL OF SOLID WASTE SERVICES TO SEPTEMBER 10, 2018

WHEREAS, on June 26, 2018 under Resolution 2018-72, the City Council authorized a public hearing notice for a proposed Consumer Price Index (CPI) rate adjustment for five consecutive years beginning in 2018 and ending 2022; in compliance with Proposition 218 ("Prop 218") approval process; and

WHEREAS, a public hearing was scheduled for August 28, 2018 at 5:00 p.m. to announce the quantity of protests received; and

WHEREAS, it was later determined that City Council meetings would not be held in the month of August, 2018; and

WHEREAS, the public hearing on the matter is required to be rescheduled to September 10, 2018 at 5:00 p.m. and the revised public hearing date will be included in all Prop 218 notifications and newspaper publications.

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

SECTION 1. The Banning City Council adopts Resolution 2018-107 amending Resolution 2018-72 to reschedule the public hearing for the consideration of rate adjustments for the collection, transportation and disposal of solid waste services to September 10, 2018.

SECTION 2. Except as herein amended, Resolution 2018-72 shall remain in full force and effect.

PASSED, APPROVED AND ADOPTED this 24th day of July, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:



Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-107, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 24th day of July, 2018, by the following vote, to wit:

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

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

ATTACHMENT 4

Sample Notification Mailed to Property Owners and Rate Payers

Resolution No. 2018-109

NEW RATES FOR RESIDENTIAL AND COMMERCIAL EFFECTIVE : OCTOBER 1, 2018

RESIDENTIAL SERVICES:

Residential Cart Service:	Current Monthly Rate	2018-19* New Rate
Basic Rate:	$20.99	$21.71

Other Residential Fees:	Current Monthly Rate	2018-19* New Rate
Additional 96-Gal Trash Cart	$8.38	$8.67
Additional 64-Gal Trash Cart	$6.71	$6.94
Additional 35-Gal Trash Cart	$5.04	$5.21
Additional Recycle Cart - Any Size	$2.16	$2.23
Additional Green Waste Cart - Any Size	$5.13	$5.31
Residential Set-up Fee	$11.02	$11.40
Cart Exchange - Excess of 1 p/year	$25.22	$26.08
Additional Bulky & E-waste - Per Item	$19.17	$19.83
Contamination Fee - Green Waste/Recycling	$15.00	$15.51
Return Service Fee	$0.00	$15.00

COMMERCIAL SERVICES:

Commercial Can Service:	Current Monthly Rate	2018-19* New Rate
Commercial Carts - Trash/Recycle Only	$21.35	$22.08

Commercial Trash Service:	Current Monthly Rate	2018-19* New Rate
2 Yard, 1x a week	$90.31	$93.41
2 Yard, 2x a week	$180.61	$186.80
2 Yard, 3x a week	$264.04	$273.09
2 Yard, 4x a week	$349.18	$361.15
2 Yard, 5x a week	$432.61	$447.44
2 Yard, 6x a week	$516.03	$533.72
3 Yard, 1x a week	$118.29	$122.34
3 Yard, 2x a week	$236.57	$244.68
3 Yard, 3x a week	$346.23	$358.10
3 Yard, 4x a week	$455.92	$471.55
3 Yard, 5x a week	$565.58	$584.97
3 Yard, 6x a week	$675.27	$698.42
4 Yard, 1x a week	$158.27	$163.70
4 Yard, 2x a week	$316.54	$327.39
4 Yard, 3x a week	$462.79	$478.65
4 Yard, 4x a week	$610.74	$631.68
4 Yard, 5x a week	$756.99	$782.94
4 Yard, 6x a week	$903.24	$934.20
6 Yard, 1x a week	$222.80	$230.44
6 Yard, 2x a week	$445.62	$460.90
6 Yard, 3x a week	$652.95	$675.33
6 Yard, 4x a week	$858.57	$888.00
6 Yard, 5x a week	$1,065.92	$1,102.46
6 Yard, 6x a week	$1,271.53	$1,315.12

ROLL-OFF SERVICES:

Temp Roll-Off Service:	Current Monthly Rate	2018-19* New Rate
40 Yard with 4 tons	$394.33	$407.85
Compactor - plus landfill tipping fee	$279.45	$289.03
40 Yard Permanent plus landfill tipping fees	$216.47	$223.89
10 Yard Permanent plus tipping fee	$216.47	$223.89
Roll-Off Recycle/per load	$216.47	$223.89

Other Roll-Off Fees:	Current Monthly Rate	2018-19* New Rate
Delivery/Relocate/Trip Charge	$79.01	$81.72
Minimum Pull Fee (1 per month)	$216.47	$223.89
Industrial Set-up Fee	$18.37	$19.00

Commercial Compactors:	Current Monthly Rate	2018-19* New Rate
2 Yard, 1x a week	$125.16	$129.45
2 Yard, 2x a week	$250.31	$258.89
2 Yard, 3x a week	$368.59	$381.23
2 Yard, 4x a week	$488.58	$505.33
2 Yard, 5x a week	$606.87	$627.67
2 Yard, 6x a week	$725.13	$749.99
3 Yard, 1x a week	$170.56	$176.41
3 Yard, 2x a week	$341.13	$352.82
3 Yard, 3x a week	$503.07	$520.32
3 Yard, 4x a week	$665.02	$687.82
3 Yard, 5x a week	$826.95	$855.30
3 Yard, 6x a week	$988.93	$1,022.83

Commercial Recycle Service:	Current Monthly Rate	2018-19* New Rate
2 Yard, 1x a week	$84.08	$86.96
2 Yard, 2x a week	$168.16	$173.92
3 Yard, 1x a week	$107.63	$111.32
3 Yard, 2x a week	$215.26	$222.64
4 Yard, 1x a week	$142.96	$147.86
4 Yard, 2x a week	$285.92	$295.72
6 Yard, 1x a week	$185.00	$191.34
6 Yard, 2x a week	$370.00	$382.68
Extra Pick Up - Recycle	$62.40	$64.54
Contamination Fee	$62.40	$64.54

Commercial Organics Service	Current Monthly Rate	2018-19* New Rate
64 Gallon, 1x a week	$45.49	$47.05
64 Gallon, 2x a week	$90.99	$94.11
64 Gallon, 3x a week	$136.48	$141.16
64 Gallon, 4x a week	$181.98	$188.22
64 Gallon, 5x a week	$227.46	$235.26
64 Gallon, 6x a week	$272.96	$282.32
2 Yard, 1x a week	$254.54	$263.27
2 Yard, 2x a week	$509.10	$526.55
2 Yard, 3x a week	$763.69	$789.87
2 Yard, 4x a week	$1,018.24	$1,053.15
2 Yard, 5x a week	$1,272.78	$1,316.41
2 Yard, 6x a week	$1,527.34	$1,579.70

Other Commercial Fees:	Current Monthly Rate	2018-19* New Rate
Extra Pick Up - Trash	$62.40	$64.54
Lost or Stolen Bin	$317.90	$328.80
Burned Bin	$178.02	$184.12
Bin Overage Fee	$75.93	$78.53
Temporary 3 Yard - one month	$213.39	$220.71
Temporary 3 Yard - 7 day	$130.80	$135.28
Locking Lids	$15.26	$15.78
Haul or Call Fee	$29.11	$30.11
Commercial Set-up Fee	$18.37	$19.00
Bin Exchange	$52.39	$54.19
Replacement Lock	$31.79	$32.88
Replacement key	$6.36	$6.58
Pull-out service per bin 16-35 feet	$15.00	$15.51
Pull-out service per bin 36-50 feet	$22.00	$22.75
Pull-out service per bin over 51 feet	$29.00	$29.99
Return to Service	$25.00	$25.86

*To be adjusted yearly for 5 years in accordance with the formula on the Notice of Public Hearing to which this schedule is attached

CITY OF BANNING
NOTICE OF PUBLIC HEARING

Notice of Public Hearing on Collection, Transportation, and Disposal of Solid Waste
September 11, 2018 at 5:00 P.M.
City Council Chambers – 99 East Ramsey Street, Banning, CA 92220

In compliance with Article XIIID of the California State Constitution and the Proposition 218 Omnibus Implementation Act, the City of Banning is hereby notifying all affected property owners and rate payers of the proposed rate adjustment for the Collection, Transportation and Disposal of Solid Waste.

Public Hearing Information

A public hearing will be held on Tuesday, September 11, 2018 at 5:00 p.m. at Banning City Hall located at 99 East Ramsey Street, Banning, CA, 92220. At the time of the public hearing, the City Council will hear and consider all protest and objections concerning these matters and will consider and may adopt the adjusted rates and charges.

If you oppose the proposed rate adjustments, your protest must be submitted in writing, contain a description of the property, be signed by the property owner and/or rate payer and be received prior to the close of the public hearing to be considered. Only one protest per identified account will be counted. If written protests are submitted by a majority of the affected property owners and/or rate payers, the proposed rate adjustment may not be imposed. Written protests must be sent to the City Clerk, City of Banning; 99 East Ramsey Street, P.O. Box 998, Banning, CA 92220.

Explanation of Rate Adjustments

The City of Banning contracts the collection, transportation and disposal of solid waste services through Waste Management of the Inland Empire. The primary reason for this notice is to update the method for calculating the annual CPI adjustment due to the United States Department of Labor, Bureau of Labor Statistics (BLS) replacing the Los Angeles-Orange County-Riverside Consumer Price Index (CPI) which was previously approved.

By approval of the rate increase future rate increases will be based on the CPI formula (defined below) or an alternative formulaic, automatic adjustment (also defined below) for an additional four-year period without further hearing or protest; such automatic adjustments to be in 2019, 2020, 2021, 2022 commencing on or after July 1 in each of such years. Note: CPI is an index of prices used to measure the change in the cost of basic goods and services in comparison with a fixed based period, also known as a cost-of-living index. The index used to determine the CPI adjustment will be based on All Urban Consumers published by the BLS. The initial rate increase for Fiscal Year 2019, scheduled to be implemented on October 1, 2018, will be based on the Los Angeles-Long Beach-Anaheim index for the March to February period immediately preceding the effective date of the rate adjustment. Beginning July 1st, 2020 and thereafter, CPI rate adjustments will be based on the Riverside-San Bernardino-Ontario index for the March to March period immediately preceding the effective date of the rate adjustment.

The CPI or other measure of automatic annual adjustments to be used will be as follows:

i. Service Component. The Service Component comprises sixty-five percent (65%) of the rate. The Service Component will be adjusted by the CPI and determined by the methodology identified above.

ii. Disposal/Green Waste Processing Component. The Disposal/Green Waste Processing Component comprises thirty five percent (35%) of the rate and will be adjusted by the greater of either (1) the CPI for the period immediately preceding the effective date of the rate adjustment as described above; or (2) the percentage increase in the per ton tipping fee established by the Riverside County Waste Management Department for disposal of Solid Waste generated within Riverside County at landfills comprising the County System (Badlands Landfill, Lamb Canyon Landfill, El Sobrante Landfill) for the period immediately preceding the effective date of the rate adjustment.

The City Council may in its discretion adopt such increases without further hearing and protest proceedings. The schedule of proposed rate adjustments covered by this notice will be for a period of five years starting from the effective date of the first increase.

If you wish to legally challenge any action taken by the City on the solid waste rate increases, you may be limited to raising only those issues you or someone else raised prior to or at the public hearing as described in this notice.

Notice of Proposed Rate Adjustment for the Collection, Transportation and Disposal of Solid Waste Services

City Council will consider adoption of the proposed rate adjustment described in this notice on September 11, 2018 at 5:00pm. If written protests against the proposed rates, as outlined in this letter, are not presented by a ***majority*** of property owners or customers of record, the City Council will be authorized to implement the proposed rates. If adopted, the rate adjustment for the collection, transportation and disposal of solid waste services will be in effect beginning October 1, 2018. Additionally, if the rates are approved, future consumer price index rate adjustments will be authorized for four (4) additional years with future increases occurring July 1st of 2019, 2020, 2021 and 2022.

If you have any questions about the proposed rate changes or would like additional information, please call: (951) 922-3130 8:00 a.m. to 5:00 p.m. Monday through Friday.

DETACH FORM BELOW TO SUBMIT PROTEST:

PROPOSITION 218 PROTEST FORM

SUBMIT TO
CITY CLERK
99 E. RAMSEY STREET
BANNING, CA 92220

SUBMIT BY
5:00 P.M.
September 11, 2018
Must submit protest by close of comment period at public hearing

By checking the applicable box and signing the form below, I protest the proposed solid rate adjustment. I affirm under penalty of law that I am the owner of the parcel or customer of the address below.

☐ I protest the rate adjustment for the collection, transportation and disposal of solid waste.

Property Owner or Parcel Information
Property Owner Name: _____
Assessor's Parcel Number (APN): _____
Street Address: _____
City, State, Zip Code: _____

Customer Information
Customer Name: _____
Customer Account Number: _____
Service Street Address: _____
City, State, Zip Code: _____

Property Owner or Customer Signature: _____
Signature Date: _____

CIUDAD DE BANNING
Aviso de audiencia pública

Aviso de audiencia pública sobre colección, transporte y disposición de residuos sólidos
11 de septiembre del 2018 a las 5:00pm
En la cámara del Concilio– 99 East Ramsey Street, Banning, CA 92220

En cumplimiento con el artículo XIIID de la Constitución del estado de California y la Proposición 218 Omnibus Implementation Act, la ciudad de Banning por este medio notifica a todos los propietarios afectados y los contribuyentes de la tarifa sobre el propuesto ajuste a la tarifa para la colección, transporte y disposición de residuos sólidos.

Información sobre la audiencia pública

La audiencia pública será el martes, 11 de septiembre del 2018 a las 5:00 pm en el City Hall de la ciudad de Banning ubicado en 99 East Ramsey Street, Banning, CA, 92220. En el momento de la audiencia pública, el Concilio escuchará y considerará toda protesta y objeciones con respecto a estos asuntos y considera e puede adoptar las tarifas ajustadas y cargos.

Si se oponen a los ajustes de la tarifa propuesta, su protesta debe presentarse por escrito, necesita tener una descripción de la propiedad, ser firmada por el dueño o el pagador de la tarifa y ser recibida antes del cierre de la audiencia pública para ser considerada. Se computará solamente una protesta por cuenta identificada. Si las protestas son presentadas por la mayoría de los propietarios afectados o los contribuyentes de la tarifa, no se podrá imponer el ajuste de la tarifa propuesta. Protestas escritas deben enviarse a la secretaria de la ciudad, ciudad de Banning; 99 East Ramsey Street, P.O. Box 998, Banning, CA 92220.

Explicación de los ajustes de tarifa

La ciudad de Banning contrata los servicios de colección, transporte y disposición de residuos sólidos a través de Waste Management de Inland Empire. La razón principal de este aviso es de actualizar el método para calcular el ajuste anual de la CPI (por sus siglas en ingles) que está reemplazando el Departamento de trabajo de Estados Unidos, la oficina de trabajo estadísticas (BLS por sus siglas en inglés) a el índice de precios al consumidor (IPC por sus siglas en inglés) de Los Angeles-Orange County-Riverside que fueron previamente aprobados.

Con la aprobación de aumento a la tarifa los futuros aumentos de tarifa se basarán en la fórmula de CPI (por sus siglas en ingles) y (definido a continuación) o un ajuste formulista alternativo, ajuste automático (también definido a continuación) por un período adicional de cuatro años sin alguna audiencia o protesta; tales ajustes automáticos se darán en el 2019, 2020, 2021, 2022 comenzando en o después del 1 de julio en cada uno de los dichos años. Nota: CPI (por sus siglas en inglés) es un índice de precios utilizado para medir el cambio en el costo de bienes y servicios en comparación con una base de período fijo, también conocido como un índice de costo de vida. El índice usado para determinar el ajuste del CPI (por sus siglas en inglés) se basará en todos los consumidores urbanos, publicados por el BLS (por sus siglas en ingles). El aumento de la tarifa inicial para el año fiscal 2019, programado para implementarse el 1 de octubre de 2018, se basará en el índice de Los Ángeles-Long Beach-Anaheim del periodo de marzo a febrero que precede inmediatamente a la fecha efectiva del ajuste de la tarifa. A partir del 1 de julio de 2020 y después, ajustes del tipo de CPI (por sus siglas en inglés) se basará en el índice de Riverside-San Bernardino-Ontario durante el período de marzo a marzo que precederá inmediatamente a la fecha efectiva del ajuste de la tarifa.

El CPI (por sus siglas en inglés) u otra medida de ajustes automáticos anuales que se utilizarán serán los siguientes:

i. Componente de servicio. El componente de servicio es el sesenta y cinco por ciento (65%) de la tarifa. El componente del servicio será ajustado por el CPI (por sus siglas en ingles) y determinado por la metodología mencionada anteriormente.

ii. Componente de procesamiento de disposición de residuos/residuos verdes. El componente de procesamiento de disposición de residuos/residuos verdes se compone de treinta y cinco por ciento (35%) de la tarifa y será ajustado por el mayor de (1) el CPI (por sus siglas en inglés) del período que inmediatamente precede a la fecha efectiva al ajuste de la tarifa como se describe anteriormente; o (2) el aumento de porcentaje sobre la cuota por tonelada establecida por el departamento de gestión de residuos del condado de Riverside para la disposición de residuos sólidos generados dentro del condado de Riverside en los vertederos que son parte del sistema del condado (Badlands Landfill, Lamb Canyon Landfill, El Sobrante Landfill) del período que inmediatamente precede a la fecha efectiva al ajuste de la tarifa.

El concilio puede, a su discreción, adoptar dichos aumentos sin alguna audiencia y actuaciones de protesta. El programa de ajustes del tipo de propuesta cubiertos por este aviso será por un período de cinco años à partir de la fecha efectiva del primer aumento.

Si desea impugnar legalmente cualquier acción tomada por la ciudad en el aumento a la tarifa de residuos sólidos, se limita a elevar sólo las cuestiones que usted o alguien más hizo antes o en la audiencia pública como se describe en este aviso.

Aviso del propuesto ajuste a la tarifa para la colección, transporte y disposición de servicios de residuos sólidos

El Concilio considerará adoptar el ajuste de la tarifa propuesta que se describe en este aviso el 11 de septiembre del 2018 a las 5:00pm. Si las protestas contra las tarifas propuestas, como se indica en esta carta, no se presentan por una **mayoría** de los propietarios o clientes de registro, el Concilio estará autorizado a aplicar las tarifas propuestas. Si se adopta, el ajuste de la tarifa para la colección, transporte y disposición de servicios de residuos sólidos estará vigente a partir del 1 de octubre del 2018. Además, si se aprueban las tarifas, futuros ajustes de tarifas del índice de precios al consumidor también serán autorizados por cuatro (4) años adicionales los futuros incrementos ocurrirán el 1 de julio de 2019, 2020, 2021 y 2022.

Si usted tiene alguna pregunta acerca de los cambios de la tarifa propuesta o desea información adicional, por favor llame al: (951) 922-3130 entre las 8:00am y las 5:00 pm de lunes a viernes.

SEPARAE EL FORMULARIO DE ABAJO PARA PRESENTAR LA PROTESTA:

FORMA DE PROTESTA DE LA PROPOSICIÓN 218

PRESENTA AL
CITY CLERK
99 E. RAMSEY STREET
BANNING, CA 92220

PRESENTA ANTES O EL
11 de septiembre del 2018
a las 5:00 pm
Debe presentar protesta antes del cierre del período de comentario de la audiencia pública

Al marcar la casilla aplicable y al firmar el formulario de abajo, protesto el ajuste de la tarifa propuesta. Afirmo bajo pena de ley que yo soy el dueño/a de la parcela o el cliente de la siguiente dirección.

☐ Protesto el ajuste de la tarifa para la colección, transporte y disposición de residuos sólidos.

Dueño de la propiedad o información de parcela
Nombre del propietario: _____
Número de parcela (APN): _____
Dirección: _____
Ciudad, estado, código postal: _____

Información del cliente
Nombre del cliente: _____
Número de cuenta del cliente: _____
Dirección, calle de servicio: _____
Ciudad, estado, código postal: _____

Firma de propietario o cliente: _____
Fecha de Firma: _____

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CITY OF BANNING
PUBLIC HEARING

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Robert Fisher, Interim Chief of Police**

MEETING DATE: **September 10, 2018**

SUBJECT: **Adopt Resolution 2018-114, Acceptance of the 2018 Edward Byrne Memorial Justice Assistance Grant**

RECOMMENDED ACTION:

The City Council accept grant funds provided by the Office of Justice Programs in the amount of $11,604 for the police department to purchase additional Puma belt recorders.

JUSTIFICATION:

The Police Department proposes to use the grant funds to purchase new Puma belt recorders as replacements for Puma belt recorders that are approaching their end of useful life. The grant will facilitate the purchase of (26) new Puma belt recorders.

Officers use Puma belt recorders to memorialize evidence in criminal investigations with citizens.

BACKGROUND:

On July 24, 2018, the Banning Police Department received notification from the U.S. Bureau of Justice Assistance that it was eligible to apply for the 2018 Local Edward Byrne Memorial Justice Assistance Grant (JAG) in the amount of $11,604. Per U.S. Department of Justice regulations, a public hearing must be conducted to allow citizens to make comments on the intended use of the noted grant funds before funding can be approved.

For the FY18 Local Edward Byrne Memorial JAG, the U.S. Bureau of Justice Assistance is requiring all eligible agencies in Riverside County to submit a

consolidated application with one Fiscal Agent (FA) as the grant administrator. The Riverside County Sheriff's Department has agreed to take on the role as the FA for 2018. As in years past, the FA agency will receive 10% of each agency's grant award ($1,160 for Banning) to help offset the costs associated with administering the grant for the agencies involved.

FISCAL IMPACT:

Accepted Byrne Grant funds will be appropriated to the Police Department's Ordnance Account to pay for the Puma belt recorders. Upon completion of the purchases, the Police Department will submit a request for reimbursement to the Riverside County Sheriff's Department.

ALTERNATIVES:

1. Adopt Resolution 2018-114
2. Reject Resolution 2018-114. If rejected, provide direction on the use of the noted grant.

ATTACHMENTS:

1. Resolution 2018-114
2. MOU 2018 Justice Assistance Grant
3. Public Hearing Notice

Approved by:

Rochelle Clayton,
Interim City Manager

ATTACHMENT 2

Resolution 2018-114

RESOLUTION NO. 2018-114

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, AUTHORIZING THE ACCEPTANCE OF THE 2018 U.S. DEPARTMENT OF JUSTICE EDWARD BYRNE MEMORIAL JUSTICE ASSISTANCE GRANT IN THE AMOUNT OF $11,604 TO BE USED BY THE POLICE DEPARTMENT TO PURCHASE NEW PUMA DIGITAL AUDIO RECORDERS.

WHEREAS, having completed a public hearing on the proposed use of the 2018 U.S. Department of Justice Byrne Grant; and

WHEREAS, the Banning Police Department is committed to providing its officers with up-to-date technology and equipment; and

WHEREAS, the City's procedures require the City Council to adopt a resolution authorizing the acceptance of grant funds and their use.

NOW, THEREFORE, BE IT RESOLVED, AS FOLLOWS: The City Council of the City of Banning authorizes the acceptance of the 2018 U.S. Department of Justice Edward Byrne Memorial Assistance Grant in the amount of $11,604 and its intended use and upon award of the grant appropriates $10,444 of those funds to the Banning Police Department Ordnance Account (001-2200-421.36-01), which, upon completion of the purchase will be reimbursed to the City through the Riverside County Sheriff's Department. The Finance Department is authorized to make necessary budget adjustments related to these accepted funds.

PASSED, APPROVED, AND ADOPTED this 10th day of September 2018.

George Moyer, Mayor
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT

Kevin Ennis
Richards Watson Gershon

ATTEST

Sonja De La Fuente, Deputy City Clerk
City of Banning

CERTIFICATION

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the forgoing Resolution No. 2018-114 was duly adopted by the City Council of the City of Banning at the regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

MOU 2018 Justice Assistance Grant

INTERLOCAL AGREEMENT
BETWEEN CITIES OF BANNING, CATHEDRAL CITY, COACHELLA, CORONA, DESERT HOT SPRINGS, HEMET, INDIO, JURUPA VALLEY, MORENO VALLEY, PALM SPRINGS, PERRIS, THE COUNTY OF RIVERSIDE AND
THE CITY OF RIVERSIDE, CA

CONCERNING DISTRIBUTION OF THE
2018 JUSTICE ASSISTANCE GRANT AWARD

This Agreement is made and entered into this ___ day of _____, 2018, by and between THE CITY OF RIVERSIDE, acting by and through its governing body, the Riverside City Council (hereinafter referred to as "CITY"), and the aforementioned COUNTY (hereinafter referred to as "COUNTY") and named CITIES (hereinafter referred to as "CITIES"), acting by and through their respective governing bodies, the Board of Supervisors and City Councils, all of whom are situated within the County of Riverside, State of California, as follows:

WHEREAS, each governing body, in performing governmental functions or in paying for the performance of governmental functions hereunder, shall make that performance or those payments from current revenues legally available to that party; and

WHEREAS, each governing body finds that the performance of this Agreement is in the best interests of all parties, that the undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and

WHEREAS, the CITY agrees to release to COUNTY and CITIES their respective grant allocation from the JAG Award, less ten percent (10%) re-allocated to CITY, as reflected on Appendix 1 here attached and hereby incorporated by reference as part of this agreement, on a reimbursement basis; and CITY agrees to provide the administration of COUNTY's and CITIES' programs during the entire permissible duration of said programs; and additionally the COUNTY and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines; and

WHEREAS, the COUNTY, CITIES and CITY believe it to be in their best interests to reallocate the JAG funds,

NOW THEREFORE, the CITY and COUNTY and CITIES agree as follows:

Section 1.

CITY agrees to release to COUNTY and CITIES up to their respective grant allocation from the JAG Award, less ten percent (10%) re-allocated to CITY, as reflected in Appendix 1 here attached and hereby incorporated by reference as part of this Agreement, on a reimbursement basis, from the JAG Award within (45) days upon receipt of fully documented reimbursement request, and; CITY agrees to provide the administration of COUNTY's and CITIES' programs during the entire permissible duration of said programs.

Section 2.

COUNTY and CITIES each agree that it is their responsibility to ensure these funds are expended in accordance with JAG guidelines.

Section 3.

COUNTY and CITIES agree to provide CITY with sufficient timely information as necessary within five business days after receiving written request from CITY to meet JAG requirements for quarterly financial and performance metrics reports and semi-annual programmatic reports.

Section 4.

Nothing arising from this Agreement shall impose any liability for claims or actions against CITY other than what is authorized by law.

Section 5.

Nothing arising from this Agreement shall impose any liability for claims or actions against COUNTY and/or CITIES other than what is authorized by law.

Section 6.

Each party to this Agreement will be responsible for its own actions in providing services under this Agreement and shall not be liable to any other party to this Agreement for any claim or action arising from the services provided under this Agreement.

Section 7.

The parties to this Agreement do not intend for any third party to obtain a right by virtue of this Agreement.

Section 8.

By entering into this Agreement, the parties do not intend to create any obligations, either express or implied, other than those set out herein; further, this Agreement shall not create any rights in any party not a signatory hereto.

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF RIVERSIDE, CA

_____
Lea Deesing
Assistant City Manager

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

_____
Gary G. Geuss
City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

COUNTY OF RIVERSIDE, CA

_____

Chair, County Board of Supervisors

ATTEST:

_____

Clerk of the Board of Supervisors

APPROVED AS TO FORM:

_____

County Counsel

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF BANNING, CA

_____

Rochelle Clayton
Interim City Manager

ATTEST:

_____

Sonja De La Fuente, Deputy City Clerk

APPROVED AS TO FORM:

_____

Kevin G. Ennis
City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF CATHEDRAL CITY, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF COACHELLA, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF CORONA, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF DESERT HOT SPRINGS, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF HEMET, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF INDIO, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF JURUPA VALLEY, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF MORENO VALLEY, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF PALM SPRINGS, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

WHEREFORE, all parties freely and voluntarily agree to all of the above terms.

CITY OF PERRIS, CA

_____

City Manager

ATTEST:

_____

City Clerk

APPROVED AS TO FORM:

_____

City Attorney

Appendix 1
Eligible Agencies in FY2018 JAG Disparate Area

Riverside City FA	BJA Formula	To Fiscal Agent	New Allocation	% to FA
Riverside City	106,196	30,523	136,719	
Banning	11,604	-1,161	10,443	10.0%
Cathedral City	10,070	-1,007	9,063	10.0%
Coachella	11,169	-1,117	10,052	10.0%
Corona	13,929	-1,393	12,536	10.0%
Desert Hot Springs	17,303	-1,731	15,572	10.0%
Hemet	37,878	-3,788	34,090	10.0%
Indio	38,823	-3,883	34,940	10.0%
Jurupa Valley	20,805	-2,081	18,724	10.0%
Moreno Valley	47,667	-4,767	42,900	10.0%
Palm Springs	21,188	-2,119	19,069	10.0%
Perris	15,310	-1,531	13,779	10.0%
Riverside County	59,449	-5,945	53,504	10.0%
	411,391	0	411,391	
Less City of Riverside allocation	-106,196 305,195			
% To Fiscal Agent	10%			
$ To FA	30,523			

ATTACHMENT 3

Public Hearing Notice

Record Gazette
218 N. Murray St.

Proof of Publication

(2015.5 C.C.P.)

157675 2018 BRYNE GRANT

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:

August 24, 31, 2018

Executed on: 08/31/2018

At Banning , CA

I ceritfy (or declare) under penalty of perjury that the foregoing is true and correct.

Ana Rivera

Signature

NOTICE OF PUBLIC HEARING PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held at a regular City Council Meeting on Tuesday, September 10, 2018 at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California regarding the following:
An application for Edward Byrne Memorial Grant funding through the Office of Justice Planning in the amount of $11,604 to purchase new Tasers for use by the Banning Police Department. Information regarding the foregoing can be obtained by contacting the Banning Police Department (951) 849-1195 or by visiting the Police Department located at 125 E. Ramsey.
ALL INTERESTED PARTIES are invited to attend said hearing and present oral or written testimony on the matter or send their written comments to the City Clerk, 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, if a public hearing is held on the proposal, you or someone else must have raised those issues at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).
BY ORDER OF THE CITY CLERK of the City of Banning, California.
/s/ Sonja De La Fuente,
City Clerk
City of Banning,
California
DATED: August 15, 2018
PUBLISH: August 24, 2018
and August 31, 2018
Published in
The Record Gazette
No. 157675
08/24, 30, 2018

CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Patty Nevins, Community Development Director**

MEETING DATE: **September 10, 2018**

SUBJECT: **ZONING TEXT AMENDMENT 18-97502 TO AMEND VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) TO ADDRESS CLARIFICATIONS, INCONSISTENCIES WITHIN THE TEXT AND UPDATES TO ADDRESS RESIDENT AND BUSINESS COMMUNITY NEEDS RELATING TO ALCOHOL BEVERAGE SALES, RETAIL AUTO PART SALES, TATTOO ESTABLISHMENTS, CHAIN LINK FENCING, PUBLIC UTILITY FACILITIES, FREEWAY ORIENTED CITY IDENTIFICATION SIGNS, HOME OCCUPATION PERMITS AND DESIGN REVIEW APPROVAL AUTHORITY**

RECOMMENDED ACTION:

Staff recommends that the City Council:

I. Adopt a Categorical Exemption for Zone Text Amendment 18-97502; and

II. Adopt Ordinance 1530 approving Zone Text Amendment 18-97502

APPLICANT INFORMATION:

Applicant: City of Banning
99 E. Ramsey Street
Banning, CA 92220

COMMITTEE RECOMMENDATION:

At its August 1, 2018 meeting, the Planning Commission unanimously recommended approval of the proposed Zoning Text Amendments. Minor verbiage changes have since been made to the ordinance heading and the definition of city identification sign.

BACKGROUND:

Staff regularly reviews the City's Zoning Ordinance to identify potential improvements and to present recommendations with respect to amendments in order to address regulated land uses and clarifications and inconsistencies within the text. This report contains recommendations for amendment of various sections to address certain commercial uses and use-specific standards, public facility uses, fencing, parking, signs, home occupation permits, and design review requirements.

PROPOSAL/ANALYSIS:

Proposed Amendments

Strikeout (formatted as ~~strikeout~~) denotes existing language to be removed; underline (formatted as underline) denotes new language to be added.

1. Alcoholic Beverage Control (ABC) Licenses, Separation From Churches

Proposed Amendment:
Amend Section 17.12.050 *Use specific standards* as follows:
B.2. In addition to any conditions of approval imposed by the Planning Commission, the following standards shall apply:

a. Establishments shall not be located within 500 feet of any ~~religious institution,~~ school~~,~~ or public park within the City.

Rationale:
Religious institutions may be located in commercial zones and commercial storefronts, which precludes commercial businesses requiring an ABC license for alcohol sales (other than sit-down restaurants) from being established within 500'. The requirement for Planning Commission approval of a Conditional Use Permit for ABC licenses (other than sit-down restaurants) provides adequate opportunity for review and notice of ABC licenses while not unnecessarily restricting bona-fide commercial businesses from considering commercial locations.

2. Alcoholic Beverage Control (ABC) Licenses, DC Zoning Conflict

Proposed Amendment: Amend Table 12.12.020, Permitted, Conditional and Prohibited Commercial and Industrial Uses, as follows:

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Alcoholic beverage sales, on- or off-site	~~X~~ C	C	C	C	X	X	X	X

Rationale:
A conflict occurs in the zoning code wherein according to Table 17.12.020 - Permitted, Conditional and Prohibited Commercial and Industrial Uses, alcoholic beverage sales on- or off-site, are not permitted in the Downtown Commercial zone although they are a conditionally permitted use in all other zones. This is in conflict with the zoning ordinance provisions that allow consideration of bars and drinking establishments (which by definition have on-site alcoholic beverage sales) as a conditionally permitted use in the Downtown Commercial zoning district. Staff has interpreted the alcoholic beverage sales exclusion to apply to liquor stores, which are not permitted in the Downtown Commercial zoning district. This amendment codifies that interpretation.

3. **Retail Auto Parts Sales in the Downtown Commercial Zone**

Proposed Amendment: Amend Table 12.12.020, Permitted, Conditional and Prohibited Commercial and Industrial Uses, as follows:

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								

Auto, mobile home, and motor vehicle sales, ~~and~~ with or without part sales, new and/or used[3]	X	P	P	X	P	P	C	X
Auto, mobile home, and motor vehicle ~~sales, and~~ part sales~~, new and used~~ [3]	~~X~~ C	P	P	X	P	P	C	X

[3] Reserved.

Rationale:

Staff has been approached regarding the inability of an existing auto-parts related business to expand operations within the Downtown Commercial (DC) zone, where such a use is nonconforming and expansion is thus limited by the City's zoning code. Currently, automobile-related uses are prohibited in the DC zone, which the Zoning Ordinance describes, in part, as follows:

> b. New auto related uses proposed after adoption of the 2005 General Plan will be prohibited. All existing auto uses in existence as of the adoption of the 2005 General Plan will be permitted until such time as the use in a particular location ceases operation for a period of six months."

An intent to disallow auto related uses is thus evidenced in the existing code language; this language may be seen as consistent with a vision of creating a traditional, historic downtown in the DC zone where one might expect small, pedestrian-oriented specialty retail and service businesses. If the City's vision is to create a retail district not limited in this manner, retail automobile-related uses may be considered consistent with what the City hopes to achieve in the DC zone. However, staff has noted that similarly, the City's General Plan states that "Auto related uses proposed after adoption of this General Plan will be prohibited". Thus, unless both the statements in the General Plan and the Zoning Ordinance are interpreted as pertaining only to auto sales and auto repair, and not to auto parts sales, a General Plan Amendment would be required in addition to a Zoning Ordinance Amendment. One distinction between the two sets of uses could be made in that parts sales are interior, retail storefront type uses that may be seen as consistent with other sales uses allowed in the DC zone such as furniture and general merchandise sales. Auto sales and repairs however are visually different in terms of their display and work areas being outside and automobile-oriented rather than internal walk-in sales facilities.

Staff has prepared a potential amendment that makes retail auto parts a conditionally permitted use, which would give the Planning Commission the ability to make decisions regarding this type of use on a site-specific basis. Findings specific to the auto-related uses have been included, should the Planning Commission (and ultimately the City Council) agree with the findings.

4. Tattoo Establishments

Proposed Amendment:
Amend 17.040.070 – Definitions – as follows:

Body Piercing Studio ~~Parlor~~ means any business or premises dedicated to the piercing, puncture or perforation of human skin or tissue, or the insertion of jewelry or other objects into or under the skin or tissue, for decorative, nonmedical purposes; the term "body piercing studio ~~parlor~~" does not include businesses that offer ear-only piercing as a service that is secondary to other business services, or acupuncture clinics.

Tattoo ~~**Parlor**~~ **Studio** means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term "tattoo ~~parlor~~ studio" does not include businesses that offer permanent make-up as a service that is secondary to other business services.

Amend Table 17.12.020 as follows:

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing ~~Parlors~~Studios	~~X~~ C	C	C	C	C	C	X	X

Amend Table 17.12.020 as follows:

Table 17.12.050
Use Specific Standards

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing ~~Parlors~~ Studios	*	*	*	*	*	*		

Tattoo Establishments. Subsection R. (Tattoo and Body Piercing Parlors) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

R. Tattoo and Body Piercing ~~Parlors~~Studios. As indicated in table 17.12.020, a conditional use permit is required for tattoo and/or body piercing businesses. The following standards shall apply:

1. ~~The business shall not be located within one thousand feet of any other tattoo and/or body piercing parlor as measured from any point from the outer boundaries of the property containing the business.~~

2. ~~The business shall not be located within five hundred feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.~~

3. ~~The business shall not be located within five hundred feet of any business selling alcoholic beverages, as measured from any point from the outer boundaries of the property containing the business.~~

4. ~~The business shall not be located within one hundred feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.~~

5. ~~The business shall not be located within six hundred feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.~~

1.~~6.~~ The business shall maintain in a sanitary condition at all times both the facilities and employees of the business. All walls, ceilings, floors, furnishings, and instruments used for tattoo and piercing shall be kept in good repair, and maintained in a clean and sanitary condition. Employees shall be required to wash their hands prior to any contact with customers.

2~~7~~. Officers of the police department, code enforcement division, and the fire department shall have the right to enter any tattoo and body piercing businesses during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being complied with, provided reasonable and normal business operations shall not be interfered with by said inspection.

3~~8~~. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

49. All activities shall be located indoors.

Rationale:
The City has received inquiries during the last year for tattoo and body art businesses interested in occupying storefront space within the Downtown Commercial zoning areas of the City. There were concerns regarding the proximity of a significant portion the City's commercial zones generally to residential areas effectively prohibiting such uses in the downtown area and along most of Ramsey Street, as the main commercial corridor. Similarly, required separation from numerous other uses is prohibitive for this type of business. By implementing the proposed changes, tattoo and body art facilities would be allowed in most of the commercially zoned areas of the City, subject to a Conditional Use Permit.

5. **Chain Link Fencing**

Proposed Amendment:
Amend Section 17.12.130 - Walls and fences – as follows:

A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.

B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.

C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the director through technical staff review.

D. Long walls should include pillars or other treatment every fifty feet to provide visual relief.

E. Chain link and Bbarbed wire fencing is prohibited except as provided for below.

F. Chain link fencing shall be allowed subject to Design Review approval by the Planning Commission, within the Industrial and Airport Industrial zoning districts for projects that are at least five acres (or two hundred seventeen thousand eight hundred square feet) in size with a single business entity managing all operations within the site.

G. Precision block walls must be stuccoed.

Rationale:
The City has seen increased interest in the last 16 months with respect to industrial end users considering locating within the City. For many of the larger projects (5+ acres), the prohibition for chain-link by Municipal Code is cost

prohibitive, thus, these end users look to other communities for building their facilities. Staff finds that limited provisions for chain link fencing, to be approved through the Design Review process, would allow consideration of this type of fencing where appropriate.

6. **Parking Studies:**

Proposal:

Amend Table 17.28.040B *Commercial and Industrial Parking Requirements* as follows:

All other commercial uses not listed	One space for each 200 sq. ft. of gross floor area.
Parking Studies	Required parking for commercial uses may be adjusted with approval of a parking study by the Planning Commission, subject to a finding by the Planning Commission that the parking requirements of the specific use are unique and that the adjustment is therefore warranted.

Rationale:

There are certain uses that are unique with respect to parking needs, and there is no provision in the Zoning Ordinance for consideration of alternate parking requirements for such uses.

7. **Public Utility Facilities**

Proposal:

Amend Tables 17.16.020 and 17.20.020 as follows:

Table 17.16.020

Permitted, Conditional And Prohibited Public Facilities Uses

	PF-A	PF-G	PF-F	PF-S	PF-H
Other Uses					

Public Utility Facilities	P	P	P	P	P

Table 17.20.020

Permitted, Conditional and Prohibited Open Space Uses

	OS-R	OS-PA	OS-PU	OS-H
Other Uses				
Public Utility Facilities	P	P	P	P

Rationale:
Public utility facilities are currently permitted in all commercial zones excepting the Downtown Commercial zone. The City's water utility department currently has a need to site one facility (a well site) adjacent to a park, and the City's utility departments could have future needs to locate facilities in other areas, thus allowing them to be located in other zoning districts consistent with current allowances in most commercial districts is proposed.

8. **Freeway-Oriented City Identification Sign**

Proposed Amendments to Chapter 17.36 - Sign Regulations:

Freeway-Oriented City Identification Sign. Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to add the following defined term in alphabetical order:

"**City Identification Sign.** A freeway-oriented pylon sign that prominently displays the name of the City of Banning and that may also include within the pylon sign a billboard, outdoor advertising structure, or an electronic message center."

Freeway-Oriented City Identification Sign. The defined term "relocated billboard" in Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"**Relocated Billboard.** An existing billboard that is located in the city that is relocated through a city council approved relocation agreement, including the replacement of a static billboard face with an electronic message center. The relocated billboard is not considered a new outdoor advertising sign."

Freeway-Oriented City Identification Sign. Subsection D. of Section 17.36.060 (Prohibited Signs) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"D. Billboards or outdoor advertising structures. However, notwithstanding any other provision of this chapter, and consistent with the California Business and Professions Code Outdoor Advertising Act provisions, relocated billboards or outdoor advertising ~~signs~~structures, including electronic message centers~~, electronic message boards, and changeable message boards~~, may be considered and constructed as part of a relocation agreement ~~requested by the city and~~ entered into between the city and a billboard sign, and/or property owner, and new city identification signs may be considered and constructed as part of a lease agreement, development agreement, or other agreement between the city, a sign owner, and property owner and subject to the requirements of section 17.36.110(B)(9) of the Banning Municipal Code. ~~The replacement of a static billboard face with an electronic message center, electronic message board, or changeable message board shall be considered a relocation for purposes of this section.~~ Such agreements may be approved by resolution of the city council upon terms that are agreeable to the city, pursuant to administrative guidelines, as adopted by the city council resolution. The execution of a relocation, lease agreement, development agreement or other agreement shall not operate to change the status of any billboard as a nonconforming use for the purpose of this code."

Freeway-Oriented City Identification Sign. A new Subsection (B)(9) is hereby added to Section 17.36.110 (Sign Regulations) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) to read as follows:

9. City identification sign. City identification signs shall be allowed subject to approval by City Council resolution and the following requirements:

    a. City Identification signs shall not be permitted south of Interstate 10 from Sunset to Hargrave.

b. The City shall have the right to place public service announcements and emergency service announcements on any such electronic messaging center so long as they are not excessive or burdensome. The limits on public service announcements will be stipulated in a City Council agreement.

c. The use of onsite electric generators to power digital billboards for normal operations shall be prohibited.

d. The sign face for any City Identification sign shall not overhang onto Interstate 10 or any other state highway.

e. Signs shall be shielded to prevent light or glare intrusion onto adjoining properties that are located within five-hundred (500) feet.

f. Message changes on any electronic message center shall be limited to one message every six (6) seconds, or that allowed by the California Department of Transportation, whichever is greater.

g. No electronic message center shall simulate motion or exhibit any images or series of images that could be considered "animated" in any way, including but not limited to sequential still images that update faster than once every 6 seconds. No electronic message center shall contain any flashing, sparkling, intermittent or moving lights. There shall be no flashing or scrolling messages. Changes in color or light intensity on a still image or message at a rate faster than once every 6 seconds are also not permitted.

h. Electronic message centers shall contain automatic dimmers that maintain a maximum luminance of 7,500 nits during the daylight hours, and 500 nits from dusk (official sunset) to sunrise and during times of fog (One nit is equivalent to one candela per square meter). Each electronic message center shall be equipped with a mechanism to monitor brightness.

j. City Identification signs shall not be illuminated between the hours of 11 p.m. to 5 a.m. when located within five-hundred (500) feet of an existing residential property, or residentially zoned property.

k. The following advertising shall not be permitted: adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic be

community standards. Objectionable advertising shall be set forth in the City Council agreement.

l. City Identification signs shall not be allowed in the Downtown Commercial (DC) zoning district.

m. City Identification signs shall require permit approval through the Building and Safety Division, CalTrans, the Riverside County Airport Land Use Commission if located within a compatibility zone, and any other responsible agency.

n. City Identification signs shall include architectural enhancements that add aesthetic appeal.

o. City Identification signs shall not exceed 55 feet in height.

p. City Identification signs shall not exceed a face are area of 14 by 48 feet, inclusive of City identification.

q. City Identification signs and all parts, portions, and materials shall be manufactured, assembled, and erected in compliance with all applicable State, Federal, and City regulations and the Uniform Building Code (BMC Section 17.36.100(A)).

r. City Identification signs shall be maintained and kept in good repair. The display surface shall be kept clean, neatly maintained, and free from rust or corrosion. Any cracked, broken surfaces, malfunctioning lights, missing sign copy, or other unmaintained or damaged portion of a sign shall be repaired or replaced within 30 calendar days following notification by the City. Noncompliance with such a request shall constitute a nuisance and penalties may be assessed.

s. Any sign agreement shall include a provision requiring the billboard owner to demonstrate that they have made reasonable efforts to solicit advertising from local businesses and nonprofits, including discounts and incentives during periods where other advertising cannot be obtained. Local businesses are defined as any business located within the City limits.

t. Enforcement provisions shall provide for written notice of violations and the opportunity to cure breaches, the potential to recover liquidated damages, the posting of securities where repeated violations occur, and the right to recover attorney fees and costs in the event that administrative or legal action is required.

u. Any other provisions contained in the lease agreement, development agreement, or other agreement that the City deems to be appropriate to protect the public health, safety, and welfare of the City.

9. **Mobile Home Park Conditional Use Permit Requirement for Home Occupation Permits:**

Proposal:
Amend Chapter 17.08 *RESIDENTIAL DISTRICTS,* Section 17.08.010(B)(9) *Purpose* as follows:
9. Mobile Home Park (MHP). The district applies to existing mobile home parks or subdivisions within the City. Only mobile parks and subdivisions are permitted. ~~Home occupations may be appropriate with the approval of a conditional use permit.~~

Rationale:
Home Occupation Permits are normally allowed within any residential structure. As the Zoning Code's existing regulation of home occupations ensures that neighbors are not impacted by home based businesses, there is no apparent reason that mobile home residents should be required to obtain a Conditional Use Permit.

10. **Design Review Approval Authority**

Proposal:
Amend Table 17.44.010, Review Authority, as follows:

Table 17.44.010
Review Authority

	Community Development Director	Planning Commission	City Council
Design Review			
Commercial:			
Occupancy Permit	X		
Tenant Improvements	X		
Exterior Additions or Modifications less than 20% of existing structure	X		
All other Improvements		X	

Rationale:
There have been recent incidents where business owners have desired to do small additions and/or exterior renovations which would not seem to warrant the process

required by the City's current design review requirements; however there is no streamlined process available for minor building modifications. This proposal would provide a path for minor projects to be reviewed at staff level.

California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment 18-97502 and has determined that it is Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA*. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)

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

Public Comment

The proposed Categorical Exemption and Zone Text Amendment was advertised in the Record Gazette newspaper on August 31, 2018.

Two letters of opposition are attached under Attachment 3.

FISCAL IMPACT:

No direct fiscal impact.

OPTIONS:

I. Approve as recommended.
II. Approve with desired modifications.
III. Do not approve and provide staff with alternative direction.

ATTACHMENTS:

1. Draft Ordinance 1530
2. Planning Commission Resolution No. 2018-11
3. Public Comment Letter
4. Public Hearing Notice

Approved by:

Rochelle Clayton, Interim City Manager

ATTACHMENT 1

Draft Ordinance

ORDINANCE 1530

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, MAKING FINDINGS PURSUANT TO CEQA AND ADOPTING ZONING TEXT AMENDMENT 18-97502, AMENDING VARIOUS SECTIONS OF THE CITY'S ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE) RELATING TO ALCOHOL BEVERAGE SALES, RETAIL AUTO PART SALES, TATTOO ESTABLISHMENTS, CHAIN LINK FENCING, PUBLIC UTILITY FACILITIES, FREEWAY ORIENTED CITY IDENTIFICATION SIGNS, HOME OCCUPATION PERMITS AND DESIGN REVIEW APPROVAL AUTHORITY

WHEREAS, in 2006, the City Council of the City of Banning adopted Ordinance No. 1339, approving Zone Change No. 03-3501 repealing the then existing zoning ordinance and adopting the new Zoning Ordinance that included sign regulations; and

WHEREAS, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, a need for clarifications, and an opportunity for updates to address resident and business community needs (Zoning Text Amendment 18-97502); and

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

WHEREAS, on August 1, 2018, the Planning Commission conducted a duly noticed public hearing to consider proposed Zoning Text Amendment 18-97502, and following receipt of public comments and the close of the public hearing, adopted Planning Commission Resolution No. 2018-11, recommending that the City Council adopt Zoning Text Amendment 18-97502; and

WHEREAS, in accordance with Chapter 17.68 (Hearings and Appeals) of the City of Banning Municipal Code and Government Code Sections 65856 and 65090, on July 20, 2018, the City gave public notice, by advertisement in the Record Gazette newspaper, of a public hearing concerning the City Council's consideration of proposed Zoning Text Amendment 18-97502; and

WHEREAS, on September 10, 2018, the City Council conducted a duly noticed public hearing to consider proposed Zoning Text Amendment 18-97502, at which interested persons had an opportunity to testify in support of, or opposition to, proposed Zoning Text Amendment 18-97502; and

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

SECTION 1. ENVIRONMENTAL.

A. California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment 18-97502 and has determined that it is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA*. The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

B. Multiple Species Habitat Conservation Plan (MSHCP)

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

SECTION 2. REQUIRED FINDINGS.

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Ordinance text amendments meet certain findings prior to approval by the City Council. The City Council hereby makes the following findings, as supported by substantial evidence on the record, including and incorporating all facts and evidence in the staff report and its attendant attachments, in support of the approval of the Zoning Text Amendment 18-97502:

Finding No. 1: Proposed Zoning Text Amendment 18-97502 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zoning Text Amendment 18-97502 is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and zoning classifications within the City will not change, and the text amendments will result in clarifying and promoting the implementation of the goals, policies, and programs of the General Plan. The primary General Plan Land Use Goals state *"A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents".* The proposed amendments are intended to establish consistency between regulations within the Zoning Ordinance and opportunities for area businesses. Further, with respect to proposed amendments concerning auto parts sales in the Downtown Commercial (DC) zoning district, the City Council

finds that the auto parts sales amendment is consistent with the General Plan in that the prohibition on auto related uses in the DC land use designation as stated in the Land Use Element is determined to pertain to auto sales uses and repair uses, but not to indoor auto parts sales uses. The proposed amendment to conditionally permit auto parts sales uses in the DC Zoning District, is consistent with the intent of the DC land use designation in that such uses are small scale commercial retail uses that will help to encourage an overall sense of pedestrian access and community in the DC land use designation.

Finding No. 2: Proposed Zoning Text Amendment 18-97502 is internally consistent with the Zoning Ordinance.

Findings of Fact: Proposed Zoning Text Amendment 18-97502 is consistent with the existing provisions of the Zoning Ordinance. The proposed text amendments will resolve inconsistencies and provide opportunities consistent with other regulations found within the Zoning Ordinance. Therefore, the proposed text amendments are internally consistent with the Zoning Ordinance.

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

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed Zoning Text Amendment 18-97502 and has determined that it is exempt from review under CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The proposed text amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that proposed Zoning Text Amendment 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. ENVIRONMENTAL.

Determination of Exemption from CEQA. In accordance with Public Resources Code Section 21006 and CEQA Guidelines Section 15061, the City Council has reviewed the Planning Division's determination of exemption of the proposed Zoning Text Amendment

18-97502 from review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3), and based on its own independent judgment, concurs in staff's determination of exemption. The City Council hereby directs the Community Development Director to file a Notice of Exemption in accordance with CEQA.

SECTION 4. APPROVAL OF ZONING TEXT AMENDMENT 18-97502.

The City Council of the City of Banning hereby amends Title 17 (Zoning) of the Banning Municipal Code as follows, with strikeouts (formatted as ~~strikeout~~) denoting existing language to be removed and underlining (formatted as underline) denoting new language to be added:

A. **Alcoholic Beverage Control (ABC) Licenses, Separation From Religious Institutions.** Subsection (B)(2)(a) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"B. Alcohol Beverage Control "ABC" License.

...

2. In addition to any conditions of approval imposed by the Planning Commission, the following standards shall apply:

...

a. Establishments shall not be located within 500 feet of any ~~religious institution,~~ school~~,~~ or public park within the City."

B. **Alcoholic Beverage Sales, On- or Off-Site in the Downtown Commercial Zone.** The following retail use listed in Table 17.20.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR

Retail Uses								
Alcoholic beverage sales, on- or off-site	~~X~~ C	C	C	C	X	X	X	X

C. **Auto, Mobile Home, and Motor Vehicle Parts Sales in the Downtown Commercial Zone.** The following retail uses listed in Table 17.12.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code are hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Auto, mobile home, and motor vehicle sales, ~~and~~with or without part sales, new and/or used[3]	X	P	P	X	P	P	C	X
Auto, mobile home, and motor vehicle ~~sales, and~~ part sales~~, new and used~~ [3]	~~X~~ C	P	P	X	P	P	C	X

[3] Reserved.

D. **Tattoo Establishments.** The definitions of "body piercing parlor" and "tattoo parlor" in Section 17.04.070 (Definitions) of Chapter 17.04 (Basic Provisions) of Division I (General Provisions) of Title 17 (Zoning) of the Banning Municipal Code are hereby amended to read as follows:

"**Body Piercing Studio ~~Parlor~~** means any business or premises dedicated to the piercing, puncture or perforation of human skin or tissue, or the insertion of jewelry or other objects into or under the skin or tissue, for decorative, nonmedical purposes; the term "body piercing studio~~parlor~~" does not include businesses that offer ear-only piercing as a service that is secondary to other business services, or acupuncture clinics."

"**Tattoo ~~Parlor~~Studio** means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term "tattoo ~~parlor~~studio" does not include businesses that offer permanent make-up as a service that is secondary to other business services."

E. **Tattoo Establishments.** The following services use listed in Table 17.12.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing ~~Parlors~~Studios	~~X~~ C	C	C	C	C	C	X	X

F. **Tattoo Establishments.** The following use listed in Table 17.12.050 (Use Specific Development Standards) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.050

Use Specific Development Standards

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
"Q. Tattoo and Body Piercing ~~Parlors~~Studios	*	*	*	*	*	*"		

G. **Tattoo Establishments.** Subsection R. (Tattoo and Body Piercing Parlors) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"R. Tattoo and Body Piercing ~~Parlors~~Studios. As indicated in table 17.12.020, a conditional use permit is required for tattoo and/or body piercing businesses. The following standards shall apply:

~~1. The business shall not be located within one thousand feet of any other tattoo and/or body piercing parlor as measured from any point from the outer boundaries of the property containing the business.~~

~~2. The business shall not be located within five hundred feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.~~

~~3. The business shall not be located within five hundred feet of any business selling alcoholic beverages, as measured from any point from the outer boundaries of the property containing the business.~~

~~4. The business shall not be located within one hundred feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.~~

~~5. The business shall not be located within six hundred feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.~~

16. The business shall maintain in a sanitary condition at all times both the facilities and employees of the business. All walls, ceilings, floors, furnishings, and instruments used for tattoo and piercing shall be kept in good repair, and maintained in a clean and sanitary condition. Employees shall be required to wash their hands prior to any contact with customers.

27. Officers of the police department, code enforcement division, and the fire department shall have the right to enter any tattoo and body piercing businesses during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being complied with, provided reasonable and normal business operations shall not be interfered with by said inspection.

38. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

49. All activities shall be located indoors."

H. **Chain Link Fencing.** Section 17.12.130 (Walls and Fences) of Article III (Commercial and Industrial Development Design Guidelines) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.

B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.

C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the director through technical staff review.

D. Long walls should include pillars or other treatment every fifty feet to provide visual relief.

E. Chain link and Bbarbed wire fencing is prohibited, except as provided for in Section 17.24.080 or below.

F. Chain link fencing shall be allowed subject to Design Review approval by the Planning Commission within the Industrial (I) district and Airport Industrial (AI) district for projects that are at least five acres (or two hundred seventeen thousand eight hundred square feet) in size with a single business entity managing all operations within the site.

~~F~~G. Precision block walls must be stuccoed.

I. **Parking Studies.** Table 17.28.040B (Commercial and Industrial Parking Requirements) of Section 17.28.040 (Number of Required Parking Spaces) of Chapter 17.28 (Parking and Loading Standards) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to add the following row after the row listing the use "All other commercial uses not listed":

Table 17.28.040B

Commercial and Industrial Parking Requirements

Use	Number of Required Parking Spaces
All other commercial uses not listed	One space for each 200 sq. ft. of gross floor area.
Parking Studies	Required parking for commercial uses may be adjusted with approval of a parking study by the Planning Commission, subject to a finding by the Planning Commission that the parking requirements of the specific use are unique and that the adjustment is therefore warranted.

J. **Public Utility Facilities.** "Other uses" listed in Table 17.16.020 (Permitted, Conditional and Prohibited Public Facilities Uses) of Section 17.16.020 (Permitted, Conditional and Prohibited Uses) of Chapter 17.16 (Public Facilities Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to include "public utility facilities" in alphabetical order to read as follows:

Table 17.16.020

Permitted, Conditional And Prohibited Public Facilities Uses

	PF-A	PF-G	PF-F	PF-S	PF-H
Other Uses					

"Public Utility Facilities	P	P	P	P	P"

K. **Public Utility Facilities.** "Other uses" listed in Table 17.20.020 (Permitted, Conditional and Prohibited Open Space Uses) of Section 17.20.020 (Permitted, Conditional and Prohibited Uses) of Chapter 17.20 (Open Space Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to include "public utility facilities" in alphabetical order to read as follows:

Table 17.20.020

Permitted, Conditional and Prohibited Open Space Uses

	OS-R	OS-PA	OS-PU	OS-H
Other Uses				
"Public Utility Facilities	P	P	P	P"

L. **Freeway-Oriented City Identification Sign.** Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to add the following defined term in alphabetical order:

"**City Identification Sign.** A freeway-oriented pylon sign that prominently displays the name of the City of Banning and that may also include within the pylon sign~~, including a billboards~~, outdoor advertising structure~~s~~, or an electronic message center~~s~~."

M. **Freeway-Oriented City Identification Sign.** The defined term "relocated billboard" in Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"**Relocated Billboard.** An existing billboard that is located in the city that is relocated through a city council approved relocation agreement, including the replacement of a static billboard face with an electronic message center. The relocated billboard is not considered a new outdoor advertising sign."

N. **Freeway-Oriented City Identification Sign.** Subsection D. of Section 17.36.060 (Prohibited Signs) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"D. Billboards or outdoor advertising structures. However, notwithstanding any other provision of this chapter, and consistent with the California Business and Professions Code Outdoor Advertising Act provisions, relocated billboards or outdoor advertising ~~signs~~structures, including electronic message centers~~, electronic message boards, and changeable message boards~~, may be considered and constructed as part of a relocation agreement ~~requested by the city and~~ entered into between the city and a billboard and/or property owner, and new city identification signs may be considered and constructed as part of a lease agreement, development agreement, or other agreement between the city, a sign, and property owner and subject to the requirements of section 17.36.110(B)(9) of the Banning Municipal Code. ~~The replacement of a static billboard face with an electronic message center, electronic message board, or changeable message board shall be considered a relocation for purposes of this section.~~ Such agreements may be approved by resolution of the city council upon terms that are agreeable to the city, pursuant to administrative guidelines, as adopted by the city council resolution. The execution of a relocation, lease agreement, development agreement, or other agreement shall not operate to change the status of any billboard as a nonconforming use for the purpose of this code."

O. **Freeway-Oriented City Identification Sign.** A new Subsection (B)(9) is hereby added to Section 17.36.110 (Sign Regulations) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) to read as follows:

9. City identification sign. City identification signs shall be allowed subject to approval by City Council resolution and the following requirements:

   a. City Identification signs shall not be permitted south of Interstate 10 from Sunset to Hargrave.

   b. The City shall have the right to place public service announcements and emergency service announcements on any such electronic messaging center so long as they are not excessive or burdensome. The limits on public service announcements will be stipulated in a City Council agreement.

   c. The use of onsite electric generators to power digital billboards for normal operations shall be prohibited.

d. The sign face for any City Identification sign shall not overhang onto Interstate 10 or any other state highway.

e. Signs shall be shielded to prevent light or glare intrusion onto adjoining properties that are located within five-hundred (500) feet.

f. Message changes on any electronic message center shall be limited to one message every six (6) seconds, or that allowed by the California Department of Transportation, whichever is greater.

g. No electronic message center shall simulate motion or exhibit any images or series of images that could be considered "animated" in any way, including but not limited to sequential still images that update faster than once every 6 seconds. No electronic message center shall contain any flashing, sparkling, intermittent or moving lights. There shall be no flashing or scrolling messages. Changes in color or light intensity on a still image or message at a rate faster than once every 6 seconds are also not permitted.

h. Electronic message centers shall contain automatic dimmers that maintain a maximum luminance of 7,500 nits during the daylight hours, and 500 nits from dusk (official sunset) to sunrise and during times of fog (One nit is equivalent to one candela per square meter). Each electronic message center shall be equipped with a mechanism to monitor brightness.

j. City Identification signs shall not be illuminated between the hours of 11 p.m. to 5 a.m. when located within five-hundred (500) feet of an existing residential property, or residentially zoned property.

k. The following advertising shall not be permitted: adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic be community standards. Objectionable advertising shall be set forth in the City Council agreement.

l. City Identification signs shall not be allowed in the Downtown Commercial (DC) zoning district.

m. City Identification signs shall require permit approval through the Building and Safety Division, CalTrans, the Riverside County Airport Land Use Commission if located within a compatibility zone, and any other responsible agency.

n. City Identification signs shall include architectural enhancements that add aesthetic appeal.

o. City Identification signs shall not exceed 55 feet in height.

p. City Identification signs shall not exceed a face are area of 14 by 48 feet, inclusive of City identification.

q. City Identification signs and all parts, portions, and materials shall be manufactured, assembled, and erected in compliance with all applicable State, Federal, and City regulations and the Uniform Building Code (BMC Section 17.36.100(A)).

r. City Identification signs shall be maintained and kept in good repair. The display surface shall be kept clean, neatly maintained, and free from rust or corrosion. Any cracked, broken surfaces, malfunctioning lights, missing sign copy, or other unmaintained or damaged portion of a sign shall be repaired or replaced within 30 calendar days following notification by the City. Noncompliance with such a request shall constitute a nuisance and penalties may be assessed.

s. Any sign agreement shall include a provision requiring the billboard owner to demonstrate that they have made reasonable efforts to solicit advertising from local businesses and nonprofits, including discounts and incentives during periods where other advertising cannot be obtained. Local businesses are defined as any business located within the City limits.

t. Enforcement provisions shall provide for written notice of violations and the opportunity to cure breaches, the potential to recover liquidated damages, the posting of securities where repeated violations occur, and the right to recover attorney fees and costs in the event that administrative or legal action is required.

u. Any other provisions contained in the lease agreement, development agreement, or other agreement that the City deems to be appropriate to protect the public health, safety, and welfare of the City.

P. **Mobile Home Park Conditional Use Permit Requirement for Home Occupation Permits.** Subsection (B)(9) (Mobile Home Park (MPH)) of Section 17.08.010 (Purpose) of Article I (General Provisions) of Chapter 17.08 (Residential Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"9. Mobile Home Park (MHP). The district applies to existing mobile home parks or subdivisions within the City. Only mobile parks and subdivisions

are permitted. ~~Home occupations may be appropriate with the approval of a conditional use permit.~~"

Q. **Design Review Approval Authority.** Table 17.44.010 (Review Authority) of Section 17.44.010 (Purpose) of Chapter 17.44 (Administration— General Provisions) of Division IV (Administration) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add the following row after "Design Review; Commercial; Tenant Improvements" and before "Design Review; Commercial; All other improvements" to read as follows:

Table 17.44.010

Review Authority

	Community Development Director	Planning Commission	City Council
Design Review			
Commercial:			
Tenant Improvements	X		
Exterior Additions or Modifications less than 20% of existing structure	X		
All other Improvements		X	

SECTION 5. Severability.

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

SECTION 6. PUBLICATION; EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper

of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

PASSED, APPROVED, AND ADOPTED this 10th day of September, 2018.

_____
George Moyer, Mayor
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon, APC

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance 1530 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 10th day of September, 2018, and was duly adopted at a regular meeting of said City Council on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Planning Commission Resolution

RESOLUTION 2018-11

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING APPROVAL TO THE CITY COUNCIL OF AN ENVIRONMENTAL EXEMPTION AND ZONING TEXT AMENDMENT 18-97502 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE)

WHEREAS, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, a need for clarifications, and a need for updates to address resident and business community needs; and

WHEREAS, staff has identified the need to address restrictions affecting and an inconsistency in the treatment of, alcoholic beverage control licenses and tattoo and body piercing studios as found in Section 17.12.050 Use Specific Standards and Table 17.12.020 Permitted, Conditional and Prohibited Commercial and Industrial Uses of the City of Banning Municipal Code; and

WHEREAS, staff has identified the need to provide a path for consideration of retail auto parts sales in the Downtown Commercial zoning district as well as unclassified uses as regulated within Table 12.12.020, Permitted, Conditional and Prohibited Commercial and Industrial and chain link fencing for certain industrial uses as regulated under 17.12.130 Walls and Fences; and

WHEREAS, staff has identified the need to consider certain updated regulations pertaining to parking as regulated under Table 17.28.040(B) Commercial and Industrial Parking Requirements and public utility facilities as regulated under Tables 17.16.020 Permitted, Conditional And Prohibited Public Facilities Uses and Table 17.20.020 Permitted, Conditional and Prohibited Open Space Uses; and

WHEREAS, staff has identified the need to amend Sign Regulations Section 17.36.030 – Definitions,17.36.060- Prohibited Signs, and 17.36.110 Signs in Commercial and Industrial Zones to provide opportunity for City identification signage; and

WHEREAS, staff has identified the need to amend Section 17.08.010(B)(9) to correct an inconsistency related to home occupation permits; and

WHEREAS, staff has identified the need to amend Table 17.44.101 – Review Authority to provide for a streamlined process for minor commercial design modifications; and

WHEREAS, the Planning Commission has authority pursuant to Section 17.116.030 (Planning Commission Action on Amendments) of the City of Banning Municipal Code to make a written recommendation to the City Council to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

WHEREAS, the City has reviewed the proposed Zoning Text Amendment for compliance with the California Environmental Quality Act (CEQA) and it is determined that Zone Text Amendment 18-97502 is not a 'project" under CEQA Guidelines 15061(b)(3); and

WHEREAS, on June 29, 2018, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning Zone Text Amendment 18-97502; and

WHEREAS, on July 11, 2018, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the project and at which the Planning Commission considered the environmental exemption and Zone Text Amendment 18-97502.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The following environmental findings are made and supported by substantial evidence on the record before the Planning Commission, including and incorporating all evidence in the staff report and attendant attachments thereto:

California Environmental Quality Act (CEQA)
In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment 18-97502 and has determined that it is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)
The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance

will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

SECTION 2. REQUIRED FINDINGS FOR ZONE TEXT AMENDMENT 18-97502.

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zone Text Amendments meet certain findings prior to recommendation of approval by the Planning Commission and approval by the City Council. The Planning Commission hereby makes the following findings, as supported by substantial evidence on the record including and incorporating all facts and evidence in the staff report and its attendant attachments, in support of the recommendation for approval of the Zone Text Amendment 18-97502:

Finding No. 1: Proposed Zone Text Amendment 187-97502 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zone Text Amendment 18-97502 is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations within the City will not change, and the text amendments will result in clarifying and promoting the implementation of the goals, policies and programs of the General Plan. The primary General Plan Land Use Goals state *"A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents"*. The proposed amendments are intended to establish consistency between regulations within the Zoning Ordinance and opportunities for area businesses.

Finding No. 2: Proposed Zone Text Amendment 18-97502 is internally consistent with the Zoning Ordinance.

Findings of Fact: Proposed Zone Text Amendment 18-97502 is consistent with the existing provisions of the Zoning Ordinance. The proposed amendments will resolve inconsistencies and provide opportunities consistent with other regulations found within the Zoning Ordinance. Therefore, the proposed zone text amendments will are internally consistent with the Zoning Ordinance.

Finding No. 3: The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment 18-97502 and has determined that it is exempt from CEQA pursuant to Section

15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. PLANNING COMMISSION ACTION.

The Planning Commission hereby takes the following action:

Adoption of Planning Commission Resolution 2018-11:

1. Recommending to the City Council the adoption of the environmental exemption under Section 15061(b)(3) of the CEQA Guidelines for Zone Text Amendment 18-97502; and

2. Recommending to the City Council the adoption of Ordinance 1530 approving Zone Text Amendment 18-97502.

PASSED, APPROVED AND ADOPTED this 11th day of July, 2018.

Eric Shaw, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT:

Serita Young, Assistant City Attorney
Richards Watson & Gershon

ATTEST:

Sandra Calderon, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, 2018-11, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 1st day of August, 2018, by the following vote, to wit:

AYES: Aldredge, Krick, Price, Schuler, Shaw

NOES: None

ABSENT: None

ABSTAIN: None

Sandra Calderon

Sandra Calderon, Recording Secretary
City of Banning, California

ORDINANCE 1530

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, MAKING FINDINGS PURSUANT TO CEQA AND ADOPTING ZONING TEXT AMENDMENT 18-97502, AMENDING VARIOUS SECTIONS OF THE CITY'S ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE)

WHEREAS, in 2006, the City Council of the City of Banning adopted Ordinance No. 1339, approving Zone Change No. 03-3501 repealing the then existing zoning ordinance and adopting the new Zoning Ordinance that included sign regulations; and

WHEREAS, a review of the existing Zoning Ordinance text reveals certain inconsistencies within the text, conflicting information between sections, a need for clarifications, and an opportunity for updates to address resident and business community needs (Zoning Text Amendment 18-97502); and

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

WHEREAS, on July 11, 2018, the Planning Commission conducted a duly noticed public hearing to consider proposed Zoning Text Amendment 18-97502, and following receipt of public comments and the close of the public hearing, adopted Planning Commission Resolution No. 2018-11, recommending that the City Council adopt Zoning Text Amendment 18-97502; and

WHEREAS, in accordance with Chapter 17.68 (Hearings and Appeals) of the City of Banning Municipal Code and Government Code Sections 65856 and 65090, on June 29, 2018, the City gave public notice, by advertisement in the Record Gazette newspaper, of a public hearing concerning the City Council's consideration of proposed Zoning Text Amendment 18-97502; and

WHEREAS, on [month] [day], 2018, the City Council conducted a duly noticed public hearing to consider proposed Zoning Text Amendment 18-97502, at which interested persons had an opportunity to testify in support of, or opposition to, proposed Zoning Text Amendment 18-97502; and

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

SECTION 1. ENVIRONMENTAL.

A. California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment 18-

97502 and has determined that it is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

B. Multiple Species Habitat Conservation Plan (MSHCP)

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

SECTION 2. REQUIRED FINDINGS.

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Ordinance text amendments meet certain findings prior to approval by the City Council. The City Council hereby makes the following findings, as supported by substantial evidence on the record, including and incorporating all facts and evidence in the staff report and its attendant attachments, in support of the approval of the Zoning Text Amendment 18-97502:

Finding No. 1: Proposed Zoning Text Amendment 18-97502 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zoning Text Amendment 18-97502 is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and zoning classifications within the City will not change, and the text amendments will result in clarifying and promoting the implementation of the goals, policies, and programs of the General Plan. The primary General Plan Land Use Goals state *"A balanced, well planned community including businesses which provides a functional pattern of land uses and enhances the quality of life for all Banning residents".* The proposed text amendments are intended to establish consistency between regulations within the Zoning Ordinance and opportunities for area businesses.

Finding No. 2: Proposed Zoning Text Amendment 18-97502 is internally consistent with the Zoning Ordinance.

Findings of Fact: Proposed Zoning Text Amendment 18-97502 is consistent with the existing provisions of the Zoning Ordinance. The proposed text

amendments will resolve inconsistencies and provide opportunities consistent with other regulations found within the Zoning Ordinance. Therefore, the proposed text amendments are internally consistent with the Zoning Ordinance.

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

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed the proposed Zoning Text Amendment 18-97502 and has determined that it is exempt from review under CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines, which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The proposed text amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that proposed Zoning Text Amendment 18-97502 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. ENVIRONMENTAL.

Determination of Exemption from CEQA. In accordance with Public Resources Code Section 21006 and CEQA Guidelines Section 15061, the City Council has reviewed the Planning Division's determination of exemption of the proposed Zoning Text Amendment 18-97502 from review under CEQA pursuant to CEQA Guidelines Section 15061(b)(3), and based on its own independent judgment, concurs in staff's determination of exemption. The City Council hereby directs the Community Development Director to file a Notice of Exemption in accordance with CEQA.

SECTION 4. APPROVAL OF ZONING TEXT AMENDMENT 18-97502.

The City Council of the City of Banning hereby amends Title 17 (Zoning) of the Banning Municipal Code as follows, with strikeouts (formatted as ~~strikeout~~) denoting existing language to be removed and underlining (formatted as underline) denoting new language to be added:

A. **Alcoholic Beverage Control (ABC) Licenses, Separation From Religious Institutions.** Subsection (B)(2)(a) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12

(Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"B. Alcohol Beverage Control "ABC" License.

...

2. In addition to any conditions of approval imposed by the Planning Commission, the following standards shall apply:

...

a. Establishments shall not be located within 500 feet of any ~~religious institution,~~ school~~,~~ or public park within the City."

B. **Alcoholic Beverage Sales, On- or Off-Site in the Downtown Commercial Zone.** The following retail use listed in Table 17.20.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Alcoholic beverage sales, on- or off-site	~~X~~ C	C	C	C	X	X	X	X

C. **Auto, Mobile Home, and Motor Vehicle Parts Sales in the Downtown Commercial Zone.** The following retail uses listed in Table 17.12.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code are hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Auto, mobile home, and motor vehicle sales, ~~and~~with or without part sales, new and/or used[3]	X	P	P	X	P	P	C	X
Auto, mobile home, and motor vehicle ~~sales, and~~ part sales~~, new and used~~ [3]	~~X~~ C	P	P	X	P	P	C	X

[3] Reserved.

D. **Tattoo Establishments.** The definitions of "body piercing parlor" and "tattoo parlor" in Section 17.04.070 (Definitions) of Chapter 17.04 (Basic Provisions) of Division I (General Provisions) of Title 17 (Zoning) of the Banning Municipal Code are hereby amended to read as follows:

"**Body Piercing Studio ~~Parlor~~** means any business or premises dedicated to the piercing, puncture or perforation of human skin or tissue, or the insertion of jewelry or other objects into or under the skin or tissue, for decorative, nonmedical purposes; the term "body piercing studio~~parlor~~" does not include businesses that offer ear-only piercing as a service that is secondary to other business services, or acupuncture clinics."

"**Tattoo ~~Parlor~~Studio** means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term "tattoo ~~parlor~~studio" does not include businesses that offer permanent make-up as a service that is secondary to other business services."

E. **Tattoo Establishments.** The following services use listed in Table 17.12.020 (Permitted, Conditional and Prohibited Commercial and Industrial Uses) of

Section 17.12.020 (Permitted, Conditional and Prohibited Uses) of Article I (General Provisions) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.020

Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Services								
Tattoo and Body Piercing ~~Parlors~~Studios	~~X~~ C	C	C	C	C	C	X	X

F. **Tattoo Establishments.** The following use listed in Table 17.12.050 (Use Specific Development Standards) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

Table 17.12.050

Use Specific Development Standards

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
"Q. Tattoo and Body Piercing ~~Parlors~~Studios	*	*	*	*	*	*"		

G. **Tattoo Establishments.** Subsection R. (Tattoo and Body Piercing Parlors) of Section 17.12.050 (Use Specific Standards) of Article II (Land Use District Development Standards) of Chapter 17.12 (Commercial and Industrial Districts) of

Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"R. Tattoo and Body Piercing ~~Parlors~~Studios. As indicated in table 17.12.020, a conditional use permit is required for tattoo and/or body piercing businesses. The following standards shall apply:

~~1. The business shall not be located within one thousand feet of any other tattoo and/or body piercing parlor as measured from any point from the outer boundaries of the property containing the business.~~

~~2. The business shall not be located within five hundred feet of any adult-oriented business as measured from any point from the outer boundaries of the property containing the business.~~

~~3. The business shall not be located within five hundred feet of any business selling alcoholic beverages, as measured from any point from the outer boundaries of the property containing the business.~~

~~4. The business shall not be located within one hundred feet of any residential use as measured from any point between the outer boundaries of the property containing the business and the nearest property line of a residentially occupied property.~~

~~5. The business shall not be located within six hundred feet of a school, park or day care center/family day care home as measured from any point between the outer boundaries of the property containing the business to the nearest property line of the school, park or day care center/family day care home.~~

16. The business shall maintain in a sanitary condition at all times both the facilities and employees of the business. All walls, ceilings, floors, furnishings, and instruments used for tattoo and piercing shall be kept in good repair, and maintained in a clean and sanitary condition. Employees shall be required to wash their hands prior to any contact with customers.

27. Officers of the police department, code enforcement division, and the fire department shall have the right to enter any tattoo and body piercing businesses during regular business hours to make reasonable inspection to ascertain whether the provisions of this chapter are being complied with, provided reasonable and normal business operations shall not be interfered with by said inspection.

38. The hours of operation shall be no earlier than 7:00 a.m. and no later than 10:00 p.m.

49. All activities shall be located indoors."

H. **Chain Link Fencing.** Section 17.12.130 (Walls and Fences) of Article III (Commercial and Industrial Development Design Guidelines) of Chapter 17.12 (Commercial and Industrial Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

A. Walls should be kept to the lowest height possible to accomplish their screening or buffering function.

B. Walls should always be decorative, and should be designed to blend with the structure's architectural style.

C. Security fencing should combine solid walls with wrought iron grill work. Additional height for security fencing may be approved by the director through technical staff review.

D. Long walls should include pillars or other treatment every fifty feet to provide visual relief.

E. Chain link and ~~B~~barbed wire fencing is prohibited, except as provided for below.

F. Chain link fencing shall be allowed subject to Design Review approval by the Planning Commission within the Industrial (I) district and Airport Industrial (AI) district for projects that are at least five acres (or two hundred seventeen thousand eight hundred square feet) in size with a single business entity managing all operations within the site.

~~F~~G. Precision block walls must be stuccoed.

I. **Parking Studies.** Table 17.28.040B (Commercial and Industrial Parking Requirements) of Section 17.28.040 (Number of Required Parking Spaces) of Chapter 17.28 (Parking and Loading Standards) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to add the following row after the row listing the use "All other commercial uses not listed":

Table 17.28.040B

Commercial and Industrial Parking Requirements

Use	Number of Required Parking Spaces

All other commercial uses not listed	One space for each 200 sq. ft. of gross floor area.
Parking Studies	Required parking for commercial uses may be adjusted with approval of a parking study by the Planning Commission, subject to a finding by the Planning Commission that the parking requirements of the specific use are unique and that the adjustment is therefore warranted.

J. **Public Utility Facilities.** "Other uses" listed in Table 17.16.020 (Permitted, Conditional and Prohibited Public Facilities Uses) of Section 17.16.020 (Permitted, Conditional and Prohibited Uses) of Chapter 17.16 (Public Facilities Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to include "public utility facilities" in alphabetical order to read as follows:

Table 17.16.020

Permitted, Conditional And Prohibited Public Facilities Uses

	PF-A	PF-G	PF-F	PF-S	PF-H
Other Uses					
"Public Utility Facilities	P	P	P	P	P"

K. **Public Utility Facilities.** "Other uses" listed in Table 17.20.020 (Permitted, Conditional and Prohibited Open Space Uses) of Section 17.20.020 (Permitted, Conditional and Prohibited Uses) of Chapter 17.20 (Open Space Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to include "public utility facilities" in alphabetical order to read as follows:

Table 17.20.020

Permitted, Conditional and Prohibited Open Space Uses

	OS-R	OS-PA	OS-PU	OS-H
Other Uses				
"Public Utility Facilities	P	P	P	P"

L. **Freeway-Oriented City Identification Sign.** Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to add the following defined term in alphabetical order:

"**City Identification Sign.** A freeway-oriented pylon sign that prominently displays the name of the City of Banning, including billboards, outdoor advertising structures, electronic message centers."

M. **Freeway-Oriented City Identification Sign.** The defined term "relocated billboard" in Section 17.36.030 (Definitions) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"**Relocated Billboard.** An existing billboard that is located in the city that is relocated through a city council approved relocation agreement, including the replacement of a static billboard face with an electronic message center. The relocated billboard is not considered a new outdoor advertising sign."

N. **Freeway-Oriented City Identification Sign.** Subsection D. of Section 17.36.060 (Prohibited Signs) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) is hereby amended to read as follows:

"D. Billboards or outdoor advertising structures. However, notwithstanding any other provision of this chapter, and consistent with the California Business and Professions Code Outdoor Advertising Act provisions, relocated billboards or outdoor advertising ~~signs~~structures, including electronic message centers~~, electronic message boards, and changeable message boards~~, may be considered and constructed as part of a relocation agreement ~~requested by the city and~~ entered into between the city and a billboard and/or property owner, and new city identification signs may be considered and constructed as part of a lease agreement, development

agreement, or other agreement between the city, a sign, and property owner and subject to the requirements of section 17.36.110(B)(9) of the Banning Municipal Code. ~~The replacement of a static billboard face with an electronic message center, electronic message board, or changeable message board shall be considered a relocation for purposes of this section.~~ Such agreements may be approved by resolution of the city council upon terms that are agreeable to the city, pursuant to administrative guidelines, as adopted by the city council resolution. The execution of a relocation, lease agreement, development agreement, or other agreement shall not operate to change the status of any billboard as a nonconforming use for the purpose of this code."

O. **Freeway-Oriented City Identification Sign.** A new Subsection (B)(9) is hereby added to Section 17.36.110 (Sign Regulations) of Chapter 17.36 (Sign Regulations) of Division III (Development Standards) of Title 17 (Zoning) to read as follows:

9. City identification sign. City identification signs shall be allowed subject to approval by City Council resolution and the following requirements:

   a. City Identification signs shall not be permitted south of Interstate 10 from Sunset to Hargrave.

   b. The City shall have the right to place public service announcements and emergency service announcements on any such electronic messaging center so long as they are not excessive or burdensome. The limits on public service announcements will be stipulated in a City Council agreement.

   c. The use of onsite electric generators to power digital billboards for normal operations shall be prohibited.

   d. The sign face for any City Identification sign shall not overhang onto Interstate 10 or any other state highway.

   e. Signs shall be shielded to prevent light or glare intrusion onto adjoining properties that are located within five-hundred (500) feet.

   f. Message changes on any electronic message center shall be limited to one message every six (6) seconds, or that allowed by the California Department of Transportation, whichever is greater.

   g. No electronic message center shall simulate motion or exhibit any images or series of images that could be considered "animated" in any way, including but not limited to sequential still images that

update faster than once every 6 seconds. No electronic message center shall contain any flashing, sparkling, intermittent or moving lights. There shall be no flashing or scrolling messages. Changes in color or light intensity on a still image or message at a rate faster than once every 6 seconds are also not permitted.

h. Electronic message centers shall contain automatic dimmers that maintain a maximum luminance of 7,500 nits during the daylight hours, and 500 nits from dusk (official sunset) to sunrise and during times of fog (One nit is equivalent to one candela per square meter). Each electronic message center shall be equipped with a mechanism to monitor brightness.

j. City Identification signs shall not be illuminated between the hours of 11 p.m. to 5 a.m. when located within five-hundred (500) feet of an existing residential property, or residentially zoned property.

k. The following advertising shall not be permitted: adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic be community standards. Objectionable advertising shall be set forth in the City Council agreement.

l. City Identification signs shall not be allowed in the Downtown Commercial (DC) zoning district.

m. City Identification signs shall require permit approval through the Building and Safety Division, CalTrans, the Riverside County Airport Land Use Commission if located within a compatibility zone, and any other responsible agency.

n. City Identification signs shall include architectural enhancements that add aesthetic appeal.

o. City Identification signs shall not exceed 55 feet in height.

p. City Identification signs shall not exceed a face are area of 14 by 48 feet, inclusive of City identification.

q. City Identification signs and all parts, portions, and materials shall be manufactured, assembled, and erected in compliance with all applicable State, Federal, and City regulations and the Uniform Building Code (BMC Section 17.36.100(A)).

r. City Identification signs shall be maintained and kept in good repair. The display surface shall be kept clean, neatly maintained, and free from rust or corrosion. Any cracked, broken surfaces, malfunctioning lights, missing sign copy, or other unmaintained or damaged portion of a sign shall be repaired or replaced within 30 calendar days following notification by the City. Noncompliance with such a request shall constitute a nuisance and penalties may be assessed.

s. Any sign agreement shall include a provision requiring the billboard owner to demonstrate that they have made reasonable efforts to solicit advertising from local businesses and nonprofits, including discounts and incentives during periods where other advertising cannot be obtained. Local businesses are defined as any business located within the City limits.

t. Enforcement provisions shall provide for written notice of violations and the opportunity to cure breaches, the potential to recover liquidated damages, the posting of securities where repeated violations occur, and the right to recover attorney fees and costs in the event that administrative or legal action is required.

u. Any other provisions contained in the lease agreement, development agreement, or other agreement that the City deems to be appropriate to protect the public health, safety, and welfare of the City.

P. **Mobile Home Park Conditional Use Permit Requirement for Home Occupation Permits.** Subsection (B)(9) (Mobile Home Park (MPH)) of Section 17.08.010 (Purpose) of Article I (General Provisions) of Chapter 17.08 (Residential Districts) of Division II (Land Use Districts) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to read as follows:

"9. Mobile Home Park (MHP). The district applies to existing mobile home parks or subdivisions within the City. Only mobile parks and subdivisions are permitted. ~~Home occupations may be appropriate with the approval of a conditional use permit.~~"

Q. **Design Review Approval Authority.** Table 17.44.010 (Review Authority) of Section 17.44.010 (Purpose) of Chapter 17.44 (Administration— General Provisions) of Division IV (Administration) of Title 17 (Zoning) of the Banning Municipal Code is hereby amended to add the following row after "Design Review; Commercial:; Tenant

Improvements" and before "Design Review; Commercial:; All other improvements" to read as follows:

Table 17.44.010

Review Authority

	Community Development Director	Planning Commission	City Council
Design Review			
Commercial:			
Tenant Improvements	X		
Exterior Additions or Modifications less than 20% of existing structure	X		
All other Improvements		X	

SECTION 5. Severability.

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

SECTION 6. PUBLICATION; EFFECTIVE DATE.

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute of the passage and adoption thereof in the records of and the proceedings of the City Council at which the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) days after its final passage, the City Clerk shall cause it to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California.

PASSED, APPROVED, AND ADOPTED this __day of _____, 2018.

_____
George Moyer, Mayor

City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon, APC

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance _____ was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____, 2018, and was duly adopted at a regular meeting of said City Council on the _____ day of _____ _____, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 3

Comment Letters

7/27/2018

To: City of Banning / Community Development Department
99 E. Ramsey Street. Banning, CA. 92220

Subject: Re- Proposed Zone Text Amendment (ZTA) No. 18-97502
Pursuant to chapter 17.116 Zoning Ordinance Amendments

RECEIVED
AUG 01 2018
By

Dear Sir/ Madam,

My name is Ed Omari, 61 years old married family man with three teenage children; the oldest will be in college next year. I have invested in your city for income and to secure my children's future college education. I bought a building located at 263 W. Ramsey Street, Banning (City of Banning downtown area) in January 2017 Ramsey (APN: 540-166-004) the building is currently leased to an auto parts company which has been in this particular location since 1990, the lease is now in a final year and it's up for renewal.

My broker & I visited the City of Banning prior of making the decision to purchase the building and to find out the current status of this property (zoning, type of businesses allowed and requirements) etc. There we met personally with Ms. Pattie Nevins (Community Development Director). She was a great help and she provided us with lots of information, zoning, amendments, city ordinances and all type of businesses allowed in this location. She assured us that no other Parts Store could come in to the Downtown Commercial zone and we have the exclusive rights for this auto parts store location because it has been operating as an auto parts store since 1990 and it falls under the legal nonconforming use ("Grandfathered In") in Downtown Commercial (DC) Land Use Zoning District and under the current Table 17.12.020 of the Banning Municipal Code.

Based on all the above information given to us and assurances by your Community Development Department, we decided to purchase this building because of its exclusive location rights and zoning privileges. If this property didn't have those exclusive location rights & privileges no person in the right mind would jeopardize his family future by putting up all of his saving (every penny) plus barrowing the rest of the money from bank in order to buy this one single tenant building for $600,000 with only two years term left on the existing lease.

There are two major brands of auto parts companies that already exist in City of Banning for a total population of 31,638 people per U.S Census Bureau, it's nonsense to add more auto parts for such a small community and in particular in

downtown area. Pep Boys Auto Parts requirements in their site criteria selection model that they will not open up any new store in any community with a population less than 30,000 people, minimum traffic count 22,000 cars per day and must not have any other competitors nearby, that's why we don't see Pep Boys Store in the City of Banning.

I am very surprised and extremely shocked, why this sudden change now? If the very well known national auto parts stores are not interested in opening up new stores in such small communities as City of Banning, then who is the one behind this zoning change? And why is he pushing the city to change the existing zoning specifically in down town area at this time and in particular auto parts sales business?

Just a hunch, maybe my neighbor with a vacant building across the street, is he the one has been "approaching your staff"? as stating in your Planning Commission Report dated August 1, 2018 (please see attached), as I was told by a manager of my existing tenant recently that he knows next door property owner very well and he would love to move to his building, because it's been vacant for such a long time and the owner is desperate to lease it for low lease rates. I replied; he can't do that because of the zoning prohibits auto parts sales in downtown area then the manager said I don't think this owner will have any problems at the city he's a very well known person to them and highly respected, if the City of Banning approves his building for occupancy I will be more than happy to relocate my store next door. I would hope that this is not the reason for this sudden appearance of this Amendment.

My family & I very strongly (100%) oppose this proposed Zone Text Amendment (ZTA) No. 18-97502, if approved, it will devastate our family's main source of income and it will add extreme financial difficulties to my children future college education. If my tenant moves out and relocates due to this proposed change I won't be able to make monthly payments on this property loan, then the bank will foreclose on me for nonpayment and I will end up losing this property. This will inflict a total financial disaster on my entire family forever; no one wishes this to happen to anyone.

Our family lives are hanging on your important decision and we would hope to find compassion in your hearts for our children's future. We all pray to God that the City planning Commission and the director will find fairness and justification of making the right decision and **would not change the existing zoning and leave it as is.**

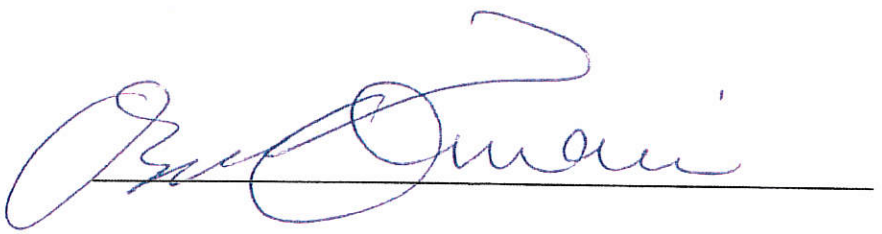
If it is approved, I will have no other choice except to turn this matter over to my attorney for further legal assistance: Dennis Delahanty Esq. New Port Beach, CA. (949)660-6300

Thank you very much for your time and for your great considerations in this matter.

Sincerely,
Ed and Evit Omari/ husband & wife property owner (818)968-0050
20657 Tulsa Street, Chatsworth, CA. 91311
Email: triple99@sbcglobal.net

Property Address: 263 W. Ramsey Street
Banning, CA. 92220

Property APN: 540-166-004



CC:
Ms. Pattie Nevins (Community Development Director)
City Clerk/ City of Banning
City of Banning Planning Commission

conditionally permitted use in all other zones. This is in conflict with the zoning ordinance provisions that allow consideration of bars and drinking establishments (which by definition have on-site alcoholic beverage sales) as a conditionally permitted use in the Downtown Commercial zoning district. Staff has interpreted the alcoholic beverage sales exclusion to apply to liquor stores, which are not permitted in the Downtown Commercial zoning district. This amendment codifies that interpretation.

3. Retail Auto Parts Sales in the Downtown Commercial Zone

Proposed Amendment: Amend Table 12.12.020, Permitted, Conditional and Prohibited Commercial and Industrial Uses, as follows:

Table 17.12.020
Permitted. Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Retail Uses								
Auto, mobile home, and motor vehicle sales, ~~and~~ with or without part sales, new and/or used[3]	X	P	P	X	P	P	C	X
Auto, mobile home, and motor vehicle ~~sales, and~~ part sales ~~, new and used~~ [3]	~~X~~ C	P	P	X	P	P	C	X

[3] Reserved.

PLEASE READ.

Rationale:

Staff has been approached regarding the inability of an existing auto-parts related business to expand operations within the Downtown Commercial (DC) zone, where such a use is nonconforming and expansion is thus limited by the City's zoning code. Currently, automobile-related uses are prohibited in the DC zone, which the Zoning Ordinance describes, in part, as follows:

> b. New auto related uses proposed after adoption of the 2005 General Plan will be prohibited. All existing auto uses in existence as of the adoption of the 2005 General Plan will be permitted until such time as the use in a particular location ceases operation for a period of six months."

An intent to disallow auto related uses is thus evidenced in the existing code language; this language may be seen as consistent with a vision of creating a traditional, historic downtown in the DC zone where one might expect small, pedestrian-oriented specialty

retail and service businesses. If the City's vision is to create a retail district not limited in this manner, retail automobile-related uses may be considered consistent with what the City hopes to achieve in the DC zone. However, staff has noted that similarly, the City's General Plan states that "Auto related uses proposed after adoption of this General Plan will be prohibited". Thus, unless both the statements in the General Plan and the Zoning Ordinance are interpreted as pertaining only to auto sales and auto repair, and not to auto parts sales, a General Plan Amendment would be required in addition to a Zoning Ordinance Amendment. One distinction between the two sets of uses could be made in that parts sales are interior, retail storefront type uses that may be seen as consistent with other sales uses allowed in the DC zone such as furniture and general merchandise sales. Auto sales and repairs however are visually different in terms of their display and work areas being outside and automobile-oriented rather than internal walk-in sales facilities.

Staff has prepared a potential amendment that makes retail auto parts a conditionally permitted use, which would give the Planning Commission the ability to make decisions regarding this type of use on a site-specific basis. Findings specific to the auto-related uses have been included, should the Planning Commission (and ultimately the City Council) agree with the findings.

4. **Tattoo Establishments**

Proposed Amendment:

Amend 17.040.070 – Definitions – as follows:

Body Piercing Studio ~~Parlor~~ means any business or premises dedicated to the piercing, puncture or perforation of human skin or tissue, or the insertion of jewelry or other objects into or under the skin or tissue, for decorative, nonmedical purposes; the term "body piercing studio ~~parlor~~" does not include businesses that offer ear-only piercing as a service that is secondary to other business services, or acupuncture clinics.

Tattoo ~~Parlor~~ Studio means any business or premises dedicated to the act or process of marking or coloring the skin of any person by the insertion of pigment under or in the skin or by the production of scars. The term "tattoo ~~parlor~~ studio" does not include businesses that offer permanent make-up as a service that is secondary to other business services.

Amend Table 17.12.020 as follows:

Table 17.12.020
Permitted, Conditional and Prohibited Commercial and Industrial Uses

Zone	DC	GC	HSC	PO	I	AI	BP	IMR
Services								

MILLIGAN, BESWICK, LEVINE* & KNOX, LLP
ATTORNEYS AT LAW

1447 FORD ST. SUITE 201
REDLANDS, CALIFORNIA 92374

TELEPHONE
(909) 798-3300
(909) 888-5741
FACSIMILE
(909) 798-3301
MBLKLAWFIRM.COM

C. PATRICK MILLIGAN
RICHARD R. BESWICK (1941-2006)
STEPHEN P. LEVINE *
JAMES L. KNOX

J. TIMOTHY HEGNESS, *OF COUNSEL*
JAMES F. PENMAN, *OF COUNSEL*
MICHAEL REITER, *OF COUNSEL*

*CERTIFIED SPECIALIST - CRIMINAL LAW
THE STATE BAR OF CALIFORNIA
BOARD OF LEGAL SPECIALIZATION

September 5, 2018

Banning City Council
Via Marie A. Calderon, City Clerk
PO Box 998
Banning CA 92220-0998
Via First Class and Certified Mail, Return Receipt Requested.

Subject: Proposed Zone Text Amendment (ZTA) No. 18-97502
Pursuant to chapter 17.116 Zoning Ordinance Amendments

Dear Honorable Banning City Council:

Our firm represents the owners of 263 W. Ramsey Street (APN 540-166-004) in the City of Banning. The building is currently leased to an auto parts company which has been in this particular location since February 19, 1988. The use is a legal nonconforming use.

As our client confirmed in a letter to the Planning Commission, his broker and he visited the City of Banning prior of making the decision to purchase the building and to find out the current status of this property (zoning, type of businesses allowed and requirements). They met with the Community Development Director, Patty Nevins.

Director Nevins was a great help to our clients. Director Nevins assured the owners that no other auto parts store could come in to the Downtown Commercial zone. Thus, the 263 W. Ramsey Street property, because of its longevity, was a legal non-conforming use, and would be the exclusive auto parts store in the zone. The only reason that the owners purchased the property is because the owners were convinced and assured by the tenant that they would renew the lease, since they had the exclusive rights in the zone and had nowhere else to go in downtown.

The owners decided to purchase the property because of its exclusive location rights and zoning privileges based on the assurances given by the City. This Zone Text Amendment is both legally, and politically unfair.

The reason why the Zone Text Amendment is legally unfair, is because it gives a preference to a nearby land owner the ability to operate, with a conditional use permit, an auto parts store directly across from an existing location. Essentially, it is treating one property owner different than another without a rational basis, which is a violation of our client's equal protection rights under the U.S. and California Constitutions.

The reason why is simple. There are already two major brands of auto parts companies existing for Banning, a City with an estimated population of 31,282 in 2018. The City cannot handle another, non-incumbent auto parts business. Downtown simply lacks the population to allow for another profitable auto parts store according to the business model of the national auto parts stores.

Adding another available location downtown will not bring any new business to the City. For example, Pep Boys Auto will not open up any new store in any community with a population less than 30,000 people and a minimum traffic count 22,000 cars per day and must not have any other competitors nearby. What that means is that should additional auto parts stores be allowed in the zone, it would require that the existing location move across the street. There is no gain for the City, only a gain for the one property that would benefit from the change, and at the expense of an existing business owner in town. In fact, the only reason for this change is because it would benefit a local property owner over a property owner that is not local.

This is a bad move for political reasons. This "staff-initiated" Zone Text Amendment is not above-board. As shown in the Planning Commission report, "staff was approached" regarding the inability to open an auto parts business in the zone. Now, Adriana Ortiz told our client last Thursday that "no one approached the City regarding this matter and was done within the planning department." As shown in the letter sent to my client when this matter was heard at the Planning Commission, which is a part of the record in this matter, this ZTA is a result of political cronyism, and not a matter of good government.

This path should be continued only if Banning wishes to join the City of Beaumont in the headlines. We believe if you do take the correct action, that the Riverside Superior Court will rule in the owners' favor in a writ of mandamus action.

We also ask that you postpone the September 10, 2018 hearing and any decision on the hearing so that we may speak with you City Attorney regarding this matter, and allow us additional time for our pending California Public Records Act requests, which we are certain will show the true motive for this request.

Sincerely,

Michael Reiter
Milligan, Beswick, Levine & Knox, LLP

ATTACHMENT 4

Public Hearing Notice

Record Gazette
218 N. Murray St.

Proof of Publication

(2015.5 C.C.P.)

157996 PHN ZTA 18-97502

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:

August 31, 2018

Executed on: 08/31/2018

At Banning , CA

I ceritfy (or declare) under penalty of perjury that the foregoing is true and correct.

Ana Rivera

Signature

NOTICE OF A PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION FOR ZONE TEXT AMENDMENT (ZTA) NO. 18-97502 AMENDING VARIOUS SECTIONS OF THE ZONING ORDINANCE (TITLE 17 OF THE BANNING MUNICIPAL CODE)
NOTICE IS HEREBY GIVEN
of a public hearing before the City of Banning City Council, to be held on Monday, September 10, 2018, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed Zone Text Amendment (ZTA) No. 18-97502 pursuant to Chapter 17.116 (Zoning Ordinance Amendments) of the City of Banning Municipal Code.
The proposal consists of amendments to Table 17.12.020, Permitted, Conditional and Prohibited Commercial and Industrial Uses and Section 17.12.050, Commercial and Industrial Use Specific Development Standards, pertaining to Alcoholic Beverage Control licenses, tattoo and body piercing parlors, and retail auto parts; Section 17.04.070, Definitions, pertaining to tattoo and body piercing parlors; Section 17.12.130, Walls and fences, pertaining to chain link fencing; Table 17.28.040B Commercial and Industrial Parking Requirements pertaining to parking; Tables 17.16.020 Permitted, Conditional And Prohibited Public Facilities Uses and 17.20.020 Permitted, Conditional and Prohibited Open Space Uses pertaining to public utility facilities; Chapter 17.36, Sign Regulations, pertaining to city identification, outdoor advertising, and pylon signs; Section 17.08.010(B)(9) RESIDENTIAL DISTRICTS, Purpose pertaining to Home Occupation Permits; and Table 17.44.010, Review Authority, related to design review authority.
Information regarding the Categorical Exemption and Zone Text Amendment (ZTA) No. 18-97502 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
Patty Nevins
Community Development Director
Dated: August 28, 2018
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CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Robert J. Meteau Jr., Deputy Human Resources Director**

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-115, Appointment of Douglas Schulze as City Manager, Adoption of Resolution Appointing Mr. Schulze as City Manager and Approving the City Manager Employment Agreement in Connection Therewith**

RECOMMENDED ACTION:

Adopt Resolution No. 2018-115 Appointing Douglas Schulze to the Position of City Manager Effective October 1, 2018 (with a start date of October 8, 2018) and Approving a City Manager Employment Agreement in Connection Therewith.

BACKGROUND:

Rochelle Clayton has served as Interim City Manager since March 13, 2018. The City conducted a nationwide recruitment and selected Douglas Schulze for the permanent position of City Manager, who will begin work on October 8, 2018.

Pursuant to Municipal Code section 2.08.020, "[t]he city manager shall be appointed by the city council . . . ." The proposed agreement between the City and Douglas Schulze for City Manager services is attached hereto as **Attachment No. 2**. Mr. Schulze has signed the agreement with the understanding that its terms must be agreed to by City Council.

The material terms of the City Manager Employment Agreement are as follows:

- Employee will receive an annual salary of $210,048.85 during his term as City Manager. This represents a yearly increase of $24,049.32 over Ms. Clayton's salary as Interim City Manager.

- The term of the agreement is initially three calendar years commencing on October 1, 2018, subject to termination at any time by the City Council or Mr. Schulze with or without cause. Upon expiration of the initial term, the City may exercise the option to unilaterally extend the agreement for an additional three years, or the term may be extended upon mutual written agreement by both parties.

- If the City terminates the agreement without cause, Mr. Schulze is entitled to six months' salary plus insurance coverage for himself and his dependents, subject to limitation by Government Code section 53260.

- In addition to the standard benefits offered to previous City Managers since November 2015, Mr. Schulze is entitled to an advance of 80 hours of vacation leave upon reporting for work.

GOVERNMENT CODE SECTION 54953(c)(3) ANNOUNCEMENT

Consistent with Section 54953(c)(3) of the Government Code and Section 2.5 of the City Council Rules of Procedure, the Mayor, Mayor Pro Tempore, or other presiding officer shall orally report a summary of a recommendation for a final action on the salaries, salary schedules, or compensation paid in the form of fringe benefits of a local agency executive, as defined in Section 3511.1(d) of the Government Code, during the open regular meeting in which the final action is to be taken and prior to the motion to approve. The City Manager is a local agency executive as defined in Section 3511.1(d) of the Government Code, and the oral report is required prior to approval of the attached Agreement as addressed in the Staff Recommendation section of this report.

- Employee will receive an annual salary of $210,048.85 during his term as City Manager.

- If the City terminates the agreement without cause, Mr. Schulze is entitled to six months' salary plus insurance coverage for himself and his dependents, subject to limitation by Government Code section 53260.

- In addition to the standard benefits offered to previous City Managers since November 2015, Mr. Schulze is entitled to an advance of 80 hours of vacation leave upon reporting for work.

FISCAL IMPACT:

The City will incur an increase in annual salary expense of approximately $24,049.32 with the change from Interim City Manager Rochelle Clayton to City Manager Douglas Schulze.

STAFF RECOMMENDATION

1. Prior to a motion to adopt the attached Resolution approving the City Manager Employment Agreement between the City of Banning and Douglas Schulze, the Mayor shall make an oral summary report for compliance with Section 54953(c)(3) of the Government Code as follows: "Staff is recommending the City Council approve a City Manager Employment Agreement between the City and Douglas Schulze for the position of City Manager. In addition to the benefits described in the City's adopted Management Benefits Resolution, following is a summary of the Salary, Benefits, and Severance provisions of the City Manager Employment Agreement that are unique to this Agreement:

   - Employee will receive an annual salary of $210,048.85 during his term as City Manager.

   - If the City terminates the agreement without cause, Mr. Schulze is entitled to six months' salary plus insurance coverage for himself and his dependents, subject to limitation by Government Code section 53260.

   - In addition to the standard benefits offered to previous City Managers since November 2015, Mr. Schulze is entitled to an advance of 80 hours of vacation leave upon reporting for work.

2. Adopt Resolution No. 2018-115 Appointing Douglas Schulze to the position of City Manager Effective October 1, 2018 (with a start date of October 8, 2018) and Approving a City Manager Employment Agreement in Connection Therewith

ATTACHMENTS:

1. Resolution 2018-115 - Appointing Douglas Schulze to the position of City Manager Effective October 1, 2018 and Approving a City Manager Employment Agreement in Connection Therewith

2. City Manager Employment Agreement

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

City Council Resolution No. 2018-115

RESOLUTION 2018-115

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPOINTING DOUGLAS SCHULZE TO THE POSITION OF CITY MANAGER EFFECTIVE OCTOBER 1, 2018 AND APPROVING A CITY MANAGER EMPLOYMENT AGREEMENT IN CONNECTION THEREWITH

WHEREAS, the City Council approved the appointment of Rochelle Clayton as Banning's Interim City Manager and approved an Interim City Manager Employment Agreement for Ms. Clayton's services as Interim City Manager, effective March 13, 2018; and

WHEREAS, following a nationwide recruitment, the City Council selected Douglas Schulze for the permanent position of City Manager; and

WHEREAS, at the City Council regular meeting on September 10, 2018, the Council considered a City Manager Employment Agreement between the City of Banning and Douglas Schulze.

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

SECTION 1. The City Council hereby appoints Douglas Schulze to the position of City Manager effective October 1, 2018.

SECTION 2. The City Council approves the City Manager Employment Agreement between the City of Banning and Douglas Schulze, attached hereto as Exhibit A, effective October 1, 2018.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, APPROVED, AND ADOPTED this 10th day of September, 2018.

_____
George Moyer, Mayor
City of Banning

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____

Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-115, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

City Manager Employment Agreement between the City of Banning and Douglas Schulze

CITY OF BANNING

CITY MANAGER EMPLOYMENT AGREEMENT

This CITY MANAGER EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into and made effective the ___ day of _____, 2018, by and between the CITY OF BANNING, a general law city and municipal corporation (hereinafter referred to as the "CITY") and DOUGLAS SCHULZE, an individual (hereinafter referred to as "EMPLOYEE") and who, as a member of the International City/County Management Association (ICMA), is subject to the ICMA Code of Ethics. For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the "Parties" or individually as a "Party."

RECITALS

WHEREAS, it is the desire of the City Council of the City of Banning (hereinafter the "City Council") to employ an individual to serve in the position of City Manager, which position is prescribed by state law and the CITY's Municipal Code; and

WHEREAS, California Government Code section 34852 provides that an ordinance establishing a City Manager form of government shall define the powers and duties of the City Manager; and

WHEREAS, the duties of the City Manager of the CITY are set forth in full in Banning Municipal Code ("BMC") section 2.08.080 and in Exhibit "A" to this AGREEMENT; and

WHEREAS, pursuant to BMC section 2.08.020, "[t]he City Manager shall be appointed by the city council solely on the basis of his executive and administrative qualifications and ability, and shall hold office at and during the pleasure of the city council[;]" and

WHEREAS, the CITY requires the services of a City Manager; and

WHEREAS, based on EMPLOYEE's executive and administrative qualifications and ability, the City Council desires to employ EMPLOYEE to serve as the City Manager for the CITY; and

WHEREAS, EMPLOYEE has the required level of education, experience, skills and expertise to serve as the City Manager of the CITY; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of City Manager services to the CITY and its related agencies; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE's provision of City Manager professional services to the CITY and its related agencies through this AGREEMENT;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the CITY and EMPLOYEE hereby agree as follows:

1.0 EMPLOYMENT & DUTIES

1.1 Duties. The City Council hereby appoints and employs EMPLOYEE as City Manager for the CITY to perform the functions and duties of that position, as described in Exhibit "A" to this AGREEMENT, Banning Municipal Code § 2.08.080, the California Government Code, and such other legally permissible and proper duties and functions as the City Council shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend Banning Municipal Code Chapter 2.08, including § 2.08.080, which defines City Manager functions and duties, as it deems necessary and appropriate, without requiring EMPLOYEE's acquiescence or an amendment of this AGREEMENT. EMPLOYEE agrees to perform all such functions and duties to the best of his ability and in an efficient, competent, and ethical manner. EMPLOYEE further agrees to be bound by the ICMA Code of Ethics, attached hereto as Exhibit "B," and to comply with its provisions as a material term of this AGREEMENT.

1.2 Work Schedule. It is recognized that the City Manager is expected to engage in the hours of work that are necessary to fulfill the obligations of the position, must be available at all times, and must devote a great deal of time outside the normal office hours to the business of the CITY. EMPLOYEE acknowledges that proper performance of the duties of City Manager will require EMPLOYEE to generally observe normal business hours (currently 8:00 a.m. to 5:00 p.m., Monday through Friday, including a standard one hour-lunch period), as set by the CITY and as may be duly revised from time-to-time by the CITY, and will also often require the performance of necessary services outside of normal business hours. EMPLOYEE's compensation (whether salary or benefits) is not based on hours worked. Furthermore, the City Manager position remains an "exempt" classification under the overtime provisions of the federal Fair Labor Standards Act ("FLSA") and EMPLOYEE shall not be entitled to any compensation for overtime nor subject to such overtime provisions of the FLSA.

1.3 FLSA Exempt Status. EMPLOYEE acknowledges and agrees that the City Manager position is that of an exempt employee of the CITY for the purposes of the FLSA.

1.4 Other Activities. EMPLOYEE shall focus his professional time, ability, and attention to the CITY's business during the term of this AGREEMENT. EMPLOYEE shall not engage, without the express prior written consent of the City Council, in any other business duties or pursuits whatsoever, or directly or indirectly render any services of a business, commercial, or professional nature to any other person or organization, whether for compensation or otherwise, that is or may be competitive with the CITY, that might cause a conflict-of-interest with the CITY, or that otherwise might interfere with the business or operation of the CITY or the satisfactory performance of the functions and duties of the City Manager.

1.5 Employment Status. Upon appointment to the City Manager position, EMPLOYEE shall serve at the will and pleasure of the City Council and understands that by accepting the City Manager appointment, he shall be an "at-will" employee and shall be subject to summary dismissal without any right of notice or hearing, including any so-called due process pre-disciplinary "Skelly" hearing. The CITY may terminate EMPLOYEE at any time in accordance with Section 3.4 below.

1.6 Exemption from Personnel System. BMC §2.68.020(E) expressly exempts the City Manager position from the CITY's Personnel System established in BMC Chapter 2.68. EMPLOYEE understands, acknowledges and agrees that EMPLOYEE is exempt from the CITY's Personnel System.

1.7 CITY Documents. All data, studies, reports and other documents prepared by EMPLOYEE while performing his duties during the term of this AGREEMENT shall be furnished to and become the property of the CITY, without restriction or limitation on their use. All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, computer program data, input record data, written information, and other materials either created by or provided to EMPLOYEE in connection with the performance of this AGREEMENT shall be held confidential by EMPLOYEE to the extent permitted by applicable law, except as may be required by any governmental agency or court of competent jurisdiction. Such materials shall not be used by EMPLOYEE, without the prior written consent of the City Council, for any purposes other than the performance of EMPLOYEE's duties. Additionally, no such materials may be disclosed to any person or entity not connected with the performance of services under this AGREEMENT, except as required by (a) law, (b) any governmental agency, (c) subpoena, or (d) an order issued by a court of competent jurisdiction.

2.0 COMPENSATION AND REIMBURSEMENT

2.1 Base Salary. For the services rendered pursuant to this AGREEMENT, EMPLOYEE shall be placed at Range D13, Step 7 which is $17,504.07 per month and annually Two Hundred Ten Thousand Forty-Eight Dollars and Eighty –Five Cents ($210,048.85) per year ("Salary"), which shall be paid on a pro-rated basis bi-weekly at the same time as other employees of the CITY are paid, effective the first full pay period after the effective date of this AGREEMENT as provided in Section 3.1 hereof. Such Salary shall be subject to normal and proper withholdings as determined by state and federal law and as determined appropriate by the City Council and shall be subject to payroll taxes, workers' compensation, and other payroll-related liability costs.

2.2 Salary Review. The City Council and EMPLOYEE agree to endeavor to conduct an annual Salary review concurrently with the annual performance evaluation set forth in Section 5.2 hereof.

2.3 Salary Adjustment. Following the annual performance evaluation set forth in Section 5.2 hereof and the annual Salary review set forth above in Section 2.2, the City Council may increase EMPLOYEE's base salary and benefits package based on the results of those annual reviews. Any adjustments in the base salary and/or benefits following the annual performance evaluation under Section 5.2 and review under Section 2.2 shall be at the sole discretion of the City Council.

2.4 Business Expense Reimbursements. CITY shall reimburse EMPLOYEE for reasonable and necessary travel, subsistence, and other CITY related business expenses incurred by EMPLOYEE in the performance of his duties. All reimbursements shall be subject to and in accordance with California law, the CITY's adopted policies, and IRS rules for reporting compensation through payroll or reimbursement through accounts payable.

3.0 TERM

3.1 Commencement & Effective Date. EMPLOYEE shall commence service hereunder at 8:00 a.m. Pacific Daylight Time on October 1, 2018, or such other date/time upon which EMPLOYEE and City Council may mutually agree. In the event EMPLOYEE commences services on a date other than October 1, 2018 such date shall be deemed the effective date of this AGREEMENT ("Effective Date").

3.2 Term. CITY hereby employs EMPLOYEE for an initial term of three (3) calendar years commencing on the AGREEMENT's Effective Date and continuing to and including September 30, 2021, subject to termination by the City Council or by EMPLOYEE, with or without cause, as hereinafter provided in Sections 3.3 and 3.4, at the conclusion of which this AGREEMENT shall automatically terminate. Prior to such automatic termination, the CITY shall have the option to unilaterally extend the Term of this AGREEMENT for an additional three (3) years, subject to termination by the City Council or by EMPLOYEE, with or without cause, as hereinafter provided in Sections 3.3 and 3.4. Additionally, the Term of this AGREEMENT may be extended upon mutual concurrence from the City Council and the EMPLOYEE, as evidenced by a writing signed by both parties. The CITY agrees that in the last year of the initial three year Term of the AGREEMENT, and in the last year of the Term of the AGREEMENT should the Term of the AGREEMENT be extended beyond its initial three years, the annual evaluation will be performed at least six (6) months prior to the expiration of the term.

3.3 Termination by EMPLOYEE. EMPLOYEE may terminate this AGREEMENT at any time, provided EMPLOYEE provides the City Council with at least sixty (60) days' advance written notice. In the event EMPLOYEE terminates this AGREEMENT, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay.

3.4 Termination by CITY. The City Council may terminate this AGREEMENT at any time with or without cause, by providing written notice of the reason(s). The City Council's right to terminate EMPLOYEE pursuant to this Section 3.4 shall not be subject to or in any way limited by the CITY's Rules and Regulations of the Personnel System (Resolution No. 1974-22), or any subsequent related resolutions, or past CITY practices related to the employment, discipline or termination of the CITY's employees. EMPLOYEE expressly waives any rights provided for the City Manager under the CITY's Rules and Regulations of the Personnel System (Resolution No. 1974-22), Municipal Code, or under other local, state or federal law to any other form of pre- or post-termination hearing, appeal, or other administrative process pertaining to termination. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law in the position of City Manager. Notwithstanding this Section 3.4, upon appointment to the City Manager position, EMPLOYEE remains an at-will employee serving at the pleasure of the City Council.

(a) Termination by CITY for Cause. The CITY may terminate this AGREEMENT at any time by providing EMPLOYEE with five (5) business days' written notice of the termination for cause and the facts and grounds constituting such cause. The term "cause" shall be defined to include any misconduct materially related to performance of official duties, including but not limited to any of the following: 1) breach of this AGREEMENT, 2) willful or persistent material breach of duties, 3) résumé fraud or other acts of material dishonesty,

4) unauthorized absence or leave, 5) conviction of a misdemeanor involving moral turpitude (i.e., offenses contrary to justice, honesty, or morality), conviction of a misdemeanor DUI, or conviction of a felony (the CITY may, in its discretion, place EMPLOYEE on paid or unpaid administrative leave until resolution of charges brought against EMPLOYEE), 6) violation of the CITY's anti-harassment policies and/or a finding that legally prohibited personal acts of harassment against a CITY official or employee or legally prohibited personal acts of discrimination against a CITY official or employee has occurred, 7) violation of the CITY's Municipal Code, ordinances, rules, and regulations, including but not limited to the CITY's Rules and Regulations of the Personnel System (Resolution No. 1974-22) and Administrative Policies, 8) use or possession of illegal drugs, 9) engaging in conduct tending to bring embarrassment or disrepute to the CITY, 10) any illegal or unethical act involving personal gain, 11) pattern of repeated, willful and intentional failure to carry out materially significant and legally constituted directions or policy decisions of the City Council, and 12) gross misfeasance or gross malfeasance. If the CITY terminates for cause this AGREEMENT and the services of EMPLOYEE hereunder, the CITY shall have no obligation to pay EMPLOYEE any severance.

(b) Termination by CITY Without Cause. By providing EMPLOYEE at least thirty (30) days' prior written notice thereof, the CITY may terminate EMPLOYEE without cause but rather based upon management reasons such as implementing the CITY's goals or policies, including but not limited to: i) change of administration, or ii) incompatibility of management styles. In the event EMPLOYEE is terminated without cause, EMPLOYEE expressly agrees that EMPLOYEE shall not be entitled to any severance pay as the result of the termination of this AGREEMENT except as provided in Section 4.1 below.

4.0 SEVERANCE

4.1 Severance Pay. In the event EMPLOYEE is terminated without cause and EMPLOYEE does not challenge such termination, including but not limited to, by means of appeal or civil or administrative claim or liberty hearing, then CITY shall pay to EMPLOYEE severance as follows:

- CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by six (6).
- CITY shall pay the cost for medical, dental and vision insurance for EMPLOYEE and all dependents for a period of six months after the date of termination or until EMPLOYEE is eligible for insurance coverage through other employment, whichever occurs first.
- In the event that this AGREEMENT expires by its own terms and not by resignation of EMPLOYEE or early termination by CITY, then EMPLOYEE shall not be entitled to any severance.

Notwithstanding any other provision of this paragraph 4.1, should such proposed severance payment exceed the amount authorized to be paid under Government Code Section 53260, then the amount paid to EMPLOYEE shall be reduced in the amount necessary to comply with such statute. (Government Code Section 53260 provides that all contracts of employment with a city

must include a provision limiting the maximum cash settlement for the termination of the contract to the monthly salary (excluding benefits) multiplied by the number of months left on the unexpired term, but not more than eighteen (18) months if the unexpired term exceeds 18 months).

4.2 No Severance Pay if Termination for Cause or Initiated by EMPLOYEE. As provided in Section 3.4(a), should EMPLOYEE be terminated for cause, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 3.3, should EMPLOYEE initiate termination of this AGREEMENT, the CITY shall have no obligation to pay the severance provided for in Section 4.1 above. As provided in Section 4.1 above, should this AGREEMENT expire by its own terms without early termination by EMPLOYEE or CITY, then the CITY shall have no obligation to pay the severance provided for in Section 4.1.

4.3 Sole Rights. The severance rights provided in this Section 4.0 shall constitute the sole and only entitlement of EMPLOYEE with respect to severance pay in the event of the termination, other than for cause or by expiration of the AGREEMENT. EMPLOYEE expressly waives any and all other rights with respect to severance pay except as provided herein. Any and all severance rights are conditioned upon and in consideration for execution of the standard "Agreement of Separation, Severance, and General Release" attached hereto in form only as Exhibit "C."

5.0 PERFORMANCE EVALUATIONS

5.1 Purpose. The performance review and evaluation process set forth herein is intended to provide review and feedback to EMPLOYEE so as to facilitate a more effective management of the CITY. Nothing herein shall be deemed to alter or change the employment status of EMPLOYEE as City Manager (as set forth in Section 1.5 above), nor shall this Section 5.0 be construed as requiring "cause" to terminate this AGREEMENT, or the services of EMPLOYEE hereunder.

5.2 Annual Evaluation. The City Council shall conduct a formal or informal review and evaluate the performance of EMPLOYEE on an annual basis to coincide with the anniversary date of EMPLOYEE's appointment to the position of City Manager, using an evaluation form to be approved by City Council. Such performance review and evaluation shall be conducted concurrently with an annual base salary review provided for in Section 2.2 hereof, and in accordance with the purpose noted in Section 5.1 above.

5.3 Written Summary. The City Council may, at its sole discretion, elect to provide a written summary of each performance evaluation to EMPLOYEE within two (2) weeks following the conclusion of the performance review and evaluation process, and may, at its sole discretion, schedule at least one (1) City Council closed session with EMPLOYEE to deliver and discuss the evaluation.

6.0 BENEFITS AND OTHER COMPENSATION

6.1 Professional Development. The CITY recognizes its obligation to the professional development of its City Manager, and agrees that EMPLOYEE shall be given adequate opportunities to develop and maintain skills and abilities as a public administrator. EMPLOYEE is expected and encouraged to and does agree to participate in professional

organizations and to attend area and regional meetings and conferences related to matters of interest to the CITY consistent with the time required for such attendance in relationship to EMPLOYEE's other responsibilities as determined by the City Council. The City Council hereby agrees to budget an amount to be determined in the exercise of its sole discretion to pay the cost, travel and subsistence expense of EMPLOYEE for professional and/or official travel, meetings, and occasions adequate to continue professional development of EMPLOYEE and to adequately pursue necessary official functions for the CITY. These activities shall include membership in at least two professional associations (i.e., the International City Management Association, the California City Management Association), and attendance of at least two annual professional development conferences. EMPLOYEE shall be responsible for maintaining any professional certifications recognized as necessary or desirable in the performance of the duties hereunder. Tuition will be reimbursed to EMPLOYEE for professional and technical courses approved by the City Council and taken in an accredited educational institution provided that: i) the subject matter of the course relates directly to and contributes toward the City Manager position with the CITY; ii) EMPLOYEE has received at least a competent proficiency rating on the last performance evaluation report; and iii) EMPLOYEE has furnished evidence that the course has been completed with at least a "C" or "pass" grade.

The City Council also agrees to budget and pay for travel and subsistence expenses of EMPLOYEE for short courses, institutes, and seminars that are necessary for EMPLOYEE's professional development and for the good of the CITY. The City Council agrees to budget and pay for professional dues and subscriptions of EMPLOYEE reasonably related to the professional growth, development, education and training of EMPLOYEE.

6.2 Paid Leave.

(a) Sick Leave. EMPLOYEE shall be entitled to ninety-six (96) hours of sick leave annually, with the right to cash in a maximum of ninety-six (96) hours annually. A minimum of forty (40) sick leave hours must be left in the bank at time of cash out. Sick leave shall accrue at the rate of 3.69 hours per pay period. Any sick leave cash out request must be made no later than November 1st of each year, and payment of the cash out shall be made in the last check issued in November. Sick leave may only be accrued to a maximum of four hundred eighty (480) hours at which point sick leave accrual will cease until the accrued hours fall below the maximum of four hundred eighty (480) hours. Sick leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon termination for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused sick leave on the books then existing.

(b) Vacation Leave. EMPLOYEE shall be entitled to one hundred sixty (160) hours of vacation leave annually, with the right to cash in a combined maximum of eighty (80) vacation leave hours annually from any vacation leave bank. A minimum of eighty (80) vacation leave hours must be left in the regular vacation bank at time of cash out. If EMPLOYEE accrues greater than three hundred (300) hours of vacation time, then he may request a one-time cash out of fifty percent (50%) of the total available vacation hours to be paid at his current pay rate. Vacation leave shall accrue at the rate of 6.15 hours per pay period. Upon actually reporting for work and assuming the duties of City Manager on the Effective Date, EMPLOYEE shall be

advanced eighty (80) vacation hours to be earned through future service. Employee shall not start to accrue additional vacation leave until the advance is fully earned through service. Vacation leave may only be accrued to a maximum of four hundred eighty (480) hours at which point vacation leave accrual will cease until the accrued hours fall below the maximum of four hundred eighty (480) hours. Vacation leave must be used and deducted from accruals on a minute by minute basis for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon termination, for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused vacation leave on the books then existing.

(c) Holiday Leave. EMPLOYEE shall be granted the following holidays: New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving, Day after Thanksgiving, and Christmas. In addition, one (1) floating holiday will be credited to EMPLOYEE's Holiday Leave bank July 1st each year. Leave balances must be used during the fiscal year or they may be cashed out with City Council approval according to Administrative Policy A-30. If the City Council recognizes an additional holiday for City employees, said holiday shall be extended to EMPLOYEE. Holiday leave must be used and deducted from accruals in increments of no less than one hour for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours.

(d) Executive Leave. EMPLOYEE shall be entitled to forty-eight (48) hours of executive leave annually, with the right to cash in a maximum of forty-eight (48) executive leave hours annually. Executive leave shall accrue at the rate of 1.85 hours per pay period. Executive leave may only be accrued to a maximum of two hundred (200) hours at which point executive leave accrual will cease until the accrued hours fall below the maximum of two hundred (200) hours. Executive leave must be used and deducted from accruals in increments of no less than one hour for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. Upon termination, for any reason, EMPLOYEE shall be entitled to one hundred percent (100%) of the unused executive leave on the books then existing.

(e) Bereavement Leave. In the event of the death of a member of EMPLOYEE's family, including EMPLOYEE's spouse, domestic partner, mother, father, brother, sister, child, grandchild, or grandparent or any one of the same relatives of EMPLOYEE's spouse or domestic partner, EMPLOYEE shall be allowed thirty (30) hours of bereavement leave for each death of a family member. Bereavement leave must be used and deducted from the total allowed hours in increments of no less than five hours for time missed from normal work hours which for purposes of this section are deemed to be normal City operating hours. In the event of the death of a spouse or multiple family deaths occurring within a 24-hour period, EMPLOYEE shall be allowed forty (40) hours of total bereavement leave for this unfortunate event.

6.3 Cafeteria/Health & Welfare Benefits. EMPLOYEE shall be entitled to receive from the CITY an annual cafeteria benefit in an annual amount capped at Twenty Thousand Dollars ($20,000.00), for the purchase of health and welfare benefits under any approved plan provided by the CITY. Said contribution shall first be used to provide for health insurance for the EMPLOYEE. EMPLOYEE may use funds for any of the CITY's medical plans or, upon proof of coverage under another acceptable health plan as determined by the CITY's Human Resource

Department, this amount may be taken as taxable income or converted to a 457 Plan or CITY sponsored Medical Savings Account. EMPLOYEE may increase the benefit annually using CPI or the average of all CITY health insurance premium increases as long as it stays within the maximum parameters established by City Council for department heads. EMPLOYEE may elect to receive ninety-two and five-tenths percent (92.5%) of the balance in cash as CalPERS non-includable taxable income or converted to a 457 plan or CITY sponsored Medical Savings Account.

6.4 Retirement.

(a) Retirement Plan. EMPLOYEE will be enrolled in CITY's retirement plan with the California Public Employees' Retirement System (CalPERS), subject to the applicable benefit formula, terms and conditions provided in the contract between the CITY and CalPERS and also subject to applicable state law and regulations. It is the understanding of the Parties that Employee is a "New Employee" under the Public Employees' Pension Reform Act of 2013 and will be covered by the 2% at 62 formula with three year final compensation period. In the event of any conflict between this Agreement and the CITY's CalPERS contract or the applicable laws and regulations, the latter shall prevail.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE's CalPERS retirement plan. There shall be no employer paid member contributions.

6.5 Automobile. EMPLOYEE shall receive a Two Hundred Fifty Dollar ($250.000) per month car allowance for use of a personal vehicle in pursuit of recognized official duties.

6.6 CITY Flexible Spending Plan. EMPLOYEE is entitled to participate in the CITY's Flexible Spending Plan to the same extent as enjoyed by any other employee.

6.7 Life Insurance. In addition to the annual cafeteria benefit, the CITY will pay annual premiums for life insurance for EMPLOYEE with a benefit/coverage amount of One Hundred Fifty Thousand Dollars ($150,000.00) during EMPLOYEE's employment.

6.8 Business Equipment. The CITY will finance at no interest to EMPLOYEE the purchase of any job-related personal tools or equipment, such as a computer, cell phone, etc., that serve the professional development of EMPLOYEE. Such tools or equipment shall be approved in advance by the City Council at its sole discretion and the amount financed shall not exceed the value of one month's base salary of EMPLOYEE. Repayment to the CITY shall be made by payroll deductions until the amount loaned is completely repaid. The maximum period for repayment shall be two (2) years. Should EMPLOYEE terminate employment, then the remaining loan amount repayment shall be accelerated and become fully due and owing as of the termination date and may be deducted from any wages owed, including any severance payment to be made.

6.9 Bonding. CITY shall bear the full cost of any fidelity or other bonds required for EMPLOYEE under any law or CITY ordinance.

6.10 Education Pay. The CITY agrees to pay to EMPLOYEE the sum of Two Hundred and Seventy Five Dollars ($275.00) per month as and for an education incentive for possessing a Master's degree from an educational institution accredited by a nationally recognized accrediting agency listed and published by the U.S. Secretary of Education.

6.11 Eyewear/Eyecare Reimbursement. EMPLOYEE shall be entitled to reimbursement for expenses incurred and paid by EMPLOYEE and/or dependents in obtaining prescription eyewear or medical care from a licensed Optician, Optometrist or Ophthalmologist. Such amount is limited to a total for all expenses of Two Hundred Fifty Dollars ($250.00) every two years commencing on the date of this AGREEMENT. Thereafter, reimbursement will occur two years from the date of the previous reimbursement.

6.12 Utility Allowance. Should EMPLOYEE reside within the CITY limits, then EMPLOYEE shall be entitled to receive a utility credit in the amount of One Hundred Fifty Dollars ($150.00) per month against the cost of electric and water service during the period of such residency. In the event EMPLOYEE's spouse or a member of EMPLOYEE's household also is employed by the CITY and is eligible for this utility allowance, only one of either EMPLOYEE or EMPLOYEE's spouse or member of EMPLOYEE's household shall be eligible for such utility allowance.

6.13 Disability Program. EMPLOYEE agrees to pay the cost of membership in the CITY-approved short-term/ long-term disability insurance program. EMPLOYEE agrees that such premiums will be paid with after-tax dollars in order to maintain the tax-free benefit status to both the CITY and EMPLOYEE in the event benefits are paid. It is agreed between the Parties that in the event of disability, EMPLOYEE shall enjoy all the rights and privileges to which EMPLOYEE is entitled under state and federal law.

6.14 Housing/Relocation Expenses Reimbursement. CITY will reimburse Employee for the actual and reasonable cost, not to exceed $5,500, of (i) travel expenses incurred following full execution of this Agreement to visit CITY for Employee to prepare for and commence employment and for Employee and his immediate family to investigate housing options; (ii) moving Employee and his immediate family and personal property from Bainbridge Island, Washington to a location within the corporate limits of the City of Banning; and (iii) temporary housing for Employee and his immediate family. Moving expenses include packing, moving, temporary storage costs if necessary, travel, unpacking and insurance charges. To be eligible for reimbursement, expenses must be incurred and receipts submitted within six months of the Effective Date.

7.0 INDEMNIFICATION

To the extent mandated by the California Government Code, the CITY shall defend, hold harmless, and indemnify EMPLOYEE against any tort, professional liability, claim or demand, or other legal action arising out of an alleged act or omission occurring in the performance of EMPLOYEE's services under this AGREEMENT. This section shall not apply to any intentional tort or crime committed by EMPLOYEE, to any action outside the course and scope of EMPLOYEE's employment, or any other intentional or malicious conduct or gross negligence of EMPLOYEE.

8.0 OTHER TERMS – CONDITIONS OF EMPLOYMENT

The Mayor, in consultation with EMPLOYEE, shall establish any such other terms and conditions of employment as it may determine from time to time, provided such terms do not exceed the maximum salary and benefits approved by the City Council and are reduced to writing and signed by EMPLOYEE and the Mayor.

9.0 GENERAL PROVISIONS

9.1 Entire AGREEMENT. This AGREEMENT represents the entire AGREEMENT and understanding between the Parties and supersedes any and all other agreements and understandings, either oral or in writing, between the Parties with respect to EMPLOYEE's employment by the CITY and contains all of the covenants and agreements between the Parties with respect to such employment. No ordinances or resolutions of CITY governing employment, including the Personnel System, shall apply unless specified herein. Each Party to this AGREEMENT acknowledges that no representations, inducements, promises or agreements, orally or otherwise, have been made by either Party, or anyone acting on behalf of either Party, which are not embodied herein, and that no other agreement, statement or promises not contained in this AGREEMENT shall be valid or binding upon either Party.

9.2 Amendment. This AGREEMENT may be amended at any time by the mutual consent of the Parties by an instrument in writing, which amendment shall require City Council approval.

9.3 Notices. Any notice required or permitted by this AGREEMENT shall be in writing and shall be personally served or shall be sufficiently given when served upon the other Party as sent by United States Postal Service, postage prepaid and addressed as follows:

To CITY:	To EMPLOYEE:
Mayor City of Banning P.O. Box 998 Banning, California 92220	Douglas Schulze [On file with Human Resources Dept.]

Notices shall be deemed given as of the date of personal service or upon the date of deposit in the course of transmission with the United States Postal Service.

9.4 Conflicts Prohibited. During the term of this AGREEMENT, EMPLOYEE shall not engage in any business or transaction or maintain a financial interest which conflicts, or reasonably might be expected to conflict, with the proper discharge of EMPLOYEE's duties under this AGREEMENT. EMPLOYEE shall comply with all requirements of law, including but not limited to, Sections 87100 et seq., Section 1090 and Section 1126 of the Government Code, and all other similar statutory and administrative rules.

9.5 Effect of Waiver. The failure of either Party to insist on strict compliance with any of the terms, covenants, or conditions of this AGREEMENT by the other Party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment

of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

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

9.7 Governing Law. This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California, which are in full force and effect as of the date of execution and delivery by each Party hereto.

9.8 Government Code §§ 53243 - 53243.4. Assembly Bill 1344, which was subsequently enacted as Government Code §§ 53243 - 53243.4, sought to provide greater transparency in local government and institute certain limitations on compensation paid to local government executives. These statutes also require that contracts between local agencies and its employees include provisions requiring an employee who is convicted of a crime involving an abuse of his office or position to provide reimbursement to the local agency. These statutes are incorporated herein by reference. Accordingly, the Parties agree that it is their mutual intent to fully comply with these Government Code sections and all other applicable law as it exists as of the date of execution of this AGREEMENT and as such laws may be amended from time to time thereafter. Specifically, the following Government Code sections are called out and hereby incorporated by this AGREEMENT:

> §53243. Reimbursement of paid leave salary required upon conviction of crime involving office or position.
>
> §53243.1. Reimbursement of legal criminal defense upon conviction of crime involving office or position.
>
> §53243.2. Reimbursement of cash settlement upon conviction of crime involving office or position.
>
> §53243.3. Reimbursement of noncontractual payments upon conviction or crime involving office or position.
>
> §53243.4. "Abuse of office or position" defined.

EMPLOYEE represents that EMPLOYEE has reviewed, is familiar with, and agrees to comply fully with each of these provisions if any of these provisions are applicable to EMPLOYEE, including that EMPLOYEE agrees that any cash settlement or severance related to a termination that EMPLOYEE may receive from the CITY shall be fully reimbursed to the local agency if EMPLOYEE is convicted of a crime involving an abuse of EMPLOYEE's office or position.

9.9 Independent Legal Advice. The CITY and EMPLOYEE represent and warrant to each other that each has received legal advice from independent and separate legal counsel with respect to the legal effect of this AGREEMENT, or had the opportunity to do so, and the CITY and EMPLOYEE further represent and warrant that each has carefully reviewed this

entire AGREEMENT and that each and every term thereof is understood and that the terms of this AGREEMENT are contractual and not a mere recital. This AGREEMENT shall not be construed against the Party or its representatives who drafted it or who drafted any portion thereof.

IN WITNESS WHEREOF, the City of Banning has caused this AGREEMENT to be signed and executed on its behalf by its Mayor, and duly attested by its officers thereunto duly authorized, and EMPLOYEE has signed and executed this AGREEMENT, all in triplicate.

CITY OF BANNING

_____

George Moyer, Mayor

ATTEST:

_____

Marie Calderon, City Clerk

APPROVED AS TO FORM:

_____

Kevin G. Ennis, City Attorney

CITY MANAGER

_____

Douglas Schulze

EXHIBIT A

JOB DESCRIPTION
CITY MANAGER

Plans, organizes, coordinates, and directs department heads and support staff to accomplish the goals and work activities of the City; develops and directs the implementation of goals, objectives, policies, procedures and work standards for the City; works closely with the City Attorney, City Council, boards and commissions and a variety of public and private organizations, and citizen groups in implementing programs and projects to resolve issues of concern and solve problems; advises the City Council on issues and programs; prepares and recommends long-range plans for City services and programs and develops specific proposals for action on current and future City needs; makes interpretations of City regulations and various ordinances, codes and applicable laws to ensure compliance; has responsibility for the preparation and administration of the annual budget for the City; represents the City in contacts with governmental agencies, community groups, and various business, professional and other organizations directly or through subordinate staff; coordinates the preparation of a wide variety of reports or presentations to the City Council or outside agencies; and receives other direction and assignments from the City.

EXHIBIT B

ICMA Code of Ethics

ICMA Code of Ethics

The mission of ICMA is to create excellence in local governance by developing and fostering professional local government management worldwide. To further this mission, certain principles, as enforced by the Rules of Procedure, shall govern the conduct of every member of ICMA, who shall:

1. Be dedicated to the concepts of effective and democratic local government by responsible elected officials and believe that professional general management is essential to the achievement of this objective.
2. Affirm the dignity and worth of the services rendered by government and maintain a constructive, creative, and practical attitude toward local government affairs and a deep sense of social responsibility as a trusted public servant.
3. Be dedicated to the highest ideals of honor and integrity in all public and personal relationships in order that the member may merit the respect and confidence of the elected officials, of other officials and employees, and of the public.
4. Recognize that the chief function of local government at all times is to serve the best interests of all of the people.
5. Submit policy proposals to elected officials; provide them with facts and advice on matters of policy as a basis for making decisions and setting community goals; and uphold and implement local government policies adopted by elected officials.
6. Recognize that elected representatives of the people are entitled to the credit for the establishment of local government policies; responsibility for policy execution rests with the members.
7. Refrain from all political activities which undermine public confidence in professional administrators. Refrain from participation in the election of the members of the employing legislative body.
8. Make it a duty continually to improve the member's professional ability and to develop the competence of associates in the use of management techniques.
9. Keep the community informed on local government affairs; encourage communication between the citizens and all local government officers; emphasize friendly and courteous service to the public; and seek to improve the quality and image of public service.

10. Resist any encroachment on professional responsibilities, believing the member should be free to carry out official policies without interference, and handle each problem without discrimination on the basis of principle and justice.

11. Handle all matters of personnel on the basis of merit so that fairness and impartiality govern a member's decisions, pertaining to appointments, pay adjustments, promotions, and discipline.

12. Public office is a public trust. A member shall not leverage his or her position for personal gain or benefit.

Adopted by the ICMA Executive Board in 1924, and most recently revised by the membership in April 2015.

ICMA

Leaders at the Core of Better Communities

EXHIBIT C

AGREEMENT OF SEPARATION, SEVERANCE, AND GENERAL RELEASE

1. PARTIES

This Agreement of Separation, Severance, and General Release (hereinafter referred to as the "AGREEMENT") is entered into by and between the City of Banning, a general law city and municipal corporation (hereinafter referred to as "THE CITY"), and DOUGLAS SCHULZE, an individual (hereinafter referred to as "EMPLOYEE").

2. RECITALS

2.1 EMPLOYEE was hired by THE CITY as an at-will City Manager effective on or about October 1, 2018 serving at the pleasure of the City Council of THE CITY pursuant to a written contract, a copy of which is attached hereto as Exhibit "A" ("THE CONTRACT"). EMPLOYEE is currently ____ years old.

2.2 THE CITY and EMPLOYEE desire that EMPLOYEE separate from employment with THE CITY and enter into a severance agreement whereby EMPLOYEE receives severance compensation in exchange for executing a general release and waiver of any and all claims that EMPLOYEE may have against THE CITY, including but not limited to its elected and non-elected officials, employees, attorneys, and agents. Accordingly, the parties hereto intend by this AGREEMENT to mutually conclude any and all employment relationships between THE CITY and EMPLOYEE by means of EMPLOYEE's separation by means of _____ as of _____. This AGREEMENT sets forth the full and complete terms and conditions concluding EMPLOYEE's employment relationship with the CITY and any obligations related thereto, including any provided under THE CONTRACT.

2.3 In accordance with this AGREEMENT and with applicable state and federal laws, EMPLOYEE acknowledges that EMPLOYEE has been advised of EMPLOYEE's post-employment rights, including but not limited to, EMPLOYEE's rights under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), and the Health Insurance Portability and Accountability Act of 1996 ("H1PAA").

3. CONSIDERATION

3.1 EMPLOYEE shall receive payment to him at the time of his voluntary separation all earned salary, accrued fringe benefits as detailed in THE CONTRACT, and/or all other wage compensation/benefits owed to EMPLOYEE upon separation of employment, as required by state, federal or municipal law or THE CONTRACT or any other agreement with THE CITY.

3.2. In exchange for the waivers and releases set forth herein, THE CITY shall cause to be paid to EMPLOYEE an additional compensatory payment as severance pay by means of a lump sum payment of _____ and cents ($_____.00), as set forth in THE CONTRACT in the form of a check made payable to EMPLOYEE to be mailed to EMPLOYEE

at EMPLOYEE's home address via certified mail return receipt requested within thirty (30) business days after the EFFECTIVE DATE (as defined below) of this AGREEMENT. The lump sum payment shall be subject to applicable state and federal withholdings as determined appropriate by THE CITY.

3.3 In exchange for the severance payment provided for herein, EMPLOYEE, and on behalf of EMPLOYEE's spouse, heirs, representatives, successors, and assigns, hereby releases, acquits, and forever discharges THE CITY, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter referred to as "THE CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which EMPLOYEE now has or may acquire in the future, or which EMPLOYEE ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect at any time from the beginning of time up to and including _____ __, ____ (hereinafter referred to collectively as "CLAIMS"), without regard to whether such CLAIMS arise under the federal, state, or local constitutions, statutes, rules or regulations, or the common law. EMPLOYEE expressly acknowledges that the CLAIMS forever barred by this AGREEMENT specifically include, but are not limited to, claims based upon any alleged breach of THE CONTRACT or any other agreement of employment, any demand for wages, overtime or benefits, any claims of violation of the provisions of ERISA, COBRA or HIPAA, any alleged breach of any duty arising out of contract or tort, any alleged wrongful termination in violation of public policy, any alleged breach of any express or implied contract for continued employment, any alleged employment discrimination or unlawful discriminatory act, or any claim or cause of action including, but not limited to, any and all claims whether arising under any federal, state or local law prohibiting breach of employment contract, wrongful termination, or employment discrimination based upon age, race, color, sex, religion, handicap or disability, national origin or any other protected category or characteristic, and any and all rights or claims arising under the California Labor Code or Industrial Welfare Commission Wage Orders, the Federal Fair Labor Standards Act, the California Fair Employment and Housing Act, California Government Code §§12, 900 et seq., the Americans With Disabilities Act, Title VII of the Civil Rights Act of 1964, the Public Safety Officers Procedural Bill of Right Act, and any other federal, state, or local human rights, civil rights, or employment discrimination or employee rights statute, rule, or regulation. Nothing herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency. Furthermore, nothing herein shall be interpreted as a release or waiver of the THE CITY's statutory obligations relative to providing defense and indemnification of public employees, if any, including but not limited to Government Code Sections 825-825.6 and Sections 995-996.6.

4. SPECIFIC ACKNOWLEDGMENT OF WAIVER OF CLAIMS UNDER ADEA AND OWBPA

The Age Discrimination in Employment Act of 1967 (hereinafter referred to as the "ADEA") makes it illegal for an employer to discharge any individual or otherwise discriminate

with respect to the nature and privileges of an individual's employment on the basis that the individual is age forty (40) or older. The Older Workers Benefit Protection Act (hereinafter referred to as the "OWBPA," 29 U.S.C. § 626, et. seq., Pub L 101-433, 104 Stat. 978 (1990)) further augments the ADEA and prohibits the waiver of any right or claim under the ADEA, unless the waiver is knowing and voluntary. By entering into this AGREEMENT, EMPLOYEE acknowledges that EMPLOYEE knowingly and voluntarily, for just compensation in addition to anything of value to which EMPLOYEE was already entitled, waives and releases any rights he may have under the ADEA and/or OWBPA. EMPLOYEE further acknowledges that EMPLOYEE has been advised and understands, pursuant to the provisions of the ADEA and OWBPA, that:

(a) This waiver/release is written in a manner understood by EMPLOYEE;

(b) EMPLOYEE is aware of, and/or has been advised of, EMPLOYEE's rights under the ADEA and OWBPA, and of the legal significance of EMPLOYEE's waiver of any possible claims EMPLOYEE currently may have under the ADEA, OWBPA and/or similar age discrimination laws;

(c) EMPLOYEE is entitled to a reasonable time of at least twenty-one (21) days within which to review and consider this AGREEMENT and the waiver and release of any rights EMPLOYEE may have under the ADEA, the OWBPA and similar age discrimination laws; but may, in the exercise of EMPLOYEE'S own discretion, sign or reject this AGREEMENT at any time before the expiration of the twenty-one (21) days;

(d) The waivers and releases set forth in this AGREEMENT shall not apply to any rights or claims that may arise under the ADEA and/or OWBPA after the EFFECTIVE DATE of this AGREEMENT;

(e) EMPLOYEE has been advised by this writing that EMPLOYEE should consult with an attorney prior to executing this AGREEMENT;

(f) EMPLOYEE has discussed this waiver and release with, and been advised with respect thereto by, EMPLOYEE's counsel of choice or at least had the opportunity to do so, and EMPLOYEE represents by signing this AGREEMENT that EMPLOYEE does not need any additional time within which to review and consider this AGREEMENT;

(g) EMPLOYEE has seven (7) days following EMPLOYEE's execution of this AGREEMENT to revoke the AGREEMENT;

(h) Notice of revocation within the seven (7) day revocation period must be provided, in writing, to THE CITY pursuant to Paragraph 8.9 herein, and must state, "I hereby revoke my acceptance of our Agreement of Severance and General Release;" and

(i) This AGREEMENT shall not be effective until all parties have signed the AGREEMENT and ten (10) days have passed since EMPLOYEE's execution of same ("EFFECTIVE DATE").

5. UNKNOWN CLAIMS

In relation to the release provisions of Paragraphs 3 and 4 above, EMPLOYEE understands that California Civil Code section 1542 reads as follows:

> "General Release--Claims Extinguished"
>
> "A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor."

EMPLOYEE hereby waives the protection of California Civil Code section 1542.

6. WAIVER OF ADDITIONAL CLAIMS

EMPLOYEE hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions of Paragraphs 3, 4, and 5 above.

7. REPRESENTATIONS AND WARRANTIES

Each of the parties to this AGREEMENT represents and warrants to, and agrees with, each other party as follows:

7.1. Advice of Counsel: The parties hereto have received independent legal advice from their respective attorneys concerning the advisability of entering into and executing this AGREEMENT or have been given the opportunity to obtain such advice. The parties acknowledge that they have been represented by counsel of their own choice in the negotiation of this AGREEMENT, that they have read this AGREEMENT; that they have had this AGREEMENT fully explained to them by such counsel, or have had such opportunity to do so and that they are fully aware of the contents of this AGREEMENT and of its legal effect.

7.2. No Fraud in Inducement: No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this AGREEMENT, and neither party relies upon any statement, representation, omission or promise of any other party in executing this AGREEMENT, or in making the settlement provided for herein, except as expressly stated in this AGREEMENT.

7.3. Independent Investigation: Each party to this AGREEMENT has made such investigation of the facts pertaining to this settlement and this AGREEMENT and all the matters pertaining thereto, as it deems necessary.

7.4. Mistake Waived: In entering into this AGREEMENT, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this AGREEMENT was untrue, or that any fact was concealed from it, or that its understanding of the facts or of the law was incorrect, such

party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this AGREEMENT. This AGREEMENT is intended to be, and is, final and binding between the parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

7.5. Later Discovery: The parties are aware that they may hereafter discover claims or facts in addition to or different from those they now know or believe to be true with respect to the matters related herein. Nevertheless, it is the intention of the parties that EMPLOYEE fully, finally and forever settle and release all such matters, and all claims relative thereto, which do now exist, may exist or have previously existed against THE CITY or THE CITY PARTIES. In furtherance of such intention, the releases given here shall be, and remain, in effect as full and complete releases of all such matters, notwithstanding the discovery or existence of any additional or different claims or facts relative thereto.

7.6. Indemnification: EMPLOYEE agrees to indemnify and hold harmless THE CITY or THE CITY PARTIES from, and against, any and all claims, damages, or liabilities sustained by them as a direct result of the violation or breach of the covenants, warranties. and representations undertaken pursuant to the provisions of this AGREEMENT. EMPLOYEE understands and agrees that EMPLOYEE shall be exclusively liable for the payment of all taxes for which EMPLOYEE is responsible, if any, as a result of EMPLOYEE's receipt of the consideration referred to in Paragraph 3 of this AGREEMENT. In addition, EMPLOYEE agrees fully to indemnify and hold the CITY PARTIES harmless for payment of tax obligations as may be required by any federal, state or local taxing authority, at any time, as a result of the payment of the consideration set forth in Paragraph 3 of this AGREEMENT.

7.7. Future Cooperation & Consultation fees: EMPLOYEE shall execute all such further and additional documents as shall be reasonable, convenient, necessary or desirable to carry out the provisions of this AGREEMENT. EMPLOYEE shall provide THE CITY with consultation services (including deposition or trial testimony) in any litigation involving THE CITY which is reasonably related to acts or occurrences transpiring during EMPLOYEE's employment. Said services shall be provided as needed by THE CITY at a rate of $100.00 per hour.

7.8. Return of Confidential Information and Property: Prior to the separation date, EMPLOYEE shall submit a written inventory of, and return to the City Clerk, all City keys, equipment, computer identification cards or codes, and other equipment or materials or confidential documents provided to or obtained by EMPLOYEE during the course of EMPLOYEE's employment with THE CITY.

7.9 No Pending Claims and/or Actions: EMPLOYEE represents that EMPLOYEE has not filed any complaints or charges against THE CITY or THE CITY PARTIES with any local, state or federal agency or court; that EMPLOYEE will not do so at any time hereafter for any claim arising up to and including the EFFECTIVE DATE of this AGREEMENT; and that if any such agency or court assumes jurisdiction of any such complaint or charge against THE CITY or THE CITY PARTIES on behalf of EMPLOYEE, whenever or where ever filed, EMPLOYEE will request such agency or court to withdraw from the matter forthwith. Nothing

herein shall be interpreted as a release or waiver of any workers' compensation claims or in any way prohibit or prevent EMPLOYEE from participating in any claims or administrative action brought by a state or federal agency.

7.10. Ownership of Claims: EMPLOYEE represents and warrants as a material term of this AGREEMENT that EMPLOYEE has not heretofore assigned, transferred, released or granted. or purported to assign, transfer, release or grant, any of the CLAIMS disposed of by this AGREEMENT. In executing this AGREEMENT, EMPLOYEE further warrants and represents that none of the CLAIMS released by EMPLOYEE thereunder will in the future be assigned, conveyed, or transferred in any fashion to any other person and/or entity.

7.11 Enforcement Fees and Costs: Should any legal action be required to enforce the terms of this AGREEMENT, the prevailing party shall be entitled to reasonable attorneys' fees and costs in addition to any other relief to which that party may be entitled.

7.12 Authority: Each party represents to the other that it has the right to enter into this AGREEMENT, and that it is not violating the terms or conditions of any other AGREEMENT to which they are a party or by which they are bound by entering into this AGREEMENT. The parties represent that they will obtain all necessary approvals to execute this AGREEMENT. It is further represented and agreed that the individuals signing this AGREEMENT on behalf of the respective parties have actual authority to execute this AGREEMENT and, by doing so, bind the party on whose behalf this AGREEMENT has been signed.

8. MISCELLANEOUS

8.1. No Admission: Nothing contained herein shall be construed as an admission by THE CITY of any liability of any kind. THE CITY denies any liability in connection with any claim and intends hereby solely to avoid potential claims and/or litigation and buy its peace.

8.2. Governing Law: This AGREEMENT has been executed and delivered within the State of California, and the rights and obligations of the parties shall be construed and enforced in accordance with, and governed by, the laws of the State of California.

8.3. Full Integration: This AGREEMENT is the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous oral and written agreements and discussions. This AGREEMENT may be amended only by a further agreement in writing, signed by the parties hereto.

8.4. Continuing Benefit: This AGREEMENT is binding upon and shall inure to the benefit of the parties hereto, their respective agents, spouses, employees, representatives, officials, attorneys, assigns, heirs, and successors in interest.

8.5. Joint Drafting: Each party agrees that it has cooperated in the drafting and preparation of this AGREEMENT. Hence, in any construction to be made of this AGREEMENT, the parties agree that same shall not be construed against any party.

8.6. Severability: In the event that any term, covenant, condition, provision or agreement contained in this AGREEMENT is held to be invalid or void by any court of competent jurisdiction, the invalidity of any such term, covenant, condition, provision or agreement shall in no way affect any other term, covenant, condition, provision or agreement and the remainder of this AGREEMENT shall still be in full force and effect.

8.7. Titles: The titles included in this AGREEMENT are for reference only and are not part of its terms, nor do they in any way modify the terms of this AGREEMENT.

8.8. Counterparts: This AGREEMENT may be executed in counterparts, and when each party has signed and delivered at least one such counterpart each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one AGREEMENT, which shall be binding upon and effective as to all parties.

8.9. Notice: Any and all notices given to any party under this AGREEMENT shall be given as provided in this paragraph. All notices given to either party shall be made by certified or registered United States mail, or personal delivery, at the noticing party's discretion, and addressed to the parties as set forth below. Notices shall be deemed, for all purposes, to have been given and/or received on the date of personal service or three (3) consecutive calendar days following deposit of the same in the United States mail.

As to EMPLOYEE:

At EMPLOYEE' s home address on file with THE CITY.

As to THE CITY:

Mayor
City of Banning
P.O. Box 998
Banning, California 92220

IN WITNESS WHEREOF, THE CITY has caused this AGREEMENT to be signed and executed on its behalf by its Mayor and duly attested by its City Clerk, EMPLOYEE has signed and executed this AGREEMENT, and the attorneys for THE CITY and EMPLOYEE, if any, have approved as to form as of the dates written below.

DATED: _____ EMPLOYEE

By:_____
Douglas Schulze

DATED: _____ THE CITY

By:_____
Mayor

ATTEST:

_____
City Clerk

APPROVED AS TO FORM:

RICHARDS, WATSON & GERSHON

By:_____
[_____], City Attorney

[EMPLOYEE'S ATTORNEY'S LAW FIRM]

By:_____
[Counsel Name]

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CITY OF BANNING
CITY COUNCIL REPORT

TO:	**CITY COUNCIL**
FROM:	**Rochelle Clayton, Interim City Manager**
PREPARED BY:	**Ted Shove, Economic Development Manager**
MEETING DATE:	**September 10, 2018**
SUBJECT:	**Consideration and Approval of City Policy No. B-33, Reference Validation of Private Parties Doing Business with the City**

RECOMMENDED ACTION:

The Council approve City Policy No. B-33, Reference Validation of Private Parties Doing Business with the City.

BACKGROUND:

In the past, the City has entered into agreements for goods and services procurement and real estate contracts without a formalized policy to validate references, licensure, and business entity structure. Establishing a formal policy will establish a defined set of criteria, enable uniformity in validating private parties, and increase transparency within the City's contract approval process. Additionally, the Riverside County Grand Jury issued a report to Banning recommending the City adopt strict policies for formalizing agreements and/or contracts with private parties. Staff developed Policy B-33, to augment recently adopted City Policies.

JUSTIFICATION:

No prior policy was developed to formalize and provide minimum standards to validating references and licensure of private parties engaged in or attempting to do business with the City. Policy No. B-33 – Reference Validation for Private Parties Doing Business with the City, was drafted for Council's consideration to address this internal process.

FISCAL IMPACT:

None.

ATTACHMENTS:

1. Policy B-33, Reference Validation for Private Parties Doing Business with the City

Approved by:



Rochelle Clayton, Interim City Manager

ATTACHMENT 1

Policy B-33
Reference Validation Requirements for Private Parties Doing Business with the City

City of Banning Reference Validation of Private Parties Doing Business with the City		POLICY NO: B-33 ORIGINATING DEPARTMENT: Community Development Reference: Administrative
SUPERCEDES: None	EFFECTIVE DATE: 9/10/2018	PAGES 6
APPROVED BY CITY MANAGER: Rochelle Clayton		

Purpose

To establish guidelines required for the City of Banning ("City") to conduct reference, licensure, and business structure validation of private entities ("Business") before entering into contractual agreements for goods and/or services, or disposition of real estate ("Agreement").

Background

The intent of the Policy is to establish transparency in validating Businesses before entering into Agreements. This Policy provides minimum standards for validating the credibility of Businesses and its employees and/or agents. Specifically, the Policy's focuses is non-criminal background verification, including required business entity formation and required licensure.

Process

Prior to approving an Agreement, the City will validate all statements of a Business' qualifications, specific to the Agreement being considered. The Business will be subject to all applicable searches via website links identified in this Policy, and include:

- Public Records Search:
    - Corporations, Limited Liability Companies, and Limited Partnerships:
        - Doing Business and/or Formed in California: Information can be found at the website of the California Secretary of State ("Cal. SOS"): https://businesssearch.sos.ca.gov/
        - Doing Business and/or Formed Outside of California: All 50 states, plus all Canadian provinces and territories have online services. A

complete list of the websites can be found here: https://www.iaca.org/about-iaca/jurisdictional-information/

- State Registered Charity Search: This is a search to find nonprofit organizations registered with the Office of the Attorney General (as necessary), can be found here: https://oag.ca.gov/charities

- Financial Institutions (Banks, Savings & Loans, Credit Unions, etc.):

  - Federally-chartered financial institutions: Information can be found at the Office of the Comptroller of the Currency: https://www.occ.treas.gov/topics/licensing/national-banks-fed-savings-assoc-lists/index-active-bank-lists.html

  - Financial Institutions chartered by the State of California: Information can be found at the Department of Business Oversight: http://www.dbo.ca.gov/About_DBO/organization/dfi.asp

- Fictitious Business Name: If there is no record of a business as a corporation, limited liability company, or limited partnership, it may be locatable through a Fictitious Business Name ("FBN") search. Records of FBNs are kept by each county in California, and so a separate search must be performed for each county. Following are links to the search pages for some Southern California counties.

  - Riverside County: https://webselfservice.riversideacr.com/Web/action/ACTIONGROUP313S3

  - San Bernardino County: http://acrparis.sbcounty.gov/fbn/index.html

  - Orange County: https://cr.ocgov.com/FBNOnlineNet/

  - Los Angeles County: https://www.lavote.net/home/county-clerk/fictitious-business-names/filing/fictitious-business-name-search

- Real Estate/Appraiser Licensure (As Applicable): Verification of licensure for real estate agents and brokers, and real estate appraisers (and verification of license level), licensing look up includes:
    - Real Estate Agents and Brokers: http://www.dre.ca.gov/
    - Real Estate Appraisers: http://www.orea.ca.gov/

- Google Search: As part of validation of references, a general Google search will be conducted, to see what information is available.

- Other Data Sources (Westlaw, LexisNexis): These sources provide in-depth legal research and limited compliance data analytics. As necessary, these inquiries will be conducted on an as needed basis, by legal counsel.

- Additional Vendor License Checks, (As Applicable):
    - Find a Certified Small Business/Disabled Veteran Business Enterprise - DVBE, LGBT, MBE, 8(a), WBE and WMBE:
        - Cal e-Procure – https://caleprocure.ca.gov/pages/PublicSearch/supplier-search.aspx
        - The Supplier Clearinghouse – https://sch.thesupplierclearinghouse.com/FrontEnd/SearchCertifiedDirectory.asp
    - Public Works Contractor (PWC) Registration Search:
        - Department of Industrial Relations - https://efiling.dir.ca.gov/PWCR/pages/Search
    - Contractors State License Board Vendor Search:
        - Department of Consumer Affairs - https://www2.cslb.ca.gov/OnlineServices/CheckLicenseII/CheckLicense.aspx

- Exclusions Database:
  - Office of Inspector General - https://exclusions.oig.hhs.gov/

- License Lookup (Verification) for California-Licensed Professional Engineers, Land Surveyors, Geologists, and Geophysicists:
  - Department of Consumer Affairs – Board for Professional Engineers, Land Surveyors, and Geologists - https://www.bpelsg.ca.gov/consumers/lic_lookup.shtml

- License Verification for Architects:
  - Department of Consumer Affairs – California Architects Board - https://www.cab.ca.gov/consumers/license_verification.shtml

- Entity Registration Records or Entity Exclusion Records:
  - System for Award Management (SAM) - https://www.sam.gov/portal/SAM/?portal:componentId=0c0d95d1-a020-4d5d-9f91-4020bd008cb3&interactionstate=JBPNS_rO0ABXc0ABBfanNmQnJpZGdlVmlld0lkAAAAAQATL2pzZi9mdW5jdGlvbmFsLmpzcAAHX19FT0ZfXw**&portal:type=action#1#1

- Real Estate/Appraiser Licensure: Verification of licensure for real estate agents and brokers, and real estate appraisers (and verification of license level), licensing look up includes:
  - Real Estate Agents and Brokers: http://www.dre.ca.gov/
  - Real Estate Appraisers: http://www.orea.ca.gov/

- Reference Evaluation – Questions [Procurement]:

1. What type of work did they do for you?
   - Dollar amount (estimate):_____?
2. How would you rate this consultant, on total cost?

   (Scale of 1 to 5:1= unacceptable, 5 = exceptional)

   On Timeliness

   On Problem Responsiveness

   On Quality of Services

   On Attitude of Personnel
3. If you had to go out and bid today for a similar project, would you choose this firm, again?
4. What are the strengths about this firm?
5. What are the weaknesses about this firm?
6. Did they exceed their proposal cost?
7. If so, by how much?
8. If applicable, do you feel that the exceeded costs were justified?

Findings

- Vendors: upon completing verification of references and required licensures, the findings will be returned to the originating City Department ("Department") for further consideration. If the validation process indicated derogatory information about the Business and was identified through a Request for Proposal or similar mechanism "RFx", the initiating Department may elect to: disqualify the submittal; consider the next, highest scored submittal as part of that RFx process; or disqualify the RFx results and re-publish the RFx, dependent upon the type of procurement, as outlined in Policy B-30. All investigative materials will be retained on file with the original procurement file.

- Real Estate-related Agreements: Once verification of references and licensure is completed. A report of findings will transmitted to the City Council for review of

the Business prior to City Council consideration of approval for real estate-related agreements. All investigative materials will be retained with the original contract file.

Conflict of Interest

City agents and officials with authority to approve Agreements must exercise that authority in a manner consistent with the City's Conflict of Interest Policy, and shall not have an affiliation with the Agency. If a personal association with the Agency exists, the agent or official must declare such and withdraw from the approval process. The private entity must also acknowledge an ex parte communication statement, as outlined below.

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. XX-001 – Vendor Services Generic RFP at any time after [Date].

_____

OR

I certify that Proposer or Proposer's representatives have communicated after [Date] with a City Councilmember concerning the RFP No. XX-001 – Vendor Services Generic RFP. A copy of all such communications is attached to this form for public distribution.

_____

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CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Public Works Director**
Kevin Sin, Senior Civil Engineer

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-111, Approving a Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for the Banning Master Drainage Plan Line H Stage 1 Project**

RECOMMENDATION:

Adopt Resolution 2018-111 as follows:

1. Authorizing the Mayor to sign the Cooperative Agreement with the Riverside County Flood Control and Water Conservation District ("District") for the Banning Master Drainage Plan Line H Stage 1 Project ("Project").

2. Authorizing the Interim City Manager or her designee to make necessary budget adjustments, appropriations and transfers related to the Cooperative Agreement for the additional street paving share cost in a not-to-exceed amount of $100,000.

BACKGROUND:

The District proposes to construct Project in order to improve flood protection and drainage. The proposed Project includes the construction of 3,900 lineal feet of an underground storm drain system and related appurtenances such as connector pipes and catch basins along Hathaway Street from Barbour Street to Wesley Street and along Wesley Street from Hathaway Street to Smith Creek Channel in the City of Banning. City staff has requested the District extend their proposed paving limits on Wesley Street and Hathaway Street, due to its condition, as part of the Project. The

location of the project and the additional street paving on Wesley Street and Hathaway Street is attached as Exhibit "A".

Currently a storm drain system does not exist within the project limits. The proposed storm drain system has been sized for the 100-year rainfall event and will have the capacity to convey nearly 500 cubic feet per second of storm water. The chosen alignment minimizes conflicts with existing utilities and preserves the city's infrastructure to the maximum extent practicable, while still achieving the project goals.

The District will pay the costs associated with the construction of the storm drain system and appurtenances and estimates that the cost of construction will be approximately $2,500,000. The City will share the cost in a not-to-exceed amount of $100,000 for the additional street paving on Hathaway Street and Wesley Street as requested by City staff and identified in Exhibit "A".

The Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the Project; identifies facilities to be maintained by the District and which facilities are to be maintained by the City.

JUSTIFICATION:

The District proposes to construct flood control facilities within the City of Banning in order to improve flood protection and drainage. The Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the Project. The City's cost share for the additional paving will allow the City to upgrade the condition of its streets in these locations. Due to the amount of paving included in the District's project, it is anticipated that the paving costs will be very economical (i.e. economies of scale).

FISCAL IMPACT:

The City of Banning's share of the cost is a not-to-exceed amount of $100,000 for additional street paving, which will be funded from the Measure "A" Fund.

ALTERNATIVE:

The City Council may choose not to adopt Resolution No. 2018-111. Without a Cooperative Agreement the District may elect to not proceed with the project. Additionally, if City Council requests that a City match not be included in the Cooperative Agreement, the additional paving as requested by staff will not be included as part of the Project.

ATTACHMENTS:

1. Resolution No. 2018-111
2. Exhibit "A" – Share Cost Location Map
3. Exhibit "B" – Cooperative Agreement with the District

Approved by:

Rochelle Clayton,
Interim City Manager

ATTACHMENT 1

Resolution No. 2018-111

RESOLUTION 2018-111

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A COOPERATIVE AGREEMENT WITH THE RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT FOR THE BANNING MASTER DRAINAGE PLAN LINE H STAGE 1 PROJECT

WHEREAS, the Riverside County Flood Control and Water Conservation District ("District") proposes to construct a storm drain system within the City of Banning right-of-way; and

WHEREAS, the proposed Project includes the construction of 3,900 lineal feet of an underground storm drain system and related appurtenances such as connector pipes and catch basins along Hathaway Street from Barbour Street to Wesley Street and along Wesley Street from Hathaway Street to Smith Creek Channel in the City of Banning as shown in Exhibit "A"; and

WHEREAS, a Cooperative Agreement between the District and the City of Banning is necessary in order to grant the District the necessary rights to construct, inspect, operate and maintain the project; and

WHEREAS, the Cooperative Agreement, attached as Exhibit "B", between the District and the City of Banning grants the District the necessary rights to construct, inspect, operate and maintain the project; identifies facilities to be maintained by the District and which facilities are to maintained by the City; and

WHEREAS, City staff has requested the additional street paving on Hathaway Street and Wesley Street as identified in Exhibit "A".

WHEREAS, the City agrees to pay its share of the cost for additional street paving on Hathaway Street and Wesley Street for a not-to-exceed amount of $100,000; and

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

SECTION 1. The City Council adopts Resolution No. 2018-111, approving a Cooperative Agreement with the Riverside County Flood Control and Water Conservation District for Banning Master Drainage Plan Line H Stage 1 and authorizes the mayor to sign said Cooperative Agreement.

SECTION 2. The Interim City Manager or her designee is authorized to make necessary budget adjustments, appropriations and transfers related to the Cooperative Agreement for the cost of the additional street paving in a not-to-exceed amount of $100,000.

PASSED, APPROVED and ADOPTED this 10th day of September, 2018.

George Moyer, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, Esq., City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-111 was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 10th of September, 2018.

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Sonja De La Fuente, Deputy City Clerk
City of Banning
Banning, California

ATTACHMENT 2

Exhibit "A"

Share Cost Location Map

City Requested "Street Paving"

Exhibit A

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

Area to be repaved 4" HMA over 6" Base, to be reimbursed by City of Banning per cooperative agreement

GENERAL NOTES

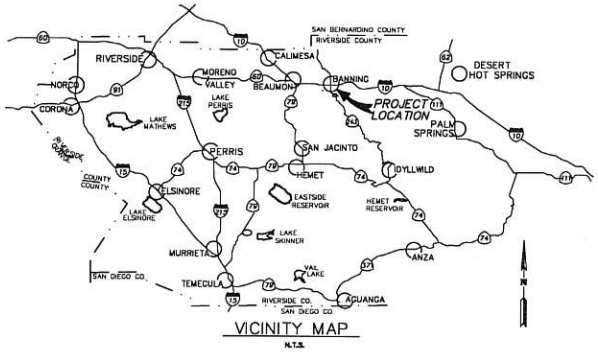
1. BEDDING AND PAYLINES ARE SHOWN ON RCFC STANDARD DRAWING M815 UNLESS SHOWN OTHERWISE ON THESE PLANS.
2. ALL STATIONS REFER TO CENTERLINE OF CONSTRUCTION.
3. ALL CHANNEL/STORM DRAIN REFERENCES AND CROSS SECTIONS ARE TAKEN LOOKING DOWNSTREAM.
4. TOPOGRAPHY BY DIGITAL PHOTOGRAMMETRIC METHODS, AERIAL PHOTOGRAPHS TAKEN AT AN ALTITUDE NOT TO EXCEED A FLYING HEIGHT TO CONTOUR INTERVAL RATIO OF 1800. PHOTOGRAPHY DATED: 04-15-2010.
5. THE VERTICAL DATUM IS DERIVED FROM NAVD 88. THE HORIZONTAL DATUM IS DERIVED FROM NAD 83, EPOCH 2007.
6. STANDARD DRAWINGS CALLED FOR ON THE PLAN AND PROFILE SHALL CONFORM TO RCFC & WCD STANDARD DRAWINGS, OR CALTRANS/CITY STANDARD PLANS UNLESS OTHERWISE NOTED.
7. ELEVATIONS AND LOCATIONS OF UTILITIES WERE OBTAINED FROM AVAILABLE INFORMATION AND ARE SHOWN APPROXIMATELY ON THESE PLANS. 48 HOURS BEFORE EXCAVATION CALL UNDERGROUND SERVICE ALERT AT 1-800-227-2600. ALL UTILITIES SHALL BE PROTECTED IN PLACE EXCEPT AS NOTED ON PLANS AND SPECIFICATIONS.
8. THE CONTRACTOR IS REQUIRED TO CONTACT ALL UTILITY AGENCIES REGARDING TEMPORARY SUPPORT AND SHORING REQUIREMENTS FOR THE VARIOUS UTILITY LINES SHOWN ON THESE PLANS.
9. ALL OPENINGS RESULTING FROM CUTTING OR PARTIAL REMOVAL OF EXISTING CULVERTS, PIPES OR SIMILAR STRUCTURES TO BE ABANDONED SHALL BE SEALED AT BOTH ENDS WITH 6" OF CLASS "B" CONCRETE.
10. UNLESS OTHERWISE SPECIFIED, MINIMUM STREET RECONSTRUCTION SHALL BE 0.25' TYPE "A" HOT MIX ASPHALT OVER 6" CLASS 2 AGGREGATE BASE OR AS SPECIFIED BY THE ENGINEER.
11. ALL RECONSTRUCTION RESURFACING AND PAVEMENT DELINATION, CURBS, SIDEWALKS AND OTHER IMPROVEMENTS ARE TO BE RECONSTRUCTED IN AND AT THE SAME LOCATIONS AND ELEVATIONS AS THE EXISTING IMPROVEMENTS, UNLESS OTHERWISE NOTED.
12. THE CONTRACTOR SHALL SECURE ALL REQUIRED ENCROACHMENT PERMITS PRIOR TO COMMENCEMENT OF ANY WORK.
13. ⊕ INDICATES APPROXIMATE SOIL BORING LOCATION PER SOILS REPORT DATED 05/05/13.
14. THE CONCRETE COATING ON THE INSIDE OF ALL REINFORCED CONCRETE PIPES MUST BE INCREASED TO PROVIDE A MINIMUM OF 1-1/2 INCHES OVER THE REINFORCING AND INCREASED TO A MINIMUM OF 3-1/2 INCHES OVER REINFORCING (INVERT SLAB) FOR BOX CULVERT WHEN DESIGN VELOCITIES EXCEED 20 FEET PER SECOND. THE CONCRETE DESIGN STRENGTH IN THESE REACHES SHALL BE F'C=5,000 PSI FOR VELOCITIES EXCEEDING 20 FEET PER SECOND AND F'C=6,000 PSI FOR VELOCITIES EXCEEDING 30 FEET PER SECOND.

RCFC & WCD STANDARD DRAWINGS

CB 100	CATCH BASIN NO. 1
CB 110	CONCRETE DROP INLET
LD 201	LOCAL DEPRESSION CASE "B","C"
JS 227	JUNCTION STRUCTURE NO. 2
JS 229	JUNCTION STRUCTURE NO. 4
MH 251	MANHOLE NO. 1
MH 252	MANHOLE NO. 2
MH 253	MANHOLE NO. 3
MH 254	MANHOLE NO. 4
TS 301	TRANSITION STRUCTURE NO. 1
TS 303	TRANSITION STRUCTURE NO. 3
M 816	CONCRETE BULKHEAD
M 803	CONCRETE COLLAR

CALTRANS STANDARD DRAWINGS

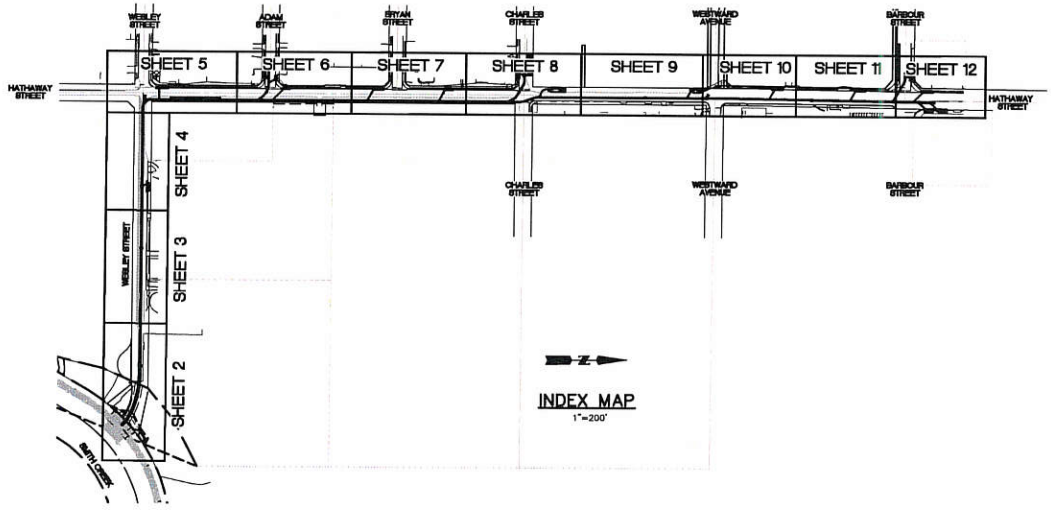
D84	BOX CULVERT HEADWALL
D80	CAST-IN-PLACE RCB



VICINITY MAP
N.T.S.

INDEX

TITLE SHEET	1
LINE "H" PLAN AND PROFILE	2-12
LATERAL "H-4B" PLAN AND PROFILE	13
CONNECTOR PIPE PROFILES	14-16
DETAIL SHEET	17-22



INDEX MAP
1"=200'

Don't Dig...Until You Call U.S.A. Toll Free 1-800-227-2600 for the location of buried utility lines. Don't disrupt vital services.
TWO WORKING DAYS BEFORE YOU DIG

SEAL-ENGINEER

JLG Engineering & Consulting, Inc.
36263 CALLE DE LOBO, MURRIETA, CA 92562
PH. 951.304.9552 FAX 951.304.3568

JOSEPH L. CASTANEDA R.C.E. 59835 DATE

BENCHMARK:
Z 14059
1" IP
W/ RCE 13191 TAG
FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
ELEV=2150.48 FT.
DATUM: NAVD 88

REVISIONS			
REF.	DESCRIPTION	APPR.	DATE

CITY OF BANNING
APPROVED BY:
CITY ENGINEER
DATE:

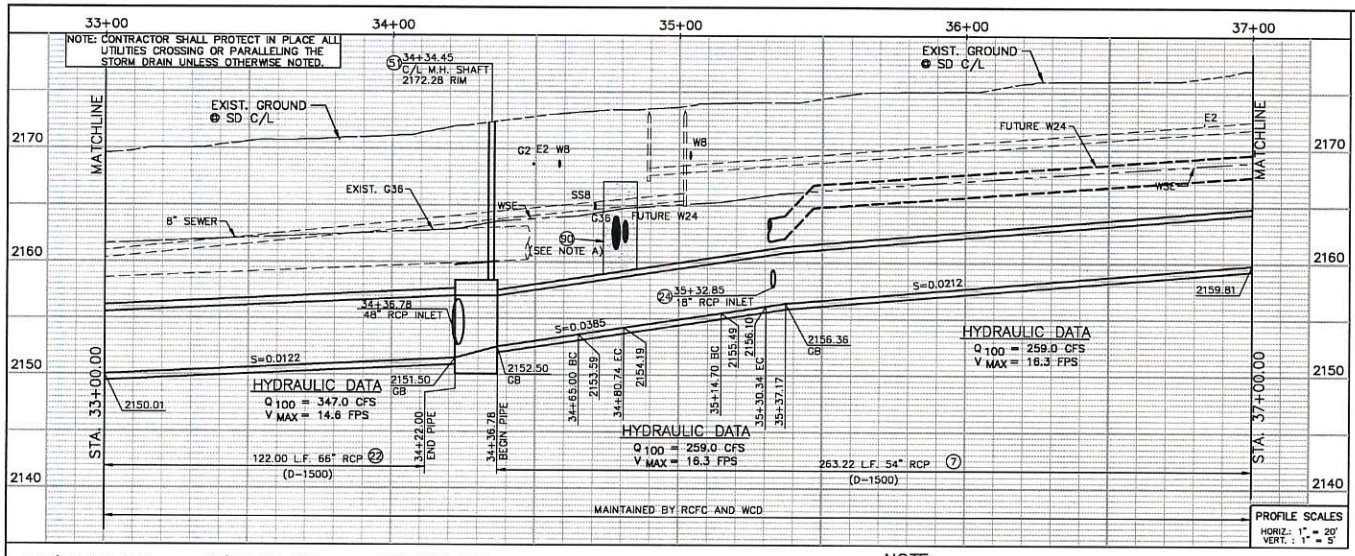
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY:
CHIEF, DESIGN AND CONSTRUCTION
DATE:
APPROVED BY:
GENERAL MANAGER-CHIEF ENGINEER
DATE:

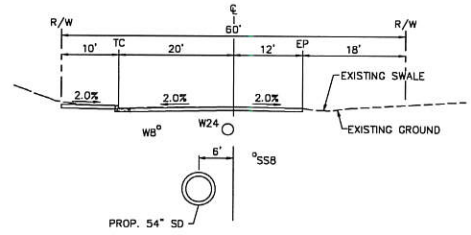
BANNING MDP LINE H STORM DRAIN

TITLE SHEET

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 1 OF 31

Drawing Name: Q:\145-03-11\Engineering\Storm_Drain_Plan\145-03-11_A-11_SD-SHT01.dwg
Last Opened: Dec. 20, 2013 - 9:41am by bellran





HATHAWAY STREET
STA. 36+50.00
SCALE 1"=10'

CONSTRUCTION NOTES

(6) CONSTRUCT 48" RCP (D-LOAD PER PROFILE).

(7) CONSTRUCT 54" RCP (D-LOAD PER PROFILE).

(13) CONSTRUCT CONCRETE APRON PER DETAIL ON SHEET 20.

(14) CONSTRUCT 1' THICK CUTOFF WALL PER DETAIL ON SHEET 20.

(16) CONSTRUCT LOCAL DEPRESSION TYPE "B" PER STD. NO. LD201.

(17) CONSTRUCT MODIFIED CONCRETE DROP INLET PER RCFC & WCD STD. NO. CB110. W=10.16'; V=8.00'. 12'-30" RCP CLASS IV, SEE PROFILE LATERAL H-8A ON SHEET 15, AND DETAIL ON SHEET 19..

(21) CONSTRUCT CONCRETE BULKHEAD PER RCFC & WCD STD. NO. M816.

(22) CONSTRUCT 66" RCP (D-LOAD PER PROFILE).

(24) CONSTRUCT JUNCTION STRUCTURE NO. 4 PER STD. JS229.

(32) CONSTRUCT CONCRETE COLLAR PER STD. DWG. NO. M803.

(35) REMOVE AND REPLACE EXISTING CROSS GUTTER.

(40) PROTECT TEL/TV/E LINE IN PLACE.

(42) CONSTRUCT CONCRETE APRON PER DETAIL PER SHEET 19.

(43) REMOVE AND REPLACE EXISTING AIR RELEASE VALVE AS DIRECTED. LOCATION TO BE DETERMINED BY THE CITY ENGINEER OR HIS FIELD REPRESENTATIVE.

(51) CONSTRUCT MANHOLE NO. 4 PER RCFC & WCD STD. NO. MH254. A=30'00"00", B=48", C=15.17', D=66", D2=54". ELEV R= 2153.22, ELEV S=2152.67.

(66) CONSTRUCT CATCH BASIN NO. 1 PER STD. NO. CB100. W=21'; V=7.5', 23'-24" RCP CALSS IV, SEE PROFILE CP H-88 ON SHEET 13.

(68) CONSTRUCT MODIFIED CONCRETE DROP INLET PER RCFC & WCD STD. NO. CB110. W=7.58'; V=8.00'. 46'-18" RCP CLASS IV, SEE PROFILE LATERAL H-9 ON SHEET 15 AND DETAIL ON SHEET 20.

(90) EXPOSED 36" GAS LINE SHALL NOT BE BURIED WITHOUT PRIOR INSPECTION AND APPROVAL BY SO CAL GAS. THE PIPELINE MUST BE BACKFILLED WITH SAND OR ZERO-SACK SLURRY ONLY. NO MECHANICAL EQUIPMENT SHALL OPERATE WITHIN 3 FEET OF THE PIPELINE.

(A) C/L CURVE DATA
Δ = 20°00'00"
R = 45.00'
T = 7.92'
L = 15.71'
BC = STA. 34+65.10
EC = STA. 34+80.81
PI = N 2277559.28
E 6376817.38

(B) C/L CURVE DATA
Δ = 20°00'05"
R = 45.00'
T = 7.94'
L = 15.71'
BC = STA. 35+14.70
EC = STA. 35+30.34
PI = N 2277606.09
E 6376800.66

(C) C/L CURVE DATA
Δ = 29°48'53"
R = 45.00'
T = 11.98'
L = 23.42'
BC = STA. 10+15.17
EC = STA. 10+38.59
PI = N 2277532.95
E 6376803.64

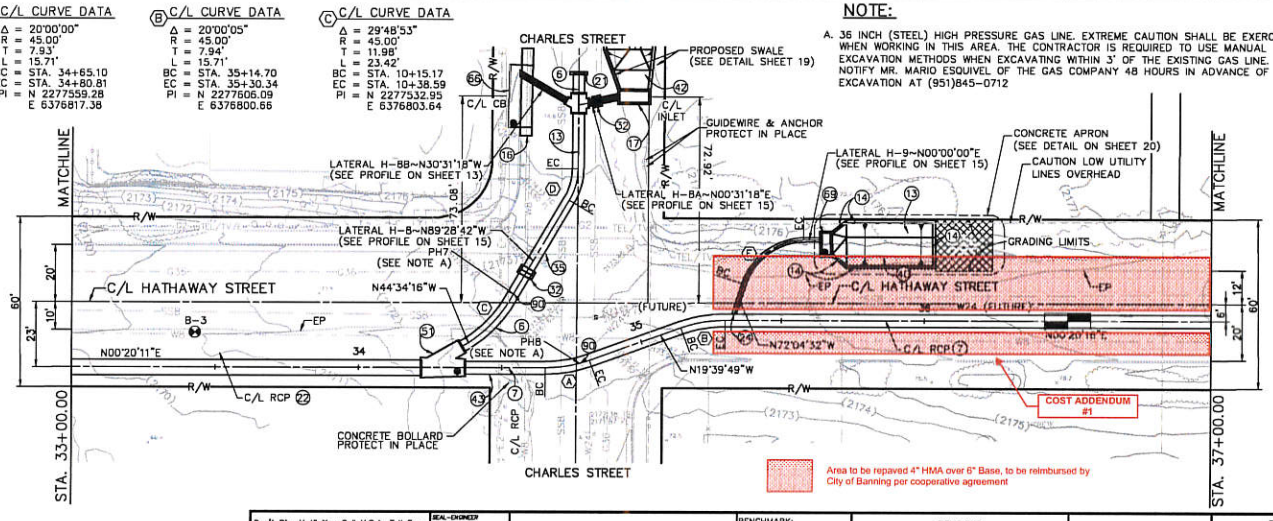
(D) C/L CURVE DATA
Δ = 30°00'00"
R = 22.50'
T = 6.03'
L = 11.78'
BC = STA. 10+62.63
EC = STA. 10+74.41
PI = N 2277562.78
E 6376753.05

(E) C/L CURVE DATA
Δ = 72°04'32"
R = 22.50'
T = 16.37'
L = 28.30'
BC = STA. 10+13.48
EC = STA. 10+41.78
PI = N 2277625.08
E 6376774.31

(F) C/L CURVE DATA
Δ = 72°04'32"
R = 22.50'
T = 16.37'
L = 28.03'
BC = STA. 10+13.48
EC = STA. 10+41.78
PI = N 2277625.73
E 6376772.31

NOTE:

A. 36 INCH (STEEL) HIGH PRESSURE GAS LINE. EXTREME CAUTION SHALL BE EXERCISED WHEN WORKING IN THIS AREA. THE CONTRACTOR IS REQUIRED TO USE MANUAL EXCAVATION METHODS WHEN EXCAVATING WITHIN 3' OF THE EXISTING GAS LINE. NOTIFY MR. MARIO ESQUIVEL OF THE GAS COMPANY 48 HOURS IN ADVANCE OF EXCAVATION AT (951)845-0712



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REAL ENGINEER — JOSEPH L. CASTANEDA R.C.E. 59835 DATE

JLC Engineering & Consulting, Inc.
36263 CALLE DE LOBO, MURRIETA, CA 92562
PH. 951.304.9552 FAX 951.304.3568

BENCHMARK:
Z 14059
1" IP
W/ RCE 13191 TAG FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
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RECOMMENDED FOR APPROVAL BY:
DATE:
APPROVED BY:
DATE:

BANNING MDP LINE H STORM DRAIN
LINE "H"
33+00.00 - 37+00.00

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 8 OF 31

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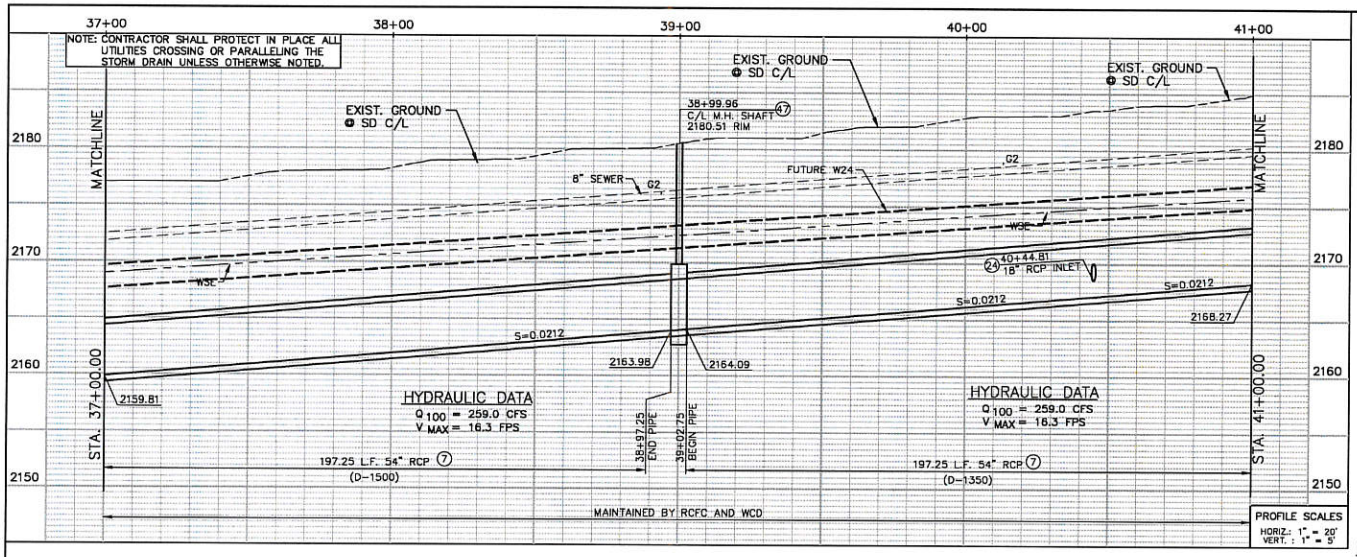
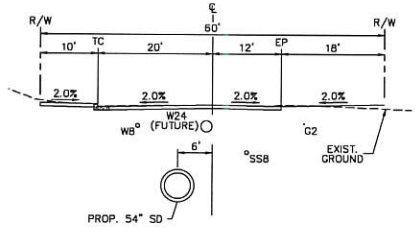
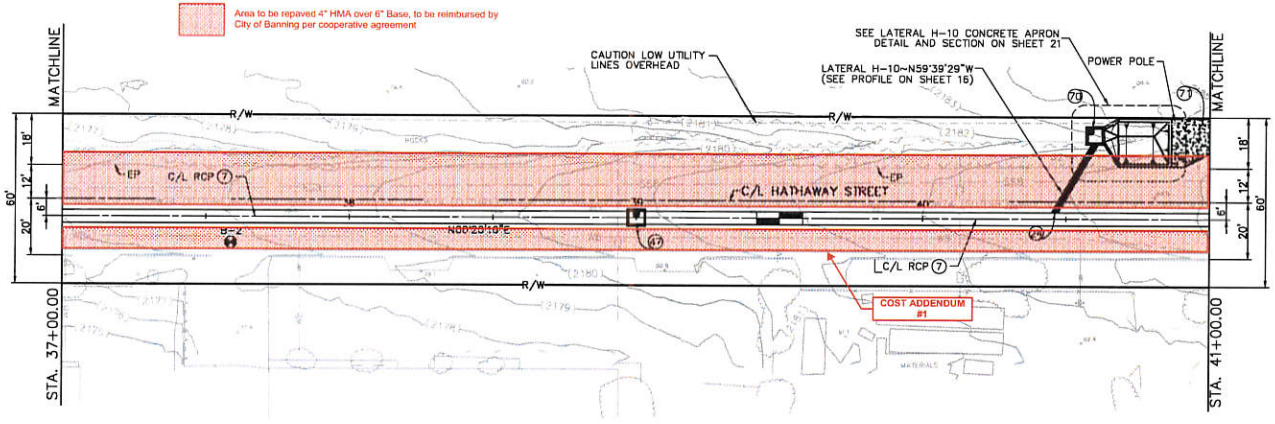




HATHAWAY STREET
STA. 39+50.00
SCALE 1"=10'



CONSTRUCTION NOTES

7 CONSTRUCT 54" RCP (D-LOAD PER PROFILE)

24 CONSTRUCT JUNCTION STRUCTURE NO. 4 PER STD. JS229.

47 CONSTRUCT MANHOLE NO. 2 PER RCFC & WCD STD. NO. MH252; L=7.3', D_1=D_2=54".

70 CONSTRUCT CONCRETE DROP INLET PER RCF & WCD STD. NO. CB110, W=5',H=1.63' V=8.00', 26'-24" RCP CLASS VI. SEE PROFILE H-10 ON SHEET 16.

71 4" OF AC PAVEMENT OVER 6" OF BASE.

Don't Dig...Until You Call U.S.A. Toll Free 1-800-227-2600 for the location of buried utility lines. Don't disrupt vital services.
TWO WORKING DAYS BEFORE YOU DIG

SEAL-ENGINEER

JLC Engineering & Consulting, Inc.
36203 CALLE DE LOBO, MURRIETA, CA 92562
PH 951.304.9552 FAX 951.304.1568
JOSEPH L. CASTANEDA R.C.E. 59835 DATE

BENCHMARK:
Z 14059
1" IP
W/ RCE 13191 TAG FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
ELEV=2150.48 FT.
DATUM: NAVD 88

REVISIONS			
REF.	DESCRIPTION	APPR.	DATE

CITY OF BANNING
APPROVED BY:
CITY ENGINEER
DATE:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY:
DATE:
APPROVED BY:
DATE:

BANNING MDP LINE H STORM DRAIN
LINE "H"
37+00.00 - 41+00.00

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 9 OF 31

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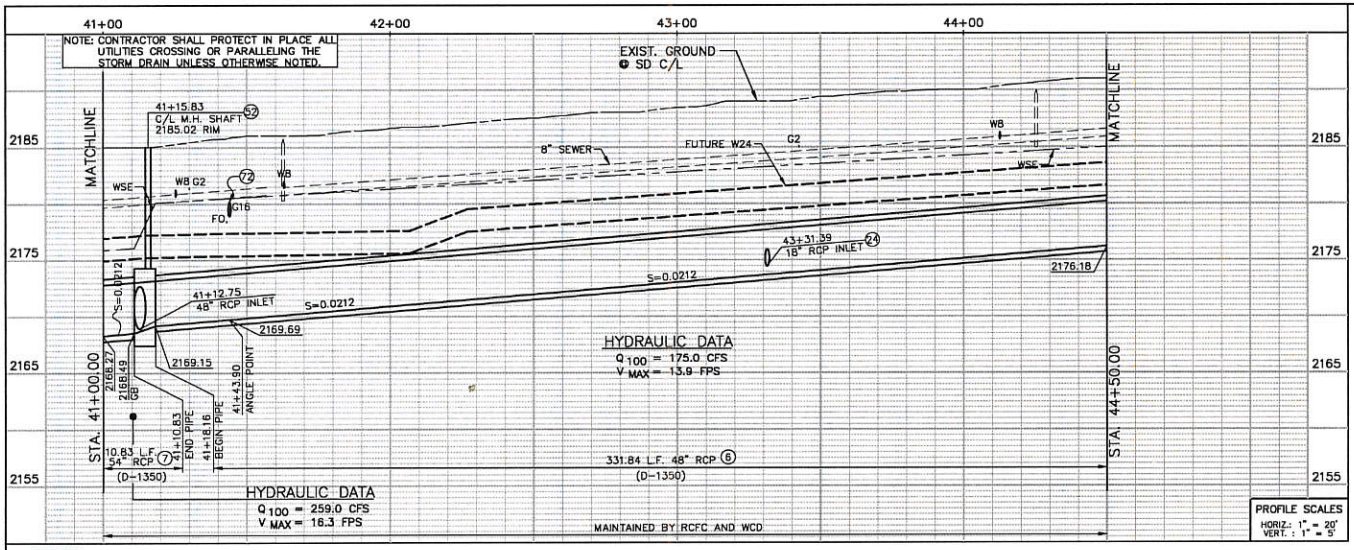
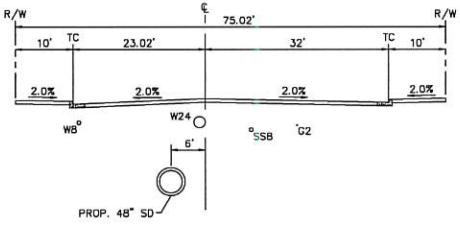
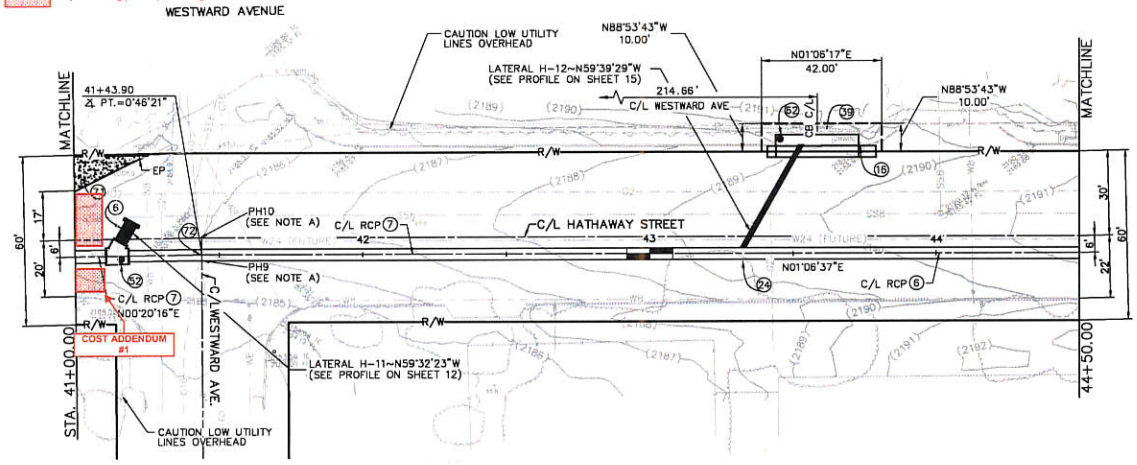




HATHAWAY STREET
STA. 43+00.00
SCALE 1"=10'

Area to be repaved 4" HMA over 6" Base, to be reimbursed by City of Banning per cooperative agreement



WESTWARD AVENUE

CONSTRUCTION NOTES

(6) CONSTRUCT 48" RCP (D-LOAD PER PROFILE).
(7) CONSTRUCT 54" RCP (D-LOAD PER PROFILE).
(16) CONSTRUCT LOCAL DEPRESSION TYPE "B" PER STD. LD201.
(24) CONSTRUCT JUNCTION STRUCTURE NO. 4 PER STD. JS229.
(39) PROTECT EXISTING FENCE IN PLACE.
(52) CONSTRUCT MANHOLE NO. 4 PER RCFC & WCD STD. NO. MH254, A=59°52'54", B=24", C=6.02', D_1=54" D_2=48", ELEV R= 2169.55, ELEV S=2169.08.
(62) CONSTRUCT CATCH BASIN NO.1 PER STD. CB100 WITH OPENING IN BACK. W=28', V=6.5' 43"-18" RCP CLASS IV, SEE PROFILE H-12 ON SHEET 15.
(71) CONSTRUCT 4" OF AC PAVEMENT OVER 6" OF BASE.
(72) QUESTAR SOUTHERN TRAILS PIPELINE MUST BE CONTACTED AT (801) 324-7718 A MINIMUM OF 2 BUSINESS DAYS IN ADVANCE OF CONSTRUCTION IN THE VICINITY OF THE PIPLINE SO ARRANGEMENTS CAN BE MADE FOR PERSONNEL TO BE ON SITE TO OBSERVE CONSTRUCTION ACTIVITY AND ENSURE IT IS COMPLETED IN A SAFE MANNER.

NOTE:

A. 36 INCH (STEEL) HIGH PRESSURE GAS LINE. EXTREME CAUTION SHALL BE EXERCISED WHEN WORKING IN THIS AREA. THE CONTRACTOR IS REQUIRED TO USE MANUAL EXCAVATION METHODS WHEN EXCAVATING WITHIN 3' OF THE EXISTING GAS LINE. NOTIFY MR. MARIO ESQUIVEL OF THE GAS COMPANY 48 HOURS IN ADVANCE OF EXCAVATION AT (951)845-0712

Don't Dig...Until You Call U.S.A. Toll Free 1-800-227-2600 for the location of buried utility lines. Don't disrupt vital services.
TWO WORKING DAYS BEFORE YOU DIG

JLC Engineering & Consulting, Inc.
36263 CALLE DE LOBO, MURRIETA, CA 92562
PH 951 304 9552 FAX 951 304 3568

JOSEPH L. CASTANEDA R.C.E. 59835 DATE

BENCHMARK:
Z 14059
1" IP
W/ RCE 13191 TAG FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
ELEV=2150.48 FT.
DATUM: NAVD 88

REVISIONS			
REF.	DESCRIPTION	APPR.	DATE

CITY OF BANNING
APPROVED BY:
CITY ENGINEER
DATE:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY:
DATE:
APPROVED BY:
DATE:

BANNING MDP LINE H STORM DRAIN
LINE "H"
41+00.00 - 44+50.00

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 10 OF 31

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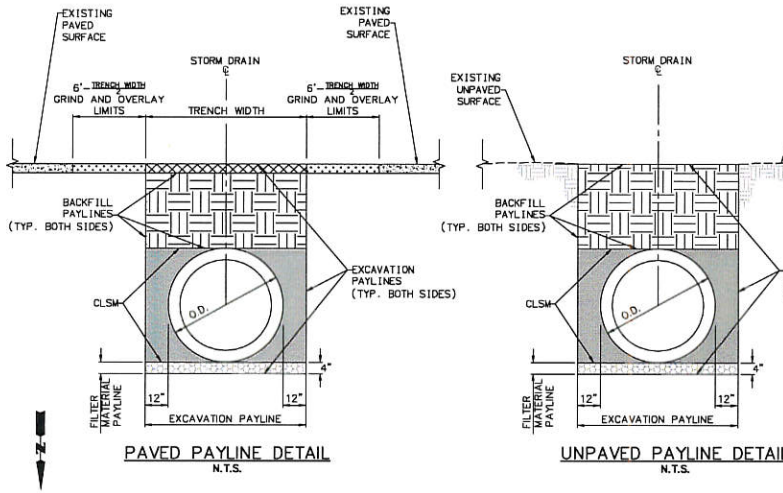
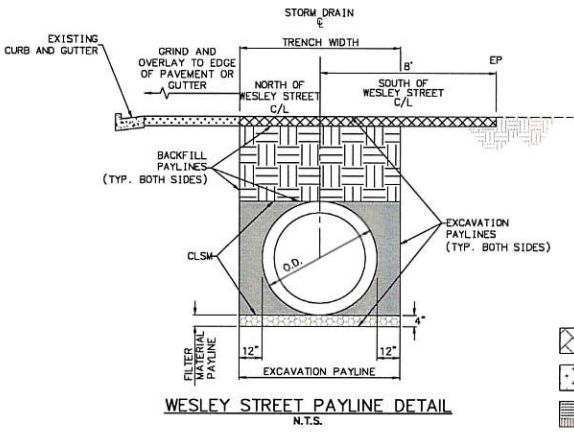


PAVED PAYLINE DETAIL
N.T.S.

UNPAVED PAYLINE DETAIL
N.T.S.



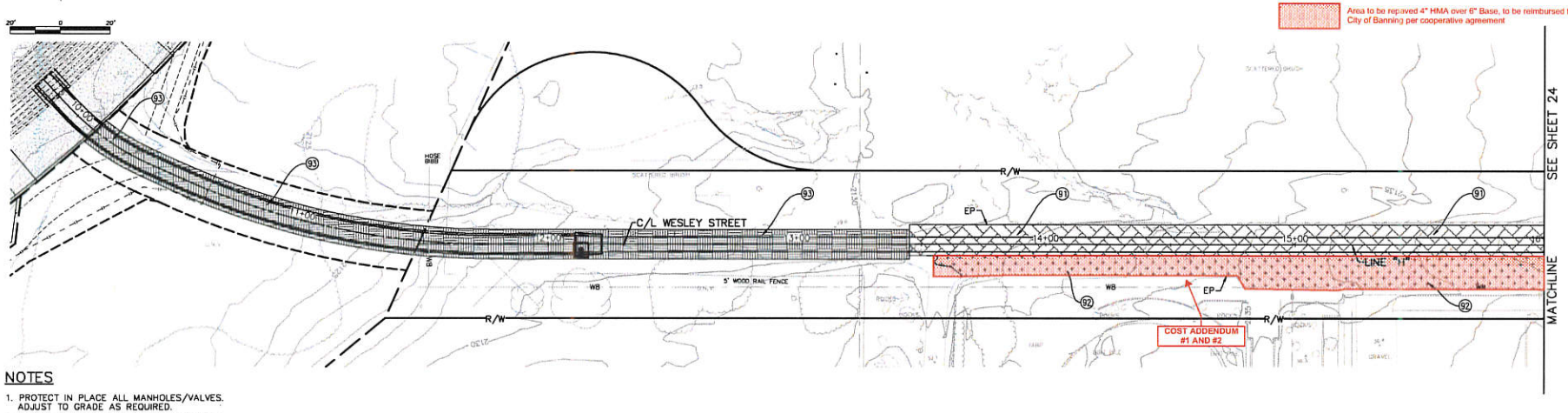
WESLEY STREET PAYLINE DETAIL
N.T.S.

PAYLINE LEGEND

- CONSTRUCT FULL HMA AND AB REPLACEMENT WITHIN TRENCH LIMITS. INSTALL 4" TYPE A HMA OVER 6" CLASS II AB.
- PLACE CLSM BACKFILL TO TOP OF RCB/RCP
- PLACE 4" FILTER MATERIAL
- GRIND AND OVERLAY
- BACKFILL SHALL BE COMPACTED AS FOLLOWS: A) UPPER 12" SHALL BE COMPACTED TO 95% B) REMAINING BACKFILL SHALL BE COMPACTED TO 90%

PLAN HATCH LEGEND

- (91) NEW PAVEMENT LOCATION (SEE PAYLINE DETAILS ON SHEET 23)
- (92) GRIND AND OVERLAY LOCATION (SEE PAYLINE DETAILS ON SHEET 23)
- (93) UNPAVED LOCATION (SEE PAYLINE DETAILS ON SHEET 23)
- Area to be repaved 4" HMA over 6" Base, to be reimbursed by City of Banning per cooperative agreement



NOTES

1. PROTECT IN PLACE ALL MANHOLES/VALVES. ADJUST TO GRADE AS REQUIRED.
2. INSTALL/REPLACE ALL DISTURBED STRIPING, YELLOW CENTERLINE, WHITE EDGE LINES AND REFLECTIVE PAVEMENT. DISTURBED MARKINGS SHALL BE REPLACED WITH 2 COATS PAINT FOR STRIPING, AND THERMOPLASTIC FOR ALL BARS, LEGENDS, AND CROSSWALKS.
3. ALL SIGNING, STRIPING, AND PAVEMENT MARKINGS SHALL BE IN COMPLIANCE WITH SECTION 84 OF THE CALTRANS STANDARD SPECIFICATIONS (LATEST EDITION) AND ALL OTHER APPLICABLE FEDERAL, STATE, AND LOCAL LAWS.

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Last Opened: Jun 06, 2018 - 10:39am by swilliam

Don't Dig...Until You Call U.S.A. Toll Free 1-800-227-2600 for the location of buried utility lines. Don't disrupt vital services.
TWO WORKING DAYS BEFORE YOU DIG

SEAL-ENGINEER
REGISTERED PROFESSIONAL ENGINEER JOSEPH L. CASTANEDA No. 59835 CIVIL STATE OF CALIFORNIA
NO SHEET DEP. 12/31/19

JLC Engineering & Consulting, Inc.
36263 CALLE DE LOBO, MURRIETA, CA 92562
PH: 951.304.9552 FAX 951.304.3568
JOSEPH L. CASTANEDA R.C.E. 59835 DATE

BENCHMARK:
Z 14059
1" IP
W/ RCE 13191 TAG FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
ELEV=2150.48 FT.
DATUM: NAVD 88

REVISIONS			
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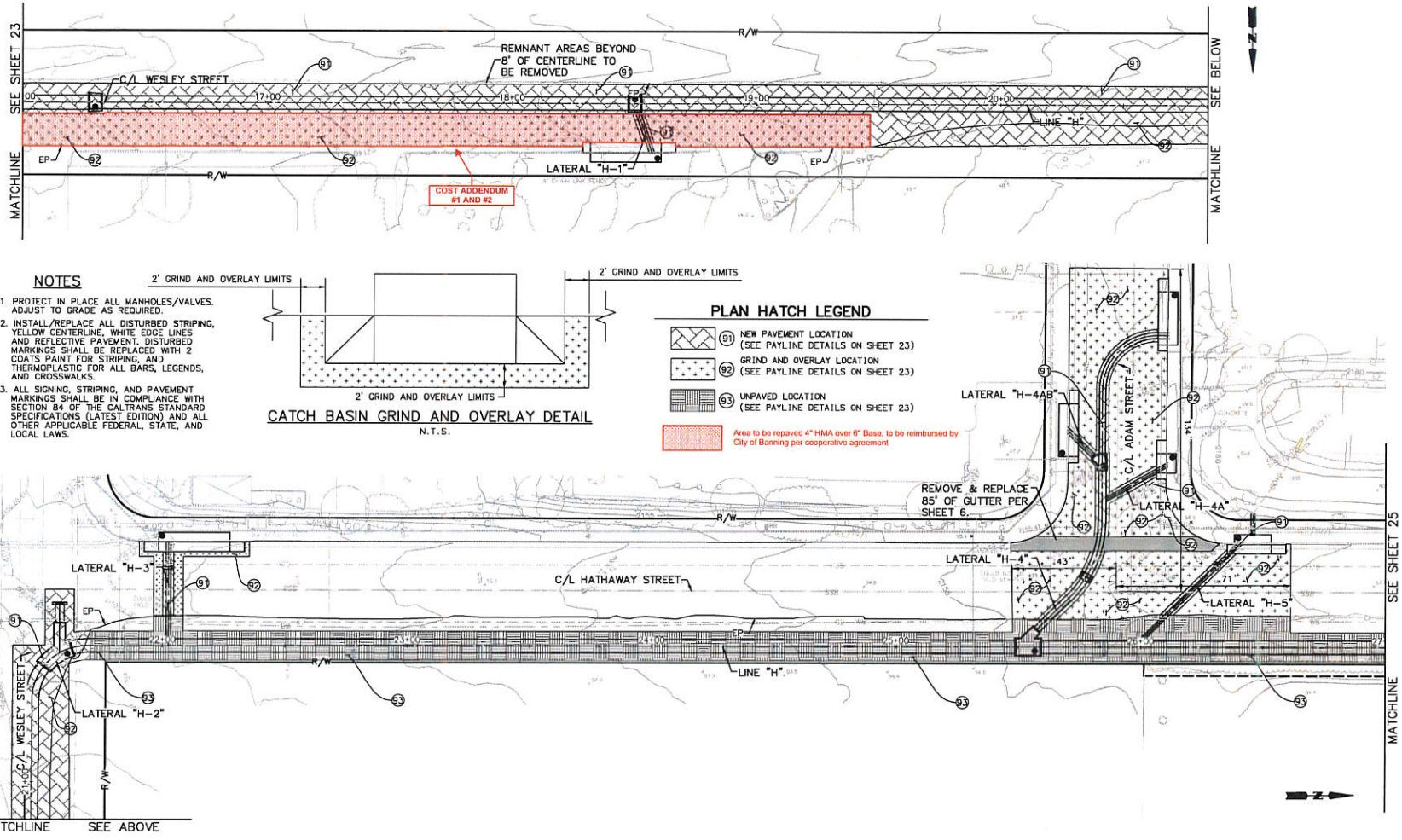
CITY OF BANNING
APPROVED BY:
CITY ENGINEER
DATE:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY: DATE:
APPROVED BY: DATE:

BANNING MDP LINE H STORM DRAIN

LINE "H"
9+79.57 – 16+00.00
PAVING PLAN

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 23 OF 33



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SEAL-ENGINEER

JLC Engineering & Consulting, Inc.
36263 CALLE DE LOBO, MURRIETA, CA 92562
PH 951 304 9555 FAX 951 304 3368

JOSEPH L. CASTANEDA R.C.E. 59835 DATE

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1" IP
W/ RCE 13191 TAG
FLUSH
INTERSECTION OF HATHAWAY ST. AND WESLEY ST.
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REVISIONS			
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CITY OF BANNING
APPROVED BY:
CITY ENGINEER
DATE:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY:
DATE:
APPROVED BY:
DATE:

BANNING MDP LINE H STORM DRAIN
LINE "H"
16+00.00 – 27+00.00
PAVING PLAN

PROJECT NO. 5-0-0177-01
DRAWING NO. 5-0224
SHEET NO. 24 OF 33

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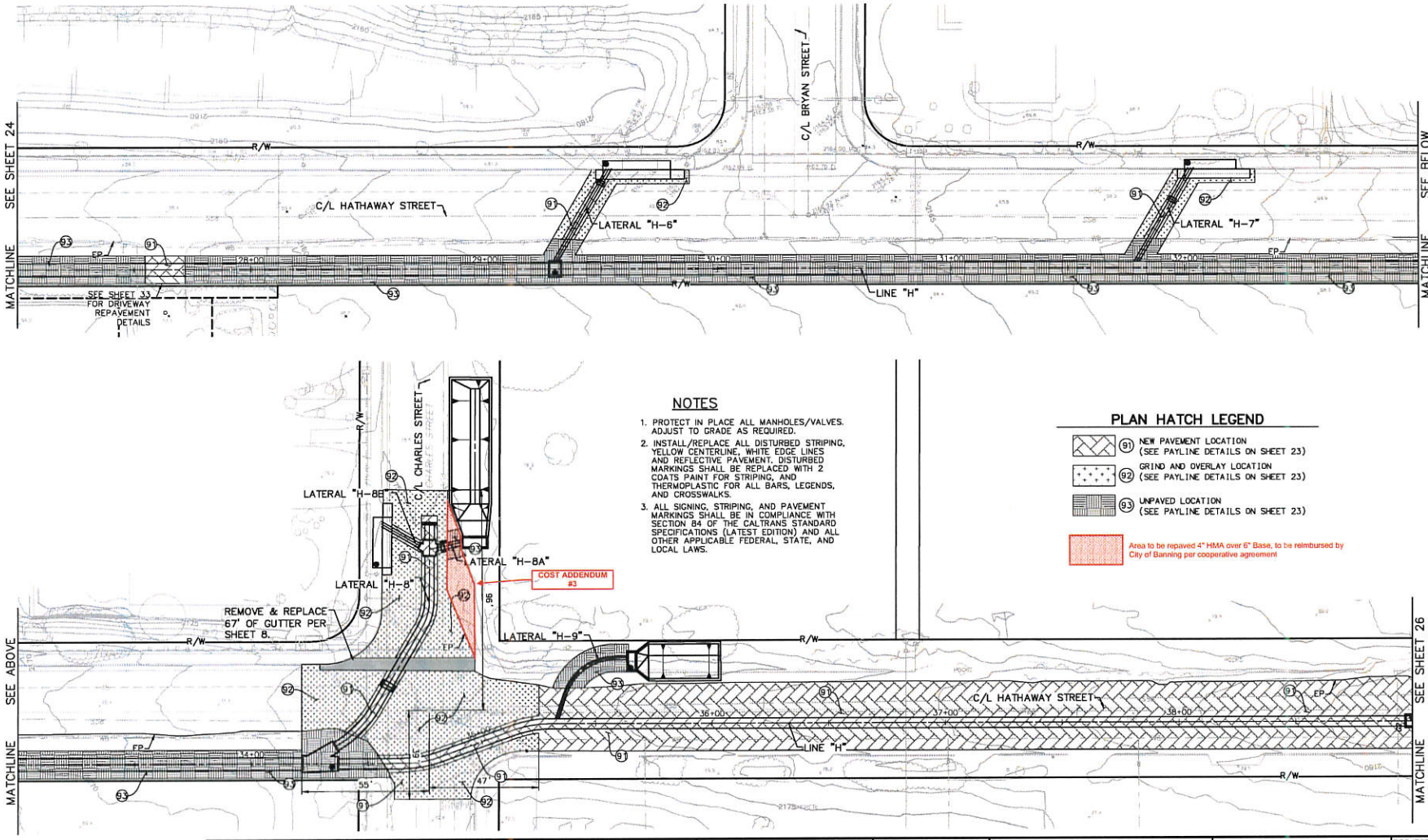

NOTES

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PLAN HATCH LEGEND

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- (93) UNPAVED LOCATION (SEE PAYLINE DETAILS ON SHEET 23)

Area to be repaved 4" HMA over 6" Base, to be reimbursed by City of Banning per cooperative agreement

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REAL ENGINEER — REGISTERED PROFESSIONAL ENGINEER — No. 59835 EXP. 12/31/17 — STATE OF CALIFORNIA

JLC Engineering & Consulting, Inc.
36763 CALLE DE LOBO, MURRIETA, CA 92562
PH. 951 304 9552 FAX 951 304 3568

JOSEPH L. CASTANEDA R.C.E. 59835 DATE

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CITY ENGINEER
DATE:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RECOMMENDED FOR APPROVAL BY:
DATE:
APPROVED BY:
DATE:

BANNING MDP LINE H STORM DRAIN

LINE "H"
27+00.00 – 39+00.00
PAVING PLAN

PROJECT NO.	5-0-0177-01
DRAWING NO.	5-0224
SHEET NO.	25 OF 33

ATTACHMENT 3

Exhibit "B"
Cooperative Agreement with the District

COOPERATIVE AGREEMENT
Banning Master Drainage Plan Line H, Stage 1
Project No. 5-0-00177

The Riverside County Flood Control and Water Conservation District, a body politic, ("DISTRICT") and the City of Banning, a municipal corporation, ("CITY"), hereby agree as follows:

RECITALS

A. DISTRICT has budgeted for and plans to design and construct Banning Master Drainage Plan Line H, Stage 1 ("LINE H STAGE 1"), to provide necessary flood control and drainage improvements for the immediate adjacent areas within the city of Banning; and

B. LINE H STAGE 1 as identified in DISTRICT's Banning Master Drainage Plan ("MDP") and as shown on District Drawing No. 5-0224 consists of approximately 3,900 lineal feet of underground storm drain system located within Hathaway Street between Barbour Street and Wesley Street then easterly along Wesley Street to Smith Creek Channel, in the city of Banning, as shown in concept on Exhibit "A" attached hereto and made a part hereof. At its downstream terminus, LINE H STAGE 1 will outlet into DISTRICT's existing Smith Creek Channel; and

C. Associated with the construction of LINE H STAGE 1 is the construction of various catch basins, connector pipes and storm drains that are thirty-six inches (36") or less in diameter ("APPURTENANCES"); and

D. CITY desires DISTRICT to include certain street improvements such as street paving ("STREET PAVING"), as shown in concept on Exhibit "B" attached hereto and made a part hereof, as a part of its construction contract; and

E. CITY is willing to reimburse DISTRICT for one hundred percent (100%) of the lowest responsible construction contract bid price for STREET PAVING ("CITY INITIAL

PAYMENT"), plus any cost associated with STREET PAVING items resulting from contract change orders ("STREET PAVING CHANGE ORDERS"). Together, CITY INITIAL PAYMENT and STREET PAVING CHANGE ORDERS are collectively referred to as "CITY CONTRIBUTION". CITY CONTRIBUTION shall not exceed a total sum of one hundred thousand dollars ($100,000); and

F. DISTRICT is willing to include STREET PAVING as part of its public works construction contract. Therefore, DISTRICT has also budgeted for and is willing to prepare or cause to be prepared, and have CITY review for approval the necessary restoration plans and specifications for STREET PAVING ("STREET PAVING PLANS") located within CITY rights of way; and

G. CITY is willing to review and approve DISTRICT's plans and specifications for STREET PAVING PLANS; and

H. Together, APPURTENANCES and STREET PAVING are hereinafter called "CITY FACILITIES"; and

I. Altogether LINE H STAGE 1 and CITY FACILITIES are called "PROJECT"; and

J. DISTRICT and CITY acknowledge it is in the best interest of the public to proceed with the construction of PROJECT at the earliest possible date; and

K. The purpose of this Agreement is to memorialize the mutual understandings by and between DISTRICT and CITY with respect to design, construction, inspection, ownership, operation, and maintenance of PROJECT.

NOW, THEREFORE, in consideration of the preceding recitals and the mutual covenants hereinafter contained, the parties hereto mutually agree as follows:

SECTION I

DISTRICT shall:

1. Pursuant to the California Environmental Quality Act (CEQA), act as the Lead Agency and assume responsibility for the preparation, circulation, and adoption of all necessary and appropriate CEQA documents pertaining to the construction, operation, and maintenance of PROJECT.

2. Prepare, at its sole cost and expense, construction plans and specification documents for PROJECT ("IMPROVEMENT PLANS"), including STREET PAVING PLANS, in accordance with applicable DISTRICT and CITY standards.

3. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT located within its rights of way.

4. Secure, at its sole cost and expense, all necessary permits, approvals, licenses or agreements required by any federal, state or local resource or regulatory agencies pertaining to the construction, operation and maintenance of PROJECT.

5. Prior to advertising PROJECT for public works construction contract bids, submit IMPROVEMENT PLANS and STREET PAVING PLANS to CITY for its review and approval, as appropriate.

6. Advertise, award and administer a public works construction contract for PROJECT, including STREET PAVING PLANS.

7. Provide CITY with written notice that DISTRICT has awarded a public works construction contract for PROJECT. The written notice to CITY shall include the Contractor's actual bid amounts for STREET PAVING PLANS.

8. Within thirty (30) days of awarding PROJECT construction contract, pay the

Western Riverside County Regional Conservation Agency the costs associated with the Multiple Species Habitat Conservation Plan, which is either the lesser of three percent (3%) of the lowest bid price or three percent (3%) of the contract bid price, less the value of the applicable project specific mitigation.

9. Prior to commencing PROJECT construction, schedule and conduct a pre-construction meeting between DISTRICT, CITY and other affected entities. DISTRICT shall notify CITY at least twenty (20) days prior to conducting the pre-construction meeting.

10. Furnish CITY, at the time of providing written notice for the pre-construction meeting as set forth in Section I.9., with a construction schedule which shall show the order and dates in which DISTRICT or DISTRICT's contractor proposes to carry out the various parts of work, including estimated start and completion dates.

11. Not permit any change to, or modification of, CITY and DISTRICT approved STREET PAVING PLANS without the prior written permission and consent of CITY.

12. Grant CITY, by execution of this Agreement, the right to enter upon DISTRICT's property where necessary and convenient for the purpose of gaining access to, and performing inspection service for the construction of PROJECT as set forth herein.

13. Construct or cause to be constructed, PROJECT pursuant to a DISTRICT administered public works construction contract, in accordance with DISTRICT and CITY approved IMPROVEMENT PLANS and STREET PAVING PLANS.

14. Inspect or cause to be inspected, construction of PROJECT.

15. Require its construction contractor(s) to comply with all Cal/OSHA safety regulations including regulations concerning confined space and maintain a safe working environment for all DISTRICT and CITY employees on the site.

16. Require its construction contractor(s) to include CITY as an additional

insured under the liability insurance coverage for PROJECT, and also require its construction contractor(s) to include CITY as a third party beneficiary of any and all warranties of the contractor's work with regard to CITY FACILITIES.

17. Accept ownership and sole responsibility for the operation and maintenance of PROJECT until such time as CITY accepts ownership and responsibility for operation and maintenance of CITY FACILITIES.

18. Within two (2) weeks of completing PROJECT construction, provide CITY with written notice that PROJECT construction is substantially complete and requesting that CITY conduct a final inspection of CITY FACILITIES and subsequently assume ownership and responsibility for operation and maintenance of CITY FACILITIES.

19. Keep an accurate accounting of all PROJECT construction costs and include this final accounting when invoicing CITY for STREET PAVING and if applicable, STREET PAVING CHANGE ORDERS. The final accounting of construction costs shall include a detailed breakdown of all costs, including but not limited to DISTRICT'S costs associated with administering the construction contract, payment vouchers, CITY-approved change orders and other such construction contract documents as may be necessary, to establish the actual cost of construction.

20. Upon completion and acceptance of STREET PAVING construction by CITY, invoice CITY for CITY CONTRIBUTION as set forth in Section II.10, provided that CITY CONTRIBUTION shall not exceed one hundred thousand dollars ($100,000).

21. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with a copy of DISTRICT's Notice of Completion.

22. Upon DISTRICT's acceptance of PROJECT construction as complete, provide CITY with (i) a reproducible duplicate set of "record drawings" of PROJECT plans; and

(ii) a reproducible copy of "record drawings" of STREET PAVING PLANS.

23. Ensure that all work performed pursuant to this Agreement by DISTRICT, its agents or contractors is done in accordance with all applicable laws and regulations, including but not limited to prevailing wage laws, all applicable provisions of the Labor Code, Business and Professions Code, and Water Code. DISTRICT shall be solely responsible for all costs associated with compliance with applicable laws and regulations.

SECTION II

CITY shall:

1. Act as a Responsible Agency under CEQA, taking all necessary and appropriate action to comply with CEQA.

2. Review and approve, as appropriate, IMPROVEMENT PLANS and STREET PAVING PLANS prior to DISTRICT's advertising PROJECT for construction bids.

3. Grant DISTRICT, by execution of this Agreement, all rights necessary to construct, inspect, operate and maintain PROJECT within CITY rights of way or easements, upon reasonable prior notice to CITY before such activities.

4. Issue, at no cost to DISTRICT or DISTRICT's contractor, the necessary encroachment permit(s) required to construct PROJECT within CITY rights of way.

5. Obtain, at its sole cost and expense, all necessary rights of way, rights of entry and temporary construction easements necessary to construct, inspect, operate and maintain PROJECT located within its rights of way.

6. Order the relocation of all utilities installed by permit or franchise within CITY rights of way which conflict with the construction of PROJECT and which must be relocated at the utility owner's expense.

7. Order the relocation of all CITY owned utilities within CITY rights of way

which conflict with the construction of PROJECT and which must be relocated at the CITY's expense.

8. Inspect the construction of CITY FACILITIES for quality control purposes at its sole cost, and provide any comments to DISTRICT personnel who shall be solely responsible for all quality control communications with DISTRICT's contractor(s) during the construction of PROJECT.

9. Upon receipt of DISTRICT's written notice that PROJECT construction is substantially complete as set forth in Section I.21, conduct a final inspection of CITY FACILITIES.

10. Pay DISTRICT, within thirty (30) days after receipt of DISTRICT'S appropriate invoice, for CITY CONTRIBUTION as set forth in Section I.20.

11. Accept ownership and sole responsibility for the operation and maintenance of CITY FACILITIES upon (i) receipt of DISTRICT's Notice of Completion as set forth in Section I.21; and (ii) receipt of a reproducible duplicate set of "record drawings" of PROJECT plans and STREET PAVING PLANS as set forth in Section I.22.

12. Upon DISTRICT acceptance of PROJECT construction as being complete, accept sole responsibility for the adjustment of all PROJECT manhole rings and covers located within CITY rights of way and jurisdiction which must be performed at such time(s) that the finished grade along and above the underground portions of PROJECT are improved, repaired, replaced or changed. It being further understood and agreed that any such adjustments shall be performed at no cost to DISTRICT.

SECTION III

It is further mutually agreed:

1. STREET PAVING shall, at all times, remain sole ownership and exclusive responsibility of CITY. Nothing herein shall be construed as creating any obligation or responsibility on the part of DISTRICT to operate or maintain STREET PAVING.

2. Except as otherwise provided herein, all construction work involved with PROJECT shall be inspected by DISTRICT, and shall not be deemed complete until approved and accepted as complete by DISTRICT.

3. Except as otherwise provided herein, DISTRICT shall not be responsible for any additional street repairs or improvements not shown in IMPROVEMENT PLANS or STREET PAVING PLANS and not as a result of PROJECT construction.

4. DISTRICT and CITY each pledge to cooperate in regard to the operation and maintenance of their respective facilities as set forth herein and to discharge their respective maintenance responsibilities in an expeditious fashion so as to avoid the creation of any nuisance condition or undue maintenance impact upon the others' facilities.

5. DISTRICT shall indemnify, defend, save and hold harmless CITY (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to DISTRICT's (including its officers. Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

6. CITY shall indemnify, defend, save and hold harmless DISTRICT and the County of Riverside (including its agencies, districts, special districts and departments, their

respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) from any liabilities, claim, damage, proceeding or action, present or future, based upon, arising out of or in any way relating to CITY's (including its officers, elected and appointed officials, employees, agents, representatives, independent contractors, and subcontractors) actual or alleged acts or omissions related to this Agreement, performance under this Agreement, or failure to comply with the requirements of this Agreement, including but not limited to: (a) property damage; (b) bodily injury or death; (c) payment of reasonable attorney's fees; or (d) any other element of any kind or nature whatsoever.

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

8. This Agreement is to be construed in accordance with the laws of the State of California.

9. Any and all notices sent or required to be sent to the parties of this Agreement will be mailed by first class mail, postage prepaid, to the following addresses:

RIVERSIDE COUNTY FLOOD CONTROL
AND WATER CONSERVATION DISTRICT
1995 Market Street
Riverside, CA 92501
Attn: Engineering Services Section

CITY OF BANNING
99 E. Ramsey Street
Banning, CA 92220
Attn: Kevin Sin

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

11. Any action at law or in equity brought by any of the parties hereto for the purpose of enforcing a right or rights provided for by the Agreement, shall be tried in a court of competent jurisdiction in the County of Riverside, State of California, and the parties hereto waive all provisions of law providing for a change of venue in such proceedings to any other county.

12. This Agreement is the result of negotiations between the parties hereto, and the advice and assistance of their respective counsel. The fact that this Agreement was prepared as a matter of convenience by DISTRICT shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against DISTRICT because DISTRICT prepared this Agreement in its final form.

13. This Agreement is made and entered into for the sole protection and benefit of the parties hereto. No other person or entity shall have any right or action based upon the provisions of this Agreement.

14. This Agreement is intended by the parties hereto as a final expression of their understanding with respect to the subject matter hereof and as a complete and exclusive statement of the terms and conditions thereof and supersedes any and all prior and contemporaneous agreements and understandings, oral and written, in connection therewith. This Agreement may be changed or modified only upon the written consent of the parties hereto.

//

//

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement on

_____.
(to be filled in by Clerk of the Board)

RECOMMENDED FOR APPROVAL:

By _____
JASON E. UHLEY
General Manager-Chief Engineer

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT

By _____
MARION ASHLEY
Chairman, Riverside County Flood Control and Water Conservation District Board of Supervisors

APPROVED AS TO FORM:

GREGORY P. PRIAMOS
County Counsel

By _____
KRISTINE BELL-VALDEZ
Supervising Deputy County Counsel

ATTEST:

KECIA HARPER-IHEM
Clerk of the Board

By _____
Deputy

(SEAL)

Cooperative Agreement w/City of Banning
Banning Master Drainage Plan Line H, Stage 1
Project No. 5-0-00177
08/02/18
AMR:blm

RECOMMENDED FOR APPROVAL:

CITY OF BANNING

By _____
GEORGE MOYER
Mayor

APPROVED AS TO FORM:

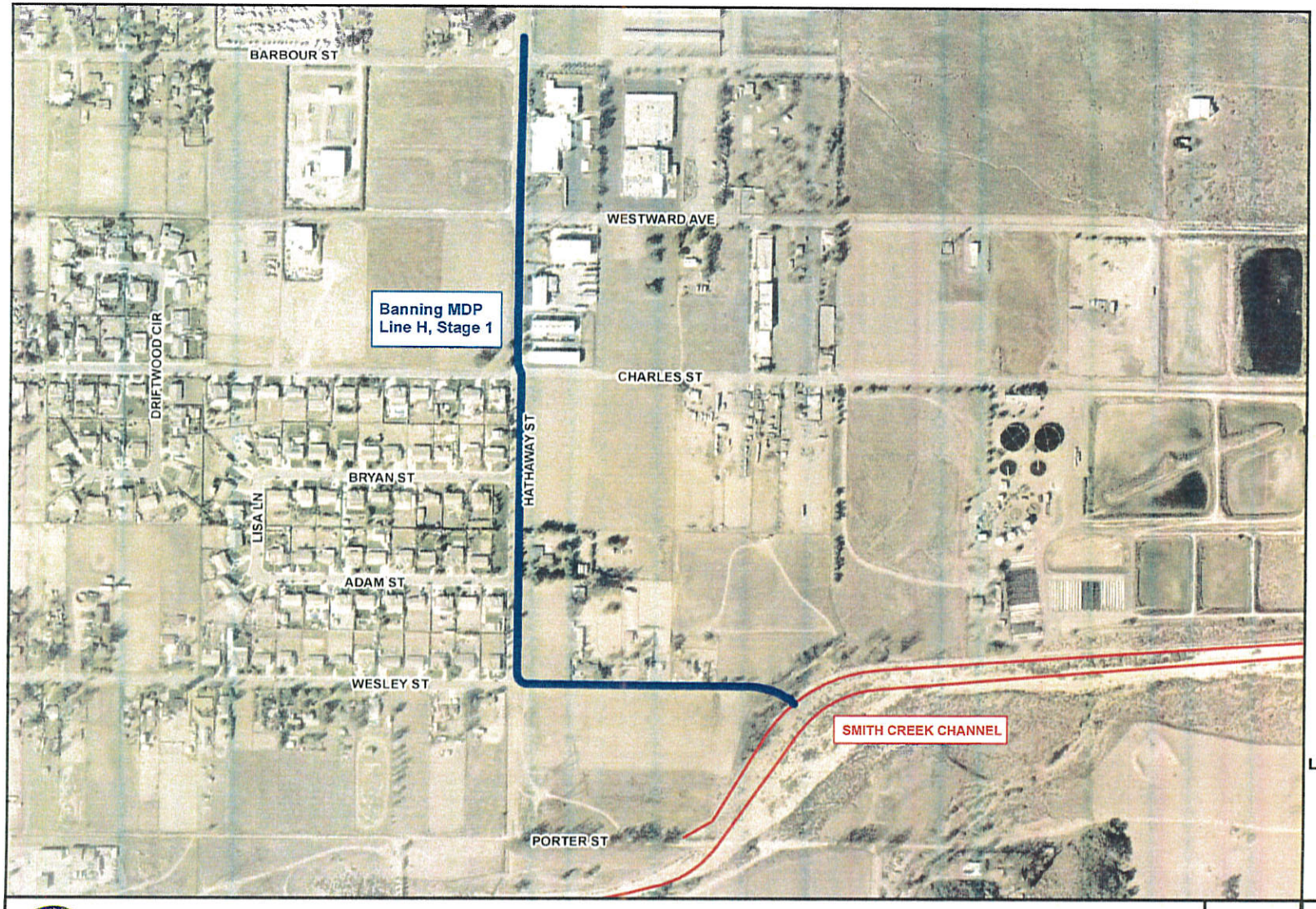
By _____
KEVIN G. ENNIS
City Attorney

ATTEST:

By _____
MARIE CALDERON
City Clerk

(SEAL)

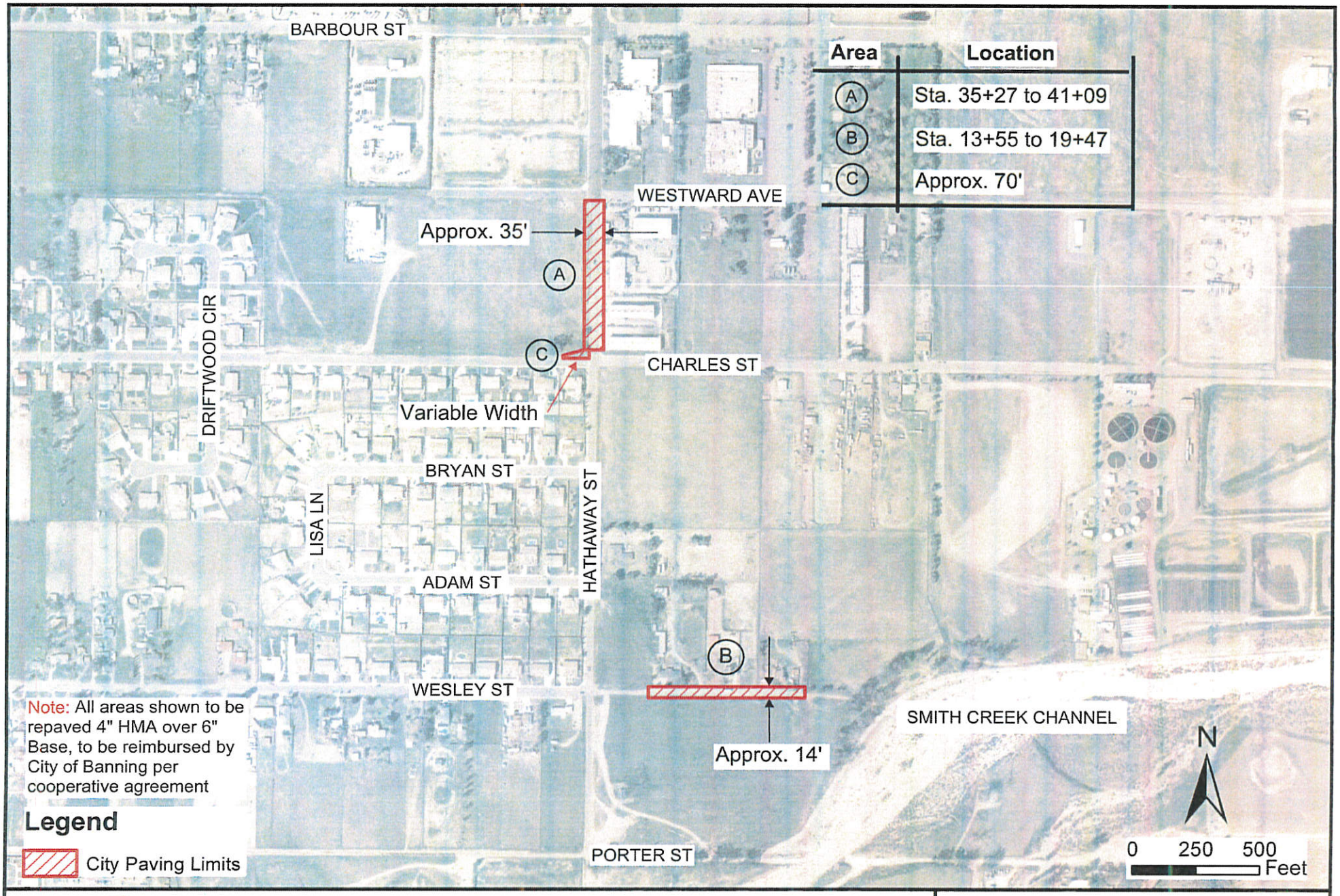
Cooperative Agreement w/City of Banning
Banning Master Drainage Plan Line H, Stage 1
Project No. 5-0-00177
08/02/18
AMR:blm



Banning MDP Line H, Stage 1
Project No. 5-0-00177

N
W E
S

EXHIBIT A



Banning MDP Line H, Stage 1
Project No. 5-0-00177

EXHIBIT B

CITY PAVING LIMITS

CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

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

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-117, Approving an Amended Professional Services Agreement in the amount of $34,671 with Christy White Associates to perform an Audit of the Electric Utility and Billing Departments, based on the Updated Cost due to increased Professional Liability Insurance requirements per the City's Insurance Carrier.**

RECOMMENDATION:

Approve Resolution 2018-117 authorizing the Interim City Manager to Execute an Amended Professional Services Agreement in the amount of $34,671 with Christy White Associates to perform an Audit of the Electric Utility and Billing Departments, based on the updated cost due to increased Professional Liability Insurance requirements (per the City's insurance carrier), and authorize the necessary budget adjustments.

JUSTIFICATION:

On April 10, 2018, Council approved Resolution 2018-46 approving a contract with Christie White Associates in the amount of $32,200 to perform an audit of the Electric Utility and Utility Billing departments. The audit entrance conference was scheduled for August 9, 2018, however the professional liability insurance could not be validated through Planet Bids as the certificate submitted by Christy White Associates was not sufficient.

On June 4, 2018, Purchasing staff sent the copy of the contract and professional liability insurance provided by Christy White Associates to the City's insurance carrier, Public Entity Risk Management Authority ("PERMA") to seek approval of accepting their insurance as-is. **PERMA stated that they would not approve the insurance provided**, specifically Mr. Trost stated that "The indemnification language in the Agreement is not in compliance with the current state of the law." Further, that the City

was not in compliance with their requirements of $2M professional liability coverage per occurrence.

Based on the requirement PERMA gave to the City, Purchasing consulted with the City Attorney and together they developed a new contract requirement applicable to all consultants that provide a professional service to the City, which requires a $2M professional liability coverage, increased from $1M.

Due to the increased coverage requirement, Christy White Associates is seeking an additional $2,471 to their original approved contract for the cost of the additional coverage. Further, due to the time delay, Christy White Associates cannot begin the audit until January 2019.

Based on the proposal schedule, the time frame to conduct the audit and provide the necessary reports will be completed within 90 days of starting, so the audit should be completed by April 2019.

BACKGROUND:

On April 10, 2018, Council approved a contract with Christie White and Associates to perform an audit of the Electric Utility and Utility Billing departments, as prescribed in the Request for Proposal issued by the City. The proposals ranged in cost from $32,200 to $59,280 or possibly more as one proposal did not list how many hours they anticipate spending on the audit.

The City's external auditors, Lance Soll & Lunghard, explained to Council that their firm could not perform a forensic audit as they do not have the certified staff for that type of an audit and they further explained that it is expensive for such an audit. With that information, Council gave direction to release an RFP for an Internal Audit of the Electric Utility by a firm certified in fraud examining, and to bring back results before proceeding to determine how costly the audit shall be.

OPTIONS:

1. Approve Resolution 2018-46, authorizing the Interim City Manager to execute an agreement with Christy White Associates for $34,671.

2. Provide alternative direction to staff.

FISCAL IMPACT:

$34,671.00 to the Electric Fund.

ATTACHMENTS:

1. Email from Kerry Trost of PERMA responding to Purchasing

2. Updated Insurance Requirements from PERMA

3. Quote for the additional premium for increased Professional Liability Insurance
4. Email from Christy White indicating the Schedule to start the Audit (January 2019)
5. Notice of Termination of Professional Services Agreement dated June 28, 2018
6. Proposal received by Christy White Associates
7. Resolution 2018-117
8. Amended Professional Services Agreement

Approved by:

Rochelle Clayton, Interim City Manager

ATTACHMENT 1

Email from Kerry Trost of PERMA responding to Purchasing

From: Kerry Trost
To: Tisha Showers
Subject: RE: City of Banning Contract and Insurance Review
Date: Monday, June 4, 2018 8:17:14 AM
Attachments: Insurance Requirements - Consultant Services Agreement - Norco.docx

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The indemnification language in the Agreement is not in compliance with the current state of the law. As a result, it could be found void and unenforceable. For contracts with design professionals executed after 01/01/18, contracts that purport to indemnify, including the duty and the cost to defend, the indemnitee by a design professional against liability for claims against the indemnitee, are unenforceable, except to the extent that the claims against the indemnitee arise out of, pertain to, or relate to the negligence, recklessness, or willful misconduct of the design professional. Be3low is the indemnification language we are recommending to our members:

> "To the furthest extent allowed by law, including California Civil Code section 2782.8, Consultant shall indemnify, hold harmless and defend City and each of its elected officials, officers, 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), and from any and all claims, demands and actions in law or equity (including reasonable attorney's fees and litigation expenses) to the extent that any loss, liability, fines, penalties, forfeitures, costs, damages, claims, demands or actions in law or equity arise out of, pertain to, or relate to the negligence, recklessness or willful misconduct of Consultant, its principals, officers, employees or agents in the performance of this Agreement. In no event shall the cost to defend charged to the design professional exceed the design professional's proportionate percentage of fault. However, notwithstanding the previous sentence, in the event one or more defendants is unable to pay its share of defense costs due to bankruptcy or dissolution of the business, the design professional shall meet and confer with other parties regarding unpaid defense costs.
>
> If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to indemnify, hold harmless and defend City and each of its elected officials, officers, employees, agents and volunteers in accordance with the terms of the preceding paragraph.
>
> This section shall survive termination or expiration of this Agreement."

I would suggest you consult with your City Attorney.

Insurance is not approved.

As a reminder, a Certificate of Insurance reads as follows:

"This Certificate is issued as a matter of information only and confers not rights upon the certificate holder. This Certificate does not affirmatively or negatively amend, extend or alter the coverage afforded by the policies below. This Certificate does not constitute a contract between the issuing

insurer(s), authorized representative or producer and the certificate holder.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsements."

The only document which amends extends or alters coverage is an endorsement.

ICTC will require the following to approve insurance:

1) Additional insured and primary insurance endorsements for General Liability insurance in favor of the City of Banning, its respective elected and appointed officers, directors, officials, employees, agents and volunteers.

2) Evidence of Auto Liability insurance and an additional insured endorsement for Auto Liability insurance in favor of the City of Banning, its respective elected and appointed officers, directors, officials, employees, agents and volunteers.

We are recommending our members increase the limits of liability required for GL and AL insurance.

You should require Employer's Liability insurance. In addition, you should require a waiver of subrogation for Workers' Compensation insurance.

Professional Liability insurance is a first party insurance policy and you cannot require that it be primary or name the City as an additional insured.

In the meantime, I am attaching our recommended insurance language for Professional Services Agreements. You would need to change "Contractor" to "Consultant." Again, I would suggest you consult with your City Attorney.

KT

From: tshowers@ci.banning.ca.us <tshowers@ci.banning.ca.us>
Sent: Monday, June 04, 2018 7:47 AM
To: Kerry Trost <KTrost@perma.dst.ca.us>
Subject: City of Banning Contract and Insurance Review

Good morning Kerry,

We are in the process of doing a contract for auditing services with Christy White Associates., however we are running into some issues with their insurance in regards to our requirements.. The main issue we are seeing right now is their Professional Liability does not have endorsements and they are claiming the insurance company does not provided endorsements, in addition to the AM Best rating. I have attached the contract, the General/Auto/WC certificate and endorsements and the Certificate for the Professional Liability. Can you please review their attached

insurance they have submitted and advise if we can accept it as is?

Tisha Showers

City of Banning
Administrative Services / Purchasing Division
(951) 922-3151
99 E Ramsey St
Banning, Ca 92220
tshowers@ci.banning.ca.us

ATTACHMENT 2

Updated Insurance Requirements from PERMA

PERMA INSURANCE LANGUAGE:

Throughout the life of this Agreement, Contractor/Consultant 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 the 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 the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

$2,000,000 per occurrence for bodily injury and property damage
$1,000,000 per occurrence for personal and advertising injury
$4,000,000 aggregate for products and completed operations
$4,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 - Any Auto) with limits of liability of not less than $1,000,000 per accident 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.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of $2,000,000 per claim/occurrence and $2,000,000 policy aggregate.

In the event Contractor/Consultant 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).

Contractor/Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Contractor/Consultant 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 City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to VVTA, its board members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to VVTA's Executive Director or his/her designee, guaranteeing payment of losses and related investigations, claim

administration and defense expenses. At no time shall the City 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 has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Contractor/Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Contractor/Consultant 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 Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Contractor/Consultant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Contractor/Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Contractor/Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least 3 years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a 3-year discovery period.
3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of 3 years following the expiration or termination of the Agreement.
4. A copy of the claims reporting requirements must be submitted to VVTA for review.
5. These requirements shall survive expiration or termination of the Agreement.

Contractor/Consultant shall furnish City 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 City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Contractor/Consultant or any of its sub Contractor/Consultants fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Contractor/Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Contractor/Consultant of its responsibilities under this Agreement.

Upon request of City, Contractor/Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, 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 Agreement.

The fact that insurance is obtained by Contractor/Consultant shall not be deemed to release or diminish the liability of Contractor/Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 Contractor/Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Contractor/Consultant, its principals, officers, employees, agents, persons under the supervision of Contractor/Consultant, vendors, suppliers, invitees, sub-consultants, sub Contractor/Consultants, or anyone employed directly or indirectly by any of them.

If Contractor/Consultant should subcontract all or any portion of the services to be performed under this Agreement, Contractor/Consultant shall require each sub Contractor/Consultant to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the sub Contractor/Consultants' certificates and endorsements shall be on file with Contractor/Consultant and City prior to the commencement of any work by the sub Contractor/Consultant.

ATTACHMENT 3

Quote for the additional premium for increased Professional Liability Insurance

Rochelle Clayton

From: Christy White <cwhite@christywhite.com>
Sent: Wednesday, September 5, 2018 8:08 AM
To: Rochelle Clayton
Cc: Carrie Ash
Subject: FW: CAMICO Certificates of Insurance-CAL108463
Attachments: CMI No Known Claims Form.doc

Hi Rochelle, below in this email is the quote for the additional insurance. Thank you, Christy

From: Carrie Ash
Sent: Monday, August 6, 2018 12:42 PM
To: Christy White <cwhite@christywhite.com>
Subject: FW: CAMICO Certificates of Insurance-CAL108463

Sent: Monday, August 06, 2018 10:30 AM
To: Carrie Ash <cash@christywhite.com>
Subject: RE: CAMICO Certificates of Insurance-CAL108463

Hi,

Thank you for the copy of the insurance requirement. Please review the quote effective 8/6/2018 below:

Limits: $2,000,000 per claim/$2,000,000 aggregate
Deductible: $10,000 per claim
Additional premium: $2,471.00

Please note to increase the coverage, the firm would need to copy and paste the wording of the attached no known claims statement onto company letterhead, sign and return to me. Once received, I can update the coverage.

Thank you,

CAMICO

Judy Chen
Senior Underwriter
Lic #0G08639

1800 Gateway Drive, Suite 300, San Mateo, CA 94404
T: 800.652.1772 | D: 650.378.6896 | E: jchen@camico.com

From: Carrie Ash [mailto:cash@christywhite.com]
Sent: Monday, August 06, 2018 10:18 AM
To: Judy Chen <JCHEN@camico.com>
Subject: RE: CAMICO Certificates of Insurance

ATTACHMENT 4

Email from Christy White indicating the Schedule to start the Audit (January 2019)

Rochelle Clayton

From: Christy White <cwhite@christywhite.com>
Sent: Thursday, August 16, 2018 6:14 AM
To: Rochelle Clayton
Cc: Carrie Ash; Heather Rubio
Subject: Re: Internal Utility Audit Project

Thank you Rochelle for moving this project forward. We would be happy to work with the City. I can attend the city council meeting if you need me to or be available for questions? I will not have a presentation as we would start complete the project in January. But I could attend gladly. Let me know. Christy

Sent from my iPhone

> On Aug 15, 2018, at 5:19 PM, "rclayton@ci.banning.ca.us" <rclayton@ci.banning.ca.us> wrote:
>
> Hi Christy,
>
> I see that you responded to my Out-of-Office message, so I'm sure you know that I was out of the office until yesterday. I reviewed all of the emails and we can absolutely take your contract back to Council on September 10th for them to approve the increase. I understand Jennifer McCoy sent the contract cancellation, but we will need a new contact with the increased amount anyway once Council approves the increase.
>
> Are you available to attend the meeting on September 10, 2018? Let me know if that's possible and we'll put it on the agenda. I also want to confirm that the new contract amount will be the original proposal of $32,200 + $2,471, for a total of $34,671 to complete the scope of work?
>
> I understand there was a problem with us receiving your firm's Professional Liability insurance proof, and that's why it was forwarded to our insurance carrier to see if the requirement could be waived, and discovered from our insurance carrier that we must increase the requirement to $2M. It was a series of issues that I hope we can resolve so that we can get this audit completed!!
>
> Please let me know if you're available on September 10th and verify that $34,671 is the new contract amount?
>
> Thank you!
> Rochelle Clayton
> Interim City Manager
> City of Banning
> Ph: 951-922-3104
> Cell: 760-218-0053
>
>
> -----Original Message-----
> From: Christy White [mailto:cwhite@christywhite.com]
> Sent: Wednesday, August 8, 2018 1:50 PM
> To: Rochelle Clayton <rclayton@ci.banning.ca.us>; Tisha Jacobs <tjacobs@ci.banning.ca.us>; don@donpeterson.org; Carla Young <cyoung@ci.banning.ca.us>

> Cc: Carrie Ash <cash@christywhite.com>; Heather Rubio <Hrubio@christywhite.com>
> Subject: Internal Utility Audit Project
> Importance: High
>
> Hi Rochelle, in order to proceed with the internal utilities audit we need to conclude the issue that arose just this week over professional liability insurance coverage. Attached is a letter the summarizes where we are with this and sets forth a plan to remedy. We are happy to move the project forward once this issue is resolved, albeit on a different timeline given the delays in getting this contract completed. Can you please read through our materials and let me know what the City decides to do to proceed? Thank you! Christy
>
> Christy White, CPA
> President
>
> □ Think before you print
>
> Corporate Office:
> 348 Olive Street
> San Diego, CA 92103
>
> Phone: (619) 270-8222
> Fax: (619) 260-9085
> This e-mail, including all attachments and replies thereto, are covered by the Electronic Communications Privacy Act, 18 U.S.C. §2510-2521 and are legally privileged. This information is confidential, may contain attorney-client privileged information, and is intended only for the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is prohibited.
> Circular 230: As a result of certain perceived abuses, the Treasury Department has promulgated regulations that require all attorneys and accountants who provide certain written communications to a client to include an extensive analysis and disclosure in such written communications. To comply with our obligations under these regulations, we wish to inform you that this communication does not contain all of such analysis and disclosure and was not written or intended by us to be used, and may not be used, by any taxpayer for the purpose of avoiding any tax penalty that may be imposed on the taxpayer. In addition, any tax advice contained in this communication may not be used to promote, market or recommend a transaction.
>
>
>
>
> -----Original Message-----
> From: rclayton@ci.banning.ca.us <rclayton@ci.banning.ca.us>
> Sent: Friday, August 3, 2018 6:44 PM
> To: Christy White <cwhite@christywhite.com>
> Subject: Automatic reply: City of Banning C00389 PO 29125
>
> I am out of the office until Tuesday, August 14, 2018. If you need immediate assistance, please contact the following:
>
> CITY MANAGER'S EXECUTIVE ASST - Laurie Sampson at 951-922-4860 ACTING CITY MANAGER - Tom Miller at 951-922-3265 FINANCE - Suzanne Cook at 951-922-3148 HUMAN RESOURCES - Robert Meteau at 951-922-3147

>
> Have a great day!
>
> Rochelle Clayton
> Interim City Manager
> City of Banning
> <City of Banning Insurance Requirements Letter.pdf>

ATTACHMENT 5

Notice of Termination of Professional Services Agreement dated June 28, 2018

CITY OF BANNING

99 EAST RAMSEY ST., PO BOX 998, BANNING, CA 92220-0998

ADMINISTRATIVE SERVICES DEPARTMENT
PURCHASING DIVISION

August 9, 2018

Ms. Christy White, CPA
Christy White Associates
348 Olive Street
San Diego, CA 92103

RE: Internal Utility Audit, Purchase Order #29125 Dispute Response

Dear Ms. White:

The Administrative Services Department – Purchasing Division has evaluated the letter of dispute submitted by your firm by email to the City of Banning on August 8, 2018 and has determined that it is the best interest of the City to terminate the Agreement dated June 28, 2018 with cause as allowable per Article 7 - Enforcement of Agreement and Termination of said Agreement, in lieu of Amendment request for the City to pay an additional fee for Christy White and Associates insurance policy change. The following information will provide an explanation as to the findings for the decision.

1. Inability to meet minimum requirements of Agreement - Article 5.1(v) Insurance, Indemnification and Bonds – Professional Liability.
2. Violation of Agreement – Article 8.2 City Officers and Employees: Non-Discrimination – Conflict of Interest.
3. Violation of the City of Banning's Policy No. B-30 – Procurement Policies and Procedures – Section 4-109 Purchasing Code of Ethics: Conflicts of Interest – Contractors/Vendors.

It's imperative that you are notified that your dispute letter contained multiple inaccuracies and will be addressed below to assist in providing additional details as to the final results of this decision.

After receiving the City Councils approval for award on April 10, 2018 through Resolution 2018-46, the Purchasing Division posted the Notice of Intent to Award on Planet Bids, and emailed the first Professional Services Agreement dated April 10, 2018, (not July 10, 2018) along with the Vendor Packet and Consultant Insurance Requirements to Christy White and Associates representative, (Heather Daud) on April 13, 2018 for approval and completion of forms. The initial agreement reflected the City of Banning's standard required insurance coverages that were also included in RFP #17-105. The claim of the junior purchasing staff uploading the wrong insurance requirement template is false. This finding has been confirmed through our Planet Bids Insurance Module records. From April 13, 2018 through May 30, 2018, the Purchasing Division had extensive correspondence with your firm (Heather Daud) by email and telephone conversations discussing the contract status and insurance deficiencies (AM Best

Rating and Professional Liability), but were unsuccessful in obtaining the required proof on insurance (Decision Item #1).

In an effort to obtain approval for an exception to the standard requirements, the Purchasing Division emailed our risk management company (PERMA) requesting a review. On June 4, 2018, PERMA replied stating that the City's indemnification language was not in compliance with the current state law and that our limits weren't meeting the minimum requirements. As a result, the exception to this request was denied.

Beginning June 5, 2018 through June 18, 2018 the City Attorney, PERMA and Purchasing Division worked on revising our Agreements and Insurance templates. Heather Daud was notified by telephone and email of the insurance issue and informed her that their firm would receive a revised contract once finalized. The claim in your dispute of not being notified about the contract modifications is found to be false.

On June 28, 2018, the revised Agreement with the modified insurance language, to include the higher limits was sent to Christy White and Associates for approval. The City received the signed Agreement dated June 28, 2018 from your firm on July 5, 1018, at which time it was routed for internal signatures. On July 12, 2018, Jennifer McCoy emailed Heather Daud the PO #29125 and contact information to allow her to schedule her meetings. The purchasing division emailed the approved PO and Agreement to the firm on July 17, 2018 concurrently with notifying the department of the outstanding insurance deficiency. After being notified by the department on August 2, 2018 of the insurance status, your firm continued correspondence with the department claiming that the remaining insurance would be submitted. To date this has not been received (Decision Item #1).

On August 7, 2018, Mayor George Moyer inquired about the status of the Christy White and Associates Agreement with the Purchasing Division. While providing the information pertaining to the insurance deficiencies and processes that had transpired, he informed the Purchasing Manager (Jennifer McCoy) that your firm has had constant and continuing correspondence with Councilman Don Peterson regarding the contract and insurance issues. The following day, Christy White, CPA emailed the formal dispute letter to Rochelle Clayton (Interim City Manager), Tisha Jacobs (Purchasing Assistant), Carla Young (Electric Utilities Management Analyst) and Councilman Don Peterson. These actions clearly portray the appearance of a conflict of interest which could affect the performance of this Agreement (Decision Item #2 and #3).

This concludes the findings and decision pertaining to your official dispute/request. If additional information or explanation is required, please respond according to the City of Banning Appeal Process found in Section 6-106 of Policy B-30, which is located on the City of Banning's web page.

Sincerely,

J. McCoy

Jennifer McCoy
Purchasing Manager

ATTACHMENT 6

Proposal received by Christy White Associates

PROPOSAL FOR INTERNAL AUDIT SERVICES

CITY OF BANNING

BANNING, CALIFORNIA

RFP NO. 17-105

Submitted on January 26, 2018 by:

Christy White Associates
A Professional Accountancy Corporation
Christy White, CPA, President

Corporate San Diego Office
348 Olive Street
San Diego, California 92103
E-Mail: cwhite@christywhite.com
www.christywhite.com
Telephone: 619-270-8222
Fax: 619-260-9085

Greater Los Angeles Office
Assigned to Serve
City of Banning

San Diego

Los Angeles

San Francisco Bay Area

christy white associates
A PROFESSIONAL ACCOUNTANCY CORPORATION

christy white associates
A PROFESSIONAL ACCOUNTANCY CORPORATION

Christy White, CPA
Michael D. Ash, CPA
John Whitehouse, CPA
Heather Daud Rubio

SAN DIEGO
LOS ANGELES
SAN FRANCISCO/BAY AREA

Corporate Office:
348 Olive Street
San Diego, CA 92103

toll-free: 877.220.7229
tel: 619.270.8222
fax: 619.260.9085
www.christywhite.com

Licensed by the California State Board of Accountancy

January 26, 2018

City of Banning
Administrative Services Department
99 East Ramsey Street
Banning, California 92220

Dear Members of the Governing Board and Administration:

Christy White Associates (CWA) is pleased to respond to your request for proposal for **City of Banning's** (the "City's") **Internal Audit Services**. Which will be valid for a minimum of 180 days following submission. We are excited about the possibility of working with the City on this important project!

CWA is a regional CPA firm specializing in public sector audits for over 17 years. Founding partner Christy White has over 30 years of audit and consulting experience and is joined by three experienced partners and a staff of 25.

SAMPLE OF CURRENT INTERNAL AUDIT AND CONSULTING CLIENTS

CWA professionals are members of the Institute of Internal Auditors and the Certified Information Systems Auditors Association. Our internal audit work includes assisting these current client:

- Southwestern Community College
- Compton Unified School District
- Monterey Peninsula Unified School District
- Riverside County Office of Education
- San Diego Unified School District

Firm President Christy White is also the former **Senior Director of Consulting Services for School Services of California, Inc.,** For over 7 years, she consulted on internal control issues including San Francisco Unified; San Diego County Office of Education; Sweetwater UHSD; Fresno USD; and Oakland USD.

My partners and I have a great deal of interest and commitment to providing excellent internal auditing and consulting services to the City. You can expect that I would personally be overseeing the risk assessment development for your City, assisted by Audit Partner Heather Rubio and Director Dena Whittington. I am authorized to sign the contract. You will find that the level of partner and manager time afforded by CWA is unmatched by other audit firms. Accompanying me on the risk assessment development will be Alexis McKeon, CPA; Kyle Montgomery, CPA, Director; and experienced senior and staff auditors.

Christy White Associates is committed to meeting all requirements and timelines for the successful completion of the engagement. We accept all of the terms and conditions of the City's Contract and insurance requirements. Upon concluding the contract terms, CWA will hold an entrance meeting and set forth specific work plans and due dates for each major work area. Regular progress meetings will be held and any issues will be resolved timely and before the release of the final reports.

Christy White Associates acknowledges that it has not held any professional relationships involving the City over the past five (5) years and that there is no conflict of interest relative to performing the proposed audit services.

Christy White Associates' proposal and other appropriate items are valid, firm, and irrevocable for six months. After reading through our proposal, if you have any questions, please feel free to contact me at 619-270-8222. I would be happy to meet with the Governing Board.

Sincerely,

Christy White

Christy White, CPA
President

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TECHNICAL PROPOSAL

BACKGROUND AND PROJECT SUMMARY SECTION

CWA will conduct the City's proposed Internal Audit for Electric Utility Billing, which will include:

1. Examine all cash, check and credit transactions of the Banning Electric Utility and determine if all customer cash payments are fully accounted for. Amount of money deposited should correspond with the amounts paid by City of Banning customers.

2. Identify the amount of electricity purchased (from Southern California Edison and other power suppliers) by the utility in a given year, and compare it to the amount of electricity sold to customers during that year (In Megawatt Hours).

3. Identify all dwellings in the City that receive utilities but are not billed or are partially billed. Identify the retail value for each of those transactions.

4. Examine random samples of electric utility bills for billing accuracy (based on meter readings provided), rate structure and consistency.

5. Examine if electric utility usage was overridden (lowered) manually in individual cases.

6. Identify charges billed for incorrect or non-existent equipment.

Deliverables:

1. CWA will make recommendations establishing controls and proceedings for employees counting and/or handling cash (prior to cash pickup by security company).

2. CWA will present recommendations for changes to the billing rate structure, along with recommendations for the monitoring of the City's future utility billings.

3. Initial Analysis Report – Firm shall provide a written Initial Analysis Report of the past two (2) years of utility bills.

4. Written draft reports will be required within two weeks of completion of the internal audit field work. Results will be discussed between the audit firm partner or manager and the appropriate City of Banning staff, and a final report will be issued within two weeks of such meeting. Copies of the final report will vary in number, depending on the audit. These additional copies are to be provided by the audit firm, and are to be included in the contract price.

5. Irregularities and illegal acts – Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the Administrative Services Director and City Manager and City Attorney.

METHODOLOGY SECTION

We propose meeting with district representatives prior to the start of the engagement to agree upon the **Project Work Plan** and establish our interview schedule. The project work plan will be developed by partners **Christy White and Heather Rubio**. We will meet with city staff to discuss and agree upon the final plan before conducting the **Internal Audit.** We will monitor our work and report regularly to city representatives.

Elements of our approach to managing projects are as follows:

- Assign personnel to areas of the project where their expertise is required
- Ensure that project expectations and scope are clearly defined up-front through development of a project
- Ensure frequent communications with the client
- Identify and anticipate potential project risks to minimize their occurrence and impact
- Closely monitor project timelines and budgets

PHASE 1: PROJECT MANAGEMENT

Phase Objective and Summary of Activities: The purpose of this phase is to conduct activities that are relevant to managing the project and enhancing its success for the City. The major activities to be performed are as follows:

- **Develop a detailed Project Plan identifying the activities, responsibilities and timing of tasks necessary to complete the project.** A project initiation meeting will be conducted to introduce the project team, finalize the project scope, deliverables and timetables. These objectives will be accomplished through the development of a project organizational structure, detailed project plan and regularly scheduled progress meetings. These steps are described below. A project kick-off meeting will also be held to communicate to City staff the goals, structure and timeline of the project.
- **Establish a Project Collaboration Environment to act as a repository for project information.** Over the last few years, collaboration environments such as Microsoft SharePoint have become increasingly viable tools in which to establish project collaboration environments for small, mid-size and large-scale projects. These environments can serve a variety of purposes including acting as a repository for documentation developed during the course of an engagement. Or we also have an internal CWA secure portal that can be used.
- **Closely monitor project timelines and budgets.** Continuous feedback is the key to a successful project. In this way, problems can either be avoided entirely, or addressed early on, to minimize wasted effort and keep the project on schedule. We will schedule regular conference calls with the City.

METHODOLOGY SECTION

PHASE 2: REVIEW AND ASSESSMENT

Phase Objective and Summary of Activities: The purpose of this phase is to conduct a needs assessment around process areas relevant to the project for the purpose of defining key functional requirements that will be used as part of the process for evaluating proposed areas in the scope of work. Activities to be included in this phase are as follows:

- **Obtain and review relevant documents to obtain background information on the current and desired environment.** CWA will review applicable Administrative Regulations, department policies, and the City's organizational structure to assess the overall internal control framework related to utility billing; Documents to be reviewed include the following:
    - Previous studies that are relevant to the project
    - Relevant process and function descriptions/handbooks, pre-existing workflow documentation/flowcharts, such as those that has already developed
    - Organizational charts
    - Billing Rates and Services
- **Conduct interviews with key stakeholders** After reviewing the documentation collected, CWA will conduct up to five days of interviews with teams representing departments directly involved with the City's utility and billing process. During the interviews, we will discuss key current business and technological workflows in order to further define the current systems and required system interfaces. These sessions will focus on reviewing any unique requirements that are needed by the City.
- **Obtain reports necessary and submit sample requests.** We will examine all electric utility billing transactions, identify and analyze amount purchased and city dwellings, we will examine billing for accuracy and identify equipment billed. Process to include the following:
    - Analyze utility account data and utility invoice reports to assess whether City staff sufficiently review billing information prior to authorizing payment.
    - Developed process maps to determine Citywide processes related to the review of utility account billing information.
    - Review accounts to identify opportunities in which the City may reduce energy costs by changing to a more cost-effective billing rate.
    - Analyze financial and asset management data related to street light inventory data with the City's inventory data.

METHODOLOGY SECTION

PHASE 3: RESULTS AND REPORTING/DELIVERABLES

Phase Objective and Summary of Activities: The purpose of this phase is to report the results of the internal audit to the.

- **Assessing the Control Environment for managing electric utility charges.** CWA will utilize COSO (Committee of Sponsoring Organizations) framework to assess risk in all key internal control areas of the school districts. The **COSO Framework** is a model for evaluating internal controls and the best industry standard.

- **Guidance for establishing a comprehensive control framework over utility and billing.** Without a Comprehensive Control Framework, the City May Miss Opportunities to Identify Lower Utility Account Rates and Potential Invoice Errors. We will make recommendations establishing controls and proceedings for employees counting and/or handling cash. Additionally, we shall present recommendations for changes to the billing rate structure along with recommendations for the monitoring of the City's future utility billings.

- **Analysis reports.** We will provide a written Initial Analysis Report of the past (2) years of utility bills. Written draft reports and will provide an immediate written report if we come across any irregularities and illegal acts.

TECHNOLOGICAL ADVANTAGES

We utilize the latest technology, including virtual servers, smart devices and online libraries to provide us with the most up-to-date information to better serve our clients. First, our online client portal gives us the capability of sending and receiving information to and from our clients faster and more securely. As portals are encrypted and use password protection to ensure that data can only be viewed by the appropriate client, we are dedicated to protecting the City's confidential information. Furthermore, we streamline our audit process and organize support documents through use of the program ProSystems Working Papers. By effectively reviewing large volumes of data through these programs, we are able to develop a better understanding and gain a broader view of the City. These technologies enable us to increase both the scope of our engagement and the reliability of our audit work efficiently, as a larger amount of information can be processed, analyzed and interpreted in a short time frame. We will be able to conduct the vast majority of our audit virtually in an effort to minimize the disturbance to City staff.

LEVEL AND NATURE OF SUPPORT REQUIRED

Christy White Associates requests sufficient space in close proximity to the accounting department and access to office equipment (e.g. copiers, phones and fax) be provided. We would also ask that the staff be generally available to answer questions and pull sampled documents throughout the course of the audit. However, we are paperless and have a client portal for ease of document transmission.

METHODOLOGY AND PROJECT WORK PLAN (CONTINUED)

TIME REQUIREMENTS

We make thorough planning a priority and believe that open communication and cooperation will ensure that the engagement will proceed smoothly and that mandated deadlines will be met. This schedule can be modified to meet the needs of the Board and Audit Committee.

Timeframe	Staff Assigned	Risk Assessment & Internal Audit Proposed Work	% of Work Done
Within 7 days of board approval	Partner, Manager and Experienced Staff	Planning and meetings with staff	25%
Within 90 days of board approval	Partner, Manager and Experienced Staff	Conduct the audit an provide the necessary reports.	75%
Total			**100%**

STAFF QUALIFICATIONS

ENGAGEMENT MANAGERS

President and Audit Partner Christy White, CPA will actively manage the audits assisted by Principal Heather Daud-Rubio, Director Alexis McKeon, CPA, and Director Dena Whittington, CFE. No subcontractors will be used.

All staff assigned to the project for RFP NO. 17-105 be working from our San Diego Office located at:
348 Olive Street, San Diego, CA 92103. All of our staff can be reached at 619.270.8222 and via fax at 619.260.9085.

Name	Title	Email Address	Relevant Experience	Audit Role	Onsite Assistance
Christy White, CPA	President	cwhite@christywhite.com	30-Years	Audit Partner	30-Percent
Heather Rubio Daud	Principal	hdaud@christywhite.com	10-Years	Supervising Partner	25-Percent
Alexis McKeon, CPA	Senior Accountant	amkeon@christywhite.com	5-Years	Supervising Auditor	15-Percent
Dena Whittington, CFE	Director	dwhittington@christywhite.com	4-Years	Supervising Auditor	30-Percent

RISK ASSESSMENT AND INTERNAL AUDIT EXPERIENCE OF PERSONNEL

The firm partners and staff of Christy White Associates bring an extensive background of audit and consulting experience to CWA clients. We have audited local educational agencies throughout California and are familiar with the unique issues relative to school finance, in particular: budgetary constraints, construction accounting, new state program issues, attendance accounting, state funding models and cash flow management. We are familiar with the various organizational structures of local educational agencies, from small and large K-12 districts, community school districts and county offices of education. The brief biography of the firm owners and staff can be found below.



President, Christy White, CPA has served hundreds of local educational agencies, over the past 30 years, twenty-two years in public accounting auditing over 250 educational agencies and seven years with School Services of California, Inc., a leading public education financial consulting and policy group. She has provided audit and financial consulting services in areas of organizational analysis, budgeting, negotiations and multi-year planning, in addition to developing and conducting six workshop series throughout the State. Ms. White is known as a leading expert in attendance accounting, school district organization, and fiscal analysis. As the founding partner of CWA, Christy provides her clients with creative and practical solutions to problems.

STAFF QUALIFICATIONS (CONTINUED)

RISK ASSESSMENT AND INTERNAL AUDIT EXPERIENCE OF PERSONNEL - CONTINUED



Principal, Heather Daud Rubio, is a key team member on CWA school district, office of education, Proposition 39 bonds and JPA's. As a Principal, Heather's responsibilities include leading, planning, performing, and supervising audit fieldwork. She has experience with our largest clients, including City of Banning, San Joaquin County Office of Education, Garden Grove Unified School District, and Contra Costa County Office of Education. Prior to joining CWA Heather worked as a project accountant in the construction industry. Heather holds a Bachelor of Arts degree in Economics with an emphasis in Accounting from the University California, Santa Barbara.



Senior Accountant, Alexis McKeon earned a Bachelor's Degree in Business Administration with an Option in Accounting from California State University San Marcos. At Christy White Associates, Alexis has been engaged to perform audits of local education agencies including City of Banning, Grossmont Union High School District, San Marcos Unified School District and various others. In addition to Local Education Agencies, Alexis has worked on a variety of clients including, County Offices of Education, Charter Schools, Non-profit organizations, For-profit organizations and Community Colleges.



Supervisor, Dena Whittington, CFE completed a Bachelor of Science in Accountancy from National University, and began her career in K-12 finance as the Internal Auditor for a school district in San Diego. After 10 years in this position, she joined Nigro, Nigro & White as an external auditor for districts. She returned public schools for ten years as Assistant Superintendent of Business Services. As Assistant Superintendent of Business Services, she served two districts, the first district being a Basic Aid district and the second district having a low socio-economic population.

COMPUTER SPECIALISTS AND SUPPORT STAFF

The Computer Admin is committed to protecting its data and that of its partners and clients from unauthorized viewing, copying, downloading, transfer, modification, or deletion. Providing for the confidentiality, integrity, and availability of Christy White Associates' data is paramount for The Computer Admin to maintain its reputation and competitive edge, the confidence of its clients, and to comply with all regulatory requirements.

On behalf of Christy White Associates, The Computer Admin manages and maintains technical and procedural standards for connecting workstations (desktop and laptop computers) to Christy White Associates' networks, systems, and resources. The Computer Admin provides break-fix services, backup maintenance for both physical and virtual environments, complete networking support, server monitoring, and onsite support. The Computer Admin also provides consulting for network security, anti-virus solutions, domain security, backup and recovery, and security and user policies.

STAFF QUALIFICATIONS (CONTINUED)

COMPUTER SPECIALISTS AND SUPPORT STAFF – CONTINUED



President of Computer Admin, Kevin Fronczek, has been working in the tech industry for almost fifteen years. Kevin started his professional career as the CTO for The University of Montana College of Health Professions and Biomedical Sciences. Kevin now owns and operates his own IT service provider company in San Diego. Kevin provides expert support and consulting for his clients. His focuses are networking, security, cloud management, and server environments.



Infrastructure Manager of Computer Admin, Kyle Fronczek, got his start in the tech field about ten years ago. He loves the challenge of working with technology and the excitement of finding a solution. Most of his experience was gained working with Apple and he is currently an Apple Certified Support Professional. At The Computer Admin, Kyle's responsibilities include developing, implementing, supporting, and maintaining our client's networking and infrastructure.

Name	Company	Email Address	Relevant Experience	Title
Kevin Fronczek	Computer Admin	kfronczek@thecomputeradmin.com	15-Years	President
Kyle Fronczek	Computer Admin	kyle@thecomputeradmin.com	10-Years	Infrastructure Manager

RECRUITMENT PROGRAM

Christy White Associates actively recruits CPA qualified candidates from our local universities. We participate in on campus interviews, invite the best candidates to tour our offices and meet with our partners and staff. Our hiring process includes a requirement to pass an accounting and auditing test in addition to the oral interview process. We also recruit experienced staff through promotion of our firm and invitations to apply for open positions.

EQUAL OPPORTUNITY EMPLOYER

Christy White Associates provides equal employment opportunities (EEO) to all employees and applicants for employment without regard to race, color, religion, sex, national origin, age, disability or genetics. In addition to federal law requirements, Christy White Associates complies with applicable state and local laws governing nondiscrimination in employment in every location in which the company has facilities. This policy applies to all terms and conditions of employment, including recruiting, hiring, placement, promotion, termination, layoff, recall, transfer, leaves of absence, compensation and training.

Christy White Associates expressly prohibits any form of workplace harassment based on race, color, religion, gender, sexual orientation, gender identity or expression, national origin, age, genetic information, disability, or veteran status. Improper interference with the ability of Christy White Associates' employees to perform their job duties may result in discipline up to and including discharge.

CWA QUALIFICATIONS

Christy White Associates (CWA), a professional California corporation, is an independent CPA firm with offices located in San Diego, Los Angeles and the San Francisco Bay Area. CWA is licensed with the State Board of Accountancy as a professional accountancy firm and is a certified small business and woman-majority owned firm.

Christy White, CPA, is the founding partner and along with Audit Partner Heather Rubio will actively lead the Internal Audit Services.

FIRM LICENSE, AFFILIATIONS, ASSOCIATIONS AND TAX IDENTIFICATION NUMBER

CWA is a member of the Private Companies Practice Section (PCPS) and Government Quality Control Center (GQCC) of the American Institute of CPAs. Christy White Associates is licensed with the California State Board of Accountancy. We are members of the American Institute of CPAs (AICPA) and the California Society of CPAs.

In addition, we are association members with the California Association of School Business Officials, the Certified Fraud Examiner's Association, the Institute of Internal Auditors, the AICPA, and the California Society of CPA's.

Christy White Associates: Tax ID Number: 27-2956198.

CWA QUALIFICATIONS (CONTINUED)

Christy White Associates, Inc. works exclusively with K-14 school district providing independent auditing, forensic auditing, and consulting services. Our clients have included some of the largest districts in the state, such as:

- **San Community College District** – independent auditor for a 5-year period
- **California Department of Education and Los Angeles Unified School District** – major consulting engagement on school district reorganization of LAUSD
- **Garden Grove Unified School District** – independent auditor for a 16-year period
- **WestEd Educational Research** – independent auditor for a 4-year period
- **Grossmont-Cuyamaca Community College District** – independent auditor for an 8-year period and fiscal independence feasibility study, including computer systems
- **Southwest Community College District** – internal auditor for past 2 years, auditing warrants
- **Riverside County Office of Education** – primary consultant to the County Committee on School District Organization, assessing the feasibility of unification, territory transfers and other educational options.
- **San Diego County Office of Education** – feasibility study for the potential unification of Alpine School District, assessing impacts related to finances, facilities, transportation, education and community.

MONTEREY COUNTY OFFICE OF EDUCATION

Description of Services: CWA conducted a **Fiscal Accountability Study** on behalf of MCOE for two districts: Monterey Peninsula USD and Salinas City Elementary. This study includes an in-depth internal control and data processing assessment. It was conducted in 2015 when the districts were considering a new financial software and becoming fiscally independent from the county office. Over the course of several weeks, CWA documented and evaluated the current and proposed internal control systems over all accounting, purchasing, budgeting, payroll and HR functions. CWA met with the software developer and examined beta test data to determine the software capabilities and fitness for a school district with complex reporting requirements, including PERS/STRS reporting. Final reports and recommendations were provided to MCOE and each district. The approximate cost of the project was $60,000.

Contact: Garry Bousum, Associate Superintendent, Finance and Business
gbousum@montereycoe.org Phone 831-755-0307

CWA QUALIFICATIONS (CONTINUED)

COMPTON USD

Description of Services: CWA was the **Internal Auditor** for Compton for over 8 years conducting a series in studies, audit and improvement plans. Christy White reported to the Superintendent and Assistant Superintendent of Business and developed annual internal audit plans that covered areas such as: fixed asset management; maintenance work order system development; food service federal program compliance and reporting; various fraud audits; facilities use fee development and controls; attendance accounting compliance and reporting; and student body accounting controls. CWA conducted approximately 4 extensive internal audits annually. Report findings and recommendations were provided to district cabinet, Superintendent and the governing board. The approximate cost of the project annually was $40,000.

Contact: Teresa Santamaria was the Assistant Superintendent of Business during this engagement period which spanned 2001 through 2009. She is now retired. CWA is currently the external auditor of record and Sunny Okeke is our main contact. He can be reached at: 310-639-4321 #55037, sokeke@compton.k12.ca.us.

SOUTHWEST COMMUNITY COLLEGE

Description of Services: CWA is the **Internal Auditor** of record for this fiscally independent community college district. We audit all commercial and payroll warrants. Our audits include verification of the validity, compliance and accuracy of the payments. We have also been tasked with other internal audit assignments. The approximate cost of the project annually

Contact: Wayne Yanda, Director of Finance, Phone 619-482-6414

CWA QUALIFICATIONS (CONTINUED)

LOS ANGELES UNIFIED SCHOOL DISTRICT (on behalf of the California Department of Education)

Description of the Services: Study of the organization of LAUSD conducted on behalf of the California Department of Education. Christy White was the principal consultant on this major project to evaluate the organization, facilities, finances, student demographics, student performance and internal controls of the district. The goal was to determine the feasibility of breaking up the district into smaller districts.

Legislative authority for the study was granted through SB 1380 (Chapter 335/2000), authored by Senator Martha Escutia, and directed "the Superintendent of Public Instruction to enter into a contract with an independent contractor for the purpose of conducting a study to determine the feasibility of reorganizing the Los Angeles Unified School District by removing from that district the schools in the southeast area of the district, including those schools located in Bell, Southgate, Cudahy, Maywood, Huntington Park, Vernon, and the unincorporated areas of Florence/Graham and Walnut Park. This study shall assess the potential benefits and disadvantages that would result from such a reorganization of the district."

Christy White led a team of professionals to fulfill the contract by analyzing district data, interviewing staff, holding public community meetings and proposing options and barriers to reorganization. The report was submitted to the State Superintendent of Public Instruction. Christy White will lead the team for the Risk Assessment and Internal Control Plan for SDUSD. Her resume is included in this proposal.

Contact Information: Larry Shirey, School Fiscal Services Division, California Department of Education
Email: lshirey@cde.ca.gov
Phone: 916-322-1468

FISCAL CRISIS MANAGEMENT AND ASSISTANCE TEAM (Compton USD and Oakland USD)

Description of Services: Christy White was engaged while at School Services of California, Inc. in 1996-2000 to develop **fiscal standards and a risk assessment methodology** to evaluate first Compton USD and then later Oakland USD, both districts that were in state receivership status. The standards that were developed are still in use by the FCMAT teams. Her work covered all financial areas including, but not limited to: procurement, accounts payable, cash receipting, budgeting, cash flow, facilities management, inventory management, maintenance and operations, attendance accounting, federal and state grant management, risk management, human resources and payroll.

Contact Information: Joel Montero was the CEO at the time of the engagement. Mike Fine is the current CEO. Mike generally knows of Christy White's work. Mike can be reached at 951-212-2334.

CWA QUALIFICATIONS (CONTINUED)

INDEPENDENT AUDITS PERFORMED BY CWA

Christy White Associates completed last audit season having audited approximately 90 school districts on time. Here is a listing of some of our 2016 audit clients performed by CWA. Many of these LEAs have been our client for over six years:

Academy of Arts and Sciences
Acalanes Union High School District
Acton-Agua Dulce Unified School District
Alameda Unified School District
Albany Unified School District
Alhambra Unified School District
Anaheim City School District
Banta Elementary School District
Barstow Unified School District
Beacons Classical Academy
Bradley Union Elementary School District
Buena Park Elementary School District
Byron Union School District
Capay Joint Union Elementary School District
Cerritos Community College District
Cold Spring School District
Compton Unified School District
Contra Costa County Office of Education
Contra Costa SELPA
Coronado Pathways Charter School
Coronado Unified School District
Culver City Unified School District
Da Vinci Charter Schools
Darnall Charter School
Dixie School District
East Bay Innovation Academy
East Whittier City School District
EJE Academies
El Monte Union High School District
El Segundo Unified School District
Elevate Elementary Charter School
Elkins Elementary School District
Empower Charter School
Encinitas Union Elementary School District
Escondido Union High School District
Excelsior Charter School
Flournoy Union Elementary School District
Garden Grove Unified School District
Glendora Unified School District
Glenn County Office of Education
Gold Trail Union School District
Gompers Preparatory Academy
Grossmont-Cuyamaca Community College District
Gustine Unified School District
Hamilton Unified School District
High Tech High
Howard Gardner Community Charter
Humphreys College
International School of Monterey
Jamul-Dulzura Union Elementary School District
John Swett Unified School District
Kavod Charter School
Keiller Leadership Acadamy Charter
Knightsen School District
La Mesa-Spring Valley School District
Lafayette School District
Lake County Office of Education
Lake Elementary School District
Lancaster School District
Laytonville Unified School District
Lennox Elementary School District
Loma Prieta Union School District
Los Angeles Academy of Arts
Magnolia School District
Magnolia Union Elementary School District
Manchester Union Elementary
Meadows Elementary School District
Method Schools
Mt. Baldy School District
New Heights Academy Charter School
New Hope Elementary School District
Newark Unified School District
Oak Park Unified School District
Oceanside Unified School District
Ohlone Community College District
Orland Unified School District
Pittsburg Unified School District
Plaza School District
Point Arena Schools District
Princeton Joint Unified School District
Redondo Beach Unified School District
San Antonio Unified School District
San Ardo Union School District
San Carlos Charter
San Diego Community College District
San Diego Cooperative Charter
San Joaquin County Office of Education
San Pasqual Union School District
Santa Maria Joint Union High School District
Santa Monica-Malibu Unified District
Santiago Middle School
Saratoga Union School District
Solana Beach School District
South Monterey County Joint Union High School District
South Orange Community College District
South Pasadena Unified School District
South San Francisco Unified School District
Stony Creek Joint Unified School District
STREAM Charter School
Sylval Union School District
Taylion High Desert Acadamy
Taylion San Diego Academy
Tulare County Office of Education
Waterford Unified School District
West Contra Costa Unified School District
William S. Hart Union High School District
Willits Unified School District
Willows Unified School District
Windsor Unified School District
Wiseburn School District

CUSTOMER SERVICE COMMITMENT

TERMINATION FOR CAUSE OR CONVENIENCE

CWA has never had an engagement terminated for cause or convenience. We strive to provide the best quality services to our clients. Good client communication, timely deliverables and a quality product is our guarantee!

CLAIM/LITIGATION/ARBITRATION HISTORY

CWA has never had a claim, litigation or arbitration in our 17 year history. We are in good standing with the State Board of Accountancy, the State Controllers' Office and other state, local and federal agencies.

CURRENT FINANCIAL STABILITY

CWA has maintained financial stability since its beginning as a firm 17 years ago. We have no long term debt and have a sound budget and cash flow monitoring system. We have never been sued and we have never filed for bankruptcy. We are a fiscally conservative firm. We are an S Corporation, meaning our profits are passed to the firm owners and we do not keep a large reserve except as needed for cash flow and major project initiatives. Attached are copies of our most recent financial statements.

PRICING PROPOSAL

COST-FEE SCHEDULE

BUDGETING PRACTICES AND OVERRUN POLICY

We believe our proposed hours and budget are reasonable and achievable. We do not bill for "extras" or failure on our part to budget properly. The only time a fee change might be made is if the client significantly changes the scope of the engagement, there are new or complex state/federal requirements or the client is unable to reasonably provide agreed upon information in a timely manner. These types of events rarely happen from our experience. Should an amendment on fees be required, we would meet first with the district to discuss the issues and agree upon a new fee based on a mutual understanding and prior to incurring the added costs.

FEE STRUCTURE FOR CITY OF BANNING

Pursuant to and in compliance with your Request for Proposal for Internal Audi Services and all other documents relating thereto, the undersigned Auditor, hereby proposes and agrees to perform the work to be done and to provide all labor and materials necessary to perform the work in connection with the Risk Assessment and Internal Audit Plan.

It is understood that the Agencies reserves the right to reject this proposal and that this proposal will remain open and not be withdrawn for a period of one hundred and eighty days.

The undersigned agrees to perform the Risk Assessment and Internal Audit Plan Services specified at a total cost not to exceed the amounts shown above.

Christy White

Christy White, CPA, President
Christy White Associates

January 26, 2017
Date

EXHIBIT D – COST / FEE SCHEDULE

EXHIBIT D **RFP No 17-105**

Internal Audit

Submitted by: Christy White Associates, Inc.

Professional Classifications	Professionals Assigned	Billing Rates	Hours Assigned	Total Fees
Partner	Christy White, Heather Rubio	$ 250	55	$ 13,750
Manager/Supervisor	Dena Whittington	$ 170	55	9,350
Senior Accountant	Alexis McKeon	$ 140	35	4,900
Experienced Staff	Natalie Palma	$ 120	35	4,200
			180	$ 32,200

Expenses: No expenses will be charged , our professional fees are all inclusive.

REQUIRED FORMS

EX PARTE COMMUNICATIONS CERTIFICATE

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. 17-105 – Internal Audit Services RFP at any time after January 2, 2018.

Christy White

_____

OR

I certify that Proposer or Proposer's representatives have communicated after January 2, 2018 with a City Councilmember concerning the RFP No. 17-105 – Internal Audit Services RFP. A copy of all such communications is attached to this form for public distribution.

_____

PRICE PROPOSAL (ONLINE RATE SHEET)

DISCLOSURE OF GOVERNMENT POSITIONS

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

None.

DISQUALIFICATIONS QUESTIONNAIRE

DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No _X_

If the answer is yes, explain the circumstances in the following space.

Other Attachments

BUSINESS LICENSE

STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

Renewal Permit

CALIFORNIA BOARD OF ACCOUNTANCY
2000 EVERGREEN STREET, SUITE 250
SACRAMENTO, CA 95815-3832
TELEPHONE: (916) 263-3680
FACSIMILE: (916) 263-3672

ACCOUNTANCY CORPORATION

PERMIT NO. COR 6499
RECEIPT NO. 00309807

VALID UNTIL JULY 31, 2018

In accordance with the provisions of Chapter 1, Division 3 of the Business and Professions Code, the firm named hereon is duly registered and entitled to practice as a Corporation.

CHRISTY WHITE, ASSOCIATES, A
348 OLIVE STREET
SAN DIEGO CA 92103

08/09/16
08/09/16

----- POST IN PUBLIC VIEW -----

WABCOR 02/29/08

INSURANCE CERTIFICATES

CAMICO

CAMICO MUTUAL INSURANCE COMPANY
DECLARATIONS
ACCOUNTANTS PROFESSIONAL LIABILITY INSURANCE POLICY

Policy Number: CAL108463-07

Effective Date:	08/01/2017	at 12:01 A.M. Standard time at the address shown below
Expiration Date:	08/01/2018	at 12:01 A.M. Standard time at the address shown below
Retroactive Date:	08/01/2010	

Item 1 - Named Insured: Christy White Associates

Item 2 - Business Address: 348 Olive St

San Diego, CA 92103

Item 3 - Limits of Liability:	$1,000,000	Per Claim
	$3,000,000	Policy Aggregate
Item 4 - Deductibles:	$10,000	Per Claim Deductible

Item 5 - Total Premium: $22,770

Item 6 - The policy consists of this Declarations page, and the following policy forms and endorsements:

PL-1000-A	07/14	Accountants Professional Liability Insurance Policy
PL-2001-A (CA)	07/14	State Endorsement - California
PL-1007-A	07/14	Exclusion - Claims Following Insureds Suit for Fees
PL-1034-A	07/14	Excluded Entities
PL-1045-A	07/2014	Cyber CPA Endorsement
PL-1049-A	07/2014	Privacy and Client Network Damage Endorsement
PL-1056-A	06/16	Multiple Claims and Related Acts, Errors and Omissions Amendment

PLEASE READ THESE DECLARATIONS, THE POLICY AND ENDORSEMENTS CAREFULLY.

CAMICO Mutual Insurance Company



Authorized Representative

CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY): 08/21/2017

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
PAYCHEX INSURANCE AGENCY INC 150 SAWGRASS DR ROCHESTER, NY 14620 (877) 362-6785	PHONE (A/C, No, Ext): (877) 362-6785	FAX (A/C, No): (877) 677-0447
	E-MAIL ADDRESS: paychex@travelers.com	
	INSURER(S) AFFORDING COVERAGE	NAIC #
	INSURER A : TRAVELERS PROPERTY CASUALTY COMPANY OF AMERICA	
INSURED CHRISTY WHITE ACCOUNTANCY 348 OLIVE ST SAN DIEGO, CA 92103	INSURER B : TRAVELERS CASUALTY INSURANCE COMPANY OF AMERICA	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES **CERTIFICATE NUMBER:** 511686757580332 **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS	
B	[X] COMMERCIAL GENERAL LIABILITY [ ] CLAIMS-MADE [X] OCCUR [X] HIRED AUTO [X] NON OWNED AUTO GEN'L AGGREGATE LIMIT APPLIES PER: [X] POLICY [ ] PRO-JECT [ ] LOC [ ] OTHER:	X		680-5568R081-17	08/15/2017	08/15/2018	EACH OCCURRENCE	$2,000,000
							DAMAGE TO RENTED PREMISES (Ea occurrence)	$300,000
							MED EXP (Any one person)	$5,000
							PERSONAL & ADV INJURY	$2,000,000
							GENERAL AGGREGATE	$4,000,000
							PRODUCTS - COMP/OP AGG	$4,000,000
								$
	AUTOMOBILE LIABILITY [ ] ANY AUTO [ ] ALL OWNED AUTOS [ ] SCHEDULED AUTOS [ ] HIRED AUTOS [ ] NON-OWNED AUTOS [ ] [ ]						COMBINED SINGLE LIMIT (Ea accident)	$
							BODILY INJURY (Per person)	$
							BODILY INJURY (Per accident)	$
							PROPERTY DAMAGE (Per accident)	$
								$
	[ ] UMBRELLA LIAB [ ] OCCUR [ ] EXCESS LIAB [ ] CLAIMS-MADE [ ] DED [ ] RETENTION $						EACH OCCURRENCE	$
							AGGREGATE	$
								$
A	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY Y/N ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? [ ] (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	N/A		UB-4493R185-17	08/15/2017	08/15/2018	[X] PER STATUTE [ ] OTH-ER	
							E.L. EACH ACCIDENT	$1,000,000
							E.L. DISEASE - EA EMPLOYEE	$1,000,000
							E.L. DISEASE - POLICY LIMIT	$1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

AS RESPECTS TO GENERAL LIABILITY, CERTIFICATE HOLDER IS ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION, CG T4 91 .

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE Mary J. Swan

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QUALITY CONTROL PEER REVIEW

Grant Bennett Associates
A PROFESSIONAL CORPORATION

Report on the Firm's System of Quality Control

June 27, 2017

To the Shareholders of Christy White Associates, Inc. and the Peer Review Committee of the California Society of CPAs:

We have reviewed the system of quality control for the accounting and auditing practice of Christy White Associates, Inc. (the firm) in effect for the year ended December 31, 2016. Our peer review was conducted in accordance with the Standards for Performing and Reporting on Peer Reviews established by the Peer Review Board of the American Institute of Certified Public Accountants. (Standards).

A summary of the nature, objectives, scope, limitations of, and the procedures performed in a System Review as described in the Standards may be found at www.aicpa.org/prsummary. The summary also includes an explanation of how engagements identified as not performed or reported in conformity with applicable professional standards, if any, are evaluated by a peer reviewer to determine a peer review rating.

Firm's Responsibility

The firm is responsible for designing a system of quality control and complying with it to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. The firm is also responsible for evaluating actions to promptly remediate engagements deemed as not performed or reported in conformity with professional standards, when appropriate, and for remediating weaknesses in its system of quality control, if any.

Peer Reviewer's Responsibility

Our responsibility is to express an opinion on the design of the system of quality control and the firm's compliance therewith based on our review.

Required Selections and Considerations

Engagements selected for review included engagements performed under *Government Auditing Standards*, including compliance audits under the Single Audit Act.

GBA CPA
www.gbacpa.com

1375 Exposition Boulevard, Suite 230
Sacramento, CA 95815
916/922-5109 FAX 916/641-5200

P.O. Box 223096
Princeville, HI 96722
888/769-7323

As part of our peer review, we considered reviews by regulatory entities as communicated by the firm, if applicable, in determining the nature and extent of our procedures.

Opinion

In our opinion, the system of quality control for the accounting and auditing practice of Christy White Associates, Inc. in effect for the year ended December 31, 2016, has been suitably designed and complied with to provide the firm with reasonable assurance of performing and reporting in conformity with applicable professional standards in all material respects. Firms can receive a rating of *pass*, *pass with deficiency(ies)* or *fail*. Christy White Associates, Inc has received a peer review rating of *pass*.

Grant Bennett Associates

GRANT BENNETT ASSOCIATES
A PROFESSIONAL CORPORATION
Certified Public Accountants

GBA CPA
www.gbacpa.com

1375 Exposition Boulevard, Suite 230
Sacramento, CA 95815
916/922-5109 FAX 916/641-5200

P.O. Box 223096
Princeville, HI 96722
888/769-7323

FINANCIAL STATEMENT

Christy White Accountancy Corporation
Profit & Loss
January through December 2016

	Jan - Dec 16
Ordinary Income/Expense	
Income	3,924,467.14
Cost of Goods Sold	
Client Printing & Shipping	26,778.51
Consultants	2,600.00
Information Technology	25,605.95
Miscellaneous (Clients)	3,343.69
Personnel Expense	1,023,339.41
Travel (Client)	344,845.02
Total COGS	1,426,512.58
Gross Profit	2,497,954.56
Expense	
Automobile Expense	7,073.11
Depreciation Expense	80,377.00
Facilities	231,135.82
General Administration	120,625.60
Insurance Expense	109,230.87
Marketing & Advertising	84,322.19
Personnel Expenses	892,630.08
Philanthropy	13,743.00
Professional Services	5,444.00
Staff Appreciation	20,063.08
Taxes	9,962.43
Training & Development	57,437.45
Uncategorized Expenses	-488.58
Total Expense	1,631,556.05
Net Ordinary Income	866,398.51
Other Income/Expense	
Other Expense	
Shareholder Compensation	700,277.80
Total Other Expense	700,277.80
Net Other Income	-700,277.80
Net Income	**166,120.71**

ATTACHMENT 7

Resolution 2018-117

RESOLUTION 2018-117

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PROFESSIONAL SERVICES AGREEMENT WITH CHRISTY WHITE ASSOCIATES IN THE AMOUNT OF $34,671, TO PERFORM AUDIT SERVICES FOR AN INTERNAL AUDIT OF THE ELECTRIC UTILITY AND BILLING DEPARTMENTS

WHEREAS, the City currently provides electric utility services to the residents of the City of Banning; and

WHEREAS, the City internally bills customers monthly for electric utility services based on the monthly electric meter reads; and

WHEREAS, the Council has expressed a desire to have a detailed internal audit of the electric utility billing process; and

WHEREAS, the Council approved Resolution 2018-46 on April 10, 2018 approving a professional services agreement with Christy White Associates to perform such audit; and

WHEREAS, the City has since increased its professional liability insurance requirements which affected the contract amount Council has expressed a desire to have a detailed internal audit of the electric utility billing process; and

WHEREAS, Resolution 2018-117 shall rescind and replace Resolution 2018-46.

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

SECTION 1. The Banning City Council adopts Resolution 2018-117 approving a Professional Services Agreement with Christy White Associates of San Diego, California, in the amount of $34,671 for internal audit services of the Electric Utility and Utility Billing departments.

SECTION 2. The Interim City Manager or her designee is authorized to make necessary budget adjustments, appropriations and transfers related to this amendment.

SECTION 3. The Interim City Manager is authorized to execute the Professional Services Agreement with Christy White Associates in a form approved by the City Attorney.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

_____

George Moyer, Mayor
City of Banning

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-117, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES: Council Members Franklin, Peterson, Welch, and Mayor Moyer

NOES: None

ABSTAIN: None

ABSENT: Council Member Andrade

_____

Sonja De La Fuente, Deputy City Clerk
City of Banning, California

ATTACHMENT 8

Amended Professional Services Agreement

PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

CHRISTY WHITE ASSOCIATES, INC.

AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
CHRISTY WHITE ASSOCIATES, INC.

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this 10th day of September, 2018 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **CHRISTY WHITE ASSOCIATES, INC., a California corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties.".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services to provide Internal Audit Services of the Electric Utility and Utility Billing departments prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the performance of the services to provide Internal Audit Services of the Electric Utility and Utility Billing departments prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required

under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed THIRTY-FOUR THOUSAND SIX HUNDRED SEVENTY-ONE DOLLARS ($34,671.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

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

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

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

Christy White (Name)	President (Title)
Heather Rubio (Name)	Principal (Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall

obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant 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 the 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 the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

$2,000,000 per occurrence for bodily injury and property damage

$1,000,000 per occurrence for personal and advertising injury

$4,000,000 aggregate for products and completed operations

$4,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than $1,000,000 per accident 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.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of $2,000,000 per claim/occurrence and $2,000,000 policy aggregate.

In the event Consultant 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).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant 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 City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

5.2 General Requirements.

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 has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant 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 Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.

2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the

commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City 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 City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, 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 Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.

5.3 Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests

provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any

Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable ($0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the

effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

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

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid

conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

Rochelle Clayton, Interim City Manager

CONSULTANT

By: _____

NAME: Christy White
TITLE: President

By: _____

NAME: Heather Daud
TITLE: Principal

ATTEST:

Sonja De La Fuente, Deputy City Clerk

47-1136179
Tax ID No.

APPROVED AS TO FORM:
Richards, Watson, Gershon

Kevin G. Ennis, Esq., City Attorney

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 _____, 20__ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following Services in connection with the internal audit services of the Electric Utility and Utility Billing Departments as specified in the Consultant proposal dated January 24, 2018 in connection therewith:

A. Examine all cash, check and credit transactions of the Banning Electric Utility and determine if all customer cash payments are fully accounted for. Amount of money deposited should correspond with the amounts paid by City of Banning customers.

B. Identify the amount of electricity purchased (from Southern California Edison and other power suppliers) by the utility in a given year, and compare it to the amount of electricity sold to customers during that year (In Megawatt Hours).

C. Identify all dwellings in the City that receive utilities but are not billed or are partially billed. Identify the retail value for each of those transactions.

D. Examine random samples of electric utility bills for billing accuracy (based on meter readings provided), rate structure and consistency.

E. Examine if electric utility usage was overridden (lowered) manually in individual cases.

F. Identify charges billed for incorrect or non-existent equipment.

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

A. Make recommendations establishing controls and proceedings for employees counting and/or handling cash (prior to cash pickup by security company).

B. Firm shall present recommendations for changes to the billing rate structure, along with recommendations for the monitoring of the City's future utility billings.

C. Initial Analysis Report – Firm shall provide a written Initial Analysis Report of the past two (2) years of utility bills.

D. Written draft reports will be required within two weeks of completion of the internal audit field work. Results will be discussed between the audit firm partner or manager and the appropriate City of Banning staff, and a final report will be issued within two weeks of such meeting. Copies of the final report will vary in number, depending on the audit. These additional copies are to be provided by the audit firm, and are to be included in the contract price.

E. Irregularities and illegal acts – Auditors shall be required to make an immediate, written report of all irregularities and illegal acts or indications of illegal acts of which they become aware to the Administrative Services Director and City Manager and City Attorney.

III. In addition to the requirements, during performance of the Services, Consultant will keep the City appraised of the status performance by delivering the following status report:

A. The partner-in-charge of the audit shall be available to attend meetings of the City of Banning Finance Committee and City Council at which times the audit progress, reports and findings will be discussed along with other in-person meetings.

B. Email updates/questions to applicant team and City while reviews are underway.

C. Conference calls.

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

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

A. Christy White, CPA

B. Heather Rubio

C. Dena Whittington, CFE

D. Alexis McKeon

E. Natalie Palma

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks at the following rates

PHASE	DESCRIPTION
1.	Project Management
2.	Review and Assessment
3.	Results and Reporting/Deliverables

ENGAGEMENT TEAM FUNCTIONS	HOURLY RATE	ESTIMATED HOURS	ESTIMATED TOTAL
Partners	$250.00	55	$13,750.00
Managers/Supervisors	$170.00	55	$9,350.00
Senior Accountant	$140.00	35	$4,900.00
Experienced Staff	$120.00	35	$4,200.00
Additional Insurance	N/A	N/A	2,471.00
TOTAL	**N/A**	**180**	**$34,671.00**

II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

III. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the Services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the Services.

IV. The total compensation for Services shall not exceed $34,671.00 as provided in Section 2.1 of this Agreement.

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all Services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the Contract Officer.

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

A. To be determined by project team, estimated to begin in January 2019 based on delays in contract.

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

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CITY OF BANNING
BANNING HOUSING AUTHORITY REPORT

TO: **BANNING HOUSING AUTHORITY BOARD**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Ted Shove, Economic Development Manager**

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-03 HA, Approval of Purchase of Affordability Covenant in the form of a Regulatory Agreement for 1323 E. Christie Street – Habitat for Humanity San Gorgonio Pass Area**

RECOMMENDED ACTION:

That the Housing Authority Board adopt Resolution 2018-03HA, approving the purchase of an Affordability Covenant in the form of a regulatory agreement for the construction of a new single family residential dwelling, located at 1323 E. Christie Street (APN 541-052-007), by Habitat for Humanity San Gorgonio Pass Area.

BACKGROUND:

On June 12, 2018, during a joint meeting of the Banning City Council and Housing Authority Board, an action was ratified to appropriate and expend funding for the development and rehabilitation of housing for families with extremely low, very low, and lower income, as defined by California Department of Housing and Community Development ("HCD").

The Housing Authority ("Authority") currently possess an *excess surplus* of funds, that, if not expended, must be forfeited to HCD within approximately the next two years. Use of Authority funds carry affordability restrictions, the chart below illustrates the residents that could potentially qualify for *"Low" income funding*. For example, a family of six with an annual income that does not exceed $62,550, would potentially qualify.

Riverside County Housing State Income Limits (California Department of Housing and Community Development)								
Income Category	Number of Persons in Household							
	1	2	3	4	5	6	7	8
Extremely Low	$ 14,150	$ 16,460	$ 20,780	$ 25,100	$ 29,420	$ 33,740	$ 38,060	$ 42,380
Very Low Income	$ 23,600	$ 27,000	$ 30,350	$ 33,700	$ 36,400	$ 39,100	$ 41,800	$ 44,500
Low Income	$ 37,750	$ 43,150	$ 48,550	$ 53,900	$ 58,250	$ 62,550	$ 66,850	$ 71,150
Median Income	*$ 46,050*	*$ 52,650*	*$ 59,200*	***$ 65,800***	*$ 71,050*	*$ 76,350*	*$ 81,600*	*$ 86,850*
Moderate Income	$ 55,250	$ 63,150	$ 71,050	$ 78,950	$ 85,250	$ 91,600	$ 97,900	$ 104,200

Riverside County 4-Person Area Median Income: $65,800

Since dissolution of RDAs, Authority funds may only be used for income levels identified (above) as Low or below (i.e. very low and extremely low). The use of these funds and restricting housing units for low income directly ties to the required Regional Housing Needs Assessment ("RHNA"). These figures have become more challenging to meet with recently passed state legislation. In addition, over the last at least five years, the City has only issued two housing permits. Neither were considered for RHNA figures as they were both market rate units.

In June, Habitat for Humanity San Gorgonio Pass Area ("Habitat") formally requested a waiver of certain fees related to the development of a single family residential dwelling unit. Since June, City staff has worked with legal counsel to develop the required documentation to purchase an "affordability covenant", to accommodate the request of Habitat, for Council consideration. The required documentation is contained in this report and identified as: Attachments 3, 4, & 5.

Habitat is a not for profit organization that specializes in refurbishing and constructing new homes for low income residents in the community. Habitat has been engaged in the San Gorgonio Pass Area for the past nineteen years.

JUSTIFICATION:

The City could approve the purchase of an Affordability Covenant (via a Regulatory Agreement). This method would provide for the Authority to pay the required fees necessary for Habitat to secure permits and construct the new house, in exchange for an Affordability Covenant. The alternative would be for the City to waive fees from the General Fund. By purchasing an Affordability Covenant, the new home is assured to be limited to lower income households for a period of 30 years.

Tenets of Affordability Covenants

- Affordability Covenants are real property deed restrictions, specific to limiting occupancy by income level (income limitations are also a condition of approval for prospective new homeowners for Habitat).

- The deed restriction runs for a period of 30 years.

- The purchase of the affordability covenant is in the form of a promissory note secured by a deed of trust.

- The affordability covenant is compatible with RHNA calculations for lower income households

FISCAL IMPACT:

Approval of this action will result in expenditure of $23,423.95 of Housing Authority funds (account code to be established for Housing Program Expenditures).

OPTIONS:

1. Approve as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2018-03 HA
2. Habitat for Humanity San Gorgonio Pass Area - Request
3. Regulatory Agreement – 1323 E. Christie St.
4. Promissory Note – 1323 E. Christie St.
5. Deed of Trust with Assignment of Rents – 1323 E. Christie St.

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution 2018-03 HA

RESOLUTION 2018-03 HA

A RESOLUTION OF THE CITY OF BANNING HOUSING AUTHORITY APPROVES HOUSING PROGRAMMING AND APPROPRIATIONS FOR FISCAL YEARS 2018/2019 AND 2019/2020

WHEREAS, on June 12, 2018 the Banning Housing Authority Board ("Board") identified an excess surplus of funds and appropriated funding for down payment assistance, rehabilitation, and homeownership literacy housing programs during fiscal years 2018/2019 and 2019/2020; and

WHEREAS, Habitat for Humanity San Gorgonio Pass Area ("Habitat") made a formal request to the Board for financial assistance to construct a new, single family residential dwelling unit designated for low income family homeownership for families within the region; and

WHEREAS, the purchase of the Affordability Covenant with Habitat for 1323 E. Christie Street (APN: 541-052-007) will accompany a 30 year low income deed restriction, and in an amount not to exceed $23,423.95, in the form of a promissory note secured by a deed of trust; and

WHEREAS, granting Habitat's request and the completion of construction for the new home located at 1323 E. Christie Street will be included toward the Regional Needs Housing Assessment calculations required for low income housing units; and

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

SECTION 1. The Banning Housing Authority Board approves the Purchase of an Affordability Covenant for the development of a single family residential dwelling unit with a low income deed restriction located at 1323 E. Christie Street.

SECTION 2. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers related to adoption of the Banning Housing Authority Budget Fiscal Year 2018/2019 and 2019/2020.

SECTION 3. The Interim City Manager is authorized to execute all necessary documents including the Regulatory Agreement in a form approved by the City Attorney.

PASSED, APPROVED, AND ADOPTED this 10th day of September, 2018.

_____
George Moyer, Chairperson
Banning Housing Authority

ATTEST:

_____
Sonja De La Fuente, Authority Secretary
Banning Housing Authority

APPROVED AS TO FORM
AND LEGAL CONTENT:

_____
Kevin G. Ennis, Legal Counsel
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Authority Secretary of the Banning Housing Authority, Banning California, do hereby certify that the foregoing Resolution 2018-01 HA was duly adopted at a joint meeting of the Banning Housing Authority thereof held on the 10th of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____

Sonja De La Fuente, Authority Secretary
Banning Housing Authority
City of Banning, California

ATTACHMENT 2

Habitat for Humanity San Gorgonio Pass Area Request

Habitat for Humanity®
San Gorgonio Pass Area

OUR MISSION: *SEEKING TO PUT GOD'S LOVE INTO ACTION, HABITAT FOR HUMANITY BRINGS PEOPLE TOGETHER TO BUILD HOMES, COMMUNITIES AND HOPE*

June 5, 2018

Ted Shove, Economic Development Manager
City of Banning, Community Development Department
99 E. Ramsey
Banning, CA 92220

REQUEST FOR WAIVER OF DEVELOPMENT FEES: 1323 E. Christie Street, Banning, CA

Dear Mr. Shove,

Habitat for Humanity International's stated mission is "Seeking to Put God's Love Into Action, Habitat For Humanity Brings People together to Build Homes, Communities and Hope." Habitat for Humanity San Gorgonio Pass Area (HfHSGPA) was established in 1999 to bring Habitat for Humanity's mission to the San Gorgonio Pass and, to date, has built or refurbished 13 homes all in the city of Banning.

Along with our housing construction activities, HfHSGPA offers a program titled *A Brush with Kindness* (ABWK). The ABWK program offers assistance to low-income homeowners who are unable to maintain the exterior of their homes. ABWK allows homeowners to reclaim their home with pride and dignity and, at the same time, revitalize neighborhoods and communities by building strong partnerships with local community businesses and residents.

At this time, HfHSGPA is currently in the final planning processes for the construction of a new home located at t 1323 E. Christie in Banning. With assistance for the City of Banning, we have been providing homes over the past 19 years and by partnering with the City we will be able to make this happen once again for a qualified deserving low income family.

As a part of the financial plan for the project, we are requesting a waiver of the following fees:

Building Permit Fee including plan review	$2,192.45
Additional fees for Mechanical, Plumbing & Electric	$500.00
Plan/Computer Storage	$65.00
Building Standards Commission	$10.00
SMIP	$32.50
Fire Facilities Development Fee	$1,335.00
Police Facilities Development Fee	$823.00
Disaster Education materials	$5.00

Traffic Control Facility Fee	$250.00
General Plan	$75.00
Park Land Fee	$1,955.00
General Facilities Fee	$478.00
Energy Conservation	$45.00
Fire Inspection	$134.00
Fire Plan Check	$134.00
Sub Total	$8,033.95
In Aid of Construction (Electric Utility)	$1,400.00
Electric meter Installation Fee (Electric Utility)	$265.00
Water Connection Fee (Public Works)	$7,232.00
Sewer Connection Fee (public Works	$2,786.00
Water Meter Fee	$268.00
Frontage Fee (Sewer)	$1,650.00
Frontage Fee (water)	$1,500.00
Site Plan Check	$289.00
Sub Total Utility Fees	$15,390.00
Total Request of Fees to be waived	**$23,423.95**

We understand that the school fees of $4,595 and Public Works fees of $615.00 are not a consideration for a fee waiver.

Once the determination has been made by the City we will be making a formal request to the County of Riverside for a waiver of the County Developer Impact Fees. It is our hope, that in partnership with the City of Banning, we will be able to help our 14th homeowner have a home they can be proud of.

Thank you in advance for your consideration of this request.

Sincerely,

Miyoko Bloomer

Miyoko Bloomer
Vice President
Habitat for Humanity SGPA
951.849.7887

cc. Mark Hodnick, Ed.D, Board President

ATTACHMENT 3

Regulatory Agreement
1323 E. Christie St.

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attention: City Clerk

With a copy to:

Habitat for Humanity
San Gorgonio Pass Area
Attn: Board Secretary
PO Box 269
Banning, CA 92220

APN(s): 541-052-007

Space above this line for Recorder's use only

Exempt From Recording Fee Pursuant to Government Code Section 27383

REGULATORY AGREEMENT

THIS REGULATORY AGREEMENT (this "Agreement") is made as of _____, 20__, by HABITAT FOR HUMANITY SAN GORGONIO PASS AREA (the "Habitat") in favor of the CITY OF BANNING (the "City").

RECITALS

WHEREAS, THE City, acting to carry out its public purposes to make financial assistance available to assist persons and families of Very Low and Low Income to obtain housing at affordable housing cost, is making a forgiveable loan (the "City Loan") to Habitat in the amount of certain development fees, for the purpose of enabling Habitat to construct a new single family residential dwelling located at 1323 E. Christie Street Banning, CA 92220, Banning, CA (the "Property"), as such real property is more particularly described in Exhibit "A" which is attached hereto and incorporated herein; and

WHEREAS, such financial assistance being made available by the City is conditioned on the use of the Property for providing housing affordable to persons or families of Very Low or Lower Income for the Affordability Period (as such terms are defined herein).

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Definitions.

"Affordability Period" means that period of time commencing upon the date on which the Improvements are completed and terminating on the thirtieth (30th) anniversary of such date.

"Affordable Housing Cost" as set forth in 25 California Code of Regulations Section 6920 which shall include: principal, interest, and fees associated with mortgage loans, property taxes and assessments, fire and casualty insurance, property maintenance and repairs, reasonable utility allowance, HOA fees, and space rent, if any.

"City Loan" means the loan from the City to Habitat in the original principal amount of twenty three thousand four hundred twenty three dollars and ninety five cents ($23,423.95), as provided in Section 5 hereof.

"City" means the City of Banning and its successors and assigns.

"County" means the County of Riverside, California.

"Date of this Restriction" means the date in the first paragraph of this Restriction.

"Default" means the failure of a party to perform any action or covenant required by this Restriction within the time periods provided herein following notice and opportunity to cure.

"Homeowner" means the person or persons who acquire the Property from Habitat, and their successors, assigns and successors-in-interest.

"Household size appropriate for the Property" as set forth in CCRL H&SC § 50052.5(h) sets for the bedroom count in the context of "adjusted size appropriate to the unit."

"Improvements" means all improvements necessary to construct a single family residential dwelling.

"Legal Description" means the legal description of the Property which is attached hereto as Exhibit "A" and incorporated herein.

"Low Income Household" means a household earning not greater than the maximum annual income for lower income (between 51% and 80% of area median income) households in Riverside County, adjusted for household size, as set forth by regulation of the California Department of Housing and Community Development.

"Monthly Housing Cost" means, for a Lower Income Household, or Very Low Income Household purchasing the Property, all of the following associated with the Property, estimated or known as of the date of the proposed sale of the Property: (i) principal and interest payments on a mortgage loan, and any loan insurance fees associated therewith (provided that if the mortgage loan obtained by the purchaser contains an adjustable interest rate, then for the purposes of this Restriction the principal and interest payments shall be deemed to be those which would be due upon a mortgage loan amortized over a thirty year period with an interest rate equal to prevailing market rates for thirty-year fixed-rate mortgage loans); (ii) property taxes and assessments; (iii)

fire and casualty insurance covering replacement value of property improvements (if the homeowner's association carries fire and casualty insurance with respect to the exterior of the Property, then no additional cost shall be assigned to fire and casualty insurance); (iv) any homeowner association fees; and (v) a reasonable utility allowance. Monthly housing cost of a purchaser shall be an average of estimated costs for the next twelve (12) month period.

"Notice of Intent to Transfer" means the Notice of Intent to Transfer attached hereto as Exhibit G and incorporated herein by reference.

"Permitted Transfer" means any Transfer which is permitted pursuant to Section 4 hereof.

"Prohibited Transfer" means any Transfer which is not permitted pursuant to Section 4 hereof,

"Property" means that certain real property located at the street address set forth in the Recitals and legally described in the attached Legal Description (Exhibit A).

"Sales Price" means the sum to be paid by a Transferee for the Transfer of the Property.

"Transfer" shall mean any sale, assignment, conveyance, lease or transfer, voluntary or involuntary, of any interest in the Property. Without limiting the generality of the foregoing, Transfer shall include (i) a transfer by devise, inheritance or intestacy to a party who does not meet the definition of a Low Income Household, or Very Low Income Household; (ii) a life estate; (iii) creation of a joint tenancy interest; (iv) a gift of all or any portion of the Property; or (v) any voluntary conveyance of the Property. Transfer shall not include transfer to a surviving spouse or joint tenant, so long as the surviving party meets the income eligibility requirements.

"Transferee" shall mean any natural person or entity who obtains ownership or possessory rights in the Property pursuant to a Transfer.

"Very Low Income Household" means a household earning not greater than the maximum annual income for very low income (50% of area median income) households in Riverside County, adjusted for household size, as set forth by regulation of the California Department of Housing and Community Development.

2. Restrictions on Sales of Property. Habitat and each Homeowner covenants and agrees that each transfer of the Property by the then-owner thereof shall be to a Very Low or Low Income Household at an Affordable Housing Cost.

3. Permitted Transfers of the Property. City hereby permits sales of the Property to proposed Transferees who are Very Low or Low Income Households who are approved in accordance with this Section 4 below, provided the Sales Price does not exceed an Affordable Housing Cost ("Permitted Transfers"). In the event that Habitat or a Homeowner desires to Transfer the Property during the Affordability Period, prior to the Transfer, the owner shall notify the City by delivering a Notice of Intent to Transfer to the City which notice shall identify the proposed Transferee who desires to purchase the Property, and shall indicate whether the purchaser is a Very Low or Low Household, and whether the sales price is at an Affordable

housing Cost. In addition to the delivery of the Notice of Intent to Transfer, the following procedure shall apply:

a. Notice to City. Habitat or the Homeowner, as applicable, shall send the Notice of Intent to Transfer to the City at the address set forth is Section 24 hereof.

b. Qualification of Proposed Transferee. The proposed Transferee shall provide the City with sufficient information, of such form and substance as requested by the City, including without limitation, a certification as to the income and family size of the proposed Transferee, for the City to determine if the proposed Transferee is a Very Low or Low Income Household, and that the purchase price is at an Affordable Housing Cost (including a copy of the applicable purchase agreement).

c. Certificates from Parties. Habitat or the selling Homeowner, as applicable, and proposed Transferee each shall certify in writing, in a form acceptable to the City, that the Transfer shall occur in accordance with, and only with, the terms of the sales contract and other documents submitted to and approved by the City and that all consideration delivered by the proposed Transferee to owner had been fully disclosed to the City.

d. Co-Signers and Co-Mortgagors. The income of co-signers (individuals who are borrowers or guarantors under a secured loan) and co-mortgagors (individuals who are borrowers or guarantors under a secured loan) will be included for determining the income of the Homeowner.

e. Written Consent of City Required Before Transfer. During the Affordability Period, the Property, and any interest therein, shall not be conveyed by any Transfer except with the express written consent of the City, which consent shall be given only if the Transfer is in accordance with the provisions in this Section. This provision shall not prohibit the encumbering of title for the sole purpose of securing financing of the purchase price of the Property.

f. Notice of Prohibited Transfer. Within fifteen (15) days after receiving notification of a proposed Transfer in accordance with Section 4(a), City shall determine and give written notice to Habitat or the Homeowner, as applicable, as to whether the proposed Transfer is a Permitted Transfer or Prohibited Transfer.

g. Delivery of Documents. Upon the close of the City-approved proposed Transfer (i.e., a Permitted Transfer), the owner and Transferee, as applicable, shall provide the City with a copy of the final sales contract, settlement statement, escrow instructions, all certificates required by this Section 4 and any other documents which the City may request.

4. Encumbrances.

a. Subordination. The provisions of this Restriction shall be subordinate to any deed of trust on the Property securing a loan to a Homeowner to purchase the Property except for any such loan from Habitat, and to any deed of trust securing refinancing such a non-

Habitat purchase money loan that does not exceed the outstanding balance of the loan being refinanced plus reasonable closing costs payable by the Homeowner for the refinancing ("First Lien") and shall not impair the rights of such lender, or lender's assignee or successor in interest, to exercise its remedies under the First Lien in the event of default under the First Lien by Homeowner. Such remedies under the First Lien include the right of foreclosure or acceptance of a deed or assignment in lieu of foreclosure. After such foreclosure or acceptance of a deed in lieu of foreclosure, this Restriction shall be forever terminated and shall have no further effect as to the Property or any transferee thereafter; similarly, if the holder of the First Lien acquires title to the Property pursuant to a deed or assignment in lieu of foreclosure, this Restriction shall automatically terminate upon such acquisition of title.

b. Request for Notice of Default. The City may cause a Request for Notice of Default to be recorded on the Property subsequent to the recordation of the First Lien deed of trust or mortgage requesting a statutory notice of default as set forth in California Civil Code Section 2924b.

c. Further Encumbrances. Subordinations of existing outstanding loans are subject to City approval, and may be approved only when the proposed new loan terms provide for a favorable interest rate or terms when compared with the existing outstanding loan. The proposed loan may not have a proposed principal amount which exceeds the outstanding principal balance of the current loan at the time of request, adjusted for reasonable and customary loan fees and transaction costs, and subject to City approval. Cash-out refinancing transactions are not allowed.

5. City Loan. Habitat has executed, as maker, and delivered to City a promissory note in favor of City, as holder ("Note"), in the principal amount of twenty three thousand four hundred twenty three dollars and ninety five cents ($23,423.95) (the "City Loan") representing various City fees imposed on the development of the Property that are being conditionally waived pursuant to the terms of said Note. The Note shall be substantially attached hereto and incorporated herein by this reference. The Note shall become due and payable as provided in the terms detailed in the Note, including upon default of this Agreement if such default is not cured after notice and an opportunity to cure as provided herein. Habitat has also executed and delivered to City a deed of trust securing the Note (the "City Deed of Trust") which has been recorded in the Official Records of Riverside County.

6. Uses. Each Homeowner covenants and agrees to occupy the Property as its principal residence, as required under Section 10 below, and devote, use and maintain the Property in accordance with this Restriction. All uses conducted on the Property, including, without limitation, all activities undertaken by the Homeowner pursuant to this Restriction, shall conform to all applicable provisions of the Banning Municipal Code, and the recorded documents pertaining to and running with the Property.

7. Nondiscrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or

enjoyment of the Property, or any part thereof, nor shall Homeowner or any person claiming under or through Homeowner 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, sub-lessees, or vendees of the Property.

Homeowner, its successors and assigns, shall refrain from restricting the rental, sale or lease of the Property on the basis of race, color, religion, sex, sexual orientation, marital status, national origin or ancestry of any person. All such deeds, leases or contracts shall contain or be subject to substantially the following nondiscrimination or non-segregation clauses:

a. In deeds: "The grantee herein covenants by and for himself or herself, his or her heirs, executors, administrators and 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, religion, sex, sexual orientation, marital status, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land herein conveyed, nor shall the grantee himself or herself or any person claiming under or through him or her, 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, sub-lessee or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for himself or herself, his or her heirs, executors, administrators and assigns, and all persons claiming under or through him or her, and this lease is made and accepted upon and subject to the following conditions:

"There shall be no discrimination against or segregation of any person or group of persons on account of race, color, religion, sex, sexual orientation, marital status, ancestry or national origin in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee himself or herself, or any person claiming under or through him or her, 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, sub-lessees, subtenants or vendees in the premises herein leased."

c. In contracts: "There shall be no discrimination against or segregation of, any person or group of persons on account of race, color, religion, sex, sexual orientation, marital status, ancestry or national origin, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the premises, nor shall the transferee himself or herself or any person claiming under or through him or her, 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, sub-lessee or vendees of the premises."

8. Maintenance of Property. Habitat and each Homeowner shall maintain the exterior and interior improvements and landscaping on the Property in a manner consistent with community standards which will uphold the value of the Property and in accordance with the Banning Municipal Code. Habitat and Homeowner also agrees to comply with all applicable

federal, state and local laws. Not later than thirty (30) days prior to a Transfer of the Property (as defined in Section 4), Habitat and Homeowner, as applicable, shall give notice of the impending sale to the City in accordance with Section 4, and shall permit the City to inspect the property prior to the Transfer, upon reasonable prior notice from the City. Following such inspection, if the City determines the Property does not comply with this Section, the City shall deliver to Habitat or the Homeowner, as applicable, a list of repairs that are required to be made to the Property to comply with this Section. At his, her or their sole cost and expense, Habitat or Homeowner, as applicable, shall complete such repairs or provide for such repairs to be completed, to the reasonable satisfactions of the City and City, prior to the Transfer. With the consent of the City, Habitat or Homeowner, as applicable, may provide for such repairs to be paid out of the portion of net sales price to be paid to Homeowner.

9. Occupancy Standards. The Property shall be used as the principal residence of Homeowners and the applicable Homeowner's family and for no other purpose. Neither Habitat nor any Homeowner shall enter into an agreement for the rental or lease of the Property or otherwise rent or lease the Property.

10. Effect of Violation of the Terms and Provisions of this Restriction.

a. In General. The covenants established in this Restriction shall be binding without regard to technical classification and designation, be binding for the benefit and in favor of the City, its successors and assigns, as to those covenants which are for its benefit. The covenants contained in this Restriction shall remain in effect for the periods of time specified herein. The covenants against discrimination shall remain in effect in perpetuity. The City (and its successor) is deemed the beneficiary of the terms and provisions of this Restriction and of the covenants running with the land, for and in its own rights and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit this Restriction and the covenants running with the land have been provided. This Restriction and the covenants therein shall run in favor of the City, without regard to whether the City has been, remains or is an owner of any land or interest therein in or adjacent to the Property. The City shall have the right, if the Restriction 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 this Restriction and covenants may be entitled.

b. Prohibited Transfers Void. Any attempt by Habitat or the Homeowner to make a Prohibited Transfer of title to or any interest of the Property in violation of this Restriction shall be voidable by the City.

11. Indemnification. Habitat and Homeowner shall defend, indemnify and hold harmless the City and its officers, officials, agents, employees, representatives, and volunteers from and against any loss, liability, claim, or judgment relating in any manner to its use of the Property or its violation of this Restriction.

12. Insurance. During the term of this Restriction, Habitat or the applicable Homeowner, as applicable, shall maintain an all risk property insurance policy insuring the Property in an amount equal to the full replacement value of the structures on the Property. The policy shall contain a statement of obligation on behalf of the carrier to notify the City of any material change, cancellation or termination of coverage at least thirty (30) days in advance of the effective date of such material change, cancellation or termination. Homeowner shall transmit a copy of the certificate of insurance to the City within thirty (30) days of the effective date of this Restriction, and Habitat and Homeowner shall annually transmit to the City a copy of the certificate of insurance, signed by an authorized agent of the insurance carrier setting forth the general provisions of coverage. The copy of the certificate of insurance shall be transmitted to the City at the address set forth in Section 22 hereof. Any certificate of insurance must be in a form, content and with companies approved by the City.

13. Non-Waiver. Failure to exercise any right the City may have or be entitled to, in the event of default hereunder shall not constitute a waiver of such right or any other right in the event of a subsequent default.

14. Further Assurances. Habitat and the Homeowner shall execute any further documents consistent with the terms of this Restriction, including documents in recordable form, as the City shall from time to time find necessary or appropriate to effectuate its purposes in entering into this Restriction.

15. Right to Monitor. The Homeowner hereby grants the City or its representatives with the right to perform periodic inspections of the Property to ensure conformance with the provisions of this Notice of Restrictions. Homeowner further agrees to provide ongoing proof of sufficient insurance coverage to the City for the duration of the City Loan.

16. Governing Law. The Homeowner hereby agrees to comply with all ordinances, rules and regulations of the City and City. Nothing in this Restriction is intended to be, nor shall it be deemed to be, a waiver of any City or City ordinance, rule or regulation. This Restriction, and all of the related documents, shall be governed by the laws of the State of California. Any legal action brought under this Restriction, or any of the related documents, must be instituted in the Superior Court of the County of Riverside, State of California, or in the Federal District Court in the Central District of California.

17. Amendment of Restriction. No modification, rescission, waiver, release or amendment of any provision of this Restriction shall be made except by a written agreement executed by the Homeowner and the City.

18. City May Assign. The City may assign, at its option, its rights hereunder without obtaining the consent of the Homeowner.

19. Homeowner Assignment Prohibited. In no event shall Habitat or Homeowner assign or transfer any portion of this Restriction without the prior express written consent of the City, which consent shall be given by the City only in the event that the City determines that the

assignee or transferee is a Very Low or Low Income Household, that the assignee's or transferee's monthly housing payments will be at an Affordable Housing Cost, and that the assignee or transferee has expressly assumed this Restriction by execution of a written assignment documented drafted by the City. This section shall not affect or diminish the City's right to assign all or any portion of its rights hereunder.

20. Notices. Any notices, requests or approvals given under this Restriction from one party to another may be personally delivered or deposited with the United States Postal Service for mailing, postage prepaid, registered or certified mail, return receipt requested to the following address:

To Habitat:

Habitat for Humanity San
Gorgonio Pass Area
PO Box 269
Banning, CA 92220

To Homeowner: To the Property.

To City:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attn: City Clerk

City may change its address for notice by giving written notice thereof to the other party.

21. Attorneys' Fees And Costs. In the event that any action is instituted to enforce payment or performance under this Restriction, or the related documents, the parties agree the non prevailing party shall be responsible for and shall pay all costs and all attorneys' fees incurred by such prevailing party in enforcing this Restriction or any related documents.

22. Entire Agreement. This Restriction, together with all attachments hereto, constitutes the entire understanding and agreement of the parties. This Restriction integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior negotiations, discussions and previous agreements between the City and the Homeowner concerning all or any part of the subject matter of this Restriction.

23. Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

IN WITNESS WHEREOF, the parties have executed this Restriction as of the date set forth above.

HABITAT:

Habitat for Humanity San Gorgonio Pass Area
PO Box 269
Banning, CA 92220

By: _____
Printed Name: Mark Hodnick
Title: President

By: _____
Printed Name: Amy Minjares
Title: Board Secretary

CITY:

CITY OF BANNING

By: _____
Printed Name: George Moyer
Title: Mayor

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY (LAND)

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

LOT 6 OF BROCK SUBDIVISION, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 15, PAGE 75 OF MAPS, RECORDS OF SAID COUNTY.

APN: 541-052-007-2

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, _____,
(insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

ATTACHMENT 4

Promissory Note
1323 E. Christie St.

PROMISSORY NOTE
SECURED BY DEED OF TRUST

$ 23,423.95

_____, 2018 BANNING, CALIFORNIA

Property Address: 1323 E. Christie Street, Banning, CA 92220, APN: 541-052-007-2

FOR VALUE RECEIVED, the undersigned ("Borrower") promises to pay to the City of Banning ("City"), or its designee, at the City Hall for the City of Banning, 99 E. Ramsey Street, Banning, CA 92220, or at such other place as the holder of this Note may from time to time designate, the principal sum of TWENTY THREE THOUSAND FOUR HUNDRED TWENTY THREE AND 95/100 Dollars ($23,423.95) consisting of various City fees for development of the "Subject Property" (as hereinafter defined) and interest thereon which may be due pursuant to Paragraph 6 below, in lawful money of the United States as hereafter set forth, on the first to occur of the following events:

(a) The refinancing by a Homeowner of any obligations secured by the Subject Property, or any part of such obligation(s) (herein referred to as the "refinancing") in excess of the outstanding principal balance of the loan being refinanced plus reasonable closing costs payable by the Homeowner);

(b) Borrower's failure to comply with the Regulatory Agreement with the City or the Deed of Trust Securing this Note that is recorded against the Subject Property;

(c) Borrower's failure to complete the Improvements on or before June 30th, 2019, subject to the delays beyond the control of Borrower;

(d) The occurrence of a default under any loan secured by a deed of trust recorded in the Official Records of Riverside County, California, that is senior to, the Deed of Trust, if such default is not cured within such period of time as may be specified in the document or instrument in question; or

(e) The making of any assignment for the benefit of creditors or the voluntary appointment of a receiver, custodian, liquidator, or trustee in bankruptcy of the Borrower's property or the filing by the Borrower of a petition in bankruptcy or other similar proceeding under law for relief of debtors; or

(f) The filing against the Borrower of a petition in bankruptcy or other similar proceeding under law for relief of debtors, for the involuntary appointment of a receiver, custodian, liquidator, or trustee in bankruptcy of the Borrower's property if any such petition or appointment is not vacated or discharged within sixty (60) calendar days after the making thereof; or

(g) The failure to maintain reasonable casualty or liability insurance on the Subject Property, pay real property taxes and assessments when due, or maintain the Subject Property in good condition.

For the purpose of this Note, the following definitions shall apply:

(a) "Disposition" shall mean any sale, transfer, assignment or conveyance of the Subject Property, any portion thereof or interest therein, including, without limitation, any lease, exchange, or other disposition of any interest in the Subject Property, whether voluntary or involuntary, except that any transfer by gift, devise or inheritance to an existing spouse or joint tenant so long as the surviving tenant meets the income eligibility requirements set forth in the Restriction and any sale in compliance with the Regulatory Agreement shall not be considered a Disposition for purposes of accelerating the Maturity Date.

(b) "Homeowner" shall mean any owner of the Property other than Borrower.

(c) "Improvements" shall mean construction of a new single family residential unit.

(d) "Regulatory Agreement" shall mean that certain Regulatory Agreement of substantially even date hereof evidencing the Subject Property.

(e) "Subject Property" shall mean the real property described in the legal description attached to this Agreement as Exhibit "A", which is commonly referred to as 1323 E. Christie Street, Banning, California 92220.

1. CITY AND BORROWER RELATIONSHIP. The City and the Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Note or in any other document or instrument made in connection with the loan, shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by and between the City and Borrower. The City shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Borrower with respect to the Subject Property or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of the Subject Property and to perform all other agreements and contracts relating to the Subject Property shall be the sole responsibility of the Borrower.

2. USURY. In no contingency or event whatsoever, whether by reason of advancement of the proceeds of this Note, acceleration or maturity of the unpaid balance hereof, or otherwise, shall the amount paid or agreed to be paid to the City hereof for the use, forbearance or detention of the money to be advanced under this Note exceed the highest lawful rate permissible under applicable usury law.

3. LOAN SECURITY. This Note is secured by that certain Deed of Trust executed by Borrower in favor of the City of even date herewith (the "Deed of Trust"). The Deed of Trust constitutes a lien on the Subject Property described therein.

This Note shall become immediately due and payable with or without notice in the amount stated plus interest due upon any default of the Loan Agreement, the Regulatory Agreement, or the Deed of Trust.

4. INTEREST RATE. The principal shall not accrue interest.

5. APPLICATION OF PAYMENTS. Any payments made by Borrower in payment of this Note shall be applied first to expenses incurred by City hereunder or under the Deed of Trust security the Note, and the remainder of each payment shall be applied to the reduction of unpaid principal. Payment of the Note Amount shall not terminate or modify Borrower's the Regulatory Agreement.

6. PREPAYMENT. This Note may be prepaid in whole or in part, at any time without penalty.

7. PLACE OF REPAYMENT. Any payment to be made under this Note shall be made in lawful money of the United States at the principal office of the Banning Housing Authority:

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

or such other place as the City may designate in writing to the Borrower.

8. REMEDIES. The remedies of City as provided herein and in the Deed of Trust, or any one of them, or at law or in equity, shall be cumulative and concurrent, and may be pursued singly, successively, or together at the sole discretion of City, and may be exercised as often as occasion therefore shall occur.

9. ATTORNEYS' FEES. If this Note is not paid when due, whether at the Maturity Date or upon acceleration, Borrower promises to pay all of the costs of collection including, without limitation, reasonable attorneys' fees, and all expenses in connection with the protection or realization of the Subject Property securing the obligations evidenced by this Note incurred by the City on account of such collection, whether or not suit is filed. Such costs and expenses shall include, without limitation, all costs, attorneys' fees and expenses incurred by the City in connection with any insolvency, bankruptcy, reorganization, arrangement or other similar proceeding involving the Borrower, which in any way affect the exercise by the City or holder hereof of its rights and remedies under this Note or under the Deed of Trust or other agreement securing the obligations under this Note.

10. BORROWER'S WAIVERS. Borrower waives presentment, protest and demand, notice of protest, demand and dishonor and nonpayment of this Note and any and all other notices or matters of a like nature, and consent to any and all renewals and extensions.

11. NOTICES. Any notice that must be given to Borrower or City under this Note will be given by delivering it or by mailing it by certified mail addressed as follows:

City:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Clerk

Borrower:

Habitat for Humanity San Gorgonio Pass Area
PO Box 269
Banning, CA 92220

Homeowner: To the Subject Property.

12. SEVERABILITY. If any portion of this Note shall be held invalid or inoperative, then, so far as is reasonable and possible, (1) the remainder of the terms of this Note shall be considered valid and operative, and (2) effect shall be given to the intent manifested by the portion held invalid or inoperative.

13. AMENDMENTS; MODIFICATIONS. Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Borrower and City. No delay or omission on the part of Holder in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Note.

14. NO WAIVER BY LENDER. No waiver of any breach, default or failure of condition under the terms of this Note or the Deed of Trust or the obligation secured thereby shall be implied from any failure of the Holder of this Note to take, or any delay be implied from any failure by the Holder in taking action with respect to such breach, default or failure from any prior waiver of any similar or unrelated breach, default or failure.

15. JOINT AND SEVERAL LIABILITY. If this Note is signed by more than one person, each person is fully and personally obligated to keep all of the promises made in this Note, including the promise to pay the full amount owed. Any person who is a guarantor, surety or endorser of this Note is also so fully and personally obligated. City may enforce its rights under this Note against each person individually or against all of said persons together.

16. GOVERNING LAW. This Note was given in consideration for a loan made in the State of California and is to be construed in accordance with, and governed by, the laws of the State of California.

IN WITNESS WHEREOF, the undersigned has executed this Note as of the _____ day of _____, 20___.

"**BORROWER**"

_____

Mark Hodnick, President
Habitat for Humanity San Gorgonio Pass Area

_____

Amy Minjares, Board Secretary
Habitat for Humanity San Gorgonio Pass Area

ATTACHMENT 5

Deed of Trust with Assignment of Rents 1323 E. Christie St.

RECORDING REQUESTED BY, AND WHEN RECORDED MAIL TO:

City of Banning
99 E. Ramsey Street
Banning, California 92220
Attn: City Clerk

APN(s): 541-052-007

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Exempt from recording fees pursuant to Government Code §27383.

DEED OF TRUST WITH ASSIGNMENT OF RENTS
(SHORT FORM)

This DEED OF TRUST is made as of _____,20___ between Habitat for Humanity of the San Gorgonio Pass Area, herein called TRUSTOR, whose address is PO Box 269, Banning, California 92220, herein called TRUSTEE, and CITY OF BANNING, herein called BENEFICIARY,

WITNESSETH: That Trustor grants 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 AND MADE A PART HEREOF.

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 (1) payment of amounts owing under a Promissory Note of even date herewith, made by Trustor in favor of Beneficiary, and extensions or renewals thereof, for the original principal amount of $23,423.95, (2) payment of any sums advanced on behalf of Trustor according to the terms of a Loan Agreement of even date herewith made by Trustor and Beneficiary, and extensions or renewals thereof, (3) payment of any damages amounts owing to Beneficiary under the terms of a Regulatory Agreement of even date herewith made by Trustor and Beneficiary, (4) the performance of each agreement of Trustor incorporated by reference or contained herein, and (5) payment of additional sums and interest thereon which may hereafter be loaned to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust.

To protect the security of this Deed of Trust, and with respect to the property above described, Trustor expressly makes each and all of the agreements, and adopts and agrees to perform and be bound by each and all of the terms and provisions set forth in said Regulatory Agreement and all of the terms and provisions in subdivision A, and it is mutually agreed that each and all of the terms and provisions set forth in subdivision B of the fictitious deed of trust recorded in Orange County August 17, 1964, and in all other counties August 18, 1964, in the

book and at the page of Official Records in the office of the county recorder of the county where said property is located, noted below opposite the name of such county, namely:

COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE	COUNTY	BOOK	PAGE
Alameda	1288	556	Kings	858	713	Placer	1028	379	Sierra	38	187
Alpine	3	130-31	Lake	437	110	Plumas	166	1307	Siskiyou	506	762
Amador	133	438	Lassen	192	367	Riverside	3778	347	Solano	1287	621
Butte	1330	513	Los Angeles	T3878	874	Sacramento	5039	124	Sonoma	2067	427
Calaveras	185	338	Madera	911	136	San Benito	300	405	Stanislaus	1970	56
Colusa	323	391	Marin	1849	122	S. Bernardino	6213	768	Sutter	655	585
Contra Costa	4684	1	Mariposa	90	453	S. Francisco	A-804	596	Tehama	457	183
Del Norte	101	549	Mendocino	667	99	S. Joaquin	2855	283	Trinity	108	595
El Dorado	704	635	Merced	1660	753	S. Luis Obispo	1311	137	Tulare	2530	108
Fresno	5052	623	Modoc	191	93	San Mateo	4778	175	Tuolumne	177	160
Glenn	469	76	Mono	69	302	Santa Barbara	2065	881	Ventura	2607	237
Humboldt	801	83	Monterey	357	239	Santa Clara	6626	664	Yolo	769	16
Imperial	1189	701	Napa	704	742	Santa Cruz	1638	607	Yuba	398	693
Inyo	165	672	Nevada	363	94	Shasta	800	633			
Kern	3756	690	Orange	7182	18	San Diego Series 5	1964	149774			

shall inure to and bind the parties hereto, with respect to the property above described. Said agreements, terms and provisions contained in said Regulatory Agreement, and in said subdivisions A and B (identical in all counties, and printed on pages 3 and 4 hereof), are by the within reference thereto, incorporated herein and made a part of this Deed of Trust for all purposes as fully as set forth at length herein, and Beneficiary may charge for a statement regarding the obligation secured hereby, provided the charge therefor does not exceed the maximum allowed by law.

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.

_____

Mark Hodnick, President
Habitat for Humanity
San Gorgonio Pass Area

_____

Amy Minjares, Board Secretary
Habitat for Humanity
San Gorgonio Pass Area

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, _____,
(insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

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, _____,
(insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

EXHIBIT "A" TO DEED OF TRUST

LEGAL DESCRIPTION

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

LOT 6 OF BROCK SUBDIVISION, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP FILED IN BOOK 15, PAGE 75 OF MAPS, RECORDS OF SAID COUNTY.

APN: 541-052-007-2

DO NOT RECORD

The following is a copy of Subdivisions A and B of the fictitious Deed of Trust recorded in each county in California as stated in the foregoing Deed of Trust and incorporated by reference in said Deed of Trust as being a part thereof as if set forth at length therein.

A. To protect the security of this Deed of Trust, Trustor agrees:

(1) 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.

(2) To provide, maintain and deliver to Beneficiary fire insurance satisfactory to and with loss payable to Beneficiary. The amount collected under any fire or other insurance policy may be applied by Beneficiary upon any indebtedness secured hereby and in such order as Beneficiary may determine, or at 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.

(3) 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 attorneys' fees in a reasonable sum, in any such action or proceeding in which Beneficiary or Trustee may appear, and in any suit brought by Beneficiary to foreclose this Deed.

(4) 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.

Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation thereof, 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 judgment of either appears to be prior or superior hereto; and, in

exercising any such powers, pay necessary expenses, employ counsel and pay his reasonable fees.

(5) 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.

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 in the same manner and with the same effect as above provided for 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 his right either to require prompt payment when due of all other sums so secured or to declare default for failure so to pay.

(3) That at any time or from time to time, without liability therefor and without notice, upon written request of Beneficiary and presentation of this Deed and said note for endorsement, and without affecting the personal liability of any person for payment of the indebtedness secured hereby, Trustee may: reconvey any part of said property; consent to the making of any map or plat thereof; join in granting any easement thereon; or join in any extension agreement or any agreement subordinating the lien or charge hereof.

(4) That upon written request of Beneficiary stating that all sums secured hereby have been paid, and upon surrender of this Deed and said 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 or 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."

(5) That as additional security, Trustor hereby gives to and confers upon Beneficiary the right, power and authority, during the continuance of these Trusts, to collect the rents, issues and profits of said property, reserving unto Trustor the right, prior to any default by Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, to collect and retain such rents, issues and profits as they become due and payable. Upon any such default, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court, and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of said property or any part thereof, in his own name sue for or otherwise collect such rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and

collection, including reasonable attorney's attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine. The entering upon and taking possession of said property, the collection of such rents, issues and profits and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

(6) That upon default Trustor in payment of any indebtedness secured hereby or in performance of any agreement hereunder, 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, said 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.

(7) 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 or counties 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 is recorded and the name and address of the new Trustee.

(8) That this Deed 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 note secured

hereby, whether or not named as Beneficiary herein. In this Deed, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

(9) That Trustee accepts this Trust when this Deed, 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.

DO NOT RECORD

REQUEST FOR FULL RECONVEYANCE
TO _____, TRUSTEE

The undersigned is the legal owner and holder of the note or notes, and of all other indebtedness secured by the foregoing Deed of Trust. Said note or notes, together with all other indebtedness secured by said Deed of Trust, have been fully paid and satisfied; and you are hereby requested and directed on payment to you of any sums owing to you under the terms of said Deed of Trust, to cancel said note or notes above mentioned, and all other evidences of indebtedness secured by said Deed of Trust delivered to you herewith, together with the said Deed of Trust, and to reconvey, without warranty, to the parties designated by the terms of said Deed of Trust, all the estate now held by you under the same.

Dated: _____

_____

_____

Please mail Deed of Trust,
Note and Reconveyance to

_____

Do not lose or destroy this Deed of Trust OR THE NOTE which it secures. Both must be delivered to the Trustee for cancellation before reconveyance will be made.

DEED OF TRUST
with power of sale

_____
TRUSTEE

CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT

TO: **BANNING UTILITY AUTHORITY**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**
Tammi Phillips, Management Analyst

MEETING DATE: **September 10, 2018**

SUBJECT: **Authorize the Interim City Manager to sign the Notice of Completion for Project No. 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1" as complete and direct the Deputy City Clerk to record the Notice of Completion**

RECOMMENDED ACTION:

That the City Council accept Project No. 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1" as complete, authorize the Interim City Manager or her designee to sign the Notice of Completion and direct the Deputy City Clerk to record the Notice of Completion.

BACKGROUND:

On November 14, 2017 the City Council adopted Resolution 2017-18 UA awarding an Agreement to Genesis Construction of Hemet, California in the amount of $1,055,120 for the completion of Project No. 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1."

The scope of work consisted of constructing the realignment of approximately 7,300 linear feet of new 24-inch ductile iron pipe along an existing access road. The realignment moved some segments of the pipeline from naturalized habitat areas to areas more accessible for easier routine maintenance. The Banning Water Canyon Pipeline Replacement project was crucial for the City to continue to provide a reliable water supply.

JUSTIFICATION:

Public Works and Purchasing staff advertised Notice Inviting Bids on October 13, 2017 for the construction of the Banning Water Canyon Pipeline Replacement Phase 1 and the contract was awarded to Genesis Construction of Hemet, California. The work was completed on June 27, 2018. Public Works staff, with the assistance of inspection services from Michal Baker International, verified that the workmanship, materials, and procedures were satisfactory and that the contractor met the required obligations.

FISCAL IMPACT:

The original contract for construction was awarded in the amount of $1,055,120 and the final contract amount was $1,129,295.60. Change orders in the amount of $74,175.60 were approved related to: installation of additional high pressure butterfly valves, field revisions due to unknown/unmarked water lines, a leak repair related to defective pipe, and installation of additional four-hundred (400) linear feet of twenty-four (24) inch ductile iron pipe. It should be noted that the change order cost related to the leak repair due to the defective pipe repair was reimbursed back to the City by the pipe manufacturer in the amount of $36,268.

The final contracted amount was under the allocated project budget, including a 10% contingency approved under Resolution 2018-18 UA. The project was funded by the 2005 Water Bonds, Account No. 663-6300-471.95-10.

ALTERNATIVE:

City Council may elect to not accept the project as complete which would keep the project open and prevent the release of retention funds to the contractor.

ATTACHMENTS:

1. Notice of Completion
2. Project Photos

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Notice of Completion

WHEN RECORDED MAIL TO:

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

FREE RECORDING:
Exempt Pursuant to
Government Code §6103

NOTICE OF COMPLETION

Project No. 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1"

THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City of Banning, a municipal corporation, pursuant to the provisions of Section 9204 of the Civil Code of the State of California, and Project No. 2016-02W is hereby accepted by the City of Banning, pursuant to authority conferred by the City Council this September 10, 2018, and the grantees consent to recordation thereof by its duly authorized agent.

That the OWNER, the City of Banning, and Hemet Manufacturing Co, Inc. DBA Genesis Construction of Hemet, California, the vendee, entered into an agreement dated November 14, 2017, for Project No. 2016-02W, "Banning Water Canyon Main Replacement Phase I".

The principal items of work included constructing the replacement and realignment of approximately 7,300 linear feet of new 24-inch ductile iron pipe along an existing access road. The work was performed in the City of Banning, CA 92220.

That the work was completed on June 27, 2018, for Project No. 2016-02W "Banning Water Canyon Pipeline Replacement Phase 1":

(1) The Nature of Interest was pipeline realignment completed on June 27, 2018 for Project No. 2016-02W, "Banning Water Canyon Pipeline Replacement Phase 1".

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

(3) That said construction was performed within the City of Banning, California 92220.

1. That the original contractor for said construction was Hemet Manufacturing Co, Inc. DBA Genesis Construction of Hemet, California.

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

(5) The nature of interest is in fee.

Dated: September 10, 2018

CITY OF BANNING
A Municipal Corporation

By_____
Rochelle Clayton
Interim City Manager

APPROVED AS TO FORM:

_____
Kevin G. Ennis, Esq., City Attorney
Richards, Watson & Gershon

JURAT

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

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2018 by _____ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(S e a l)

_____
Notary Public in and for said County and State

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

SONJA DE LA FUENTE, being duly sworn, deposes and says:

That I am the Deputy 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_____, 2018 at Banning, California.

_____
Deputy City Clerk of the City of Banning

ATTACHMENT 2

Project Photos


DIRECTION
97 deg(T)
33.98423°N
116.90495°W
ACCURACY 20 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-01-08
08:04:46-08:00


DIRECTION
311 deg(T)
33.94922°N
116.88055°W
ACCURACY 20 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-02-02
13:39:25-08:00


DIRECTION
280 deg(T)
33.97712°N
116.89819°W
ACCURACY 52 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-01-10
10:51:25-08:00


DIRECTION
329 deg(T)
33.98522°N
116.90549°W
ACCURACY 20 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-01-22
09:24:20-08:00


DIRECTION
135 deg(T)
33.98295°N
116.90300°W
ACCURACY 20 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-02-13
13:29:18-08:00


DIRECTION
195 deg(T)
33.98344°N
116.90327°W
ACCURACY 20 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-02-14
15:08:50-08:00


DIRECTION
67 deg(T)
33.99228°N
116.90735°W
ACCURACY 26 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-02-01
09:59:02-08:00


DIRECTION
67 deg(T)
33.98312°N
116.90305°W
ACCURACY 26 ft
DATUM WGS84
D Romine, Michael
Baker intl
2018-02-13
15:31:44-08:00

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CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT

TO: **BANNING UTILITY AUTHORITY**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**
Tammi Phillips, Management Analyst

MEETING DATE: **September 10, 2018**

SUBJECT: **Authorize the Interim City Manager to sign the Notice of Completion for Project No. 2017-17W, "Repair of Wells and Pumps" as complete and direct the Deputy City Clerk to record the Notice of Completion**

RECOMMENDED ACTION:

That the City Council accept Project No. 2017-17W, "Repair of Wells and Pumps" as complete, authorize the Interim City Manager or her designee to sign the Notice of Completion and direct the Deputy City Clerk to record the Notice of Completion.

BACKGROUND:

On February 27, 2018 the City Council adopted Resolution 2018-02 UA awarding an Agreement to L.O. Lynch Quality Wells & Pumps, Inc. of San Jacinto, California in the amount of $134,096.50 for the completion of Project No. 2017-17W, "Repair of Wells and Pumps."

The scope of work consisted of electrical repairs at Well M10 and the replacement of pumps and motors at Wells 3 Electric and M7. Repairs were needed as a result to damaged caused to the wells by a lightning storm.

JUSTIFICATION:

Public Works and Purchasing staff advertised Notice Inviting Bids on January 12, 2018 for the Repair of Wells and Pumps and the contract was awarded to L.O. Lynch Quality Wells & Pumps, Inc. of San Jacinto, California. The work was completed on August 17,

2018. Public Works staff verified through inspections that the workmanship, materials, and procedures were satisfactory and that the contractor met the required obligations.

FISCAL IMPACT:

The original contract for repair service was awarded in the amount of $134,096.50 and the final contract amount was $88,388.40. The final contracted amount was under the allocated project budget approved under Resolution 2018-02 UA, due to some of the equipment replacement not being necessary for Well M10, as determined after electrical repairs were completed. The project was funded from Account No. 660-6300-471.95-08, Wells/Pumping Equipment.

ALTERNATIVE:

City Council may elect to not accept the project as complete which would keep the project open and prevent the release of retention funds to the contractor.

ATTACHMENTS:

1. Notice of Completion

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Notice of Completion

WHEN RECORDED MAIL TO:

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

FREE RECORDING:
Exempt Pursuant to
Government Code §6103

NOTICE OF COMPLETION

PROJECT NO. 2017-17W, "REPAIR OF WELLS AND PUMPS"

THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City of Banning, a municipal corporation, pursuant to the provisions of Section 9204 of the Civil Code of the State of California, and Project No. 2017-17W is hereby accepted by the City of Banning, pursuant to authority conferred by the City Council this September 10, 2018, and the grantees consent to recordation thereof by its duly authorized agent.

That the OWNER, the City of Banning, and L.O. Lynch Quality Wells & Pumps, Inc., the vendee, entered into an agreement dated February 27, 2018, for Project No. 2017-17W, "Repair of Wells and Pumps".

The principal items of work included the repair of Wells 3 Electric, M7 and M10. The work was performed at various sites located throughout the City of Banning, CA 92220.

That the work was completed on August 17, 2018, for Project No. 2017-17W "Repair of Wells and Pumps":

(1) The Nature of Interest was well repair services completed on August 17, 2018 for Project No. 2017-17W, "Repair of Wells and Pumps".

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

(3) That said repairs were performed at various locations within the City of Banning, California 92220.

(4) That the original contractor for said repairs was L.O. Lynch Quality Wells & Pumps, Inc. from San Jacinto, California

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

(6) The nature of interest is in fee.

Dated: September 10, 2018

CITY OF BANNING
A Municipal Corporation

By_____
Rochelle Clayton
Interim City Manager

APPROVED AS TO FORM:

_____
Kevin G. Ennis, Esq., City Attorney
Richards, Watson & Gershon

JURAT

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

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2018 by _____ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(S e a l)

_____
Notary Public in and for said County and State

STATE OF CALIFORNIA)
) ss
COUNTY OF RIVERSIDE)

SONJA DE LA FUENTE, being duly sworn, deposes and says:

That I am the Deputy 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_____, 2018 at Banning, California.

_____
Deputy City Clerk of the City of Banning

CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT

TO: **Banning Utility Authority**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-05 UA, Approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. for an Adjustment in Compensation and to Extend the Term of the Agreement; and to Discuss Other Options for the Continued Operations and Maintenance of the City of Banning's Wastewater Treatment Plant**

RECOMMENDED ACTION:

Staff Recommends that the Banning Utility Authority adopt Resolution 2018-05 UA:

1. Approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. for an adjustment in compensation and to extend the term of the agreement for one (1) additional year and thereby amending the termination date of the original Agreement to September 30, 2019 with an option to renew for an additional year.

2. Authorizing the Interim City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement.

3. Authorizing the Interim City Manager to execute the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc.

COMMITTEE RECOMMENDATION:

The recommendation to extend the existing operation and maintenance agreement was presented by staff to the Budget and Finance Committee ("Committee") at their

December, 2017 meeting. Concluding the discussion, the Committee made a recommendation to approve the extension of the Operation and Maintenance Agreement with Suez Water Environmental Services, Inc. for an additional two (2) years which would extend the agreement termination date to September 30, 2020.

On July 16, 2018, the item was presented a second time to the Committee for the purpose of discussing additional compensation in order to cover an increase in cost related to the application of prevailing wages to certain tasks provided as part of the contract. The Committee discussed the possibility of extending the agreement for less than two (2) years, but did not make a recommendation and requested that staff look into the cost for operating and maintaining the Wastewater Treatment Plant (WWTP) with in-house staff.

BACKGROUND:

The City of Banning initially contracted out the operation and maintenance of the WWTP in September of 1993 to JMM Operational Services, Inc. (JMM) for a period of five (5) years. JMM was later acquired by United Water Services, Inc. (United Water) and subsequently the City renewed the agreement for an additional 5 years.

On September 23, 2003, under Resolution 2003-90, City Council approved a ten (10) year agreement for the Operation and Maintenance of the City of Banning Wastewater Treatment Plant to United Water for a monthly amount of $41,500 and an annual total cost of $498,000. On September 10, 2013, under Resolution No. 2013-16 UA, Banning Utility Authority approved a five (5) year contract term extension ("Current Agreement") with Untied Water to September 30, 2018.

In May of 2016, United Water notified the City of its name change to Suez Water Environmental Services, Inc. (Suez) confirming that employees and business practices would remain the same and that operations will remain unchanged with the exception of the name change.

The Current Agreement includes an annual adjustment to the monthly rate based on the changes in the Consumer Price Index (CPI) Los Angeles-Long Beach Area. Currently, the base monthly rate is $56,533 for an annual expense amounting to $678,396.

Since outsourcing the operations and maintenance of the WWTP in 1993, the City has maintained compliance with the Waste Discharge Requirements (WDR) issued to the City by the California Regional Water Quality Control Board (RWQCB). Suez has also contributed to the City being the recipient of several awards such as, the WWTP received Plant of the Year in 2007 (less than 5 MGD) and 2nd place for this same award in 2008. Additionally, in 2008 the WWTP received a safety award from the Colorado River Basin Section for its operation procedures. Again in 2016, the WWTP received the Plant of the Year (less than 5 MGD) award.

Scope of Work

Suez, under the Current Agreement, is responsible for the operation and maintenance of the City's WWTP and four wastewater lift stations located throughout the City. As stated in the Current Agreement, Suez is responsible for several maintenance activities including treatment plant equipment maintenance, building maintenance and landscape maintenance. Suez is responsible for providing five (5) full-time employees (10,400 working hours) to staff the WWTP 7 days a week, eight (8) hour days including providing the City with 24 hour, 7 days per week, on-call operational coverage. In addition to the 5 full time employees Suez also provides technical assistance utilizing their professional in-house resources for various wastewater programs such as pre-treatment, industrial waste discharges, preventative maintenance and capital improvement planning.

Suez is also obligated to pay for expenses related to consumables such as, chemicals, lubricants and contracted services (e.g. lab services) as well as capital expenses of up to $2,000 per occurrence at the WWTP or up to $1,500 during a twelve (12) month period for expense related to the wastewater lift stations.

Further details of the Suez' contract obligations are identified in the Current Agreement included herein as Attachment 2.

Contract Impact Related to Prevailing Wage

California Prevailing Wage requirements apply to construction, alteration, demolition, installation, repair and maintenance work done under contract and paid in whole or in part of public funds.

Suez and City staff, including legal counsel for both parties, discussed the applicability of prevailing wages to the services provided by Suez as part of the Current Agreement. Both parties developed and agreed to a list of tasks and hours, included herein as Attachment 3, for activities that would be required to comply with prevailing wage law. It was estimated that 1,758 hours are spent on said prevailing wage tasks. It should be noted that of these hours, 1,038 hours were worked at an hourly rate less than the prevailing wage rate allocated to the labor classification responsible for completing the specific task.

It was determined that the cost to pay the minimum prevailing wage rate for the 1,014 hour is $42,008, which included a fifteen percent (15%) markup as allowed by the Current Agreement, and equal to the increase in compensation included in the Second Amendment to the Maintenance and Operations Agreement with Suez. A table showing the variance in costs is included as Attachment 4.

In-House Analysis

On July 24, 2018 the City Council was presented with a narrow scoped estimate of costs that could be expected if the City Council were to operate and maintain the WWTP with in-house staff. The total labor costs were estimated to range from $538,272 to $666,376

per year. It was noted during the presentation that additional costs would be incurred related to the purchase of new equipment (i.e. two trucks and a loader) and consultation services. Additional costs that should be noted are costs associated with the purchase of chemicals, lab testing and utilities (with the exception of electric which is currently paid for by the City). It is estimated that the costs associated with these additional expenses would be approximately $80,000 per year.

It should be noted that the analysis above was not detailed due to the short amount of time that staff had to prepare the analysis. If requested, staff can prepare a full feasibility analysis of this option.

JUSTIFICATION:

Since 1993 JMM/United Water/Suez has proven to be a responsible contractor capable of effectively and successfully managing the operation and maintenance of the City's WWTP. The existing contract is set to expire in September 30, 2018 and it is essential that the City preserve the continued operation and maintenance of the WWTP.

The second amendment, if approved, will allow the continued operation and maintenance of the City's WWTP until September 30, 2019 with an option to extend to September 30, 2020. Other options (i.e. request for proposals or utilizing in-house staff) will take several months to be implemented.

FISCAL IMPACT:

The Wastewater Division Operational Fund, Account No. 680.8000-454.23-38 (contracted wastewater plant services) will fund the Operation and Maintenance Agreement. The base annual agreement amounts to $746,180, an increase of $42,008 from the Current Agreement. The increase is representative of the increase in costs to cover services were prevailing wage rates apply.

ALTERNATIVES:

1. Reject Resolution 2018-05 UA. If rejected, the City will have 300 days to replace Suez per the Current Agreement.
2. Approve Resolution 2018-05 UA and provided direction to staff to complete a thorough analysis of the pros and cons and associated costs for operating and maintaining the WWTP with in-house staff.
3. Approve Resolution 2018-05 UA and direct staff to prepare a Request for Proposals with an updated scope of services (e.g. no landscape maintenance)

ATTACHMENTS:

1. Resolution 2018-05 UA
2. Current Agreement for O&M of the City's WWTP and Amendment No.1
3. Prevailing Wage Task List
4. Variance in Labor Costs
5. Second Amendment to Agreement

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1
Resolution 2018-05 UA

RESOLUTION 2018-05 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE SECOND AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT WITH SUEZ WATER ENVIRONMENTAL SERVICES, INC. FOR AN ADJUSTMENT IN COMPENSATION AND TO EXTEND THE TERM OF THE AGREEMENT; AND TO DISCUSS OTHER OPTIONS FOR THE CONTINUED OPERATIONS AND MAINTENANCE OF THE CITY OF BANNING'S WASTEWATER TREATMENT PLANT

WHEREAS, the City of Banning initially contracted out the operation and maintenance of the Wastewater Treatment Plant (WWTP) in September of 1993 to JMM Operational Services, Inc. (JMM) for a period of five (5) years. JMM was later acquired by United Water Services, Inc. (United Water) and subsequently the City renewed the agreement for an additional 5 years; and

WHEREAS, on September 23, 2003, the City Council approved Resolution 2003-90, approving an agreement for operation and maintenance of the City of Banning Wastewater Treatment Plant ("Agreement"); and

WHEREAS, on September 10, 2013, the Banning Utility Authority approved Resolution 2013-16 UA, approving the first amendment to the Agreement with United Water Environmental Services, Inc.; and

WHEREAS, in May of 2016, United Water notified the City of its name change to Suez Water Environmental Services, Inc. confirming that employees and business practices will remain the same and that operations will remain unchanged with the exception of the name modification; and

WHEREAS, since 1993, Suez Water Environmental Services, Inc. has provided and continues to provide quality services to the City of Banning related to the operation and maintenance of the Wastewater Treatment Plant; and

WHEREAS, on December 12, 2017 the Budget and Finance Committee of the City of Banning discussed, supported and made a recommendation that the City Council approve the extension of the Agreement with Suez Water Environmental Services, Inc.; and

WHEREAS, on July 16, 2018, the item was presented a second time to the Budget and Finance Committee due to the additional requirement to apply prevailing wages to specific services included in the Agreement which results in an increase of $42,008 per year for a total contract amount of $746,180 per year, which may be adjusted annually by the Consumer Price Index (CPI) as allowed by the Agreement.

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

SECTION 1. Banning Utility Authority adopts Resolution 2018-05 UA, approving the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. thereby adjusting the compensation and extending the term of the agreement for one (1) additional year and thereby amending the termination date of the original Agreement to September 30, 2019 with an option to renew for an additional year.

SECTION 2. The Interim City Manager, or designee, is authorized to make necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement.

SECTION 3. The Interim City Manager is authorized to execute the Second Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

George Moyer, Chairman
Banning Utility Authority

ATTEST:

Sonja De La Fuente, Secretary
Banning Utility Authority

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, Authority Counsel
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution 2018-05 UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

_____

Sonja De La Fuente, Secretary
Banning Utility Authority
City of Banning, California

ATTACHMENT 2

Current Agreement for O&M of the City's WWTP and Amendment No. 1

ORIGINAL

AGREEMENT

FOR

CONTRACT OPERATION AND MAINTENANCE

OF

CITY OF BANNING

WASTEWATER TREATMENT PLANT

OCTOBER 1, 2003

AGREEMENT FOR CONTRACT
OPERATION AND MAINTENANCE OF THE
CITY OF BANNING WASTEWATER TREATMENT PLANT

THIS AGREEMENT is made and entered into this 1st day of October, 2003, by and between the CITY OF BANNING herein referred to as "OWNER" and UNITED WATER SERVICES, INC., a California Corporation, herein referred to as "CONTRACTOR", sometimes jointly referred to as the "Parties."

WITNESSETH

WHEREAS, OWNER owns a Wastewater Treatment Plant, certain auxiliary equipment; and wastewater collection system.

WHEREAS, CONTRACTOR is a corporation offering professional services necessary for the operation and maintenance of **Wastewater Treatment Plant.**

WHEREAS, OWNER desires to employ CONTRACTOR for the Operation and Maintenance of the aforesaid Wastewater Treatment Plant.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, it is hereby understood and agreed by the parties hereto as follows:

I. EMPLOYMENT

OWNER engages CONTRACTOR to furnish the services hereinafter mentioned at and for the compensation herein provided, and CONTRACTOR accepts said engagement upon said terms.

II. WASTEWATER FACILITY LOCATION

CONTRACTOR agrees to furnish services of its various qualified employees, associates, and staff in the operation and maintenance of the following facilities:

a) All equipment and facilities of the City of Banning Wastewater Treatment Plant located at 2242 E. Charles Street, Banning, CA.

b) The lift station located on Westward Avenue west of Sunset Avenue.

c) The lift station located on Riviera Avenue in the area commonly known as the Sun Lakes Development.

d) The lift station located on East Ramsey Street immediately west of the California Department of Transportation Maintenance Facility.

e) The lift station located on Breckenridge Avenue in the area commonly known as the Sun Lakes Development.

The facilities described above shall be jointly referred to herein as the "Wastewater Treatment Plant."

III. TERM, DURATION, AND RENEWAL OF AGREEMENT

A. TERM

Except as otherwise provided herein, services under this Agreement shall commence on October 1, 2003, and terminate on September 30, 2013.

B. RENEWAL

Subject to the provision for Termination set forth in Section IX hereof, this Agreement shall be for a period of ten (10) years. For renewal of the Agreement, one of the parties must first give written notice of its intent to the other at least one hundred and twenty (120) days prior to the above termination date of the agreement. Upon receipt of the notice, the receiving party shall notify the sending party of its acceptance of the offer to renew; the parties shall thereafter enter into negotiation of the terms of the renewal. Unless otherwise agreed to by the parties in writing, during the period of negotiation the agreement shall continue on the same terms and conditions. If agreement is not reached on new terms and conditions within one hundred eighty (180) days of the date of expiration of this

Agreement or any extension, there shall be no renewal of the Agreement and it shall be deemed to expire three hundred (300) days following date of expiration.

IV. SCOPE OF SERVICES

A. CONTRACTOR shall operate and maintain the Wastewater Treatment Plant in a cost-effective and professional manner. Such operation and maintenance shall be in accordance with generally accepted practices for wastewater treatment. The wastewater effluent discharged from the Wastewater Treatment Plant and other operational characteristics shall at all times meet the requirements of all governmental regulatory agencies in effect on date of execution of this Agreement, and as may at anytime be require by law, subject to Section IV (B) below, including those requirements as specified in California Regional Water Quality Control Board Order No. 01-022 within the limits of the operating capability of the Wastewater Treatment Plant.

CONTRACTOR shall not be responsible for removal of abnormal or biologically toxic substances, which cannot be treated or removed in the OWNER's Wastewater Treatment Plant using the processing capability of the Wastewater Treatment Plant. Also, CONTRACTOR shall not be held liable hereunder for failure to maintain the standards described herein above if the Wastewater Treatment Plant shall be rendered inoperable for any reason not within the control of the CONTRACTOR. Further, the CONTRACTOR shall not be held liable hereunder for failure to conform to the above-described standards if the average daily influent flow, influent BOD_5, and influent suspended solids at the Wastewater Treatment Plant exceed the plant processing capacity (3.6 mgd) as of date of execution of this agreement.

The current daily average influent flow, influent BOD_5, and influent suspended solids at the date of execution of this agreement are as follows:

Average Dry Weather Flow	2.260 mgd

Average Influent Total Suspended Solids (TSS) (265 mg/l) 4,995 lb/day

Average Influent BOD_5 (341 mg/l) 6,427 lb/day

At such times as the capabilities and limits of the Wastewater Treatment Facilities as described above are exceeded, CONTRACTOR shall take reasonable steps to either prevent effluent violations or keep the number and duration of violations to a minimum.

B. Operating processes agreed to be performed by CONTRACTOR include, but are not limited to, the Wastewater Treatment processes of preliminary treatment, influent pumping, trickling filtration, secondary clarification, anaerobic digestion, solids thickening, drying beds, and disposal of all screening, grit, and sludge. Maintenance activities agreed to be performed by CONTRACTOR include, but are not limited to, treatment plant equipment maintenance, building maintenance, and landscape maintenance.

C. CONTRACTOR shall, at its sole cost and expense, pay all expenses incurred in usual treatment plant operations including, but not limited to, wages, salaries, utilities, consumables such as chemicals, lubricants and contracted services, if any, except as otherwise limited herein. Save that OWNER shall pay all electric billing for the Wastewater Treatment Facilities and Collection System Pump Stations. OWNER shall also pay for cost of disposal of screening, grit, and sludge.

D. Maintenance and repairs for all equipment, structures, and vehicles shall be provided by CONTRACTOR for normal wear and tear and usage within the limits defined herein. Such maintenance and repair shall not include costs associated with flood, fire or other abnormal or extraordinary occurrences not within the control of CONTRACTOR.

CONTRACTOR shall provide copies of signed declarations, at the beginning of each contract year, from each and all employees who operate any

City-owned vehicle or equipment, including any such vehicles leased to CONTRACTOR by the City, declaring that they have a California Driver's License, which is in effect, and that they are licensed to drive all vehicles, which they may be required to operate under this Agreement. All employees shall also agree to advise CONTRACTOR within one (1) working day of their loss of the California Drivers License of the classification needed to operate vehicles under this Agreement.

CONTRACTOR shall prepare a preventive maintenance schedule for each major piece of equipment located at the Wastewater Treatment Plant for the OWNER's approval by the end of the second month of this Agreement or its extension. For purposes of this agreement, "major piece of equipment" is defined as any vehicle, tool or other equipment with a replacement cost in excess of two thousand dollars ($2,000.00). Maintenance records will be kept up to date and will be available for inspection by a representative of the OWNER at all reasonable times.

CONTRACTOR shall manage, operate, and maintain the above-described Wastewater Treatment Plant in good working order and repair so that the Wastewater Treatment Plant will not deteriorate in appearance and mechanical condition, other than from normal wear.

Inventory of equipment and vehicles and documentation of operation and maintenance will be maintained by the CONTRACTOR. CONTRACTOR shall submit a report at the end of each contract year as to operation and maintenance and such reports shall be made available for inspection by OWNER at all reasonable times.

Costs for capital items and major maintenance items are not included within the scope of services and expenditures for those items shall be subject to prior approval and funding by the OWNER. For purposes of this agreement, "capital items and major maintenance items" is defined as parts or any new

equipment or Wastewater Treatment Plant components that significantly extend the service life of the Wastewater Treatment Plant; that are considered capital expenditures in accordance with standard accounting practices, that are a non-routine type of expenditure on the annual basis, and/or that are pre-programmed for expenditure by OWNER and cost more to repair or replace than two thousand ($2,000.00) per occurrence not including costs of labor.

CONTRACTOR shall be responsible for the routine maintenance of the four lift stations [items (b), (c), (d), and (e) of Section II] as set forth in the contract. However, the CONTRACTOR shall not be responsible for the annual costs of major repairs or non-routine maintenance in excess of $1,500.00 for the said lift stations. The CONTRACTOR shall provide a monthly report to the OWNER reflecting major repairs or non-routine expenditures incurred during the 12-month period starting October 1, 2003. Any expenditures for major repairs or non-routine maintenance, in excess of $1,500.00 during the 12-month period, shall be borne by the OWNER and shall be subject to prior approval of the OWNER.

OWNER shall pay for the cost and installation of the telemetry control system for said lift stations.

CONTRACTOR will submit, upon request, present documentation of the cost effectiveness of "repair versus replace" decisions made by CONTRACTOR.

Capital items may be purchased directly by the OWNER, or by the CONTRACTOR after approval to purchase said items has been expressly granted by the OWNER pursuant to procedure established by OWNER. CONTRACTOR shall not be entitled to receive any mark-up on the cost of items purchased by CONTRACTOR, under this procedure.

E. CONTRACTOR shall staff the Wastewater Treatment Plant seven (7) days per week, eight (8) hours per day with sufficient number of full time employees (a minimum staffing level of five (5) full time certified qualified personnel including

a Plant Manager) to fully monitor the operations of the Wastewater Treatment Plant or as otherwise mutually agreed by the parties. All such employees shall be experienced in wastewater treatment procedures and practices, and possess qualifications and certifications sufficient to meet all applicable Federal and State regulatory agency requirements. The Plant Manager appointed by CONTRACTOR is Manuel Benitez. Said Plant Manager shall not be replaced by CONTRACTOR except upon thirty (30) calendar days prior written notice to OWNER of such replacement. CONTRACTOR shall provide the OWNER a 24 hour per day, seven (7) days per week, on-call operational coverage for the facility.

CONTRACTOR and subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ any person that is not knowledgeable or skilled in the work assigned to such person. It shall be the responsibility of the CONTRACTOR to insure compliance with this section.

Any person in the employ of the CONTRACTOR or sub-contractors whom OWNER may reasonably deem unfit shall be excluded from the Wastewater Treatment Plant and shall not again be employed on it except with written consent of OWNER. As used in this subsection "unfit" means any person who the OWNER reasonably concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this agreement, or who creates safety hazards which jeopardize other persons and/or property.

F. CONTRACTOR shall devise and prepare in writing, appropriate operating procedures and shall place a copy of such procedures on file with OWNER. CONTRACTOR shall prepare environmental and monitoring reports and shall file such reports at OWNER's office monthly.

CONTRACTOR shall maintain the laboratory analysis program in place on date hereof. Said Program shall be continued in accordance with the latest revision of Standard Methods for Wastewater Analysis Procedures or in accordance with the other testing requirements of the water quality of the Waste Discharge Requirements (WDR) and NPDES, if any, waste discharge permits are issued. CONTRACTOR shall familiarize itself with the monitoring reports required to be made by OWNER as specified in the water quality of the WDR and NPDES permits, if any, referenced above, and shall furnish to OWNER's office copies of all completed reports filed in accord with those permits. Said reports shall be filed with OWNER within five (5) days following date of completion by CONTRACTOR. CONTRACTOR shall prepare and file monitoring reports that may be required by any governmental agency having jurisdiction, and will provide record copies to OWNER within five (5) days of date of filing of such report.

G. OWNER shall maintain all existing warranties, guarantees, contracts, easements, and licenses that have been granted to OWNER as owners or lessors of the equipment and facilities. OWNER shall procure all other warranties, guarantees, contracts, easements, and licenses necessary to operate facility covered by this Agreement for the benefit of CONTRACTOR during the term of this Agreement. CONTRACTOR shall secure a business license and pay any applicable fee required to conduct business in the City of Banning prior to date of commencement of work under this agreement and shall maintain such license in effect during the life of this agreement.

OWNER shall make the items described immediately above, as well as the Wastewater Treatment Plant, collection and distribution system drawings, calculations, maintenance manuals, operational records, logs, reports submittal's, effluent test records, repair records, costs records, audits and general correspondence; which may be in OWNER's possession or that of their agents, related to the design, condition or operation of the Wastewater Treatment Plant and discussed appurtenances available to the CONTRACTOR.

H. Screenings, grits, and sludges shall not be stockpiled at the Wastewater Treatment Plant at any time during the term of this agreement. CONTRACTOR is responsible for the disposal of the screening, grits, and sludges in a timely manner during the term of this agreement.

OWNER will pay all the expenses incurred in the disposal of screenings, grits, and sludges.

I. CONTRACTOR shall provide review comments and technical assistance regarding any new industrial waste discharges, pre-treatment program or significant changes in existing influent wastewater discharges. CONTRACTOR's comments shall address such subjects as compatibility, operability, toxicity, plant capacity, operation and maintenance problems, cost, effluent quality, and other items as they relate to the Wastewater Treatment Plant. If new influents affect the ability of CONTRACTOR to meet the discharge requirements set forth herein, OWNER shall use its best efforts as determined by OWNER in its sole discretion, to correct such problems.

J. CONTRACTOR shall conduct a Public Relations Program for the Wastewater Treatment Plant. The program shall include: 1) conducting an open house annually to "show-case" the plant to the public; 2) providing facility tours for community groups; 3) producing informational plant brochures describing how the facilities operate; 4) maintaining a plant information center that includes brochures, schematics, and fact sheets about the plant; 5) attending meetings and hearings to inform the community about issues concerning the facilities; 6) responding to any odor or noise complaints from the public; 7) participating in an adopt-a-high school program (teaching basic principals of wastewater treatment with an Operator-in-Training Program paid for by OWNER) with a local high school; and 8) with the OWNER"s approval establishing a line of communications with the local media to present positive information about the Wastewater Treatment Plant.

K. Construction and/or plant additions and modifications conducted by the OWNER shall be conducted in such manner as not to interfere with the CONTRACTOR in the production of the required quality and amount of wastewater effluent. Mutual coordination must be conducted so that construction may progress economically, while allowing production of a wastewater effluent that complies with requirement set forth in this agreement in a cost-effective manner.

L. CONTRACTOR shall implement a proven, formal safety program including written procedures, policies, and record of periodic employee meetings. A copy of such safety program shall be placed on file with the OWNER within thirty (30) days following execution of this agreement.

M. CONTRACTOR shall assist and make recommendations to the OWNER for development of User Fee Rate Studies on an as needed basis.

N. CONTRACTOR shall take possession and maintain all existing hand tools and laboratory and office equipment in a good condition during the period of this contract, except normal wear and tear. An inventory shall be prepared of all hand tools, laboratory equipment, and other equipment and tools at the Wastewater Treatment Facilities, which are to be used by CONTRACTOR. This inventory shall be prepared within ninety (90) days of the commencement date of this contract by CONTRACTOR and representatives of OWNER; and CONTRACTOR shall approve such inventory in writing. At time of termination of contract, another inventory shall be taken and approved in writing by both parties. All items listed at the time of commencement of contract, along with items acquired by CONTRACTOR for OWNER's account, less items costing less than $200.00 each, shall be turned over to OWNER, or CONTRACTOR shall pay to OWNER the replacement cost of any missing items.

O. If the parties agree, the CONTRACTOR may rent certain City-owned equipment and vehicles; such as, autos, pickup trucks, dump trucks, dumpster, trailer, tractors, and sewer rooters; presently assigned to the facilities for use in providing

services for the Wastewater Treatment Plant. Any such lease shall be for a period not to exceed one year. The lease of the equipment shall be negotiated at the beginning of the contract year. All said equipment and vehicles transferred to CONTRACTOR for use shall be in good working order. CONTRACTOR will inspect the equipment, vehicles, and maintenance records. Under any lease, CONTRACTOR will assume maintenance responsibility for equipment and vehicles so leased and hereby assumes all liability in connection with the operation of any such equipment and vehicles.

P. CONTRACTOR assumes responsibility for wastewater effluent discharge as described herein, including regulatory agency fine liability, if such, fine liability is the result of the negligence, error or omission of the CONTRACTOR. CONTRACTOR reserves the right to contest any fines in administrative proceeding brought by the agency and/or in Court proceedings instituted by such agency prior to payment of fine.

Q. CONTRACTOR shall meet at least once a month with the Public Works Director or designee at a regularly scheduled meeting. The purpose of the meeting will be to discuss the issues relative to the operation and maintenance of the treatment facility and collection system.

R. CONTRACTOR shall submit and obtain City's prior approval of any modifications or major maintenance affecting the appearance of the Wastewater Treatment Plant. The CONTRACTOR recognizes the concern of the City about the appearance of the grounds, buildings, and structures; and agrees to maintain the cleanliness and appearance of the plant and lift station sites in a professional manner.

S. CONTRACTOR shall operate the Wastewater Treatment Plant in a manner to prevent and/or minimize the generation of odors through an on-going odor control program. In connection with its odor control effort, CONTRACTOR shall deal in

a professional manner with the community groups and individuals concerned with odors or any other facts of systems operation.

T. CONTRACTOR shall utilize local purchasing and banking; and hire staff from the local area to whatever extent is practical and legal.

V. COMPENSATION

A. BASIC COMPENSATION

OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of $41,500.00 per month with additional adjustments as specified hereinafter.

Compensation shall be adjusted annually, on July 1st of each year commencing on July 1, 2004, during the term of this Agreement to reflect annual changes in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index Los Angeles–Long Beach Area, or any successor index, as set forth for the month of March prior to date of adjustment.

In the event the unit cost of any of the utilities or chemicals which CONTRACTOR is required to provide under this agreement experiences a year to year change in price of more than 10.0% as measured from the date of the proposed purchase, an adjustment in compensation corresponding to the change in cost shall be made by the City. CONTRACTOR shall notify City in writing of any increase or decrease in cost prior to submitting an invoice containing a direct or indirect request for reimbursement of any cost affected by this paragraph.

City shall thereafter have thirty (30) days within which to independently verify such change in costs and notify CONTRACTOR of its findings. If the City agrees with the adjustment, monthly invoices shall thereafter reflect any such adjustments. CONTRACTOR shall not be entitled to receive any additional compensation in addition to any adjustment in compensation made under this

section to reflect the actual change in costs net of the change in the consumer price index referenced above.

If the City does not agree with the adjustment, the City shall notify the CONTRACTOR in writing of the basis for its disagreement. CONTRACTOR may thereafter meet and confer with the City Manager regarding the adjustment. The determination of the City Manager or his designee shall be the final response of the City.

B. ADJUSTED COMPENSATION

In the event of a change in scope of service or type of service, which results in a change in the cost to CONTRACTOR of providing the services described in the SCOPE OF SERVICES, CONTRACTOR shall be paid an adjusted compensation, in the form of an addition or subtraction from the basic compensation described above. That adjusted compensation may be a mutually agreeable lump sum payment or deduction or other arrangement as agreed upon by the parties and made a written amendment to this agreement.

If a lump sum payment or deduction is not mutually agreeable, a cost monitoring period shall be established by mutual agreement and used to assess actual costs on a time-and-materials expended basis.

If the adjustment results in additional compensation to the CONTRACTOR, such additional compensation shall not be in excess of CONTRACTOR'S direct cost plus direct overhead and profit calculated at 15.0% of the direct cost. CONTRACTOR shall be required to produce documentation in support of all or any component of such adjustment for inspection by the City before payment by City of such adjustment.

C. PAYMENT

CONTRACTOR shall submit monthly invoices for Basic Compensation and Adjusted Compensation on or before the 15th day of the month following that in

which the services were rendered. The OWNER shall thereafter have thirty (30) days within which to make payment to CONTRACTOR. Invoices left overdue and unpaid shall bear interest at the rate of 1 ½ per cent per month for each full month that such invoice remains outstanding and unpaid. However, such period shall not commence to run as to any amount in dispute if before the expiration of thirty (30) days following receipt of the invoice, the OWNER notifies CONTRACTOR in writing of a disagreement with the amount of such invoice. OWNER shall make timely payment to CONTRACTOR of any amounts not in dispute. OWNER shall thereafter have thirty (30) days unless otherwise extended by agreement of the parties, within which to notify CONTRACTOR of its determination as to the amounts in dispute. The CONTRACTOR may appeal any adverse determination made hereunder to the City Council, if such appeal is filed with the City Clerk within ten (10) days following date of notification from the City Manager or his designee of OWNER's final determination of the compensation dispute. Such appeal shall not constitute a public hearing. CONTRACTOR shall be heard on its position and a representative of the OWNER shall be heard as to the OWNER's position. The City Council shall thereafter make a determination, which shall be final.

VI. CHANGE IN SCOPE OF SERVICES OR SERVICE TYPE

A. GENERAL

Any change in scope of the Wastewater Treatment Plant operation, wastewater treatment and solids handling methods or amounts, WDR and NPDES requirements, reporting requirements, or personnel qualifications required by OWNER or by a governmental agency having jurisdiction to order such changes shall be a change in services.

If OWNER requests that CONTRACTOR provide expert testimony on any matter relating to services provided under this Agreement, CONTRACTOR shall provide said services. A request to appear by subpoena received from a party opposing the OWNER in an administrative proceeding or litigation shall not

constitute a request hereunder by the OWNER to CONTRACTOR to appear as an expert witness. Compensation for the requests from the OWNER for such services shall be paid as adjusted compensation in accordance with Section V (B).

B. EMERGENCY CONDITIONS

An "emergency condition" is, for purposes of this section, defined as a sudden and unexpected event, beyond the control of the CONTRACTOR, which if not immediately corrected, will result in the discharge of effluent from the Wastewater Treatment Plant, which effluent is in such condition as to pose an immediate threat to the health and safety of persons coming in contact with the effluent or to otherwise expose OWNER to significant penalties by agencies charged with monitoring such effluent discharges. An emergency condition shall constitute a change in scope of service. In the event of an emergency condition, CONTRACTOR shall make every effort to contact the OWNER through its City Manager, Public Works Director or Designee, and its Mayor or anyone having sufficient authority during times of disaster, to authorize needed emergency expenditures. Should the OWNER not be available to authorize needed emergency expenditure, CONTRACTOR shall have the right to proceed without OWNER's prior authorization to make the level of expenditure needed to return the Wastewater Treatment Plant to operation at acceptable levels of effluent discharge. CONTRACTOR shall provide the OWNER a written report detailing these actions within 24 hours of such occurrence. OWNER shall be liable for the cost of all such emergency measures provided that such situation was not due to the fault or negligence of CONTRACTOR. The resulting compensation shall be determined in accordance with Section V (B).

C. In the event there is a ten percent increase or decrease in influent total flow, total BOD $_5$, total suspended solids, or ammonia nitrogen at the Wastewater Treatment Plant, in any six-month period, either party shall have the right hereunder to an adjustment in compensation. The party desiring the adjustment shall give thirty (30) days prior written notice of the desire to negotiate such adjustment and the basis therefore. The resulting change in compensation shall be based on the actual

increase/decrease in cost to handle the said increase or decrease in total flow or other changes in quality of influent stated above.

If a lump sum payment or deduction is not mutually agreeable, a cost monitoring period shall be established by mutual agreement and used to assess actual costs on a time-and-materials expended basis. In case, within thirty (30) days of the request, the matter cannot be resolved to the satisfaction of the parties, the issue may be submitted to the City Council for determination in the manner set forth in Section V (C) above.

D. OPTIONAL SERVICES

Upon mutual agreement, OWNER and CONTRACTOR may agree to the modification of the scope of services to include such public works functions as determined by OWNER. OWNER and CONTRACTOR shall negotiate the scope and cost of such modified services and shall include same as an amendment to this agreement.

E. AUTHORIZING CHANGES IN SERVICES

All changes must be authorized in accordance with Section VI with adjusted compensation determined in accordance with Section V.

VII. HOLD HARMLESS AGREEMENT

A. CONTRACTOR agrees that it shall protect, defend with counsel approved by OWNER, indemnify and hold harmless OWNER, its officers, employees, and agents from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs and expenses (including reasonable attorney's fees) or judgments arising out of or resulting in any way from CONTRACTOR's negligent acts, errors, or omissions in performance of services under this agreement, unless such claim is due to the active negligence or willful acts of the City, its officers, employees, agents or contractors. Subject to the scope of this indemnification and upon demand of the OWNER, made by and through the City

Attorney, the CONTRACTOR shall appear in and defend the OWNER and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the exercise of this agreement.

B. Indemnification of Grantee

The City shall indemnify, defend and hold the CONTRACTOR harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs and expenses (including reasonable attorneys' fees) arising from or in any manner related to the sole negligence or willful acts of the OWNER its officers, employees, agents or contractors.

VIII. INSURANCE/BONDING

A. WORKER'S COMPENSATION INSURANCE

CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Agreement full workers compensation insurance in accordance with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail return receipt requested has been given to OWNER. The policy shall also be amended to waive all rights of subrogation against the OWNER, its elected or appointed officials, employees, agents or Grantees for losses which arise from work performed by the named insured for the OWNER.

CONTRACTOR shall require its subcontractors similarly to provide Worker's Compensation insurance for all of the latter's employees. In case any class of employees engaged in work under this Agreement at the Wastewater Treatment Plant is not protected under any Worker's Compensation Law,

CONTRACTOR shall provide, and shall cause each subcontractor to provide, adequate insurance for the protection of employees not otherwise protected.

B. LIABILITY COVERAGE

CONTRACTOR shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the CONTRACTOR or its agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

a) Commercial General Liability coverage on an occurrence basis, including contractual liability.
b) Automobile Liability coverage for any auto.
c) Worker's Compensation coverage as required by the State of California and Employer's Legal Liability, including a waiver of subrogation against the City of Banning.
d) Professional Liability coverage on either a claims made or occurrence basis.
e) Umbrella Liability, on either a claims made or occurrence basis.

2. Minimum Limits of Insurance

a) General Liability: $1,000,000 per occurrence combined single limit for bodily injury and property damage and $1,000,000 per occurrence personal injury. If the CGL or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limits.
b) Automobile Liability: $1,000,000 per occurrence combined single limit for bodily injury and property damage.
c) Employer's Liability: $1,000,000 per accident for bodily injury or disease.

d) Professional Liability: $2,000,000 per occurrence.

e) Umbrella Liability: $5,000,000.

3. Deductibles and Self-Insured Retention's

Any deductibles of self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respect to the City, it officers, officials, employees, and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expense.

CONTRACTOR has declared that he shall maintain retentions and deductibles of up to $250,000.00, which is acceptable to the City on the basis of the CONTRACTOR's Letter of Credit/Insurance Guarantee and posting of Faithful Performance Bond.

4. Other Insurance Provisions

a) The City, its officers, officials, employees, and volunteers shall be additional insured with respect to either liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR or liability arising out of work or operation performed by or on behalf of the CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations, excepting professional liability coverage, Worker's Compensation, and Employer's Liability.

b) For any claims arising out of the CONTRACTOR's performance pursuant to this contract, the CONTRACTOR's insurance coverage shall be primary insurance as respects to the City, its officers, officials, employees, and volunteers. Any insurance or

self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice to the City, with the exception of Notice of Cancellation for Non-Payment of premium, which shall be ten (10) days.

5. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

6. Verification of Coverage

CONTRACTOR shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require completed copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time.

C. PROPERTY INSURANCE

OWNER shall maintain property damage insurance on all OWNER-owned property contemplated by this Agreement. Any property not properly insured shall be the financial responsibility of the OWNER.

D. PERFORMANCE BOND

CONTRACTOR shall provide a performance bond or letter of credit before commencement of the work hereunder. The bond/letter of credit shall guarantee the faithful performance by the contractor of all the work required under the

contract for the first year of the contract term. Annually thereafter the contractor shall provide either a renewal of the existing bond/letter of credit or a new bond/letter of credit. Said performance bond/letter of credit shall be in a form satisfactory to the City Attorney of OWNER.

IX. TERMINATION

A. Any other provision contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated by either party, at any time and without cause, upon one hundred twenty (120) days prior written notice to the other party.

B. If this Agreement is terminated either by CONTRACTOR or OWNER, CONTRACTOR shall furnish the services necessary to continue normal operations for a period of sixty (60) days after the termination date. This sixty (60) day period will commence only at the OWNER's written request. Such period shall be for the purpose of continued supervision and of assisting in the placement and training of Wastewater Treatment Plant personnel to be furnished by OWNER or other persons. In such event, OWNER shall pay CONTRACTOR at then existing rates of compensation during such sixty (60) day period.

C. Upon termination by either OWNER OR CONTRACTOR, the OWNER may employ, at OWNER's sole discretion, as OWNER's employees, all or any personnel then employed by CONTRACTOR for OWNER's operation of the Wastewater Treatment Plant.

D. This Agreement may be terminated upon thirty (30) days prior written notice by the non-breaching party, for cause, based upon a proven breach of contract by CONTRACTOR or by the OWNER. Prior to termination for cause, the non-breaching party shall give written notice of the breach. The party allegedly in breach shall thereafter have forty five (45) days within which to correct such breach. Upon failure to either correct the breach or commence upon a substantial course of compliance within the period or such breach, the non-breaching party may provide the thirty (30) days notice described herein above.

X. AMENDMENT

This document expresses the entire Agreement between OWNER and CONTRACTOR and supersedes any previous or contemporaneous communications, representations or agreements. This Agreement may be amended or modified only by written agreement signed by both parties, and failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.

XI WORK STOPPAGE

In the event concerted activities by labor groups (e.g., picketing) results in CONTRACTOR's employees not entering and working at the Wastewater Treatment Plant, the OWNER and CONTRACTOR shall seek appropriate administrative or court orders at CONTRACTOR's expense, to return to normal operations. During such a period, CONTRACTOR shall operate the Wastewater Treatment Plant on a best effort basis until labor relations are normalized. However, if it appears to OWNER that operations will be such as to create a significant danger of the Wastewater Treatment Plant operating below safe levels, the OWNER may take such action as it shall deem appropriate to insure continued safe operation of the Wastewater Treatment Plant. The OWNER may thereafter make an adjustment in CONTRACTOR's compensation to recover any additional costs to OWNER over and above those costs, which OWNER would have been required to pay under this agreement.

XII RELATIONSHIP

It is understood that the relationship of CONTRACTOR to OWNER is that of an independent contractor and this agreement does not create the relationship of partner, joint venturer or any other joint business entity.

XIII. FORCE MAJEURE

CONTRACTOR shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of force majeure, which shall

be deemed to include, without limitation, act of God, acts of the Government, in its sovereign capacity, fire, flood, earthquake, epidemic, war, and any other similar cause beyond the control of CONTRACTOR.

XIV. ASSIGNMENT

CONTRACTOR binds itself and its successors and assigns to OWNER, in respect to all provisions of this Agreement. Except for the foregoing, neither OWNER nor CONTRACTOR shall assign, subcontract or transfer their interests in this Agreement without the prior written consent of the other.

XV. ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing, signed by the party to be charged.

XVI. PARTIAL INVALIDITY

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVII. ATTORNEY'S FEES

If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

XVIII. NOTICES

All notices shall be in writing and delivered in person or transmitted by Certified Mail, return receipt, postage prepaid.

Notices required to be given to OWNER shall be addressed to the designated representative identified below:

Paul Toor, Assistant City Manager/Public Works Director
City of Banning
P.O. Box 998
99 E. Ramsey Street
Banning, CA 92220
Phone: (909) 922-3130

Notices required to be given to CONTRACTOR shall be addressed to the designated representative identified below:

Benoit Clocheret, General Manager
United Water Services, Inc.
629 Via del Monte
Palos Verdes Estates, CA 90274
Phone: (310) 874-2549
Fax: (310) 426-6154

or such other designated representatives and addresses as may be written noticed by either party to the other, and acknowledged by the other.

XIX. INTERPRETATION

As used herein any gender includes each other gender; the singular includes the plural, and vice versa. Headings are for purposes of indexing only and do not set forth any special intent of the parties.

XX. PERFORMANCE AUDIT

The OWNER shall have the right to conduct a performance audit and evaluation of CONTRACTOR, at such times as the OWNER deems necessary. CONTRACTOR agrees to fully cooperate with any such audit. CONTRACTOR agrees to give OWNER access to Wastewater Treatment Plant at all reasonable times.

XXI. RIGHT OF OWNERSHIP

A. All facilities and equipment within the Wastewater Treatment Plant and discussed appurtenances shall remain the property of the OWNER, and such property cannot be disposed of by CONTRACTOR without the express prior approval of the City Council of OWNER.

B. Any capital equipment provided by CONTRACTOR, at his sole expense, shall remain the property of CONTRACTOR; however, the OWNER shall have the option to purchase the capital equipment at its depreciated value at the termination of the Agreement.

IN WITNESS WHEREOF, two identical counterparts of this Agreement consisting of twenty six (26) pages, each of which counterparts shall, for all purposes, be deemed an original of said Agreement, have been duly executed by the parties herein above named on the day and year first herein above written.

CITY OF BANNING

Arthur L. Welch,
Mayor

ATTEST:

Marie A. Calderon
City Clerk

APPROVAL AS TO
INSURANCE REQUIREMENTS:

F. Ann Yates
Risk Management Division

UNITED WATER SERVICES, INC.

JC Goldman, Jr.,
West Region President

APPROVED AS TO FORM
AND LEGAL CONTENT:

John F. Wilson
City Attorney

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

On this 18th day of September, 2003, before me the subscriber personally appeared JC GOLDMAN, JR., who being by me duly sworn, did depose and say: that he is the West Region President of United Water Services Inc., the Corporation described in and which executed the foregoing instrument; and that he signed his name thereto as his voluntary act and deed and as and for the voluntary act and deed of said Corporation

Elaine J. O'Brien
Notary Public of the State of New Jersey

ELAINE J. O'BRIEN
A Notary Public of New Jersey
My Commission Expires Aug. 31, 2007

SOCIETE GENERALE

560 Lexington Avenue, 4th Floor
New York, New York 10022

Irrevocable Letter of Credit Number: 53961 Issuance Date: October 20, 2003

Beneficiary: Effective Date: October 1, 2003

City of Banning
P.O. Box 998
99 E. Ramsey Street
Banning, CA 92220

For USD 498,000.00
(Four hundred and Ninety-Eight thousand 00/100 U.S. Dollars)

Initial Expiration Date: October 1, 2004

Place of Expiration: Counters of Issuing Bank

At the request and for the account of United Water Services Inc., we hereby establish our Irrevocable Letter of Credit No. 53961 (this "Letter of Credit") in your favor for one or more drawings in the aggregate amount of up to Four hundred and Ninety-Eight thousand 00/100 U.S. Dollars (USD 498,000.00). Funds under this Letter of Credit will be made available to you against presentation to us of a certificate signed by you in the form of Annex A hereto (each such certificate, a "Certificate"), in an amount equal to the amount demanded in such Certificate. Partial drawings are permitted hereunder.

This Letter of Credit expires on the Initial Expiration Date specified above or on such later date to which the expiration date of this Letter of Credit may be extended pursuant to the immediately following sentence (the "Expiration Date"). The Expiration Date shall be automatically extended for successive periods of one year on each anniversary of the Initial Expiration Date unless we give you written notice to the contrary (a "Termination Notice") no fewer than sixty (60) days prior to the then current Expiration Date, provided, that in no event will the Expiration Date extend beyond October 1, 2014.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500.

We hereby agree with you that each draft drawn in compliance with the terms of this Letter of Credit will be duly honored by payment to you in immediately available funds upon presentation and delivery of a Certificate to Societe Generale on or before the Termination Date.

Sincerely,

Societe Generale, New York Branch

Authorized Signatures

SOCIETE GENERALE

ANNEX A

Form of Certificate

On this ____ day of _____, the undersigned, THE CITY OF BANNING (the "Beneficiary"), hereby makes reference to that certain Irrevocable Letter of Credit No. 53961 issued by Societe Generale (the "Issuer") in the favor of the Beneficiary and dated October 20, 2003 (the "Letter of Credit"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Letter of Credit.

This Certificate is being issued to you in connection with a drawing by the Beneficiary under the Letter of Credit.

The Beneficiary hereby demands to draw an amount under the Letter of Credit equal to [*Specify Amount in United States Dollars in Words and Figures*] (the "Demanded Amount").

The Beneficiary hereby certifies to you that on and as of the date hereof, [*Check Either of the Following*]

United Water Services Inc has failed to comply with existing obligations owed to the Beneficiary pursuant to an Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant dated October 1, 2003, and the Demanded Amount does not exceed the amounts due and owing to the Beneficiary.

( ) The Issuer has given a Termination Notice.

The Beneficiary further certifies to you that the Demanded Amount does not exceed the remaining undrawn amount of the Letter of Credit.

Duly executed by the undersigned, as of the date first set forth above.

THE CITY OF BANNING

By: _____

Name:

Title:

RESOLUTION NO. 2003-90

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE OF CITY OF BANNING WASTEWATER TREATMENT PLANT

WHEREAS, on or about September 1, 1993, the City of Banning (hereinafter "Owner" or "City"; and JMM Operational Services, Inc., a California Corporation, enter into an Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant (hereinafter "Contractor"); and

WHEREAS, United Water Services, Inc. (hereinafter "Contractor") is the successor in interest under the Agreement to JMM Operational Services, Inc.; and

WHEREAS, on August 25, 1998, the City renewed the Agreement with the Contractor subject to amendments of the Agreement; and

WHEREAS, Section III (B) of the Agreement provides that "...this Agreement shall be for a period of five (5) years unless one of the parties first gives written notice to the other at least one hundred and twenty (120) days prior to the termination date of the intent to renew the Agreement."; and

WHEREAS, in February 2003, Contractor submitted a request to renew the First Renewal Agreement for Contract Operation and Maintenance of City of Banning Wastewater Treatment Plant and to increase the Basic Compensation with reasons to support the additional amount; and

WHEREAS, it is the intent of the City to renew the present Agreements with a new integrated and updated single Agreement in concurrence with the Contractor; and

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

Section I. The Agreement for Contract Operation and Maintenance of City of Banning Wastewater Treatment Plant is hereby awarded to United Water Services, Inc.

Section II. That the Mayor is authorized to execute the contract agreement with United Water Services, Inc. as enclosed herein as Attachment "A". This authorization will be rescinded if the contract agreement is not executed by the parties within Thirty (30) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of September, 2003.

Arthur L. Welch, Mayor
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:

John P. Wilson, 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. 2003-90 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of September, 2003 by the following vote, to wit:

AYES:	Councilmembers Jenkins, Machisic, Palmer, Salas, Mayor Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

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

Attachment "A"

ORIGINAL

AMENDMENT TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS FIRST AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT ("Amendment") by and between the **CITY OF BANNING** ("City") and **UNITED WATER ENVIRONMENTAL SERVICES, INC.**, a Delaware corporation ("Contractor") is effective as of the 1st day of October, 2013.

RECITALS

A. City and Contractor entered into that certain Agreement for Contractual Services dated October, 1, 2003 ("Agreement"), whereby Contractor agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning.

B. City and Contractor now desire to amend the Agreement to extend the scope of services an additional five (5) years and thereby amending the termination date of the Agreement of the original Contract to September 30, 2018. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

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

(a) Termination Date Extension: In the Original Agreement, Section III-A TERM is hereby amended by deleting the sentence in its entirety and replacing it with: "Except as otherwise provided herein, services under this Agreement shall commence on October 1, 2003, and terminate on September 30, 2018."

These exhibits do not amend the existing exhibits but pertain to the additional services performed hereunder.

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

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

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that,

with the passing of tie or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

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

5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 10th day of September, 2013.

CITY:

CITY OF BANNING, a municipal corporation

City Manager

ATTEST:

City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

David Aleshire, City Attorney

CONTRACTOR:

UNITED WATER ENVIRONMENTAL SERVICES INC.

By: Nadia Leslie
Name:
Title:

By: Carla E. Hjelm
Name: CARLA E Hjelm
Title: Secretary

Address: 200 OLD HOOK RD
Harrington Park NJ
07640

Two signatures are required if a corporation

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

State of New Jersey
County of Bergen

On this 15th day of November, 2013, before me, the undersigned notary,
Personally appeared Nadine Leslie, who is personally known to me, Carla Krueger, Notary and is to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose as President for United Water Environmental Services Inc., a corporation.

(Official signature and seal of notary)

SEAL STAMP

CARLA E KRUEGER
Notary Public
State of New Jersey
My Commission Expires May 1, 2015

State of New Jersey
County of Bergen

On this 15th day of November, 2013, before me, the undersigned notary,
Personally appeared Carla E Hjelm, who is personally known to me, Carla Krueger, Notary and is to be the person whose name is signed on the preceding or attached document, and acknowledged to me that (he)(she) signed it voluntarily for its stated purpose as Secretary, for United Water Environmental Services Inc., a corporation.

(Official signature and seal of notary)

SEAL STAMP

CARLA E KRUEGER
Notary Public
State of New Jersey
My Commission Expires May 1, 2015

ATTACHMENT 3

Prevailing Wage Task List

Banning Waste Water Treatment Plant and Lift Station Maintenance Task List

This is a list of maintenance tasks performed by Suez at the Banning Waste Water Treatment Plant and Lift Stations and is not a list of all operation, manage
for the facility and the City's wasterwater treatment operations. The total number of hours listed on this chart do not reflect the total number of hours perf
Banning facility or in operations of the City's wastewater treatment system.

					O&M Tech III
	Type of work	Discription of Task	Frequency		John
	PM	Boiler Inspection and Safety Checks	Weekly		.5 hr
	PM	Secondary Return Pump Packing lubrication	Weekly		.25 hr (x-3)
	PM	Primary Effluent Pumps Packing Service	Monthly		1.0 hr (x-3)
	PM	Gas System Manometer - Zero Check	Monthly		.25 hr (x-5)
	PM	Boiler Hot Water Pump Service/Lube	Quarterly		1.0 hr (x-2)
	PM	Air Blower Service	Quarterly		1.5 hr (x-2)
	PM	Sump Pump Checks and Pit Cleaning	Quarterly		1.0 hr (x-3)
	PM	Grit Tank Center Drive Checks/Inspection	Quarterly		1.0 hr
	PM	Headworks Gate Valve Lubrication	Quarterly		1.0 hr
	PM	Bar Screen Drive Lube Change	Annual		3.0 hr
	PM	Grit Classifier Cone Inspection	Bi-annual		1.5 hr
	PM	Clarifier Center Drive Checks	Weekly		.5 hr (x-5)
	PM	Clarifier Center Drive Lube Change	Annual		1.5 hr (x-5)
	PM	Grit Pump Seal Water line Service	Weekly		.7 5 hr
	PM	Grit Pump Ops Inspection Service	Quarterly		1.0 hr (x-2)
	PM	Grit Conveyor Screw Inspection	Quarterly		1.0 hr
	PM	Digester Mixing Pumps Seal Water Service	Quarterly		.75 hr (x-4)
	PM	Lab Exhaust Fan Service	Annual		1.0 hr
	PM	Equipment Motor Lubrication	Annual		1.0 hr (x-6)
	PM	Primary Effluent Pump Motor Lubrication	Quarterly		1.0 hr (x-3)
	PM	Sludge Bed Gate Valve Lubrication	Quarterly		1.0 hr
	PM	Trickling Filter Lubrication Change	Annual		2.0 hr (x-2)
	PM	Process Water Pump Motor Lube	Quarterly		.5 hr
	PM	Case Loader Oil Change	Annual		1.5 hr
	PM	Flame Arrestor Service	Annual		.75 hr (x-7)
	PM	Gas Flow Meter removal (for calibration)	Annual		1.0 hr (x-3)
	PM	Gas Flow Meter replace (after calibration)	Annual		1.0 hr (x-3)
	PM	Heat Exchanger Cleaning	Annual		3.0 hr (x-2)
	PM	Bar Screen Ops Service/Lube	Monthly		.5 hr
	PM	Landscape	Monthly		20 Hr
	PM	Painting (as needed, 2 hr per mo max)	Monthly		2 hrs
	PM	Estimated Corrective Maint	Monthly		5 hrs
	CM	Assist John with PM/CM	Monthly		
Total					58.5 hrs/mo

ATTACHMENT 4

Variance in Labor Costs

Name	FLSA	Job Code	Job Title	Projected Annual PW Hours	Annual PTO Hours*	Annual Reg Hours	SUEZ Annual Base Rate	SUEZ Annual Fringe (35%)	SUEZ Total Wages	Hourly Rate	Job Category	PW Rate	Annual PW Wages	SUEZ Annual Wages	Annual PTO	Applicable PW Fringe	SUEZ Fringe Credit	Adjusted Fringe Due	Adjusted Annual Fringe	SUEZ Annual Fringe	Total PW Wages	VARIANCE
Holub,John T	N	NNC007	O&M Tech III	378	280	1338	$ 73550.05	$ 25742.52	$ 99292.57	$ 35.36	Laborer Group 1	$ 33.19	$ 13,366.31	$ 47,312.48	$ 9,900.97	$ 20.54	$ 6.34	$ 14.20	$ 5,367.60	$ 30,911.32	$ 106,858.67	$ 7,566.11
Holub,John T				60							Plumber/Pipefitter	$ 51.44	$ 3,086.40			$ 22.86	$ 6.34	$ 16.52	$ 991.20		$ 4,077.60	$ 4,077.60
Holub,John T				24						$ 35.36	Painting	$ 29.82	$ 848.64			$ 15.23	$ 6.34	$ 8.89	$ 213.36		$ 1,062.00	$ 1,062.00
Lomeli,Ronnie	N	NNC006	O&M Tech II	192	280	1608	$ 60639.90	$ 21223.97	$ 81863.87	$ 29.15	Laborer Group 1	$ 33.19	$ 6,372.48	$ 46,879.31	$ 8,163.06	$ 20.54	$ 0.16	$ 20.38	$ 3,912.96	$ 23,445.84	$ 88,773.66	$ 6,909.79
Duarte,Jose	N	NNC005	O&M Tech I	192	280	1608	$ 45600.05	$ 15960.02	$ 61560.07	$ 21.92	Laborer Group 1	$ 33.19	$ 6,372.48	$ 35,252.34	$ 6,138.47	$ 20.54	$ 6.46	$ 14.08	$ 2,703.36	$ 20,573.15	$ 71,039.81	$ 9,479.74
Vacancy	N	NNC005	O&M Tech I	192	280	1608	$ 43,680.00	$ 15288.00	$ 58968.00	$ 21.00	Laborer Group 1	$ 33.19	$ 6,372.48	$ 33,768.00	$ 5,880.00	$ 20.54	$ 6.46	$ 14.08	$ 2,703.36	$ 17,678.57	$ 66,402.41	$ 7,434.41
																						$ 36,529.64

***Column F** Assumption used = 15 vacation days + 7 sick days + 13 Holidays = 35 days of PTO = 280 hours

NO OVERTIME WAS ASSUMED IN THESE CALCULATIONS

ATTACHMENT 5

Second Amendment to Agreement

AMENDMENT NO. 2 TO AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT

THIS AMENDMENT NO. 2 TO THE AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT ("Second Amendment") by and between the CITY OF BANNING, CALIFORNIA ("CITY" or "OWNER") and SUEZ WATER ENVIRONMENTAL SERVICES, INC., a Delaware Corporation ("Contractor") with an address of 461 From Road Suite 400 Paramus, New Jersey 07652 is effective as of October 1, 2018 (together, the "Parties").

RECITALS

A. CITY and United Water Services, Inc., a California corporation ("United Water") entered into that certain Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant dated October 1, 2003 ("Agreement") whereby United Water agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning, California.

B. United Water was merged into United Water Environmental Services, Inc., a Delaware corporation ("United Environmental"), effective December 31, 2009.

C. United Environmental changed its name to Suez Water Environmental Services, Inc., a Delaware corporation, effective November 9, 2015.

D. CITY and Contractor entered into the First Amendment to the Agreement dated October 1, 2013 to extend the scope of services an additional five (5) years thereby amending the termination date of the Agreement to September 30, 2018. The original Scope of Work and tasks remained in full force and effect in accordance with its terms.

E. CITY and Contractor now desire to amend the Agreement to extend the term of the Agreement, set new compensation consideration for the extension term, and specify that Contractor must comply with certain California Labor Code requirements, including the payment of prevailing wages on maintenance activities. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

1. **Name of Agreement.** The name of this Agreement is amended to "Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY OF BANNING and Suez Water Environmental Services, Inc., a Delaware corporation". Hereafter, all references in the Agreement to "Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY OF BANNING and United Water Services, Inc., a California corporation", or "Maintenance and Operations Agreement by and between the City of Banning and United Water Environmental Services, Inc., a Delaware corporation", or "Agreement for Contractual Services" shall be understood to refer to this Agreement, as amended.

2. Extension Term: Section III-A TERM of the Agreement is hereby amended to extend the Agreement term for one (1) year commencing on October 1, 2018 and effective through September 30, 2019 ("First Extension Term"). Upon agreement by the Parties, the Agreement may be extended by one additional year, commencing on October 1, 2019 and effective through September 30, 2020 ("Second Extension Term"). Subsequent extensions of the Term may be made upon mutual agreement of the Parties.

3. Renewal: Section III-B RENEWAL of the Agreement is amended to revise the last sentence of that Subsection B and to add an additional sentence to the end of that Subsection B to read as follows:

"Upon the expiration date set forth in the Agreement, the Agreement shall not terminate but shall continue in effect for one hundred eighty (180) days. If the parties have not reached an agreement on new terms and conditions within the one hundred eighty (180) day period, or any agreed upon extension thereof, then the parties shall have an additional one-hundred twenty (120) days to agree upon new terms and conditions. If new terms and conditions are not agreed upon in writing within the one-hundred twenty (120) day period, then the Agreement shall expire at the end of that 120 day period which equals three hundred (300) days following the date of expiration of the Agreement. In the event either party has terminated the Agreement pursuant to the provisions of Section IX (Termination), the 300-day period for expiration of the Agreement provided in this subsection shall not apply and the Agreement will terminate on the date specified in the notice provided in Subsection A or D of Section IX and pursuant to any extension thereof as provided in Subsection B of Section IX."

4. Compensation. The first paragraph of Article V, Section A, as to Basic Compensation is hereby amended to read as follows:

A. "**BASIC COMPENSATION**

Starting on October 1, 2018 and for every month during the First Extension Term (and Second Extension Term, if applicable) thereafter, OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of Sixty Two Thousand One Hundred Eighty Two Dollars ($62,182.00) per month with additional adjustments as specified hereinafter."

5. Labor Code Compliance: New Section XXII is hereby added to the Agreement to read as follows:

"XXII. **LABOR CODE REQUIREMENTS:**

(a) This Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Therefore as to those services that are "public works," CONTRACTOR shall comply in all respects with all applicable provisions of Section 1720, et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements including those set forth in this Section 4. This Section pertains to maintenance activities performed under this Agreement, which are subject to the payment of prevailing rates of wages, pursuant to Labor Code section 1771. Prevailing wages shall be paid to CONTRACTOR's workers when performing those maintenance tasks set forth in Exhibit

"A" attached hereto and incorporated by reference herein. In the event of any change in the list of maintenance tasks set forth in Exhibit A hereto, the Parties' representatives may agree to the amendment of Exhibit A to reflect such change. In such event, Exhibit A hereto shall be replaced with the newly amended Exhibit A and the same shall be deemed incorporated herein by reference without further action of the Parties.

(b) **Prevailing Wages Generally**

(i) CONTRACTOR and its subcontractors will not pay less than the prevailing rates of wages for all maintenance activities performed under this Agreement and as listed in Exhibit A hereto. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the OWNER has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk or may be obtained at http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm.

(ii) CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. CONTRACTOR shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, CONTRACTOR shall forfeit to the OWNER, as a penalty, not more than $200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

(c) In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].

(d) CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The CONTRACTOR shall, as a penalty to the OWNER, forfeit twenty-five dollars ($25) for each worker employed in the execution of the contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

(e) Certified Payrolls. Pursuant to Labor Code section 1776, CONTRACTOR shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by CONTRACTOR performing services covered by this Agreement. The CONTRACTOR is responsible for compliance with section 1776 by itself and all of its subcontractors. CONTRACTOR and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. Certified payroll

information for this project shall be submitted electronically through LCPtracker. No hard copy payrolls will be accepted. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(f) Apprentices. CONTRACTOR shall comply with Labor Code section 1777.5 concerning the employment of apprentices to the extent any workers are employed in performing services pursuant to this Agreement in any trade or craft subject to the apprentice requirement. Only bona-fide apprentices actively enrolled in an approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are employed on the project in excess of the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.

(g) Contractor shall defend, indemnify (including payment of actual attorneys' fees and costs), and hold the City, its elected officials, officers, and employees harmless with respect to any and all claims and liabilities arising from or related to any failure by Contractor to comply with any of the Labor Code requirements set forth in this Section 5 to the maximum extent permitted by law.

(h) In the event any task identified in Exhibit A is determined by the Director of Industrial Relations or any final court decision to not be subject to prevailing wages, then within thirty (30) days' of OWNER's written request, CONTRACTOR shall consent in writing to a reduction in the Contract price referenced in Section 3 of this Second Amendment that is equal to the pro-rata, net reduction in costs incurred by CONTRACTOR in providing the services required by the Agreement, resulting from such prevailing wage determination. If consent is not provided as set forth above, CONTRACTOR shall provide OWNER with a written explanation concerning its denial of consent. OWNER may deem a denial of consent by CONTRACTOR as a default if the OWNER determines that good cause does not exist for the denial."

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

7. Effective Date of Amendment. This Second Amendment shall become effective concurrent with the expiration of the First Amendment to the Agreement provided this Second Amendment has been a fully executed by all parties.

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

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

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

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

10. 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.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the date and year first-above written.

CITY/OWNER:
CITY OF BANNING

_____
Rochelle Clayton, Interim City Manager

ATTEST:

_____
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:
RICHARDS, WATSON & GERSHON, P.C.

_____
Kevin G. Ennis, City Attorney

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: _____

Name: _____

Title: _____

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: _____

Name: _____

Title: _____

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

EXHIBIT "A"

MAINTENANCE TASKS

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California)
County of Riverside)

On _____, before me, _____,
(insert name and title of the officer)

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/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature_____ (Seal)

CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT

TO: **BANNING UTILITY AUTHORITY**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**
Tammi Phillips, Management Analyst

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-11 UA, Approving the Award of a Contract for Design of Altitude Valves at San Gorgonio & Southwest Reservoirs to Michael Baker International of Temecula, CA for Fiscal Year 2018/2019 in the amount not to exceed $55,225**

RECOMMENDATION:

The Banning Utility Authority adopt Resolution 2018-11 UA:

1. Approving an agreement with Michael Baker International of Temecula, CA for the Design of Altitude Valves at San Gorgonio & Southwest Reservoirs in the amount not to exceed $55,225 for Fiscal Year 2018/2019.

2. Authorizing the Interim City Manager or her designee to execute the Agreement with Michael Baker International.

BACKGROUND:

The City's water system depends on storage reservoirs for fire protection, operational flexibility, and in emergencies such as extended power outages. The largest pressure zone in the water system is the Main Zone and has five (5) storage reservoirs with a combined total of 14.5 million gallons of storage capacity. However, the entire storage capacity has not been realized due to differences in elevation and pressure variations across the Main Zone. To keep from overflowing reservoirs, which would wasteful use of water, operations staff has been forced to keep reservoir levels lower than their design capacity. With the proposed project, the addition of altitude valves at three San

Gorgonio reservoirs and at Southwest reservoir will increase operational storage by an estimated 1.7 million gallons.

A Request for Proposals (RFP) was prepared and advertised through PlanetBids on March 16, 2018. Two proposals were received. Michael Baker International was ranked the highest by the evaluation committee. The contract award to Michael Baker International will be in the amount of $55,225.

Proposer	Total Score	Rank
Michael Baker International	448.34	1
Hazen and Sawyer	276.66	2

The scope of work requires the consultant to visit the reservoir sites and update site plans to reflect existing conditions, conduct a survey to verify elevations of overflow pipes, draft design plans in AutoCAD and prepare a Sequence of Operations Plan that outlines the procedures to be followed by the contractor to minimize the amount of time that each reservoir needs to be out of service.

This contract will cover surveying and engineering design services associated with the Altitude Valves project, including preparation of technical specifications. Construction will be bid separately, anticipated in Summer 2019.

JUSTIFICATION:

Consultant services are necessary because the City does not have the survey equipment required nor the staff availability to complete this design project in-house. A storage deficiency in the potable water system was identified in the 2018 Integrated Master Plan and this project is the first step in addressing that deficiency. Maximizing the use of existing reservoir storage capacity is more cost effective than constructing additional reservoirs.

FISCAL IMPACT:

The contract agreement will be funded by the Water Capital Facilities Fund, account number 661-6300-471.95-09 Reservoirs. This project is identified in the approved 2-year budget for fiscal years 2018-2019 and 2019-2020.

ALTERNATIVE:

1. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Resolution 2018-11 UA
2. Request for Proposals (RFP)
3. Michael Baker International Proposal
4. Professional Services Agreement

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Resolution 2018-11 UA

RESOLUTION 2018-11 UA

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AWARD OF CONTRACT FOR THE DESIGN OF ALTITUDE VALVES AT SAN GORGONIO & SOUTHWEST RESERVOIRS TO MICHAEL BAKER INTERNATIONAL OF SAN DIEGO, CALIFORNIA FOR FISCAL YEAR 2018/2019 IN THE AMOUNT OF $55,225

WHEREAS, the City of Banning has four reservoirs that require altitude valves; and

WHEREAS, staff advertised an invitation for bids for qualified contractors using the PlanetBids system and the Press Enterprise; and

WHEREAS, two bids were received; and

WHEREAS, Michael Baker of San Diego, California, was the lowest responsible bidder in the amount of $55,225.

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

SECTION 1. That the Contract Agreement for the design of altitude valves for the San Gorgonio reservoirs and the Southwest reservoir is hereby awarded to Michael Baker International of San Diego, California, in the amount of not to exceed $55,225 for Fiscal Year 2018/2019.

SECTION 2. That the Interim City Manager or her designee is authorized to make all necessary budget adjustments, appropriations and transfers.

SECTION 3. That the Interim City Manager is authorized to execute the Contract Agreement award with Michael Baker International, of San Diego, California.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

_____
George Moyer, Chairman
Banning Utility Authority

ATTEST:

_____
Sonja De La Fuente, Secretary
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

_____
Kevin G. Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Secretary of the Banning Utility Authority of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-11 UA was adopted by the City Council of the City of Banning at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

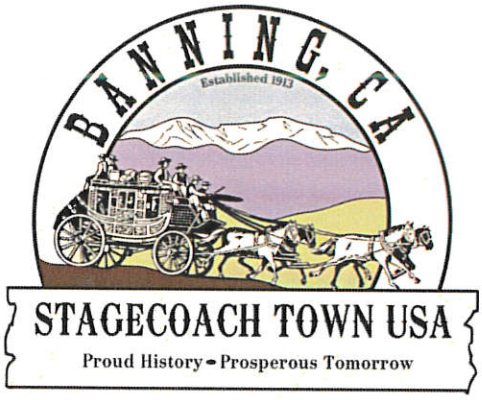
ABSENT:

ABSTAIN:

_____
Sonja De La Fuente, Secretary
Banning Utility Authority

ATTACHMENT 2

Request for Proposal (RFP)



REQUEST FOR PROPOSAL

FOR

18-009

Design of Altitude Valves at San Gorgonio & Southwest Reservoirs

CITY OF BANNING

Public Works Department

99 East Ramsey Street

Banning, California 92220

Released on March 16, 2018

REQUEST FOR PROPOSAL (RFP) NO. 18-009

Design of Altitude Valves at San Gorgonio & Southwest Reservoirs

Dear Proposers:

The City of Banning (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for the design of the Altitude Valves at San Gorgonio and Southwest Reservoirs.

NOTICE IS HEREBY GIVEN that online bid price and document submittal must be uploaded to the online bid system in accordance with the instructions included within bid documents for RFP #18-009 Design of Altitude Valves at San Gorgonio and Southwest Reservoirs, on or before the hour of 10:00 a.m. on April 10, 2018. It shall be the responsibility of the bidder to upload proposal by the announced time, and may be submitted at any time prior to the deadline. (Submitted bids may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

BID DOCUMENTS: To obtain a copy of the bid documents, please visit http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view and download the bid documents, which include the complete Notice Inviting Bids document. Firms must also check the web site periodically for addenda information as failure to download any and all addenda, and acknowledge in the bid submittal, will result in bid disqualification.

Bids must be submitted electronically by visiting the City of Banning, Planetbids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions.

A **Pre-Proposal Meeting will be held on March 27, 2018 @ 10:00 a.m.** at 99 E. Ramsey St., Banning, CA 92220 to discuss the Description of Work. Site walkthrough will immediately follow. Attendance of the pre-proposal meeting is **not mandatory**.

1. BACKGROUND

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Gorgonio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Gorgonio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	March 16, 2018
Pre-Bid Meeting	March 27, 2018 @ 10:00 a.m.
Deadline for Written Questions	March 30, 2018 by 3:00 p.m.
Responses to Questions Posted on Web	April 06, 2018 by 5:00 p.m.
Proposals are Due	April 10, 2018 by 10:00 a.m.
Interview (if held)	The Week of April 24, 2018
Approval of Contract	May 8, 2018 (Tentative)

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The City of Banning initially contracted with a firm to design (prepare plans and specifications) a new altitude valve and bypass outlet pipeline with a new check valve on each of three San Gorgonio reservoirs and the Southwest reservoir. The plans and specifications were 90% completed, however not finalized. As a result, the following is required: review of the previous work, update of specifications and drawings where applicable and project signoff (i.e. professional engineer stamp and signature.) The consultant shall:

a) Revisit sites and update plan to reflect existing conditions as necessary.
b) Conduct a survey to verify elevations.

c) Design air gap retrofits for overflow lines on #2 and #3 San Gorgonio Reservoirs
d) Redraw drawings in AutoCAD, since only PDF versions are available.
e) Prepare a Sequence of Operations Plan that outlines the procedures to be followed by the contractor to minimize the amount of time that each reservoir needs to be out of service.

4. PROPOSAL FORMAT GUIDELINES

Interested entities or consultants are to provide the City of Banning with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, graphic exhibits and required City forms. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer's response:

- **Vendor Cover Letter**

A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the Consultant's office located nearest to Banning, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work in this Request for Proposal.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.

2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.

3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.

4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.

5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.

6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual. Include a resume for each designated individual.

Upon award and during the contract period, if the Consultant chooses to assign different personnel to the project, the Consultant must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's or entity's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

For private Proposers, provide at least three references that received similar services from your firm. The City of Banning reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project start and end dates
- Client project manager name, telephone number, and **e-mail address**.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Fee Proposal**

All Proposers are required to use the online rate form to submit pricing as specified for their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Additional pricing information can be submitted within your proposal. Proposals shall be valid for a minimum of 180 days following submission.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services with the City. The form of the Agreement is enclosed as an online attachment, but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or

conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement. See Section 13, below.

- **Checklist of Forms to Accompany Proposal**

As a convenience to Proposers, following is a list of the forms, included as online attachments to this RFP, which should be included with proposals:

(1) Ex Parte Communications Certificate

(2) Price Proposal (Online Rate Sheet)

(3) Disclosure of Government Positions

(4) Disqualifications Questionnaire

5. PROCESS FOR SUBMITTING PROPOSALS

- **Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.

- **Preparation of Proposal**

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Submission of Proposals**

Complete proposals must be submitted and received no later than the deadline.
Proposals will not be accepted after this deadline.
Proposals submitted in paper form, faxed or e-mailed will not be accepted.

Submit proposals electronically by visiting the City of Banning Planetbids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions. Financial Statements only can be delivered separately to the Purchasing Division in a sealed envelope marked confidential if preferred. The Financial Statement shall be to the attention of Jennifer McCoy in a sealed envelope identified on the outside with the Bidder's Business Name, Proposer Identity— with the RFP number and the due date. Be sure to label and deliver following same deadline requirements.

- **Inquiries**

Questions about this RFP must be directed in writing, via the City of Banning, Planetbids Vendor Portal: http://www.planetbids.com/portal/portal.cfm?CompanyID=33077.

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addendums, responses to questions received, and additional information will be posted to the Banning online bid system. Proposers should check the web page above regularly for new information. The City will endeavor to answer all written questions timely that are received no later than the deadline listed in the schedule of events. The City reserves the right not to answer all questions.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to cancel this RFP in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Banning, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with the City's Purchasing and Procedures Policy (Policy). The lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

1. Qualifications of Entity and Key Personnel-------30%

   Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

2. Approach to Providing the Requested Scope of Services-------20%

Includes an understanding of the RFP and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.

3. Price Proposal-----40%

Price Proposals will be evaluated on the basis of the Total Estimated Annual Price submitted in Appendix D.

4. Innovative and/or creative approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----10%

7. EVALUATION OF PROPOSALS AND SELECTION PROCESS

In accordance with its Policy, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

A. Responsiveness Screening

Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

B. Initial Proposal Review

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. Interviews, Reference Checks, Revised Proposals, Discussions

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for the week of April 24, 2018 and will be conducted at City of Banning City Hall, 99 E. Ramsey St., Banning, CA 92220. This

date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

8. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at

the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

9. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

10. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the ***"Ex Parte Communications Certificate"***

form (See Online Attachment) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

11. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

12. DISCLOSURE OF GOVERNMENTAL POSITION

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached ***"Disclosure of Government Positions"*** form. (See Online Attachment).

13 CONDITIONS TO AGREEMENT, IF ANY.

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as (See Online Attachment, ***"Professional Services Agreement Sample"***), to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City may consider the scope and number of conditions in evaluation proposals and determining the lowest responsible bidder.

14. DISQUALIFICATIONS QUESTIONNAIRE

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because

of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. (See Online Attachment, ***"Disqualifications Questionnaire"***).

15. STANDARD TERMS AND CONDITIONS

Addendums

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addendums and additional information will be posted to the Banning Procurement Registry, http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Proposers should check this web page daily for new information.

Cost for Preparing Proposal

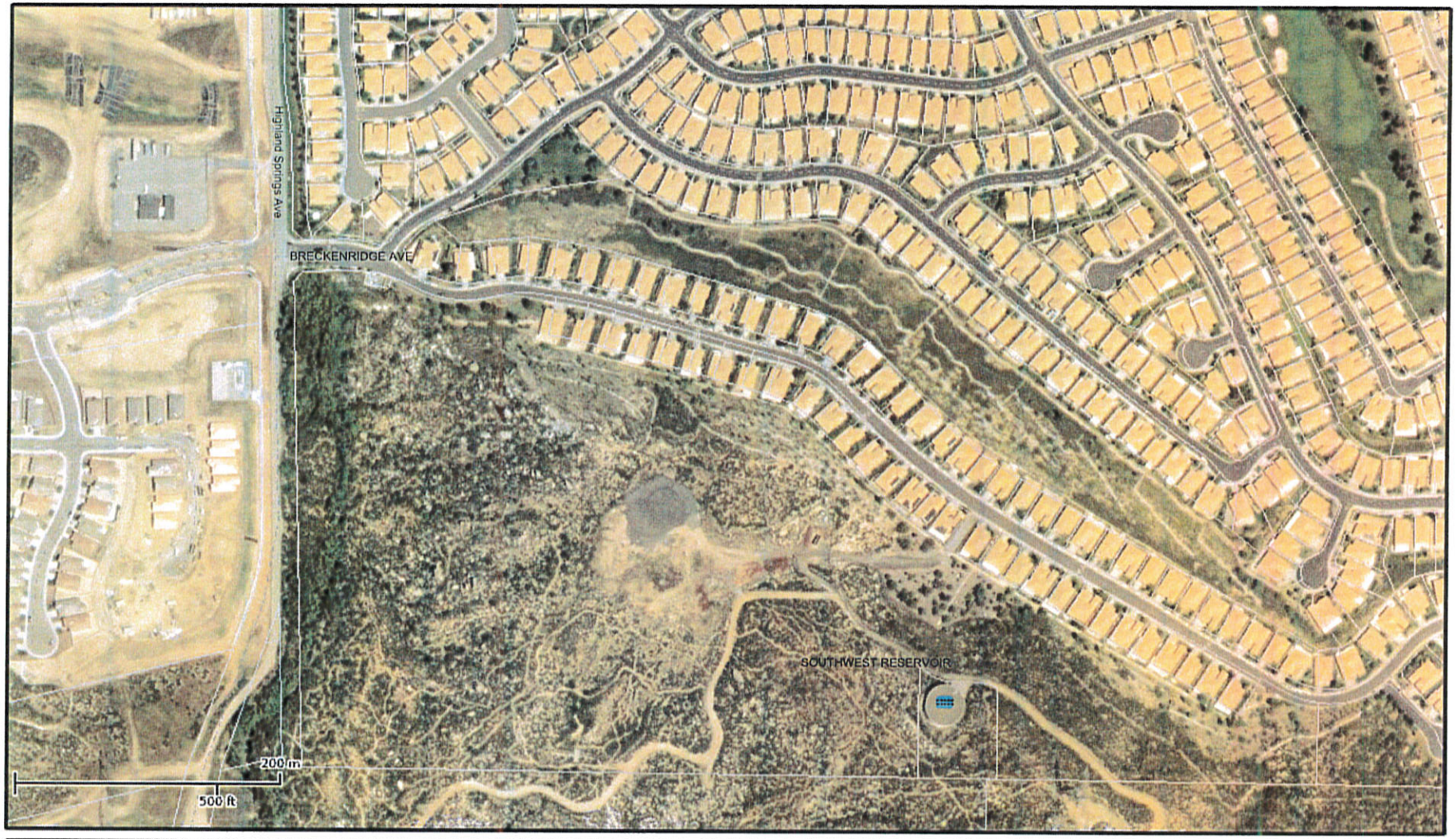
The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

Insurance Requirements

City requires that licensees, lessees, and vendors have an ***approved*** Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

EXHIBIT A

SOUTHWEST RESERVOIR ALTITUDE VALVE



1" = 376 ft	VICINITY & LOCATION MAP	01/31/2018	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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

SAN GORGONIO RESERVOIRS ALTITUDE VALVES

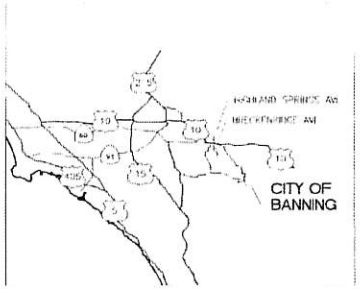


1" = 376 ft	VICINITY & LOCATION MAP	01/31/2018	N W E S	BANNING, CA Proud History Prosperous Tomorrow

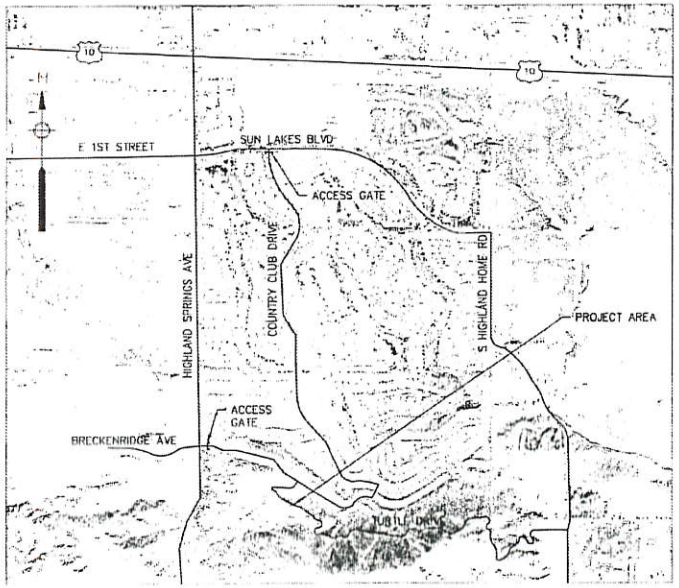
This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy please contact Banning staff for the most up-to-date information.

CITY OF BANNING, CALIFORNIA
SOUTHWEST RESERVOIR ALTITUDE VALVE
PROJECT NUMBER: 2010-01W

Proud History
Prosperous Tomorrow



OVERVIEW MAP
SCALE: N.T.S.



VICINITY & LOCATION MAP
SCALE: 1" = 1000 FEET

INDEX OF DRAWINGS

SHEET NO.	TITLE
GENERAL	
[illegible]	COVER SHEET AND INDEX OF DRAWINGS
CIVIL	
[illegible]	[illegible]
MECHANICAL	
[illegible]	VALVE MECHANICAL AND [illegible] DETAILS

NOTE: ACCESS TO PROJECT LOCATION REQUIRES ENTRY THROUGH SUNLAKES COUNTRY CLUB GATED COMMUNITY. ACCESS GATES ARE SHOWN ON THE VICINITY MAP AND REQUIRE A KEY CARD DEVICE. CONTRACTOR SHALL COORDINATE WITH CITY OF BANNING FOR ACCESS THROUGH COMMUNITY AND PROJECT LOCATION

APPROVED BY:
KARONO DEL PE
CITY ENGINEER
RCE
GP

NUMBER	DATE	MADE BY	CHECKED	DESCRIPTION

REVISIONS

AECOM
AECOM USA, INC.
1131 WEST SIXTH STREET, SUITE 350
ONTARIO, CA 91762
PHONE (909) 933-5225

DESIGNED BY: A. PEDROZA
DRAWN BY: A. PEDROZA
DEPT. CHECK:
PROJ. CHECK: Z. ISHASIOUS

SCALE:
UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

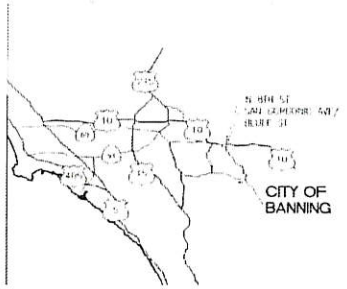
CITY OF BANNING, CALIFORNIA
SOUTHWEST RESERVOIR ALTITUDE VALVE

COVER SHEET
AND INDEX OF DRAWINGS

JOB [illegible]
FILE NO.
CAD FILE G-02
SHEET G-02

CITY OF BANNING, CALIFORNIA
SAN GORGONIO RESERVOIRS ALTITUDE VALVE
PROJECT NUMBER: 2010-01W

Proud History
Prosperous Tomorrow



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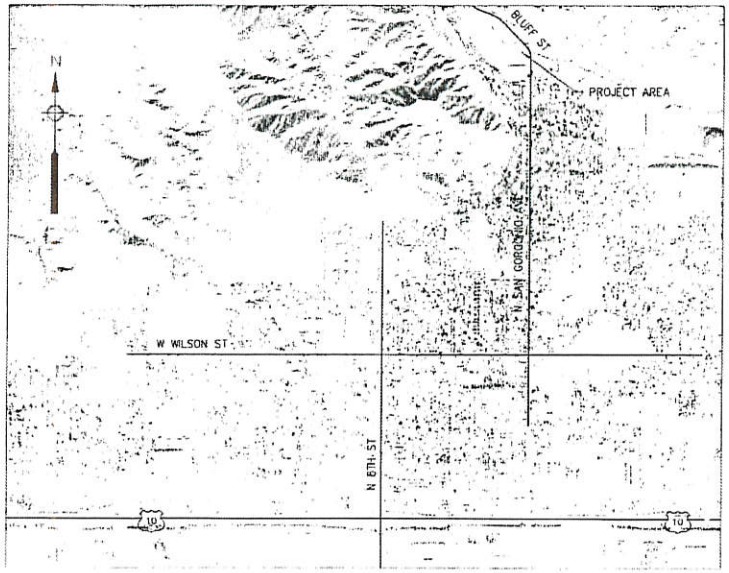

VICINITY & LOCATION MAP
SCALE: 1" = 1000 FEET

INDEX OF DRAWINGS

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[illegible]	[illegible]
CIVIL	
[illegible]	[illegible]
MECHANICAL	
[illegible]	[illegible]

NOTE: ACCESS TO PROJECT LOCATION REQUIRES ENTRY THROUGH LOCKED CITY GATES. CONTRACTOR SHALL COORDINATE WITH CITY OF BANNING FOR ACCESS THROUGH THE CITY GATES AND TO THE PROJECT LOCATION.

APPROVED BY:
KARONG GEI, PE
CITY ENGINEER
RCE:
GP:

NUMBER	DATE	MADE BY	CHECKED	DESCRIPTION

REVISIONS

REGISTERED PROFESSIONAL ENGINEER
ALFRED PEDROZA
No. 69330
Exp. 6-30-12
CIVIL
CITY OF CALIFORNIA

AECOM

AECOM USA, INC.
1131 WEST SIXTH STREET, SUITE 350
ONTARIO, CA 91762
PHONE (909) 933-5225

DESIGNED BY: A. PEDROZA
DRAWN BY: A. PEDROZA
DEPT. CHECK:
PROJ. CHECK: Z. IGNASIOUS

SCALE:
UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

CITY OF BANNING, CALIFORNIA
SAN GORGONIO RESERVOIRS ALTITUDE VALVE

COVER SHEET
AND INDEX OF DRAWINGS

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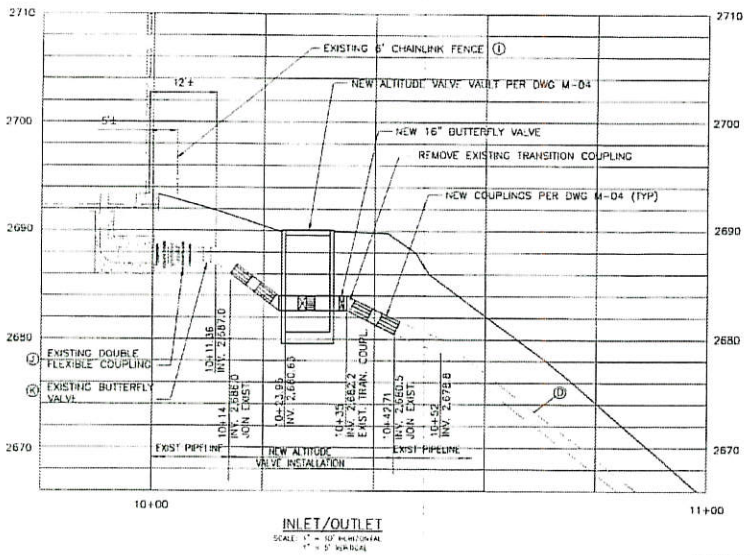
668



INLET/OUTLET

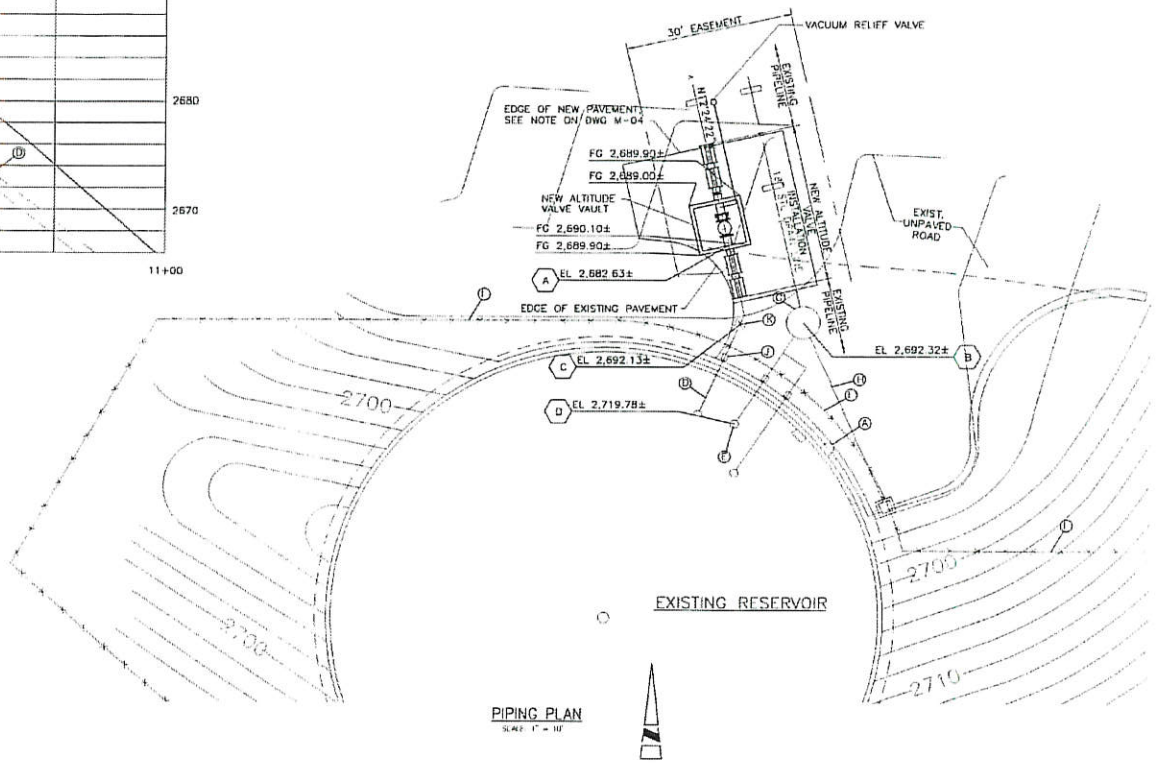
SCALE: 1" = 10' HORIZONTAL
1" = 5' VERTICAL

PIPING AND APPURTENANCES

- (A) EXISTING EXTERIOR LADDER
- (D) EXISTING 16-INCH INLET/OUTLET
- (E) EXISTING 18-INCH OVERFLOW
- (G) EXISTING DRAIN MANHOLE
- (H) EXISTING 10" PVC DRAIN LINE
- (I) EXISTING 6' CHAIN LINK FENCE
- (J) EXISTING DOUBLE-FLEXIBLE PIPE COUPLING.
- (K) EXISTING 16-INCH BUTTERFLY VALVE

COORDINATE LISTING

(P1)	NORTHING	EASTING	DESCRIPTION
(A)	2,273,394.90	6,352,020.37	INLET/OUTLET, INVERT OF PIPE
(B)	2,273,380.22	6,352,036.47	OVERFLOW MH, TOP OF COVER
(C)	2,273,380.22	6,352,023.28	16" BFV, TOP OF COVER
(D)	2,273,359.13	6,352,030.79	OVERFLOW WEIR, HIGH WATER LEVEL



PIPING PLAN

SCALE: 1" = 10'

APPROVED BY:						
RANCHO CAL PE CITY ENGINEER						
RCE:						
GE:	NUMBER	DATE	MADE BY	CHECKED	DESCRIPTION	
	REVISIONS					

ALFRED PEDROZA No. 69330 Exp. 6-30-12 CIVIL STATE OF CALIFORNIA

AECOM

AECOM USA, INC.
1131 WEST SIXTH STREET, SUITE 350
ONTARIO, CA 91762
PHONE (909) 933-5225

DESIGNED BY:	A. PEDROZA
DRAWN BY:	A. PEDROZA
DEPT. CHECK:	
PROJ. CHECK:	Z. ERASIOUS

SCALE: NONE

UNLESS OTHERWISE NOTED OR CHANGED BY NOTIFICATION

CITY OF BANNING, CALIFORNIA
SOUTHWEST RESERVOIR ALTITUDE VALVE

ALTITUDE VALVE PIPING PLAN AND PROFILE

CIVIL NOVEMBER 2010

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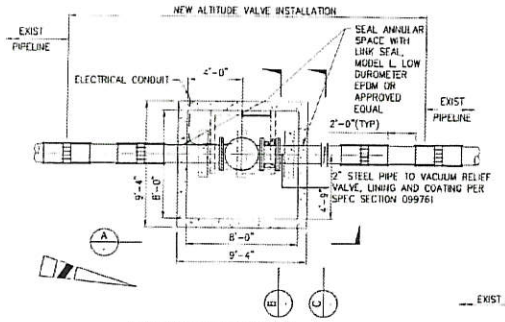
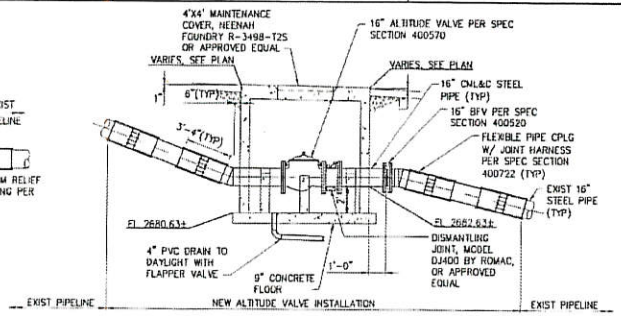
FILE NO.	
CAD FILE	C-29
SHEET	C-29

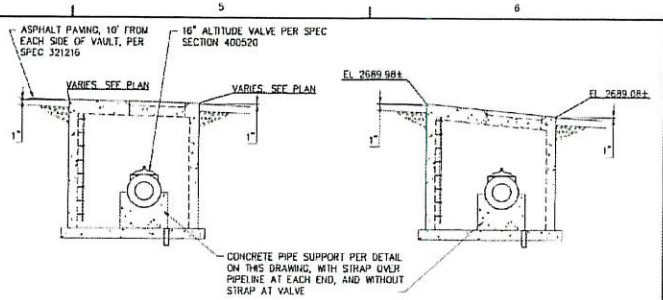
699



ALTITUDE VAULT PLAN

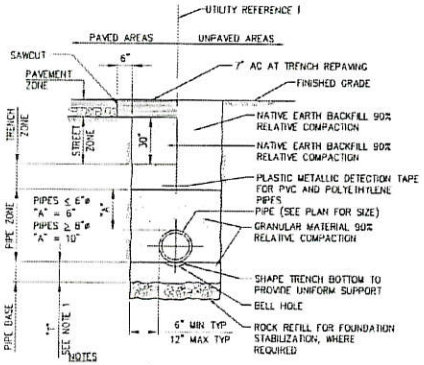


ALTITUDE VAULT SECTION A



ALTITUDE VAULT SECTION B

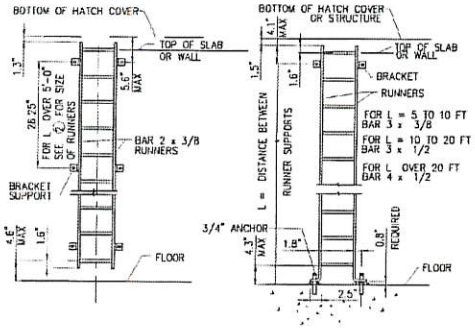
ALTITUDE VAULT SECTION C



NOTES

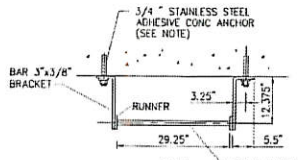
1. FOR SIZES 18" DIAMETER AND GREATER, T=6 INCHES. FOR SIZES 16" DIAMETER AND LESS, T=4 INCHES.
2. TRENCH WALL SHOWN VERTICAL FOR CLARITY, EXCAVATE PER OSHA/STATE REQUIREMENTS.
3. USE THE SAME DETAIL FOR BUILDING SERVICES.

TRENCH DETAIL



STANDARD LADDER WITH RUNNER SUPPORTS AT 5'-0" OC MAX

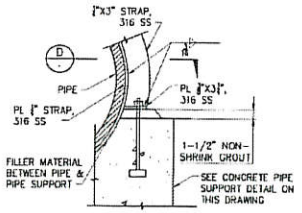
LADDER WITH RUNNER SUPPORTS SUPPORTS OVER 5'-0" OC



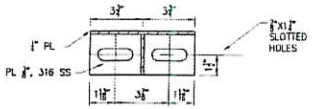
FIXED LADDER

NOTES:

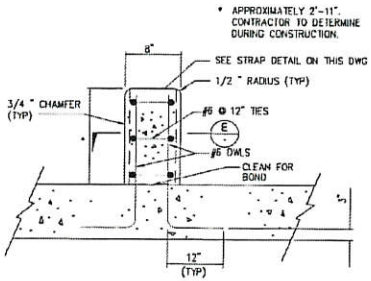
1. LADDERS SHALL BE ALUMINUM IN VAULTS & STAINLESS STEEL IN TANK.
2. ANCHORS AND FASTENERS SHALL BE STAINLESS STEEL.
3. LADDERS SHALL BE OSHA AND ANSI APPROVED



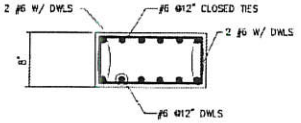
STRAP DETAIL



STRAP SECTION D



CONCRETE PIPE SUPPORT



CONCRETE PIPE SUPPORT SECTION E

APPROVED BY:						
KANSING DEL PE CIV ENGINEER						
MGR:						
GP:						
	NUMBER	DATE	MADE BY	CHECKED	DESCRIPTION	
	REVISIONS					

REGISTERED PROFESSIONAL ENGINEER ALFRED PEDROZA No. 68130 Exp. 6-30-12 CIVIL STATE OF CALIFORNIA

AECOM

AECOM USA, INC.
1131 WEST SIXTH STREET, SUITE 350
ONTARIO, CA 91762
PHONE (909) 933-5225

DESIGNED BY:	A. PEDROZA
DRAWN BY:	A. PEDROZA
DEPT. CHECK:	
PROJ. CHECK:	Z. IGNASIOUS

SCALE: NONE

UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

CITY OF BANNING, CALIFORNIA
SOUTHWEST RESERVOIR ALTITUDE VALVE

ALTITUDE VALVE
VAULT MECHANICAL AND STRUCTURAL DETAILS

MECHANICAL — NOVEMBER 2010

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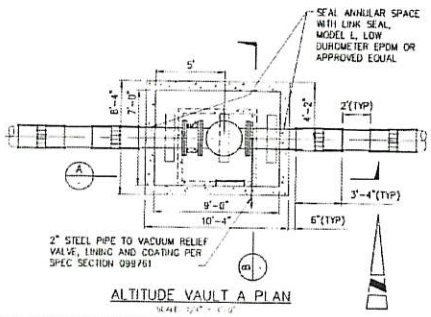
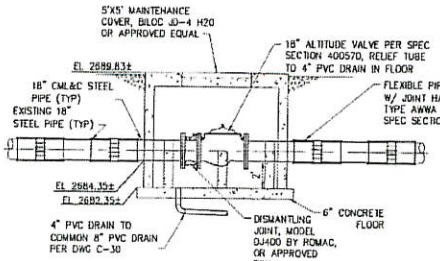
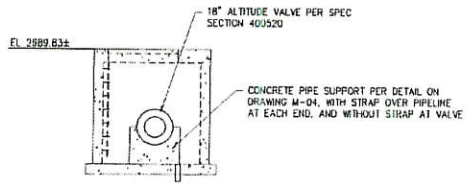
FILE NO.	
CAD FILE	M-04
SHEET	M-04



ALTITUDE VAULT A PLAN



ALTITUDE VAULT SECTION A



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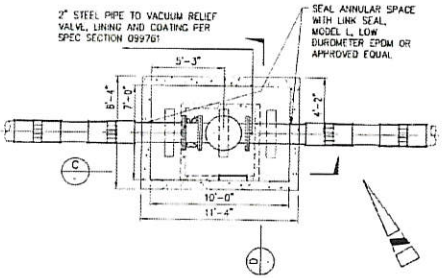
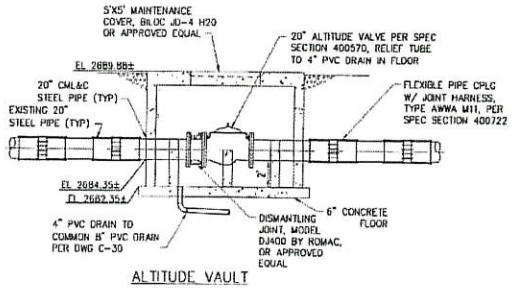
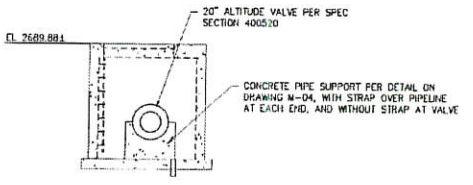


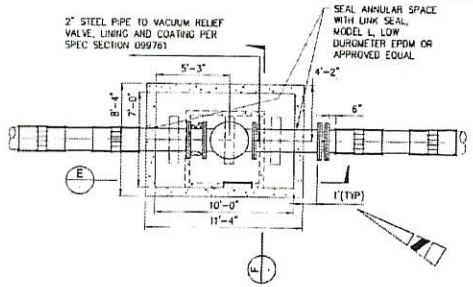
ALTITUDE VAULT B PLAN



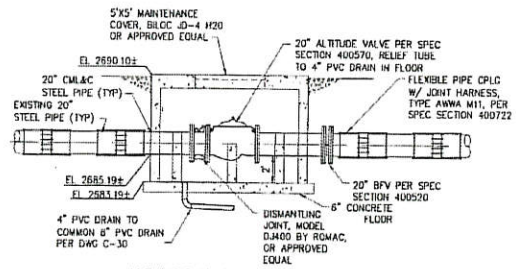
ALTITUDE VAULT SECTION C



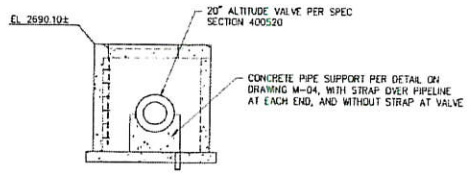
ALTITUDE VAULT SECTION D



ALTITUDE VAULT C PLAN



ALTITUDE VAULT SECTION E



ALTITUDE VAULT SECTION F

APPROVED BY:

KANCHO CO. PE
CITY ENGINEER

ACE: _____

CP: _____

NUMBER	DATE	MADE BY	CHECKED	DESCRIPTION

REVISIONS

ALFRED PEDROZA No. 69536 Exp. 9-30-12 CIVIL STATE OF CALIFORNIA

AECOM
AECOM USA, INC.
1131 WEST SIXTH STREET, SUITE 350
ONTARIO, CA 91762
PHONE (909) 933-5225

DESIGNED BY: A. PEDROZA
DRAWN BY: A. PEDROZA
DEPT. CHECK:
PROJ. CHECK: Z. ISMAGILOV

SCALE: NONE

UNLESS OTHERWISE NOTED OR CHANGED BY REPRODUCTION

CITY OF BANNING, CALIFORNIA
SAN GORGONIO RESERVOIRS ALTITUDE VALVE

ALTITUDE VALVE
VAULT MECHANICAL AND STRUCTURAL DETAILS

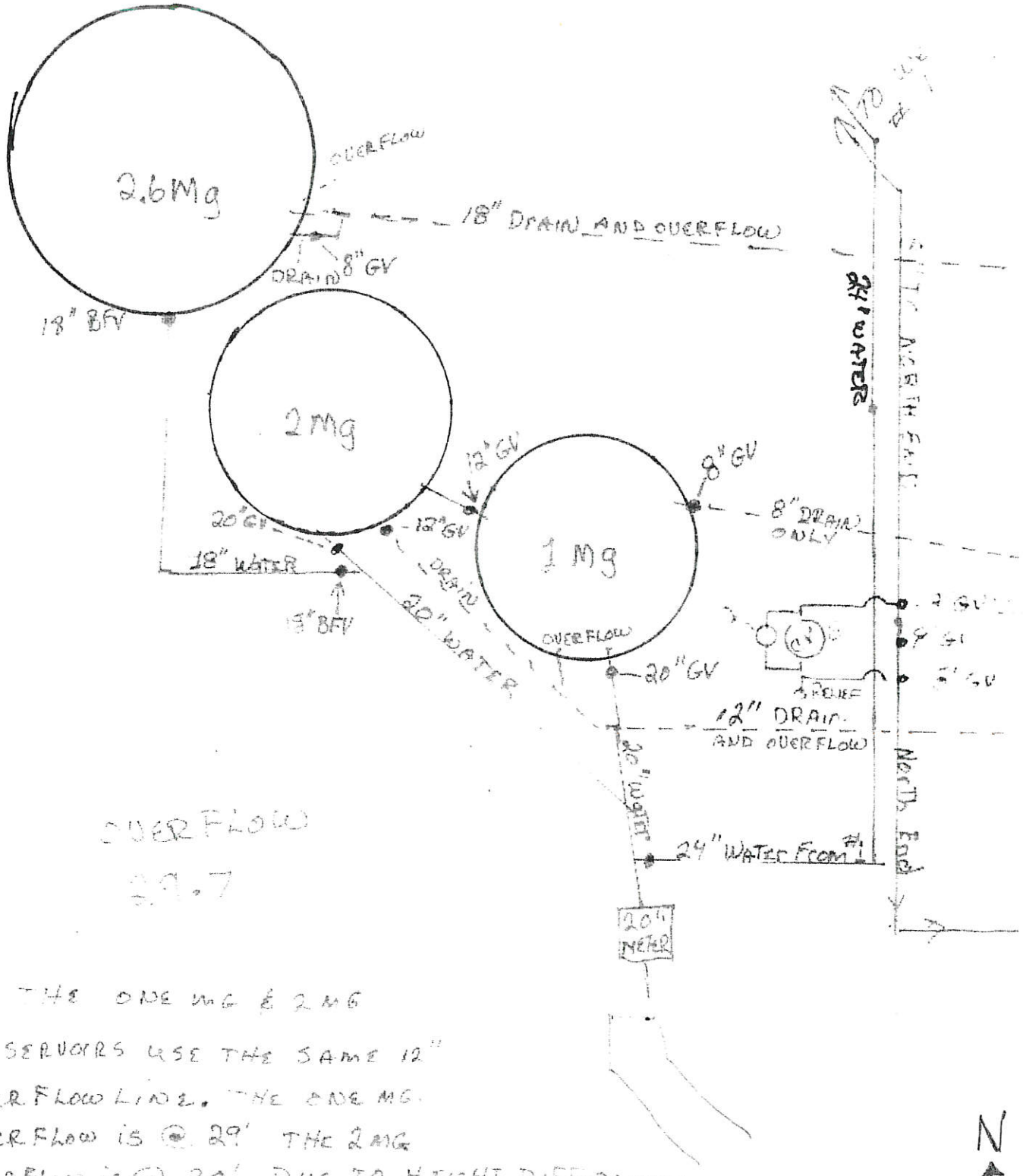
MECHANICAL — NOVEMBER 2010

JOB 60222909
FILE NO.
CAD FILE M-05
SHEET M-05

EXHIBIT B

RESERVOIR DIMENSIONS and CAPACITIES

Site	Type	Height	Circumference	Diameter	Nominal Capacity	Operational Capacity	Overflow	Shutoff	Date Built	B&E Survey
		X Feet	X Feet	X Feet			X Feet	X Feet		Overflow
San Gorgonio #1 (1MG)	Welded Steel	30	240	76	1,029,096	891,883	29	28	1950	unknown
San Gorgonio #2 (2MG)	Welded Steel	30	345	110	2,126,529	1,842,992	29	28	1962	2719.12
San Gorgonio #3 (2.6 MG)	Welded Steel	28	404	128	2,693,700	2,308,886	27	26	1982	2720.06
Southwest	Welded Steel	28	314	100	1,644,104	1,409,232	27	26	2003	not surveyed
		Length	Width	Lengthwise X-Section Area						
Brinton	Buried Concrete	440	140	8,320	8,712,704	8,075,189	20.5	19	2010	not surveyed



OVERFLOW

2.9.7

THE ONE MG & 2 MG RESERVOIRS USE THE SAME 12" OVERFLOW LINE. THE ONE MG. OVERFLOW IS @ 29' THE 2 MG OVERFLOW IS @ 30'. DUE TO HEIGHT DIFFERANCES OF THE 2 RESERVOIRS. THEY ACTUALLY OVERFLOW @ THE SAME TIME THE 2.6 MG RESERVOIR ALSO OVERFLOWS @ THE SAME TIME.

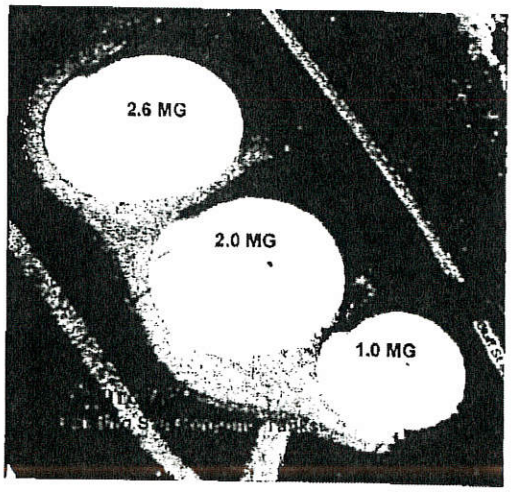
EXHIBIT C

2.0 PROJECT ALTERNATIVES AND DESCRIPTION

2.1 HIGH WATER ELEVATION

The San Gorgonio tanks were surveyed by Western Aerial Surveying on 6-5-01 but the survey was of unknown datum. Because of this, Metcalf & Eddy, Inc. had the tanks re-surveyed on the NAVD 88 Datum by B&E Engineers in the beginning of 2007. The following table indicates the results and differences between these two surveys.

Tank Size (MG)	WAS Survey Overflow	B&E Survey Overflow	WAS Nail in Tin	B&E Nail in Tin
2.6	2717.36	**2720.06**	2695.46	2697.31
2.0	2720.38	2719.12	2692.91	2694.77
1.0	Not Indicated	Unable to access	2692.90	2694.74



The WAS survey indicated that there was a 3.02 foot elevation difference between the two tanks, while the B&E survey indicated that there was a 0.94 foot elevation difference between the two tanks. The City's operators indicated that the existing San Gorgonio tanks shown in Figure 2.1 overflowed in sequence, with the 1.0 MG first, followed by the 2.0 MG tank, followed by the 2.6 MG. Given the one foot elevation difference in the two larger tanks overflow from the B&E survey, at a high enough flow rate the City indicated that the three reservoirs would crest the overflow within approximately 20 minutes of each other. Therefore, M&E proposes the higher elevation of the B&E survey be chosen as the Brinton Reservoir overflow at **2720.06.** (The marked up WAS survey is shown in Figure 2.2 along with B&E and WAS Tank Elevation Information. WAS's original survey elevations are shown in black, and B&E's new survey elevations are shown in red.) This would enable full use of the volume within the this new 8 MG tank. A single acting altitude valve should be placed on the existing 1.0 MG and the 2.0 MG tanks at their respective 20-inch pipelines which would allow for flow into these tanks and shut off at the desired elevation. The altitude valve in combination with a new check valve on these two existing tanks would allow for water to exit the reservoir. In its current condition, the 2.6 MG tank would rides under its capacity by approximately 2 feet out of 21.9 feet for approximately 0.23 MG or 9.1% if the water level were at the high water mark for the 2.0 MG tank. (The preceding was calculated by the following 2 feet divided by 21.9 feet times 2.6MG = 0.23 MG). Additionally, the 2.0 MG tank also rides under its capacity approximately half of that amount or about 0.11 MG. An altitude/check valve configuration on each of the 1.0 M G and the 2.0 MG tanks would enable the City to fully utilize the capacity of the 2.6 MG and

the 2.0 MG existing San Gorgonio tanks and gain an additional 0.34 MG in capacity of it's existing system.

The high water level (HWL) of the reservoir will then be the same as the HWL for the San Gorgonio tanks with the new altitude valves at **2720.06** feet since all the tanks will float in the same zone. The City has also indicated that the current low water level (LWL) of the San Gorgonio tanks is at 2690 feet (unknown datum). It should be noted, that the elevation of the *nail-in-tin* is consistently higher from both surveys than the reported LWL of 2690 feet. It would seem therefore that the actual LWL cannot be below the bottom of the reservoir floors which would be about the same height as the *nail-in-tin*.

The average elevation difference between the *nail-in-tin* between the WAS survey and the B&E survey is approximately 1.85 feet higher for the B&E survey. Therefore, the LWL of the San Gorgonio tanks is probably between elevation 2690 plus 1.85 or 2691.85 and the *nail in tin* of the 2.6 MG reservoir at 2697.31 to be in the same NAVD 88 Datum. The elevation of the new Brinton Reservoir must therefore have a LWL of at least **2691.85** to maintain consistency within the telemetry which runs the San Gorgonio pressure zone at the San Gorgonio tanks.

Figure 2.2
B&E and WAS Tank Elevation Information

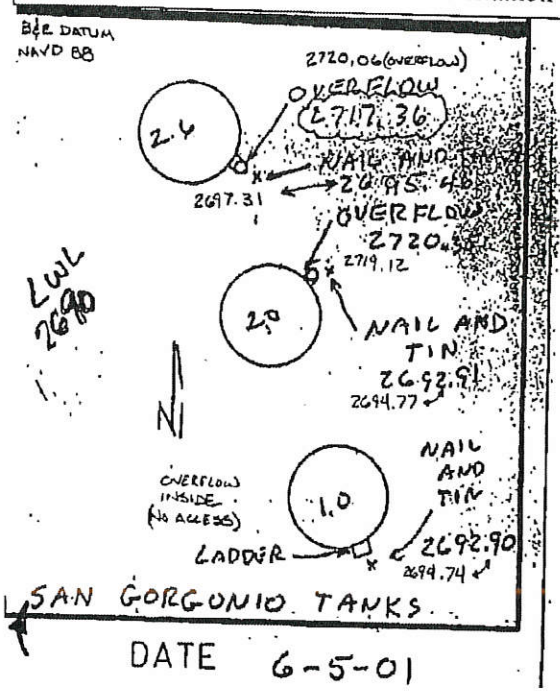


EXHIBIT A - ATTACHMENT B
WAS TANK SURVEY

2.2 RESERVOIR SHAPE

Presently there are two reservoir design alternatives under consideration for this project, 1) Circular reservoir, and 2) Rectangular reservoir. Given a HWL of **2719.12** elevation, the tanks can be fully buried which would effectively double the life expectancy of the reservoir whether the tank is rectangular or circular in shape.

If the reservoir is rectangular, two basins could be constructed to enable the City the alternative to run half of the reservoir at a time during low water demands for inspection and maintenance of one basin. The depth of the rectangular reservoir would be determined to be less than 25 feet. If the reservoir is circular a single cell/tank is envisioned. Circular tanks can be designed for any

reasonable depth but prestressed tanks are usually economical when the depth is greater than 30 feet.

The reservoir will be connected to existing water mains in the vicinity of the site. One connecting transmission pipeline will be placed in an easement along Brinton Road from the reservoir to a tie-in at Wilson Street approximately 2,220 linear feet in length. A high pressure 30-inch gas line runs perpendicular to Brinton Road, and this pipeline will be potholed to determine its exact location and depth to enable M&E to route the new pipeline around this obstruction. The second connecting pipeline will be located on City property from the reservoir west to a tie-in at Mountain Avenue approximately 2,000 linear feet in length. This second pipeline would have to go over the existing storm drain to just to the east of Mountain Avenue and then connect to the existing distribution system within Mountain Avenue.

The reservoir would also have a separate drain and and overflow line with a DHS approved air gap. An underdrain pipeline would be placed underneath the reservoir which would be piped to an observation vault next to the reservoir. These pipelines would be routed within the existing easement to the East of the reservoir and discharged into the creek which runs just East of Sunset Avenue.

Storm drainage piping may be required to divert runoff away from the top of the reservoir while allowing the water to flow along its natural course.

A conceptual layout of the transmission, drain & overflow line from the reservoir is shown in Figure 2.3.

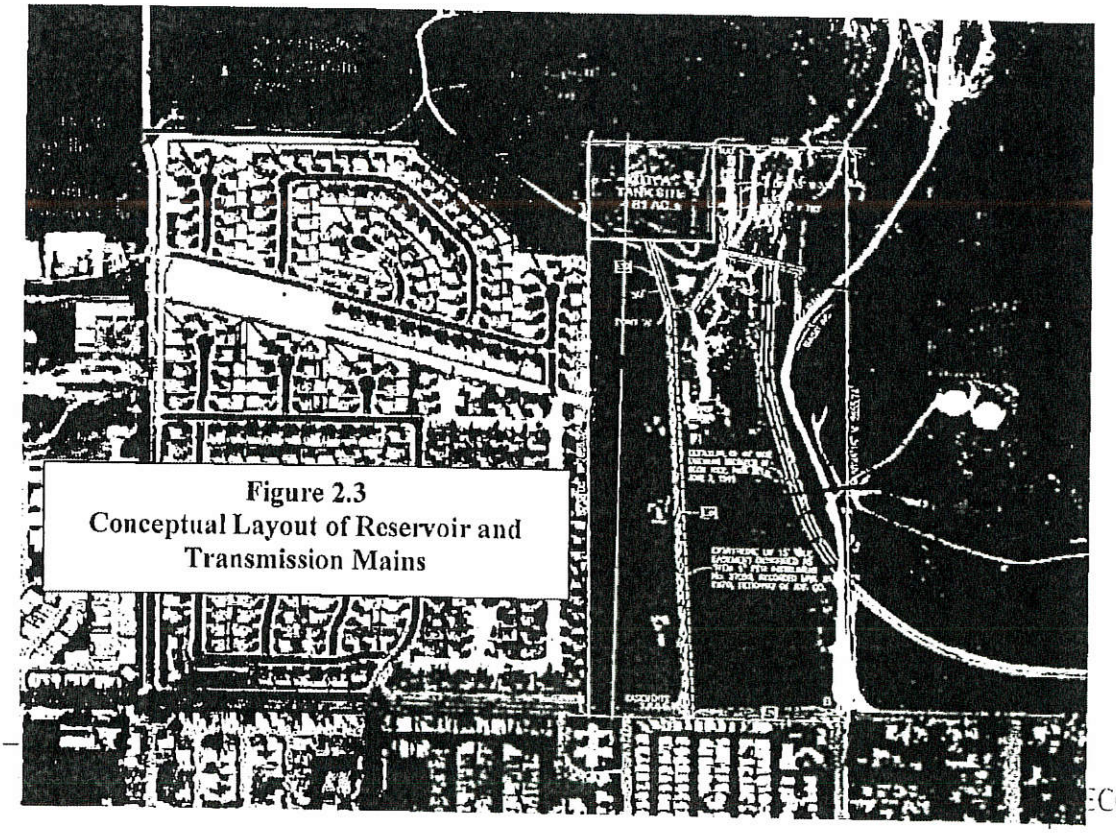
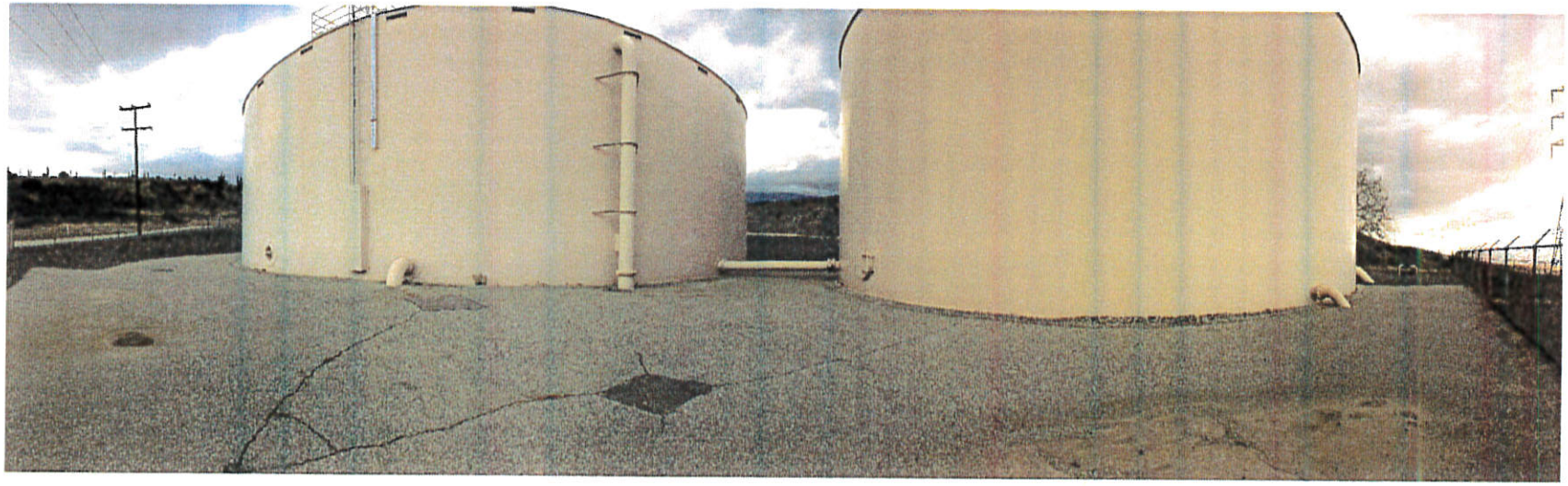


Figure 2.3
Conceptual Layout of Reservoir and Transmission Mains

EXHIBIT D



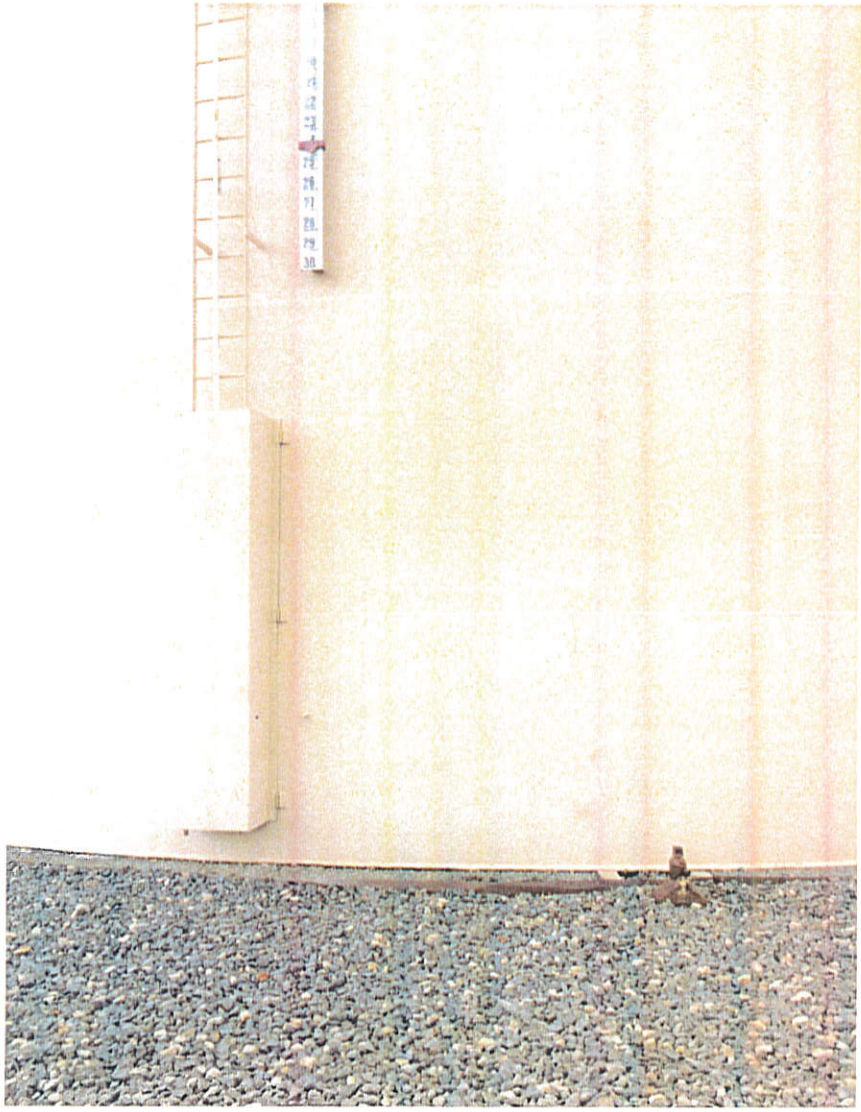
SG 1, 2 & 3



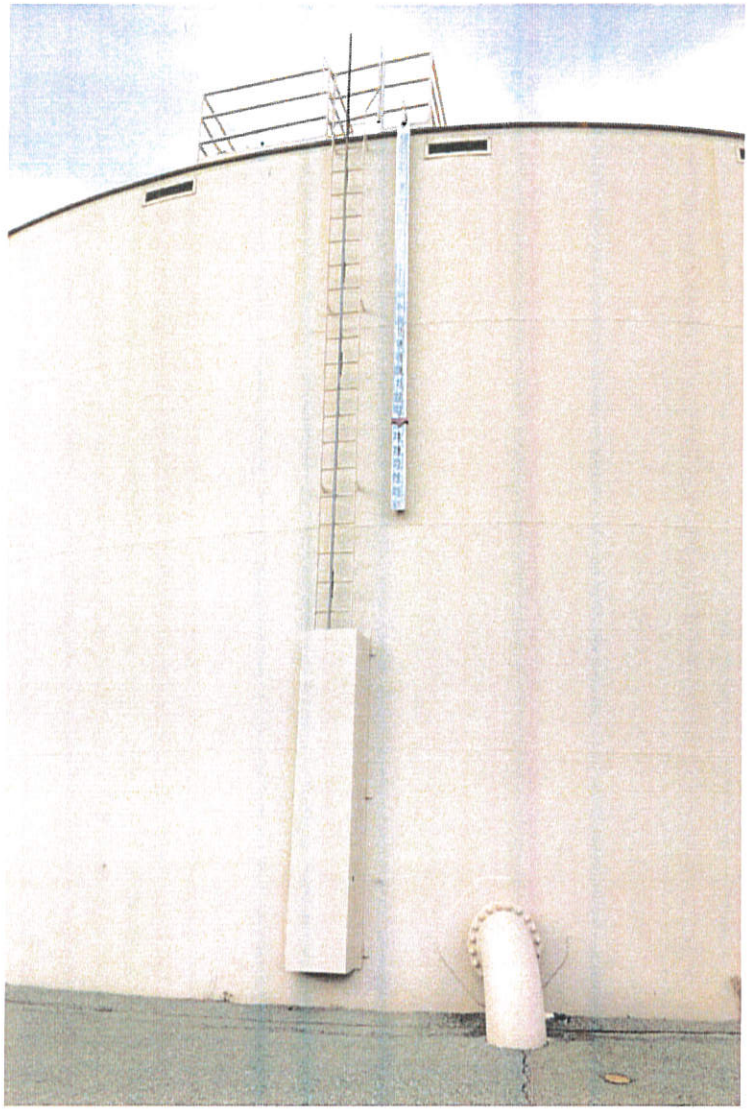
SG 2 & 1



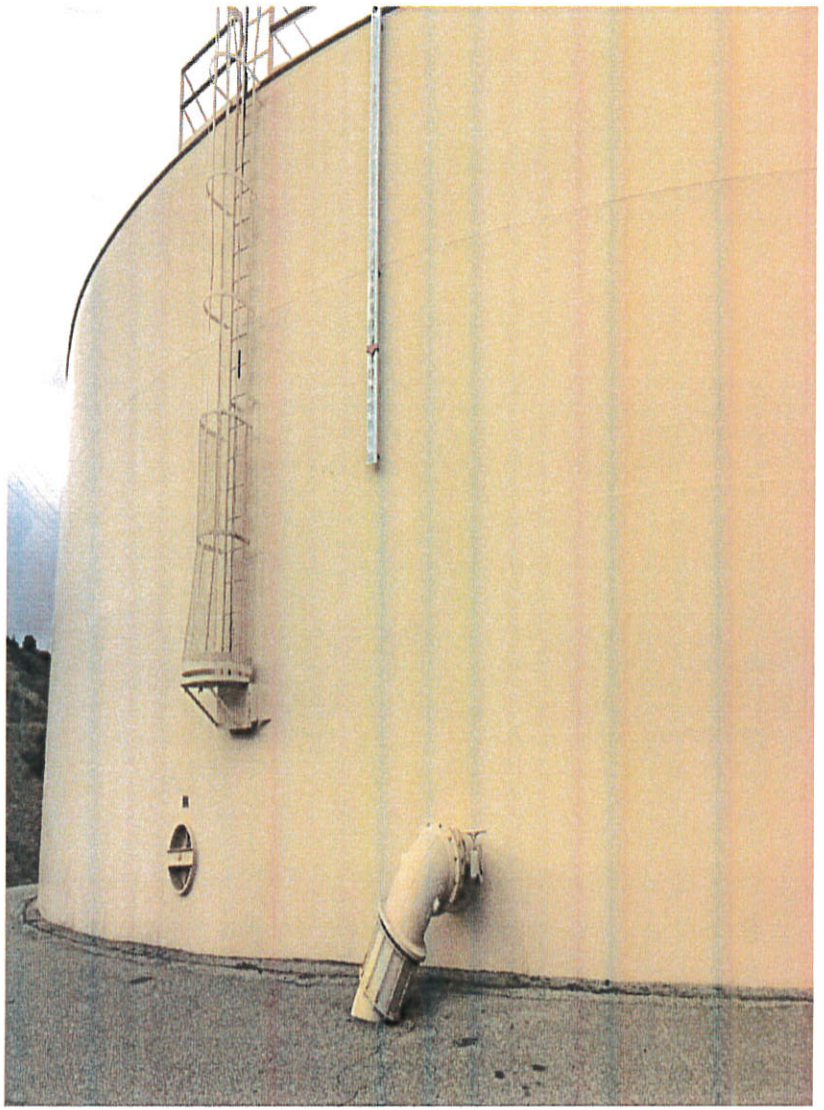
SG 1



SG1



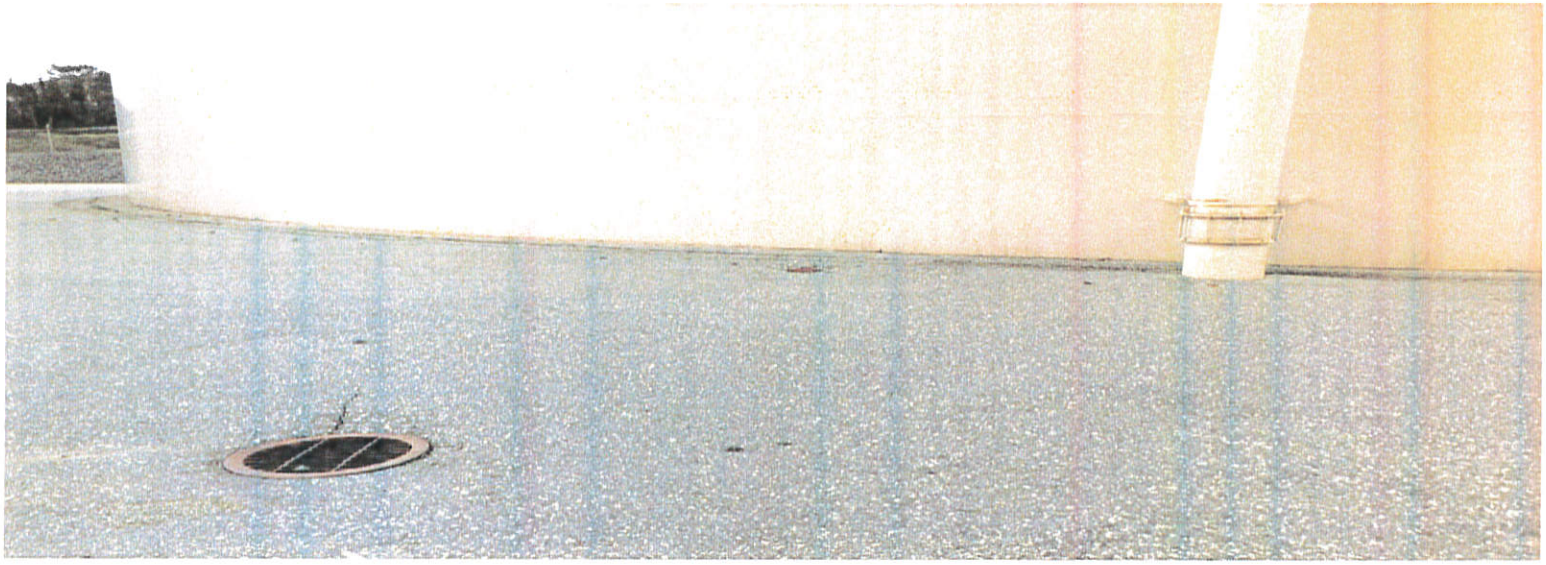
SG2



SG3



SG 3 & 2



SG3

ATTACHMENT 3

Michael Baker International Proposal

Michael Baker
INTERNATIONAL

We Make a Difference

April 13, 2018

City of Banning
Jennifer McCoy
99 E. Ramsey Street
Banning, CA 92220

Subject: **Proposal – Design of Altitude Valves at San Gorgonio & Southwest Reservoirs**
Proposal No. 18-009

Dear Mr. McCoy:

Michael Baker International Inc. (Michael Baker) is pleased to provide this proposal for the Design of Altitude Valves at San Gorgonio & Southwest Reservoirs Project. With implementation of this project, the City will design a new altitude valve and bypass outlet pipeline with a new check valve on each of three San Gorgonio reservoirs and the Southwest reservoir. The project will require an experienced team with expertise in pipeline design and supporting services.

Michael Baker provides a unique and superior advantage for the City. Key benefits of selecting the Michael Baker Team are:

- **Handpicked Team** of top professionals committed to meeting the City's needs, led by managers that have a vested interest in the City's success.

- **Experienced Project Manager** – Mr. Michael Boeck, PE. Mr. Boeck provides design engineering for water and wastewater projects that include domestic and recycled water and sewer pipelines, lift stations, booster pump stations, water reservoirs, and pressure reducing stations. Mr. Boeck provides corrosion design using galvanic or impressed current cathodic protection systems. He is also experienced in conducting soils resistivity surveys, and in the preparation of detailed plans for the construction of cathodic protection facilities for pipelines and steel tanks.

- **Multi-Discipline Service** capabilities under one roof. Water Resource Team that specializes in Reservoirs and Valving with Survey and Mapping support services all performed in-house.

On behalf of the Project Team, we appreciate the opportunity to submit this proposal to the City of Banning. Our proposal is valid for 180 days following submission. Please do not hesitate to contact me at 951-676-8042 or mboeck@mbakerintl.com, if you have any questions.

Sincerely,

Michael Boeck

Michael Boeck, PE
Project Manager

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BACKGROUND & PROJECT SUMMARY

PROJECT UNDERSTANDING

The City of Banning desires to install altitude valves and an outlet pipeline with a new check valve on each of three San Gorgonio reservoirs and the Southwest Reservoir. Similar design work had been initiated approximately thirteen years ago. However, the plans and specifications were created but never finalized. The City is looking to complete the design effort and construct the necessary improvements.

PROJECT OBJECTIVES

Items included in this work include the following:

a) Revisit sites and update plan to reflect existing conditions as necessary.
b) Conduct a survey to verify elevations.
c) Design air gap retrofits for overflow lines on #2 and #3 San Gorgonio Reservoirs
d) Redraw drawings in AutoCAD, since only PDF versions are available.
e) Prepare a Sequence of Operations Plan that outlines the procedures to be followed by the contractor to minimize the amount of time that each reservoir needs to be out of service.

PROJECT METHODOLOGY

STRATEGY & IMPLEMENTATION PLAN

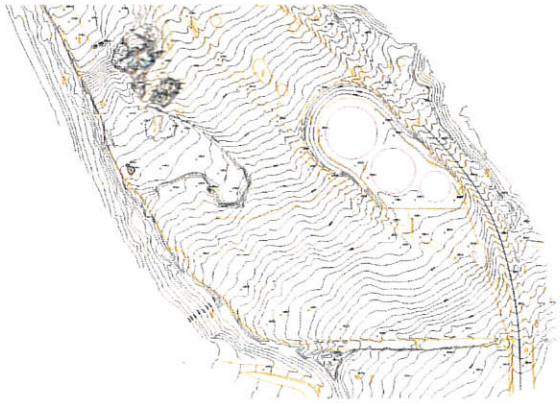
Plans and specifications were originally prepared for the work. This will form the basis of design for completing the work. Additional items included in this work include the following:

- Survey the reservoirs to confirm the high-water level (HWL) for the pressure zone. Verify the HWL with the recently constructed Brinton Reservoir.
- A duck bill/flapper is preferred as the air gap for the overflow piping modifications.
- A construction sequence to minimize the time that reservoirs will be out of service. One reservoir will only be taken out of service at a time and completed before the contractor can shut down additional reservoirs.
- Since the work will be performed on City property, as-built plans and maps provided by the City will be utilized to map any existing utilities on site. Michael Baker will also ask staff to utility mark any known underground utilities that may be on site (water piping, conduits, drain lines, electrical, etc.) prior to performing survey work. Markings will be surveyed.
- Plans and specifications have been previously prepared to a 90% level. As a cost saving measure for the City, Michael Baker will first use these plans as a template in moving forward with finalizing the design effort. During the kick-off meeting of the project, Michael Baker will elicit comments from staff and red-line these plans in order to "hit-the ground-running". This will be used a basis of design for time and cost efficiency.
- Previously prepared design plans showed separate plan sets for the Southwest and San Gorgonio Reservoirs. To reduce costs, Michael Baker proposes to consolidate the project into one plan set in order to minimize general details and reduce the overall number of sheets.

KEY ISSUES

Specific items were discussed during the pre-proposal meeting and site visit. These key issues will be addressed in the design. A summary of the issues and potential resolutions follow:

- The HWL of the Brinton Reservoir is maxed at approximately 16-feet. The level could increase to 21-feet, however, there are no controls at the San Gorgonio Reservoirs for this to occur. Levels within the San Gorgonio reservoir could easily surcharge before the levels in the Southwest Reservoir due to pressure losses within the system.
  Aerial topography in CAD is available for the Southwest Reservoir (shown right). Michael Baker recommends that this survey be spot checked with a supplemental survey to capture above ground piping, overflow piping, and electrical pads/conduit runs. Since a survey would be required to determine the HWL's of the San Gorgonio Reservoirs anyway, additional shots can be taken to assure that the same datums are being used.



- The immediate area near the Southwest Reservoir has limited space. Addition of an altitude valve near the reservoir would require the access road to be shut down during construction. The road is shared by Edison. Edison would allow such a closure given a practical time line for construction and schedule. Another option is to place the valve near the open space area adjacent to the residential Tract. This would require a conduit run and equalizing line from the altitude valve to the reservoir.



Placing the altitude within a vault in the access road could be performed using a traffic rated lid. However, access to the valve may be limited should the road be used by Edison at the same time. Another option is to place the valve in a bench area near the side of the hillside. The three alternatives will be cost estimated and provided to the City for a determination. The ultimate solution may come down to the operability and accessibility for staff. As the initial plan was to include the altitude valve in the access road, an optional item to survey the area near the access road entry will be provided separately.

SCOPE OF WORK

The following scope highlights specific items as requested in the RFP that should be completed at a minimum. Our approach is to work closely and coordinate with the City in order to provide a thorough set of design plans for contractor bidding.

Task 1: Project Management/Meetings/Coordination

Kick-Off. Michael Baker will attend a kick-off meeting with City staff to discuss the parameters of the project and discuss any concerns related to the design. Review and red-line comments of the previously prepared plans will be performed with City staff during the kick-off meeting.

Coordination Meeting and Correspondence: Michael Baker's Project Manager or Project Engineer will meet with the City to discuss the progress status of the project once plans are developed incorporating the red-lined comments. Time for correspondence updates (conference calls and emails) have also been budgeted to discuss the design and comments from staff.

Task 2: Surveying/Mapping Services

Record Base Map Preparation: Michael Baker will plot the record position of the project boundary for the reservoirs in approximate orientation with a specific coordinate system, compiled aerial topographic base data or other overlay features, Michael Baker will perform the following tasks:

- Research of the available public records via on-line services to obtain maps and other items that affect the boundary location of the property;
- Prepare a preliminary record data map to be used by the field survey crew to search for a sampling of boundary monuments;

- Perform a field survey of said monuments in order to establish orientation of the record survey data in relation to the coordinate system used in the topographic mapping;
- Plot the record boundary lines on the aerial base map, with the understanding that said record boundary is NOT the result of a comprehensive boundary survey and analysis, and that it's orientation may disagree substantially from the position determined by a full boundary survey and analysis;
- The budget for this scope of work is based upon an assumption that adequate and accessible boundary monumentation exists in the immediate project vicinity to control this survey.

Supplemental Topographic Field Survey: Michael Baker will provide an existing conditions survey to obtain the following information:

- Date to compile a topographic map of the northerly portion of the Southwest Reservoir site at a scale of 1" =40', with one-foot contour intervals. The location of the following ground surface and/or visible above ground items will be the primary target of this survey:
    - Water meters
    - Manholes rims and inverts
    - Electrical and other above ground dry utility items
    - Culverts and visible storm drain system items (rims and inverts)
- Spot check the provided topographic CAD file for the San Gorgonio Reservoir Site.
- Survey High Water Levels of the Southwest, San Gorgonio (1, 2, and 3 tanks), and Brinton Reservoirs. City's operational staff must be present in order to provide any access for the tank or provide visual markers in order for survey to capture these levels.

Task 3: Plans, Specification, and Cost Estimate

Michael Baker will prepare design plans incorporating the information obtained from Tasks 1 and 2, as well as the previous design efforts performed by a previous engineer. This plan assumes that the altitude valve for the Southwest Reservoir will be placed within the access road. The anticipated plan set is as follows:

1 Cover Sheet, Vicinity Map, Index of Drawings
2 Construction Notes, Site Plan(s), Abbreviations, Legend, Sequence of Work
3 San Gorgonio Site Plan
4 San Gorgonio Profiles
5 Southwest Site Plan and Profile
6 Detail Sheet 1
7 Detail Sheet 2

The specification package will also incorporate items previously prepared along with additional sections or changes as discussed during the kick-off meeting. It is recommended that the City's latest specification template be provided during the kick-off meeting.

A cost estimate will be prepared using the bid schedule as shown in the specification package.

This task includes two main submittal deliverables to the City. An initial submittal for the City to back check comments provided at the kick-off meeting and to provide any additional comments before finalizing the package. A final submittal will incorporate these comments and will be issued for construction bidding.

The initial submittal includes the following:

- One (1) 24" x 36" hard copy plan sets on bond paper.
- Three (3) 11" x 17" half sized copies.
- Two (2) bound copies of the specification document.
- One (1) copy of the engineer's cost estimate.
- An electronic copy (PDF) of plans, specifications

The final submittal includes the following:

- One (1) 24" x 36" mylar plan set signed by a registered civil engineer.
- One (1) unbound set of the specification document.
- One (1) copy of the engineer's cost estimate.
- Electronic files (PDF) of plans (AutoCAD), specifications (Word), cost estimate (Excel)

Optional Items

Optional Task 1 Utility Research and Notification

Michael Baker will research existing utilities using a Dig-Alert web search for known utility purveyors along the pipeline corridors. Michael Baker will provide the City with prepared letters in a Word Document to each purveyor requesting record drawings in the project area. Michael Baker has found that the utility purveyors will not charge processing fees when a direct request for plans and as-builts comes from a municipality, but will charge should a consultant request the information. Request from consultants are also executed in the order in which some purveyors receive them, which could cause a delay. A direct request from the City will provide a savings in both time and budget. Utilizing the as-built plans from the purveyors, existing facilities will be plotted in the CAD files.

Optional Task 2 Alternative Altitude Valve Location for Southwest Reservoir

This optional task will provide an additional plan sheet to Task 3 allowing for an alternative plan and profile design of placing the altitude valve above ground in the open space area near the residential housing tract. This task incorporates additional survey field time to collect topography of the area as well as design details that will defer from the rest of the below ground/vaulted valves. This task assumes that property will be made available for the placement of the valving and any conduit runs to support the altitude valve. Easements can be prepared for an additional scope and fee.

Optional Task 3 Bidding and Construction Phase Support

Request for Information (RFI's)

Michael Baker will provide five (5) RFI's associated with plan interpretation and consultation during the bidding phase.

Shop Drawing Review

Michael Baker will review shop drawings submitted by the Contractor for compliance with the project specifications and plans. The review shall not exceed two weeks. Michael Baker will create a log and track shop drawing submittals. This task includes the review of ten (10) shop drawings.

Record Drawings

Michael Baker will prepare record drawings (as-builts) when construction work has been completed and accepted by the City. As-builts will consist of making changes in CAD format and re-printing and signing of mylars. It is assumed that Contractor red lines will be supplied to Michael Baker. For budgetary purposes, it is assumed that 16 hours will be required for a designer to provide CAD changes. This task is provided as a time and materials basis. Additional time may be required to complete the changes depending on the level of redlines provided.

EXCLUSIONS

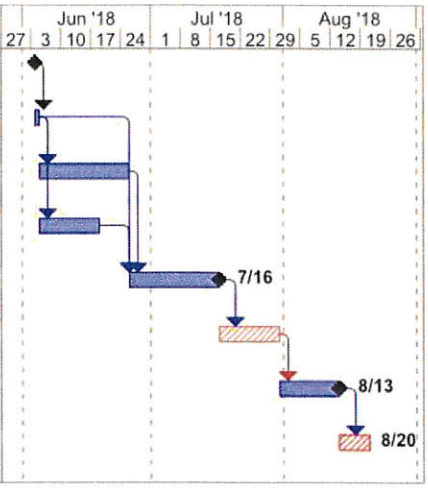
The proposed scope of work does not include the following tasks, which may be completed if negotiated under a separate authorization for an additional fee; but are presently specifically excluded from this agreement:

- Traffic Control Plans
- Geotechnical Investigations
- Potholing
- "As-constructed" Surveys
- Construction Staking
- Construction Phase Support
- Construction Management Support
- QSD/QSP or related SWPPP Documents
- Easement Preparation

SCHEDULE

The following is a preliminary design schedule providing the City with a review of time of a two-week duration. The schedule does not include review time provided by outside agencies such as Edison for work performed along the Southwest Reservoir. The schedule will slide should Edison or another entity require a review.

Task Name	Duration	Start	Finish
Notice to Proceed	0 days	Mon 6/4/18	Mon 6/4/18
Kick-off Meeting	1 day	Mon 6/4/18	Mon 6/4/18
Utility Research (Optional)	3 wks	Tue 6/5/18	Mon 6/25/18
Survey Base Mapping/Initial Shots	2 wks	Tue 6/5/18	Mon 6/18/18
Plans/Specs/Cost Estimate (Initial Submittal)	3 wks	Tue 6/26/18	Mon 7/16/18
City Review	2 wks	Tue 7/17/18	Mon 7/30/18
Plans/Specs/Cost Estimate Final Submittal	2 wks	Tue 7/31/18	Mon 8/13/18
City to Final Review and Bid	1 wk	Tue 8/14/18	Mon 8/20/18



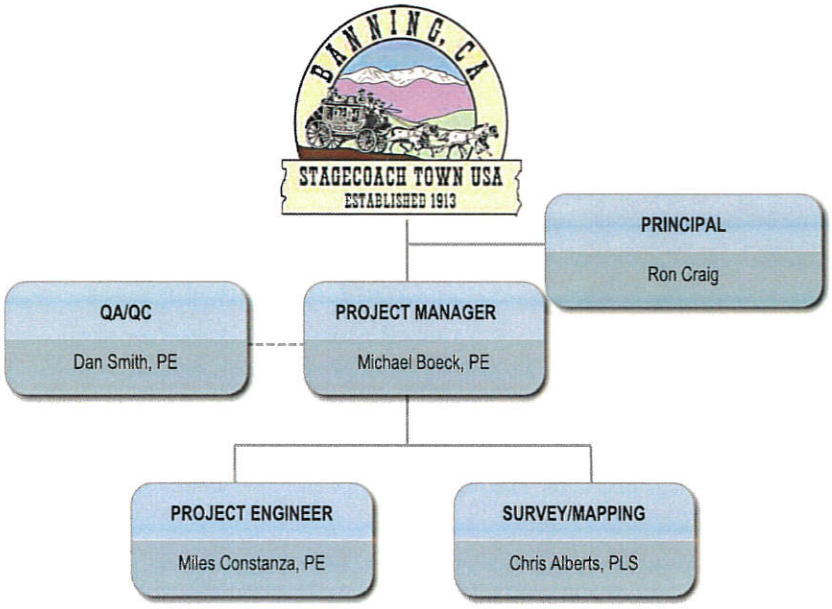


STAFFING

The Michael Baker Team is prepared to commit its personnel and its resources to serve the City of Banning by providing professional design services for the Altitude Valves Project. Our team of professionals is well balanced and experienced in working together on many successful projects. The key personnel assigned to this Project have functioned in similar responsible positions and have worked on numerous water projects.

As presented in the Project Organization, the focus of the Michael Baker Team will be on developing a high-quality project for the City of Banning. From a performance and operational perspective, the team is organized around optimal communications and responsiveness to the City.

ORGANIZATIONAL CHART



KEY PERSONNEL QUALIFICATIONS

Resumes of Michael Baker's key personnel committed to this project, demonstrating their experience, professional licenses / certifications, and years of experience.

Ronald B. Craig

Principal In Charge

General Qualifications

Mr. Craig has extensive experience in the field of water and wastewater engineering and has been directly involved in master planning, engineering management, administration, and finance. Mr. Craig has supervised the development of plans of works, feasibility studies, and the preparation of detailed capital improvement programs. He has also managed and administered various types of public financing projects including those funded by general obligation bonds, Department of Water Resources assessment districts, Mello Roos community facilities districts, and reimbursement agreements. Mr. Craig has also performed various inter-agency and inter-governmental liaison assignments including agencies representation for hearings at the State Treasurer, County Board of Supervisors, and County L.A.F.C.O., and Department of Health Services. Mr. Craig also manages Michael Baker's Ontario Office.

Experience

Chino Hills R-19 Reservoir, Chino Hills, California. Mr. Craig provided overall administration and inspection for a 2.2 mg welded-steel reservoir.

Rancho California Water District Reservoirs, Riverside County, California. Project Manager. Responsible for the District's 10 mg Date Street Reservoir, 6 mg Prado Reservoir, 5 mg General Kearney Reservoir, and 5 mg Via Vaquero Reservoir.

Water Facilities Master Plan, Riverside County, California. ***Rancho California Water District.*** Principal-in-Charge. Responsible for this comprehensive water facilities master plan which included an analysis of the District's current system, determination of land use and water demands through the year 2020, and an analysis of the ultimate pumping, storage, and transmission requirements throughout the District's 20 pressure zones. Water supply options were incorporated into the planning process including local groundwater, imported water, reclaimed water, and artificial recharge, design of water wells, pipelines, reservoirs, and pumping stations. Prepared overall capital improvement and replacement projections in association with the master plan process.

Years with Michael Baker: 30
Years with Other Firms: 12

Degrees

M.S., 2006, Leadership and Organization Studies, Azusa Pacific University

B.A., Business Administration, University of Redlands

Coursework, Architectural Engineering, Arizona State University

Certificate, Public Finance, University of California, Los Angeles

Licenses/Certifications

Certified Project Manager, California, 1985

Licensed Private Pilot, California, 1993

Professional Affiliations

American Planning Association (APA), California Chapter, Member
American Public Works Association (APWA), Member
American Water Works Association (AWWA), Member
Water Quality Committee, Association of California Water Agencies (ACWA), Member

Daniel G. Smith, P.E.

QA/QC

Years with Michael Baker: 1
Years with Other Firms: 36

Degrees

B.S., 1981, Civil Engineering, University of Wisconsin

Licenses/Certifications

Professional Engineer, California, 1984, 37682

Professional Affiliations

General Qualifications

Mr. Smith is a client service oriented professional with over 36 years of diverse engineering experience and successful achievement in the Water/Wastewater industry encompassing project management, planning and design, construction management, office and design team management, and business development. His experience spans project management and design experience covering recycled water, water and wastewater infrastructure includes feasibility and planning studies, and design/construction plans for wells, transmission and distribution pipelines, sewer collection systems, pump stations, reservoirs, pressure reducing and flow control facilities, small water/wastewater treatment process systems and sewage lift stations.

Experience

Planning Area 6 Zone C Recycled Water Transmission Mains, Irvine, California. *Irvine Ranch Water District.* Performed QA/QC during preparation of PDR and construction plans for transmission mains, reservoirs and pump station designed as part of the overall PA 6 facilities at this site.

Boulder Mountain Reservoir Repair and Replacement Project, Poway, California. *City of Poway.* Project Manager for a Preliminary Design Report and preparation of construction plans to rehabilitate an existing 1.0 MG steel (tank) reservoir, construct a new 1.0 MG welded steel (tank) reservoir adjacent to the existing reservoir and demolish two existing small (0.5 MG and 0.3 MG) welded steel reservoirs. Scope of work included typical site (grading and paving) and piping improvements, altitude valve piping, construction a new SCADA building as well as relocation of the communication antenna for the site . Reservoir No. 3 rehabilitation included upgrading of ladders, vents and hatches, in addition to providing a separate inlet and outlet with flexible connections.

Meadowlark Reservoir Nos. 3 and 4, San Marcos, California. *Vallecitos Water District.* Project Manager for reservoir site master planning for two 2.7 MG steel (tanks) reservoirs on a site already occupied by two existing reservoirs, and the design of one of the 2.7 MG reservoirs and associated site work, piping and altitude valve vaults. Ultimate site will have three 2.7 MG steel (tanks) reservoirs. Project also included the demolition of an existing 1 MG steel (tank) reservoir, construction of a new access road, site coordination with proposed pump station, retaining walls, landscaping and connections for future tank.

Berk Reservoir, Encinitas, California. *Olivenhain Municipal Water District.* Project Manager/Project Engineer for an above-ground 2.5 MG pre-stressed concrete reservoir (tank) and site piping. Overall scope of work included site planning and design for reservoir and future booster pump station adjacent to the reservoir, site piping and appurtenances, access road and paved road around the reservoir, site security systems and fencing, outlet for reservoir overflow and coordination with developer's engineer for pipeline connections to the reservoir site. Features for reservoir included wrap around stairway in lieu of a ladder

system, corrosion-resistant wash down piping inside of the reservoir, two access hatches, ship's ladder entry into reservoir and directional inlet piping to assist with reservoir circulation.

Point Loma Reservoir Rehabilitation, California. *City of San Diego.* Project Engineer for rehabilitation of the 10 MG in-ground concrete and asphalt reservoir with a wooden roof. Project included replacement of the existing roof and support system, lining of the reservoir's water contacted surfaces with a hypalon lining, reconstruction of the tank's inlet and drain outlet, steel CML/CMC inlet and outlet piping replacement, repair of internal steps, installation of structural improvements for seismic purposes (shear walls), redesign of the access road around the reservoir and addition of site drainage improvements. The project won a structural award from CELSOC.

1485-2 Reservoir and Rehab of 1485-1 Reservoir, Spring Valley, California. *Otay Water District.* Project Manager/Project Engineer for 1.6 MG welded steel reservoir and site improvements. Project included preliminary design report and drainage study, access road realignment, above-ground altitude valve and piping, flex tend connections for inlet and outlet piping within vaults, 400' feet of 12-inch transmission main and site retaining walls. Also included was the rehabilitation of the existing 0.3 MG steel reservoir that replaced the existing ladders, vents, outlet piping coatings and linings.

Leslie Lane Recycled Water Reservoir, California. *City of Escondido.* Project Engineer for final design and construction support services for 2.0 MG pre-stressed concrete reservoir (tank), site improvements and above-ground altitude valve piping. Reservoir was fully buried and site improvements included an access road and re-vegetation of the disturbed ground surrounding the reservoir. Included in the project design were deep valve vaults, inlet piping, outlet piping to two service areas and piping for the tank drain. This project was awarded a 2002 ACI Award for Concrete Structures. 1998-2001.

Loma Del Sol Reservoir Improvements, Spring Valley, California. *Otay Water District.* Project Manager/Project Engineer for inlet/outlet/drain and overflow modifications to existing 2.0 MG welded steel reservoir (tank) to enhance performance during seismic events. Project also included a secondary outlet line to provide supply redundancy for a service area adjacent to the reservoir site. The project was surrounded by environmentally sensitive habitat which had to be addressed in the project specifications.

Upper Meadowbrook Reservoir No. 2, Lake Elsinore, California. *Elsinore Valley Municipal Water District.* Project engineer for 1 MG welded steel reservoir (tank) and site improvements for Upper Meadowbrook Reservoir No. 2 and demolition of existing 0.3 MG bolted steel tank.

Technical Review for 26 Reservoirs, Lake Elsinore, California. *Elsinore Municipal Valley Water District.* Project engineer responsible for the review of 14 reservoir sites encompassing 26 reservoirs (tanks) in a five year period. Review was performed to assure that the District's design standards and operational considerations were incorporated into the construction plans prepared by developer's engineers. Technical reviews were provided for Preliminary Design Reports, and through the completion of the Construction Plans and Specifications.

Reservoir Design Standards, Standard Drawings and Specifications, Lake Elsinore, California. *Elsinore Valley Municipal Water District.* Project Manager for updating the design standards, standard drawings and specifications for EVMWD. The document encompassed weld steel reservoirs (tanks) and well as glass-lined factory bolted steel reservoirs and was a part of the District's Volume II Standards for Reservoirs, Water Booster Pump Stations, Wellhead Facilities and Sewer Lift stations.

Michael J. Boeck, P.E.

Project Manager

Years with Michael Baker: 18
Years with Other Firms: 4

Degrees

B.S., 1996, Environmental Engineering, University of California, Riverside

Coursework, Environmental Engineering, University of California, Riverside

Licenses/Certifications

Professional Engineer - Civil, California, 2003, 66417

Professional Engineer - Civil, Nevada, 2007, 19027

Professional Affiliations

American Water Works Association (AWWA), Member, 00602404
National Association of Corrosion Engineers (NACE), Los Angeles, Member 8/2008, 108017

General Qualifications

Mr. Boeck provides design engineering for water and wastewater projects that include domestic and recycled water and sewer pipelines, lift stations, booster pump stations, water reservoirs, and pressure reducing stations. Mr. Boeck provides corrosion design using galvanic or impressed current cathodic protection systems. He is also experienced in conducting soils resistivity surveys, and in the preparation of detailed plans for the construction of cathodic protection facilities for pipelines and steel tanks.

Experience

2060 Storage Tank Site, Moreno Valley, California. Michael Baker was provided with topography and boundary conditions for conceptual planning of a 2.5 million gallon storage tank for Eastern Municipal Water District's 2060 pressure zone in Moreno Valley. Michael Baker provided three alternatives for tank siting, associated access road, and on-site detention basins in order to minimize grading operations and overall area for pipeline easements. Michael Baker utilized AutoCAD Civil 3D software in order to create a terrain surface and develop various alternatives with a fast turn-around for the client.

Ramsgate Reservoirs - 1801 Pressure Zone, Lake Elsinore, California. Michael Baker provided engineering services for design of two bolted steel, 700,000 gallon tanks to supply water for the 1801 pressure zone. Design considerations included finish site grading, paving, access road, drainage, inlet/outlet line piping and appurtenances, including a Cla-Val altitude valve, flex-tend fitting (for reservoir protection in the event of an earthquake), site security, water sampling station, RTU unit for communication with the command center, motor-operated custom gate with card reader, and retaining wall. A passive tank mixing system was designed to improve the water quality and balancing between the two reservoirs. The facility design included review of the site soils report and development of a foundation and anchoring system to withstand seismic Zone 4 loading conditions. In addition, new standards were developed with Elsinore Valley Municipal Water District during the design phase.

Waite Street Reservoir - 1467 Pressure Zone, Lake Elsinore, California. Michael Baker is currently providing engineering services for design of a 2.5-million-gallon welded steel tank to supply water for Elsinore Valley Municipal Water District's (EVMWD) 1467 pressure zone. The design considerations included the construction of a new tank while maintaining service and capacity to an existing 500,000 tank on site. The District is looking to maximize space on-site for future reservoir expansion. Due to the topography of the site, the site will require a 10-foot tall retaining wall in order to provide available space for two reservoirs in the future. The latest AWWA D-100 standard was used in determining freeboard height based upon the 134-foot

diameter and 24-foot high tank. In addition, Michael Baker utilized and modified EVMWD's design details for inclusion into the plan set.

Bluff Street Pump Station/Reservoirs 8 &9, City of Norco, California Technical lead responsible for the analysis, planning, and detailed design of a new potable water storage, disinfection, and pumping facility. Project includes detailed hydraulic analysis, site layout and grading, two 1-million gallon storage tanks, three 2,500 gpm vertical turbine booster pumps, backup generator, pump house, and site security fencing. Mr. Costanza is currently responsible for client coordination and leading the design team; consisting of land development, architectural, electrical, and mechanical disciplines.

Water/Sewer Studies and Fire Flow Analyses for Various Projects, Southern California. Mr. Boeck has been involved in multiple projects where water and sewer master planning was required. Studies were prepared for District or Agency approval for determining fire flow analysis, pipe sizing and distribution for multiple residential and commercial projects using the aid of modeling software. Projects include: Tonner Hills, Brea, California - Water modeling of a two-pressure zone system within the City of Brea. Modeling consisted of reservoirs, sizing pump stations, conveyance lines, and in-tract distribution systems; French Valley Assemblage II (EMWD) - Sewer modeling of on-site, existing off-site and future tributary flows for the 270 lot subdivision. The study investigated multiple alternatives for sewering the site into various adjacent sewer systems; Temecula Lane, City of Temecula / EMWD - Sewer analysis of a single and multi-family subdivision in the City of Temecula. The study included use of the Uniform Building Code for off-site sewer conveyance; Harveston, City of Temecula / RCWD - Rancho California Water District required a water analysis based on their 1380 zone model for various tracts within the Harveston Community. Studies were completed for Ashville, Phase III, ABC Preschool, Retirement Residence, and converted Welcome Home Center; Promenade Mall Expansion (EMWD / RCWD) - Sewer and water studies were prepared for both Eastern and Rancho Water Districts for the 14-acre expansion of the existing mall in the City of Temecula; and, Countryside (EMWD) - Both domestic and recycled water and sewer were modeled for the large master planned community of Countryside.

The site consisted of approximately 2,100 residential units, school, 65-acre commercial complex, community village and storm drain channel. Various density and grading changes throughout the project created numerous revisions to the studies.

Corrosion Engineering Services for the Santa Margarita Water District (SMWD). Santa Margarita, California. Michael Baker annually conducts pipe-to-soil electropotential surveys on over 230 miles of pipeline varying in size from 12 inches to 66 inches in diameter. Michael Baker also periodically inspects the coatings on the District's 15 steel tank water reservoirs, as well as inspects and adjusts their 60 deep well cathodic protection stations. Michael Baker is also responsible for conducting analyses of failed metallic structures. In the past 16 years, Michael Baker has designed, prepared plans and specifications, and provided construction inspection for the installation of approximately 75 cathodic protection systems for SMWD. These installations consisted of both sacrificial anode and impressed current type systems and were installed on pipelines and steel tank reservoirs.

Miles Costanza, P.E.

Project Engineer

Years with Baker: 2
Years with Other Firms: 9

Degrees

B.S., 2006, Civil and Environmental Engineering, Arizona State University

Licenses/Certifications

Professional Engineer - Civil, California, 87843

Professional Engineer - Civil, Arizona, 55059

General Qualifications

Mr. Costanza has over 11 years of experience in water and wastewater engineering, design, and condition assessment. His experience is focused in water and wastewater treatment plants, pump station design and construction, welded and bolted steel storage tanks, infrastructure and piping, and facility inspection and condition assessment. He has a proven record of experience in producing detailed designs, plans, specifications, and in construction management in the water and wastewater industry. He has led teams consisting of contractors, structural engineers, geotechnical engineers, electrical engineers, and NACE certified inspectors for the condition assessment, rehabilitation, design, and construction of water infrastructure improvements.

Experience

Warren 4-R Well Equipping, City of Riverside, CA (Currently Underway) Technical lead responsible for the analysis, planning, and detailed design of the equipping of a municipal groundwater well. The project will include pump and motor sizing, discharge piping, valving, instrumentation and controls, appurtenances and discharge piping.

Well Blow-Off Line Relocation, City of Riverside, CA (Currently Underway) Project engineer responsible for DigAlert utility coordination, pothole exploration, site survey, discharge line hydraulics, and material evaluation. The project includes the relocation of a blow-off line from and existing well site. The blow-off line will be designed to accommodate the existing well operational points to ensure the well will continue to function without modifications.

Well Modifications, Bluff Street Pump Station, Norco, CA (Currently Underway) Design team lead, responsible for coordination and oversight of the design team and client coordination. Project includes discharge line hydraulics, valve selection, control, and material evaluation. Under this project, a pump-to-waste line at an existing well site was modified to discharge to an off-site storm drain. The pump-to-waste line will be equipped with a hydraulic pilot-operated control. The valve will remain open when the well starts, and then slowly close when the main discharge valve is open based on system pressure differentials.

Bluff Street Pump Station/Reservoirs 8 &9, City of Norco, California Technical lead responsible for the analysis, planning, and detailed design of a new potable water storage, disinfection, and pumping facility. Project includes detailed hydraulic analysis, site layout and grading, two 1-million gallon storage tanks, three 2,500 gpm vertical turbine booster pumps, backup generator, pump house, and site security fencing. Mr. Costanza is currently responsible for client coordination and leading the design team; consisting of land development, architectural, electrical, and mechanical disciplines.

Christopher L. Alberts, P.L.S.

Survey and Mapping Manager

Years with Michael Baker: 16
Years with Other Firms: 6

Degrees

Coursework, San Jacinto College

Coursework, General Studies, South Dakota State University

Licenses/Certifications

Professional Land Surveyor, California, 2008, 8508

Professional Affiliations

California Land Surveyors Association, Desert Chapter, Board Member
California Land Surveyors Association, State Association, Board of Directors Member, 9788
Joint Professional Practices Committee, Riverside and San Bernardino Counties, Member

General Qualifications

Mr. Alberts has extensive years of combined experience in field surveying and office mapping. As Project Surveyor, he is responsible for survey support, calculations, coordination, and supervision of all field and office operations. Additionally, Mr. Alberts has broad knowledge of title research, map preparation including right-of-way documents and legal descriptions, tentative and final maps. His experience includes ALTA Surveys, boundary, topographic, subdivision, control, monitoring, 3D modeling and construction surveys. Mr. Alberts is experienced in using various types of surveying equipment, including GPS, reflectorless total stations, lasers, CAD programs, computers and data collectors with surveying and construction and grading software on various platforms.

Experience

Avenue 56 Agricultural Drain Relocation and Airport Boulevard Water Transmission Pipeline, Phase III, Coachella, California. *Coachella Valley Water District*. Project Surveyor. Michael Baker provided civil design and surveying services for the relocation of a 24-inch agricultural drain pipeline and a 30-inch domestic water pipeline in preparation of the Avenue 56/State Route 86 bridge crossing project for the Coachella Valley Water District. Survey and mapping services included horizontal and vertical control, conventional topography and right of way mapping.

Capital Improvement Projects, Palm Desert, California. Project Surveyor. In charge of directing all survey and control work to rehabilitate survey monumentation for public streets within the City of Palm Desert. The work included record research, initial boundary and control surveys, as well as replacing survey monuments and filing appropriate documents with agencies.

Avenue 42/Monroe Street Widening, Indio, California. Project Surveyor. Responsible for field operations to facilitate infrastructure improvements for one mile of street widening. Work included right-of-way acquisition, monument preservation, as-built surveys, and construction staking.

QUALIFICATIONS

Meet our team professional experience. Representative projects are presented, highlighting the Michael Baker Team's extensive, recent water experience. These projects demonstrate our ability to complete projects similar in magnitude and design requirements on schedule, in an efficient cost-effective manner using innovative design techniques. As shown on the following page, the representative projects presented involved many of the same professional design services that will be part of the Altitude Valves at San Gorgonio and Southwest Reservoirs project.

2060 Storage Tank Site, Moreno Valley, CA

Michael Baker was provided with topography and boundary conditions for conceptual planning of a 2.5 million gallon storage tank for Eastern Municipal Water District's 2060 pressure zone in Moreno Valley. Michael Baker provided three alternatives for tank siting, associated access road, and on-site detention basins in order to minimize grading operations and overall area for pipeline easements. Michael Baker utilized AutoCAD Civil 3D software in order to create a terrain surface and develop various alternatives with a fast turn-around for the client.

Ramsgate 1601 Pressure Zone Reservoirs Lake Elsinore, CA

Michael Baker provided engineering services for design of the Ramsgate Reservoir (1601 Pressure Zone), as part of Phase I water facilities that will serve the Ramsgate Planned Community in Lake Elsinore, California. The development consists of 3,695 residential units on approximately 5,790 acres of hilly terrain. The reservoir is a 2.5 MG welded steel, above grade reservoir and is located on the same lot as the 1701 / 1801 pump station. Design considerations included finish site grading, paving, and drainage, inlet/outlet line piping and appurtenances, including altitude valve flex-tend fitting (for reservoir protection in the event of an earthquake), tideflex mixing system to prevent water stagnation, isolation valves, water sampling station, and an RTU unit for communication with the command center. The facility design included review of the site soils report and development of a foundation/ring wall footing and anchoring system to withstand seismic Zone 4 loading conditions. The project was designed to Elsinore Valley Municipal Water District standards and required extensive agency and developer coordination.

Ramsgate 1801 Pressure Zone Reservoirs, Lake Elsinore, CA

Michael Baker provided engineering services for design of two bolted steel, 700,000-gallon tanks to supply water for the 1801 pressure zone. The reservoirs are part of Phase I water facilities that will serve the Ramsgate Planned Community in Lake Elsinore, California, that consists of 3,695 residential units on approximately 5,790 acres of hilly terrain. Design considerations included finish site grading, paving, access road, drainage, inlet/outlet line piping and appurtenances, including altitude valve flex-tend fitting (for reservoir protection in the event of an earthquake), site security, water sampling station, RTU unit for communication with the command center, motor-operated custom gate with card reader, and retaining wall. A passive tank mixing system was designed to improve the water quality and balancing between the two reservoirs. The facility design included review of the site soils report and development of a foundation and anchoring system to withstand seismic Zone 4 loading conditions. This fast-tracked project was designed within six months to meet the project schedule. In addition, new standards were developed with Elsinore Valley Municipal Water District during the design phase.

Chino Basin Desalter Authority 3 MG Welded Steel Tank , Riverside County, CA

Michael Baker provided engineering services to the Chino Basin Desalter Authority (CDA) for the expansion of the Chino I Desalter and design of the new Chino II Desalter, a $100 million dollar water supply infrastructure project spanning from the City of Chino Hills to the City of Ontario within both San Bernardino and Riverside Counties. As part of this multi-million dollar Project, Michael Baker designed a 3 MG welded steel reservoir at the Chino II Desalter site, which services as the treatment facility's clearwell and forebay to the 1110' Zone booster pump station. The Chino II Desalter is a 10 mgd treatment plant that treats groundwater high in TDS and nitrate through the use of reverse osmosis and anion exchange processes that operate in parallel, along with a bypass pipeline for blending. The three blended waters are mixed just upstream of the welded steel reservoir inlet, where caustic soda is added for pH and LSI adjustment, and sodium hypochlorite is added for disinfection. The reservoir includes a separate inlet and outlet with flex-tend flexible expansion joints provided, as well as an overflow and drain line which discharge to Day Creek Channel and equipped with a passive dechlorination system.

General Kearny Reservoirs No. 1 and 2, Riverside County, California

Michael Baker Consulting, a Michael Baker International Company, provided design engineering services (plans, specifications, and estimates) to the Rancho California Water District for a 7.7-MG steel reservoir and conversion of an existing 2.2-MG domestic water steel reservoir to a reclaimed water facility. This project also included site grading plans and design of 20-, 24-, and 30-inch reclaimed waterlines within existing streets.

REFERENCES

EMWD Contact: Greg Kowalski kowalskg@emwd.org 951/928-3777 Design started January 2016 Completion Date: March 2016	**2060 Storage Tank Site, Moreno Valley, CA** Michael Baker was provided with topography and boundary conditions for conceptual planning of a 2.5 million gallon storage tank for Eastern Municipal Water District's 2060 pressure zone in Moreno Valley. Michael Baker looked into three alternatives for tank siting, associated access road, and on-site detention basins in order to minimize grading operations and overall area for pipeline easements. Michael Baker utilized AutoCAD Civil 3D software in order to create a terrain surface and develop various alternatives with a fast turn-around for the client.
RCWD Contact: Jake Wiley, PE wileyj@ranchowater.com 951-296-6980 Design started November 2014 Construction Completion Anticipated June 2018	**Camino Sierra Pressure Zone Conversion Pipeline** Project entailed installation of 8 and 12-inch water distribution pipelines to convert existing low pressure services to higher pressure. A pressure regulating station was designed in order to negate the need for adding individual pressure regulator at each residence.
EVMWD Contact: Larry Rein, PE lrein@evmwd.net 951-674-3146 Design started May 2016 Construction Closeout March 2018	**Clay Canyon Tank A** Project entailed the refurbishment of the Clay Canyon Tank A in order to meet AWWA requirements for structural and operator safety. Seismic design parameters such as loading, overturning/uplift, anchorage requirements, and anchor bolt/chairs were calculated. Design anchors were designed along with safety hand railing for the tank's roof area.

FINANCIAL CAPACITY

Michael Baker submitted financial statement in a separate sealed envelope on April 12, 2018 Attn: Jennifer McCoy.

FEE PROPOSAL

City of Banning
Design of Altitude Valves and San Gorgonio and Southwest Reservoirs
Estimated Fees

	Approximate Person Hours							Total Estimated Hours	Labor Cost	Direct/Repro Subcontract Costs	Total Estimated Fee
	Principal QA/QC	Project Manager	Project Engineer	Designer Asst Eng	Survey (2-pers)	Mapper Srvyr (LS)	Admin				
	$ 260.00	$ 220.00	$ 165.00	$ 120.00	$ 265.00	$ 210.00	$ 90.00				
TASK 1 - Project Management/Meetings/Coordination											
Kick-off, Conference Call Review, Coordination	1	6	10				4	21	$ 3,590.00	$ 140.00	$ 3,730.00
SUBTOTAL AMOUNT:	1	6	10	0	0	0	4	21	$ 3,590.00	$ 140.00	$ 3,730.00
TASK 2 - Surveying/Mapping Services											
Record Base Map Preparation		2				16		18	$ 3,800.00	$ 300.00	$ 4,100.00
Supplemental Topographic Field Survey		4		8	24			36	$ 8,200.00	$ 250.00	$ 8,450.00
SUBTOTAL AMOUNT:	0	6	0	8	24	16	0	54	$ 12,000.00	$ 550.00	$ 12,550.00
TASK 3 - Plans, Specification, and Cost Estimate											
Initial Submittal	3	16	40	70				129	$ 19,300.00	$ 200.00	$ 19,500.00
Final Submittal	2	8	24	40				74	$ 11,040.00	$ 400.00	$ 11,440.00
SUBTOTAL AMOUNT:	5	24	64	110	0	0	0	203	$ 30,340.00	$ 600.00	$ 30,940.00
PROJECT TOTALS	**6**	**36**	**74**	**118**	**24**	**16**	**4**	**278**	**$ 45,930.00**	**$ 1,290.00**	**$ 47,220.00**

Opt Task 1											
Utility Research and Notification		1	4	8				13	$ 1,840.00	$ 25.00	$ 1,865.00
Opt Task 2											
Alt Location for Southwest Reservoir		2	6	16	8	4		36	$ 6,310.00	$ 50.00	$ 6,360.00
Opt Task 3											
Request for Information (5 RFI's)		2	4	4					$ 1,580.00	$ 50.00	$ 1,630.00
Shop Drawing Review (10)			10						$ 1,650.00	$ 100.00	$ 1,750.00
Record Drawings		2		16				18	$ 2,360.00	$ 400.00	$ 2,760.00

* **Michael Baker assumes that this is a prevailing wage project. Survey Field tasks will reflect this wage.**

APPENDIX

EX PARTE Communications Certification

Please indicate by signing below one of the following two statements. **Only sign one statement.** I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. 18-009 Design of Altitude Valves at San Gorgonio & Southwest Reservoirs RFP at any time after March 16, 2018.

R. B. Cuddy

OR

I certify that Proposer or Proposer's representatives have communicated after March 16, 2018 with a City Councilmember concerning the RFP No. 18-009 Design of Altitude Valves at San Gorgonio & Southwest Reservoirs RFP. A copy of all such communications is attached to this form for public distribution.

_____

Disclosure

DISCLOSURE OF GOVERNMENT POSITIONS

Michael Baker does not have any past or current business nor any personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

"None"

Disqualifications Questionnaire

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?
Yes _____ No __X___

If the answer is yes, explain the circumstances in the following space.

ADDENDUM NO. 1

REQUEST FOR PROPOSALS

FOR

RFP 18-009

Design of Altitude Valves at San Gorgonio & Southwest Reservoirs

CITY OF BANNING

PUBLIC WORKS DEPARTMENT

RFP Released on March 16, 2018

The referenced document has been modified as per the attached **Addendum No. 1**

Please sign this Addendum where designated and include the executed copy with submission of your proposal. This addendum is hereby made part of the referenced request for proposals as though fully set forth therein. Addendum also to be acknowledged on PlanetBids.

Any questions regarding this addendum should be addressed through the Planet Bids Q&A tab.

Addendum No. 1

This Addendum formally extends the proposal due date to **April 13, 2018 at 10:00 a.m.**

Other clarifications are as follows:

3. SCOPE OF WORK
Add task:
e) Identify and show necessary conduits and junctions boxes from altitude valves to nearest telemetry panel for future SCADA integration by others. No SCADA programming or design will be a part of this contract.

6. EVALUATION CRITERIA
Replace 3. Price Proposal in its entirety:

3. Price Proposal-----40%

Price Proposals will be evaluated on the basis of the Total Estimated Price submitted through Planet Bids for the base scope of work.

Additional Documents Provided:

EXHIBIT E – Brinton Reservoir Record Drawings
EXHIBIT F – Southwest Reservoir Construction Drawings
EXHIBIT G – Tank Inspection Reports
EXHIBIT H – San Gorgonio Reservoirs Site Topo

Answers to Questions Received through Planet Bids:

1. **Was a geotechnical study performed as part of the previous design? If so, can the geotechnical report be provided?**
   No geotechnical study was performed as part of the previous design. If one is recommended, it can be included in the proposal as an optional task.

2. **Can any previous reservoir inspection records and repair/maintenance records be provided?**
   Yes. Tank cleaning/repair and inspection reports from November 2017 will be included as part of Addendum No. 1.

3. **Can the original tank fabrication drawings and record drawings be provided for each site?**
   Record drawings for Brinton Reservoir and construction drawings for Southwest Reservoir will be made available as part of Addendum 1. No record drawings are available for the three San Gorgonio tanks.

4. **RFP 18-009 p. 6 – Can you clarify the "online rate form" that is to be submitted? Is this the PlanetBids "Line Items" form or is there a separate form? Is there a task list that the City wishes to use or can bidders use their own task breakdown?**
   The online rate form is the Planet bids "Line Items" form. You may add your own task breakdown into your proposal but please be sure to also fill out the "Line Items" tab on planet bids failure to do so will result in disqualification of bid.

All other provisions of the request for proposals shall remain in their entirety.

Vendors hereby acknowledge receipt and understanding of the above Addendum. Complete and submit this Addendum with your proposal.

Michael Boeck 4/13/18

Signature Date

Michael Boeck, PE. Project Manager

Typed Name and Title

Michael Baker International Inc.

Company Name

40810 County Center Drive, Suite 200

Address

Temecula, CA 92591

City State Zip

ATTACHMENT 4

Professional Services Agreement

DESIGN SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

MICHAEL BAKER INTERNATIONAL, INC.

AGREEMENT FOR DESIGN SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
MICHAEL BAKER INTERNATIONAL, INC.

THIS AGREEMENT FOR DESIGN SERVICES (herein "Agreement") is made and entered into this 10th day of September, 2018 (the "Effective Date") by and between the **CITY OF BANNING, a municipal corporation** ("City") and **MICHAEL BAKER INTERNATIONAL, INC., a Pennsylvania corporation qualified to do business in California** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties.".

RECITALS

A. City issued a Request for Proposals No. *RFP #18-009* or Invitation for Bids, the performance of Design for Altitude Valves at San Gorgonio & Southwest Reservoirs prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant represents that it is fully qualified to perform such services by virtue of its experience and the training, education and expertise of its principals and employees.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. City desires to retain Consultant as an independent contractor and Consultant desires to serve City to perform these services in accordance with the terms and conditions of this Agreement

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

Consultant shall perform the services described in the Scope of Services (the "Services") for Design of Altitude Valves at San Gorgonio and Southwest reservoirs, attached as Exhibit A. City may request, in writing, changes in the Scope of Services to be performed. Any changes mutually agreed upon by the Parties, and any increase or decrease in compensation, shall be incorporated by written amendments to this Agreement.

1.2 Consultant's Proposal.

If applicable, this Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all Services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain and maintain during the Agreement term, at its sole cost and expense, all necessary licenses, permits, certificates and approvalsrequired by law for the performance of the Services under this Agreement, including a business license. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the Services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the Services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of Services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the Services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at Consultant's own risk until written instructions are received from the City Representative.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Standard of Performance.

Consultant shall perform all Services under this Agreement in accordance with the standard of care generally exercised by like professionals under similar circumstances and in a manner reasonably satisfactory to City.

1.8 Additional Services.

City shall have the right at any time during the performance of the Services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the City Representative to the Consultant, incorporating therein any adjustment in (i) the Maximum Compensation, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Maximum Compensation or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the City Representative. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to Services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the Services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the Services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

1.11 Party Representatives.

For the purposes of this Agreement, the City Representative shall be the City Manager, or such other person designated in writing by the City Manager (the "City Representative"). For the purposes of this Agreement, the Consultant Representative shall be Michael Boeck, Project

Manager (the "Consultant Representative"). The Consultant Representative shall directly manage Consultant's Services under this Agreement. Consultant shall not change the Consultant Representative without City's prior written consent.

1.12 Time for Performance.

Consultant shall commence the Services on the Effective Date and shall perform all Services by the deadline established by the City Representative or, if no deadline is established, with reasonable diligence.

1.13 Personnel.

Consultant has, or will secure at its own expense, all personnel required to perform the Services required under this Agreement. All of the Services required under this Agreement shall be performed by Consultant or under its supervision, and all personnel engaged in the work shall be qualified to perform such Services.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Compensation.

Subject to any limitations set forth in this Agreement, as full compensation for Services satisfactorily rendered, City shall pay Consultant at rates set forth in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. In no event shall Consultant be paid more than $55,225.00 (the "Maximum Compensation").

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the Services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Maximum Compensation or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

City shall only reimburse Consultant for those actual and necessary expenses expressly set forth in Exhibit "C". Reimbursable Expenses may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the City Representative in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Maximum Compensation shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the Services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Unauthorized Services and Expenses.

City will not pay for any services not specified in the Scope of Services, unless the City Council or the City Representative, if applicable, and the Consultant Representative authorize such services in writing prior to Consultant's performance of those services or incurrence of additional expenses. Any additional services or expenses authorized by the City Council or the City Representative shall be compensated at the rates set forth in Exhibit C, or, if not specified, at a rate mutually agreed to by the Parties. City shall make payment for additional services and expenses in accordance with Article 2 of this Agreement.

2.5 Invoices.

Consultant shall submit to City an original invoice, on a monthly basis, for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

2.6 Waiver.

No delay or omission to exercise any right, power or remedy accruing to City under this Agreement shall impair any right, power or remedy of City, nor shall it be construed as a waiver of, or consent to, any breach or default. No waiver of any breach, any failure of a condition, or any right or remedy under this Agreement shall be (1) effective unless it is in writing and signed by the Party making the waiver, (2) deemed to be a waiver of, or consent to, any other breach, failure of a condition, or right or remedy, or (3) deemed to constitute a continuing waiver unless the writing expressly so states.

2.7 Audit of Records.

Consultant shall make all records, invoices, time cards, cost control sheets and other records maintained by Consultant in connection with this Agreement available during Consultant's regular working hours to City for review and audit by City.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a Party of the benefits of any grace or use period allowed in this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the Services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all Services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the City Representative but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the Services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the City Representative in writing of the causes of the delay. The City Representative shall ascertain the facts and the extent of delay, and extend the time for performing the Services for the period of the enforced delay when and if in the judgment of the City Representative such delay is justified. The City Representative's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

The term of this Agreement shall be from the Effective Date through September 10, 2021, unless sooner terminated as provided in Article 7 of this Agreement or extended, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

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

Michael Boeck	Project Manager
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the Services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform Services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the Services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the Services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 City Representative.

It shall be the Consultant's responsibility to assure that the City Representative is kept informed of the progress of the performance of the Services and the Consultant shall refer any decisions which must be made by City to the City Representative. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the City Representative. The City Representative shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Contractor.

Consultant is an independent contractor and not an employee of the City. All Services provided pursuant to this Agreement shall be performed by Consultant or under its supervision. Consultant will determine the means, methods, and details of performing the Services. Any additional personnel performing Services under this Agreement on behalf of Consultant shall also not be employees of City and shall at all times be under Consultant's exclusive direction and

control. Consultant shall pay all wages, salaries, and other amounts due such personnel in connection with their performance of Services under this Agreement and as required by law. Consultant shall be responsible for all reports and obligations respecting such additional personnel, including, but not limited to: social security taxes, income tax withholding, unemployment insurance, disability insurance, and workers' compensation insurance.

Consultant shall indemnify and hold harmless City and its elected officials, officers, employees, servants, designated volunteers, and agents serving as independent contractors in the role of City officials, from any and all liability, damages, claims, costs and expenses of any nature to the extent arising from Consultant's personnel practices. City shall have the right to offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this Section.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the Services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Minimum Scope and Limits of Insurance.

Consultant shall procure and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of $2,000,000.00 per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of $2,000,000.00 per project or location. If Consultant is a limited liability company, the commercial general liability coverage shall be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of $2,000,000.00 per accident for bodily injury and property damage. If Consultant does not use any owned, non-owned or hired vehicles in the performance of Services under this Agreement, Consultant shall

obtain a non-owned auto endorsement to the Commercial General Liability policy required under subparagraph 5.1.1 of this Section.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of $1,000,000.00 per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant shall execute a declaration that it has no employees.

4) Professional Liability/Errors and Omissions Insurance with minimum limits of $2,000,000.00 per claim and in aggregate.

5.2 Acceptability of Insurers.

The insurance policies required under this Section shall be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide. Self insurance shall not be considered to comply with the insurance requirements under this Section.

5.3 Additional Insured.

The commercial general and automobile liability policies shall contain an endorsement naming City, its officers, employees, agents and volunteers as additional insureds.

5.4 Primary and Non-Contributing.

The insurance policies required under this Section shall apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to City. Any insurance or self-insurance maintained by City, its officers, employees, agents or volunteers, shall be in excess of Consultant's insurance and shall not contribute with it.

5.5 Consultant's Waiver of Subrogation.

The insurance policies required under this Section shall not prohibit Consultant and Consultant's employees, agents or subcontractors from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against City.

5.6 Deductibles and Self-Insured Retentions.

Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, Consultant shall either reduce or eliminate the deductibles or self-insured retentions with respect to City, or Consultant shall procure a bond guaranteeing payment of losses and expenses.

5.7 Cancellations or Modifications to Coverage.

Consultant shall not cancel, reduce or otherwise modify the insurance policies required by this Section during the term of this Agreement. The commercial general and automobile liability

policies required under this Agreement shall be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to City. If any insurance policy required under this Section is canceled or reduced in coverage or limits, Consultant shall, within two Business Days of notice from the insurer, phone, fax or notify City via certified mail, return receipt requested, of the cancellation of or changes to the policy.

5.8 City Remedy for Noncompliance.

If Consultant does not maintain the policies of insurance required under this Section in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements under this Section, City may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, City may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant shall promptly reimburse City for any premium paid by City or City may withhold amounts sufficient to pay the premiums from payments due to Consultant.

5.9 Evidence of Insurance.

Prior to the performance of Services under this Agreement, Consultant shall furnish the City Clerk with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Section. The endorsements are subject to City's approval. Consultant may provide complete, certified copies of all required insurance policies to City. Consultant shall maintain current endorsements on file with the City Clerk. Consultant shall provide proof to the City Clerk that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant shall furnish such proof at least two weeks prior to the expiration of the coverages.

5.10 Indemnity Requirements not Limiting.

Procurement of insurance by Consultant shall not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify City under this Agreement.

5.11 Subcontractor Insurance Requirements.

Consultant shall require each of its subcontractors that perform Services under this Agreement to maintain insurance coverage that meets all of the requirements of this Section.

5.12 Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action,

proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Liabilities"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The

indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and Services performed hereunder (the "books and records"), as shall be necessary to perform the Services required by this Agreement and enable the City Representative to evaluate the performance of such Services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The City Representative shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the Services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the City Representative such reports concerning the performance of the Services required by this Agreement as the City Representative shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and Services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or Services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the CCity Representative of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the City Representative or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights

of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) Consultant covenants that all data, reports, documents, discussion, or other information (collectively "Data") developed or received by Consultant or provided for performance of this Agreement are deemed confidential and shall not be disclosed or released by Consultant without prior written authorization by City. City shall grant such authorization if applicable law requires disclosure. Consultant, its officers, employees, agents, or subcontractors shall not without written authorization from the City Manager or unless requested in writing by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement or relating to any project or property located within the City. Response to a subpoena or court order shall not be considered "voluntary," provided Consultant gives City notice of such court order or subpoena.

(b) Consultant shall promptly notify City should Consultant, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed thereunder or with respect to any project or property located within the City. City may, but has no obligation to, represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, City's right to review any such response does not imply or mean the right by City to control, direct or rewrite the response.

(c) All Data required to be furnished to City in connection with this Agreement shall become City's property, and City may use all or any portion of the Data submitted by Consultant as City deems appropriate. Upon completion of, or in the event of termination or suspension of this Agreement, all original documents, designs, drawings, maps, models, computer files containing data generated for the Services, surveys, notes, and other documents prepared in the course of providing the Services shall become City's sole property and may be used, reused or otherwise disposed of by City without Consultant's permission. Consultant may take and retain copies of the written products as desired, but the written products shall not be the subject of a copyright application by Consultant.

(d) Consultant's covenants under this Section shall survive the expiration or termination of this Agreement.

(e)

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement, and any dispute arising from the relationship between the Parties to this Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. In addition to the right to terminate pursuant to Section 7.8, if the City Manager determines that Consultant is in default in the performance of any of the terms or conditions of this Agreement, City may serve Consultant with written notice of the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively ten calendar days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default within the time to cure as established by the City, the City may, notwithstanding any other provision of this Agreement, terminate this Agreement without further notice and without prejudice to any other remedy to which it may be entitled by law, in equity or under this Agreement. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or Services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable ($0.00) as liquidated damages for each working day of delay in the performance of any Service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of Services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement, at will, for any reason or no reason, upon giving written notice to Consultant at least five (5) calendar days before the termination is to be effective, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the City Representative. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice

to City Upon receipt of any notice of termination, Consultant shall immediately cease all work hereunder except such as may be specifically approved by the City Representative. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all Services rendered prior to the effective date of the notice of termination and for any services authorized by the City Representative thereafter in accordance with the Schedule of Compensation or such as may be approved by the City Representative, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2. In no event shall Consultant be entitled to receive more than the amount that would be paid to Consultant for the full performance of the Services required by this Agreement. Consultant shall have no other claim against City by reason of such termination, including any claim for compensation.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the Services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

In any litigation or other proceeding by which a Party seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be entitled to recover all attorneys' fees, experts' fees, and other costs actually incurred in connection with such litigation or other proceeding, in addition to all other relief to which that Party may be entitled.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant and its officers, employees, associates and subcontractors, if any, shall comply with all conflict of interest statutes of the State of California applicable to Consultant's Services under this Agreement, including the Political Reform Act (Gov. Code § 81000, et seq.) and Government Code Section 1090. During the term of this Agreement, Consultant may perform similar Services for other clients, but Consultant and its officers, employees, associates and

subcontractors shall not, without the City Representative's prior written approval, perform work for another person or entity for whom Consultant is not currently performing work that would require Consultant or one of its officers, employees, associates or subcontractors to abstain from a decision under this Agreement pursuant to a conflict of interest statute. Consultant shall incorporate a clause substantially similar to this Section into any subcontract that Consultant executes in connection with the performance of this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or Services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, bill, invoice, report or other communication required or permitted under this Agreement shall be in writing and conclusively deemed effective: (a) on personal delivery, (b) on confirmed delivery by courier service during Consultant's and City's regular business hours, or (c) three Business Days after deposit in the United States mail, by first class mail, postage prepaid, and addressed to the Party to be notified as set forth below:

If to City:

Attn: City Manager
City of Banning
99 East Ramsey Street
Banning, California 92220
Email:
With a courtesy copy to:

Kevin G. Ennis, City Attorney

If to Consultant:

_____
_____
_____
_____
_____

Richards, Watson & Gershon
355 South Grand Avenue, 40th Floor
Los Angeles, CA 90071
Telephone: (213) 626-8484
Email: kennis@rwglaw.com

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in multiple counterparts, all of which shall be deemed an original, and all of which shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement and all exhibits referred to in this Agreement constitute the final, complete and exclusive statement of the terms of the agreement between the Parties pertaining to the subject matter of this Agreement and supersede all other prior or contemporaneous oral or written understandings and agreements of the Parties. No Party has been induced to enter into this Agreement by, nor is any Party relying on, any representation or warranty except those expressly set forth in this Agreement. This Agreement may not be amended, nor any provision or breach hereof waived, except in a writing signed by both Parties.

9.5 Severability.

If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable for any reason, the validity of and enforceability of the remaining provisions of this Agreement shall not be affected and continue in full force and effect.

9.6 Mutual Cooperation.

(a) City's Cooperation. City shall provide Consultant with all pertinent Data, documents and other requested information as is reasonably available for Consultant's proper performance of the Services required under this Agreement.

(b) Consultant's Cooperation. In the event any claim or action is brought against City relating to Consultant's performance of Services rendered under this Agreement, Consultant shall render any reasonable assistance that City requires.

9.7 No Third Party Beneficiaries Intended.

This Agreement is made solely for the benefit of the Parties to this Agreement and their respective successors and assigns, and no other person or entity may have or acquire a right by virtue of this Agreement.

9.8 Final Payment Acceptance Constitutes Release.

The acceptance by Consultant of the final payment made under this Agreement shall operate as and be a release of City from all claims and liabilities for compensation to Consultant for anything done, furnished or relating to Consultant's work or Services. Acceptance of payment shall be any negotiation of City's check or the failure to make a written extra compensation claim within ten calendar days of the receipt of that check. However, approval or payment by City shall not constitute, nor be deemed, a release of the responsibility and liability of Consultant, its employees, subcontractors and agents for the accuracy and competency of the information provided and/or work performed; nor shall such approval or payment be deemed to be an assumption of such responsibility or liability by City for any defect or error in the work prepared by Consultant, its employees, subcontractors and agents.

9.9 Corrections.

In addition to the above indemnification obligations, Consultant shall correct, at its expense, all errors in the work which may be disclosed during City's review of Consultant's report or plans. Should Consultant fail to make such correction in a reasonably timely manner, such correction may be made by City, and the cost thereof shall be charged to Consultant. In addition to all other available remedies, City may deduct the cost of such correction from any retention amount held by City or may withhold payment otherwise owed Consultant under this Agreement up to the amount of the cost of correction.

9.10 Non-Appropriation of Funds.

Payments to be made to Consultant by City for Services performed within the current fiscal year are within the current fiscal budget and within an available, unexhausted fund. In the event that City does not appropriate sufficient funds for payment of Consultant's Services beyond the current fiscal year, this Agreement shall cover payment for Consultant's Services only to the

conclusion of the last fiscal year in which City appropriates sufficient funds and shall automatically terminate at the conclusion of such fiscal year.

9.11 Exhibits.

Exhibits A, B, C, and D constitute a part of this Agreement and are incorporated into this Agreement by this reference. If any inconsistency exists or arises between a provision of this Agreement and a provision of any exhibit, or between a provision of this Agreement and a provision of Consultant's proposal, the provisions of this Agreement shall control.

9.12 Headings.

The headings in this Agreement are included solely for convenience of reference and shall not affect the interpretation of any provision of this Agreement or any of the rights or obligations of the Parties to this Agreement.

9.13 Word Usage.

Unless the context clearly requires otherwise, (a) the words "shall," "will" and "agrees" are mandatory and "may" is permissive; (b) "or" is not exclusive; and (c) "includes" or "including" are not limiting.

9.14 Business Days.

"Business Days" means days Banning City Hall is open for business.

9.15 Corporate Authority.

Each person executing this Agreement on behalf of his or her Party warrants that he or she is duly authorized to execute this Agreement on behalf of that Party and that by such execution, that Party is formally bound to the provisions of this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

The Parties, through their duly authorized representatives are signing this Agreement on the date stated in the introductory clause.

CITY OF BANNING:

_____
Rochelle Clayton, Interim City Manager

CONSULTANT:

By: _____
NAME: John D. Tanner, III, PE
TITLE: Vice President/Office Manager

By: _____
NAME:
TITLE:

ATTEST:

_____
Sonja De La Fuente, Deputy City Clerk

25-1228638
Tax ID No.

APPROVED AS TO FORM:
Richards, Watson, Gershon

_____
Kevin G. Ennis, Esq., City Attorney

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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 2, 2018 before me, Tina Anthony Notary Public, personally appeared John D. Tanner, III, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____
Tina Anthony, Notary Public
Commission Exp. Nov. 25, 2019

TINA ANTHONY
Commission # 2131992
Notary Public - California
Riverside County
My Comm. Expires Nov 25, 2019

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☒ CORPORATE OFFICER
  Vice President/Office Manager
  TITLE(S)
- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

Design Services Agreement
TITLE OR TYPE OF DOCUMENT

22 Pages - Agreement
NUMBER OF PAGES

August 2, 2018
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following services in connection with providing Design of Altitude Valves at San Gorgonio & Southwest Reservoirs prepared in connection therewith:

A. Task 1: Project management/Meetings/Coordination

- Kick-off meeting
- Coordination Meeting and Correspondence

B. Task 2: Surveying/Mapping Services

- Record Base Map Preparation

C. Task 3: Plans, Specification, and Cost Estimate

- Design plans
- Cost Estimate

D. Task 4 (optional): Utility Research and Notification

- Research of existing utilities using a Dig-Alert web search for known utility purveyors along the pipeline corridors
- Prepared letters (Word) to each purveyor requesting record drawings in the project area.

E. Task 5 (optional): Bidding and Construction Phase Support

- Request for Information (RFI's)
- Shop Drawing Review
- Record Drawings

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

A. Preliminary Record Data Map

B. Supplemental Topographic Field Survey

C. Updated site plans and specifications and provide City with red-lined document.

D. Initial Submittal

- One (1) 24" x 36" hard copy plan sets on bond of paper.
- Three (3) 11" x 17" half sized copies.
- Two (2) bound copies of the specification document.
- One (1) copy of the engineer's cost estimate.
- An electronic copy (PDF) of plans, specifications.

E. Final Submittal

- One (1) 24" x 36" Mylar plan set signed by a registered civil engineer.
- One (1) unbound set of the specification document.
- One (1) copy of the engineer's cost estimate.

F. Electronic files (PDF) of plans (Auto CAD), specifications (Word), Cost estimate (Excel).

III. In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City appraised through periodic status reports regarding the performance of the services under this Agreement by the following means:

A. In-person meetings.

B. Email updates/questions to applicant team and City while reviews are underway.

C. Conference calls.

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

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

A. Ronald B. Craig, Principal in Charge

B. Michael J. Boeck, P.E., Project Manager

C. Daniel G. Smith, P.E. , QA/QC

D. Miles Costanza, Project Engineer

E. Christopher L. Alberts, P.L.S., Survey and Mapping Manager

- The immediate area near the Southwest Reservoir has limited space. Addition of an altitude valve near the reservoir would require the access road to be shut down during construction. The road is shared by Edison. Edison would allow such a closure given a practical time line for construction and schedule. Another option is to place the valve near the open space area adjacent to the residential Tract. This would require a conduit run and equalizing line from the altitude valve to the reservoir.



Placing the altitude within a vault in the access road could be performed using a traffic rated lid. However, access to the valve may be limited should the road be used by Edison at the same time. Another option is to place the valve in a bench area near the side of the hillside. The three alternatives will be cost estimated and provided to the City for a determination. The ultimate solution may come down to the operability and accessibility for staff. As the initial plan was to include the altitude valve in the access road, an optional item to survey the area near the access road entry will be provided separately.

SCOPE OF WORK

The following scope highlights specific items as requested in the RFP that should be completed at a minimum. Our approach is to work closely and coordinate with the City in order to provide a thorough set of design plans for contractor bidding.

Task 1: Project Management/Meetings/Coordination

Kick-Off: Michael Baker will attend a kick-off meeting with City staff to discuss the parameters of the project and discuss any concerns related to the design. Review and red-line comments of the previously prepared plans will be performed with City staff during the kick-off meeting.

Coordination Meeting and Correspondence: Michael Baker's Project Manager or Project Engineer will meet with the City to discuss the progress status of the project once plans are developed incorporating the red-lined comments. Time for correspondence updates (conference calls and emails) have also been budgeted to discuss the design and comments from staff.

Task 2: Surveying/Mapping Services

Record Base Map Preparation: Michael Baker will plot the record position of the project boundary for the reservoirs in approximate orientation with a specific coordinate system, compiled aerial topographic base data or other overlay features, Michael Baker will perform the following tasks:

- Research of the available public records via on-line services to obtain maps and other items that affect the boundary location of the property;
- Prepare a preliminary record data map to be used by the field survey crew to search for a sampling of boundary monuments;

- Perform a field survey of said monuments in order to establish orientation of the record survey data in relation to the coordinate system used in the topographic mapping;
- Plot the record boundary lines on the aerial base map, with the understanding that said record boundary is NOT the result of a comprehensive boundary survey and analysis, and that it's orientation may disagree substantially from the position determined by a full boundary survey and analysis;
- The budget for this scope of work is based upon an assumption that adequate and accessible boundary monumentation exists in the immediate project vicinity to control this survey.

Supplemental Topographic Field Survey: Michael Baker will provide an existing conditions survey to obtain the following information:

- Date to compile a topographic map of the northerly portion of the Southwest Reservoir site at a scale of 1" =40', with one-foot contour intervals. The location of the following ground surface and/or visible above ground items will be the primary target of this survey:
    - Water meters
    - Manholes rims and inverts
    - Electrical and other above ground dry utility items
    - Culverts and visible storm drain system items (rims and inverts)
- Spot check the provided topographic CAD file for the San Gorgonio Reservoir Site.
- Survey High Water Levels of the Southwest, San Gorgonio (1, 2, and 3 tanks), and Brinton Reservoirs. City's operational staff must be present in order to provide any access for the tank or provide visual markers in order for survey to capture these levels.

Task 3: Plans, Specification, and Cost Estimate

Michael Baker will prepare design plans incorporating the information obtained from Tasks 1 and 2, as well as the previous design efforts performed by a previous engineer. This plan assumes that the altitude valve for the Southwest Reservoir will be placed within the access road. The anticipated plan set is as follows:

1 Cover Sheet, Vicinity Map, Index of Drawings
2 Construction Notes, Site Plan(s), Abbreviations, Legend, Sequence of Work
3 San Gorgonio Site Plan
4 San Gorgonio Profiles
5 Southwest Site Plan and Profile
6 Detail Sheet 1
7 Detail Sheet 2

The specification package will also incorporate items previously prepared along with additional sections or changes as discussed during the kick-off meeting. It is recommended that the City's latest specification template be provided during the kick-off meeting.

A cost estimate will be prepared using the bid schedule as shown in the specification package.

This task includes two main submittal deliverables to the City. An initial submittal for the City to back check comments provided at the kick-off meeting and to provide any additional comments before finalizing the package. A final submittal will incorporate these comments and will be issued for construction bidding.

The initial submittal includes the following:

- One (1) 24" x 36" hard copy plan sets on bond paper.
- Three (3) 11" x 17" half sized copies.
- Two (2) bound copies of the specification document.
- One (1) copy of the engineer's cost estimate.
- An electronic copy (PDF) of plans, specifications

The final submittal includes the following:

- One (1) 24" x 36" mylar plan set signed by a registered civil engineer.
- One (1) unbound set of the specification document.
- One (1) copy of the engineer's cost estimate.
- Electronic files (PDF) of plans (AutoCAD), specifications (Word), cost estimate (Excel)

Optional Items

Optional Task 1 Utility Research and Notification

Michael Baker will research existing utilities using a Dig-Alert web search for known utility purveyors along the pipeline corridors. Michael Baker will provide the City with prepared letters in a Word Document to each purveyor requesting record drawings in the project area. Michael Baker has found that the utility purveyors will not charge processing fees when a direct request for plans and as-builts comes from a municipality, but will charge should a consultant request the information. Request from consultants are also executed in the order in which some purveyors receive them, which could cause a delay. A direct request from the City will provide a savings in both time and budget. Utilizing the as-built plans from the purveyors, existing facilities will be plotted in the CAD files.

Optional Task 2 Alternative Altitude Valve Location for Southwest Reservoir

This optional task will provide an additional plan sheet to Task 3 allowing for an alternative plan and profile design of placing the altitude valve above ground in the open space area near the residential housing tract. This task incorporates additional survey field time to collect topography of the area as well as design details that will defer from the rest of the below ground/vaulted valves. This task assumes that property will be made available for the placement of the valving and any conduit runs to support the altitude valve. Easements can be prepared for an additional scope and fee.

Optional Task 3 Bidding and Construction Phase Support

Request for Information (RFI's)

Michael Baker will provide five (5) RFI's associated with plan interpretation and consultation during the bidding phase.

Shop Drawing Review

Michael Baker will review shop drawings submitted by the Contractor for compliance with the project specifications and plans. The review shall not exceed two weeks. Michael Baker will create a log and track shop drawing submittals. This task includes the review of ten (10) shop drawings.

Record Drawings

Michael Baker will prepare record drawings (as-builts) when construction work has been completed and accepted by the City. As-builts will consist of making changes in CAD format and re-printing and signing of mylars. It is assumed that Contractor red lines will be supplied to Michael Baker. For budgetary purposes, it is assumed that 16 hours will be required for a designer to provide CAD changes. This task is provided as a time and materials basis. Additional time may be required to complete the changes depending on the level of redlines provided.

EXCLUSIONS

The proposed scope of work does not include the following tasks, which may be completed if negotiated under a separate authorization for an additional fee; but are presently specifically excluded from this agreement:

- Traffic Control Plans
- Geotechnical Investigations
- Potholing
- "As-constructed" Surveys
- Construction Staking
- Construction Phase Support
- Construction Management Support
- QSD/QSP or related SWPPP Documents
- Easement Preparation

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks ("Tasks") at the following rates

TASK	DESCRIPTION	SUB-BUDGET
1.	Kick-off, Conference Call Review, Coordination	$3,730.00
2.	Record Base Map Preparation	$4,100.00
3.	Supplemental Topography Field Survey	$8,450.00
4.	Initial Submittal	$19,500.00
5.	Final Submittal	$11,440.00
6.	Utility Research and Notification	$1,865.00
7.	Request for Information (5 RFI's)	$1,630.00
8.	Shop Drawing Review (10)	$1,750.00
9.	Record Drawings	$2,760.00
	TOTAL	**$55,225.00**

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the City Representative, funds may be shifted from one Task sub-budget to another so long as the Maximum Compensation is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.

V. The total compensation for services shall not exceed $55,225.00 as provided in Section 2.1 of this Agreement.

VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"
CONSULTANT'S BILLING RATE AND TASK SCHEDULE

FEE PROPOSAL

City of Banning
Design of Altitude Valves and San Gorgonio and Southwest Reservoirs
Estimated Fees

	Approximate Person Hours							Total Estimated Hours	Labor Cost	Direct/Repro Subcontract Costs	Total Estimated Fee
	Principal QA/QC	Project Manager	Project Engineer	Designer Asst Eng	Survey (2-pers)	Mapper Srvyr (LS)	Admin				
	$ 260.00	$ 220.00	$ 165.00	$ 120.00	$ 265.00	$ 210.00	$ 90.00				
TASK 1 - Project Management/Meetings/Coordination											
Kick-off, Conference Call Review, Coordination	1	6	10				4	21	$ 3,590.00	$ 140.00	$ 3,730.00
SUBTOTAL AMOUNT:	1	6	10	0	0	0	4	21	$ 3,590.00	$ 140.00	$ 3,730.00
TASK 2 - Surveying/Mapping Services											
Record Base Map Preparation		2				16		18	$ 3,800.00	$ 300.00	$ 4,100.00
Supplemental Topographic Field Survey		4		8	24			36	$ 8,200.00	$ 250.00	$ 8,450.00
SUBTOTAL AMOUNT:	0	6	0	8	24	16	0	54	$ 12,000.00	$ 550.00	$ 12,550.00
TASK 3 - Plans, Specification, and Cost Estimate											
Initial Submittal	3	16	40	70				129	$ 19,300.00	$ 200.00	$ 19,500.00
Final Submittal	2	8	24	40				74	$ 11,040.00	$ 400.00	$ 11,440.00
SUBTOTAL AMOUNT:	5	24	64	110	0	0	0	203	$ 30,340.00	$ 600.00	$ 30,940.00
PROJECT TOTALS	**6**	**36**	**74**	**118**	**24**	**16**	**4**	**278**	**$ 45,930.00**	**$ 1,290.00**	**$ 47,220.00**

Opt Task 1											
Utility Research and Notification		1	4	8				13	$ 1,840.00	$ 25.00	$ 1,865.00
Opt Task 2											
Alt Location for Southwest Reservoir		2	6	16	8	4		36	$ 6,310.00	$ 50.00	$ 6,360.00
Opt Task 3											
Request for Information (5 RFI's)		2	4	4					$ 1,580.00	$ 50.00	$ 1,630.00
Shop Drawing Review (10)			10						$ 1,650.00	$ 100.00	$ 1,750.00
Record Drawings		2		16				18	$ 2,360.00	$ 400.00	$ 2,760.00

' **Michael Baker assumes that this is a prevailing wage project. Survey Field tasks will reflect this wage.**

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. **Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the City Representative. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the City Representative.**

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

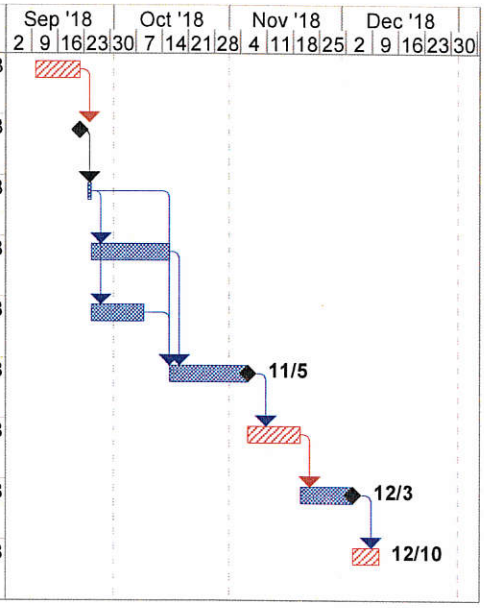
A. Proposed Project Schedule – Attached as Exhibit D-1.

III. **TheCity Representative may approve extensions for performance of the services in accordance with Section 3.2.**

EXHIBIT "D-1"
PROPOSED PROJECT SCHEDULE

Project Schedule

Task Name	Duration	Start	Finish
Award	2 wks	Mon 9/10/18	Fri 9/21/18
Notice to Proceed	0 days	Fri 9/21/18	Fri 9/21/18
Kick-off Meeting	1 day	Mon 9/24/18	Mon 9/24/18
Utility Research (Optional)	3 wks	Tue 9/25/18	Mon 10/15/18
Survey Base Mapping/Initial Shots	2 wks	Tue 9/25/18	Mon 10/8/18
Plans/Specs/Cost Estimate (Initial Submittal)	3 wks	Tue 10/16/18	Mon 11/5/18
City Review	2 wks	Tue 11/6/18	Mon 11/19/18
Plans/Specs/Cost Estimate Final Submittal	2 wks	Tue 11/20/18	Mon 12/3/18
City to Final Review and Bid	1 wk	Tue 12/4/18	Mon 12/10/18



Michael Baker Task
Milestone
Summary
Outside Agency
City Review
Progress

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CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT

TO: **BANNING UTILITY AUTHORITY**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Art Vela, Director of Public Works/City Engineer**
Tammi Phillips, Management Analyst

MEETING DATE: **September 10, 2018**

SUBJECT: **Resolution 2018-13 UA, Approving the Award of a Professional Services Contract for the Design of Well C-8 to Hazen and Sawyer of Palm Desert, CA for Fiscal Years 2018/2019 and 2019/2020 in the Amount of $671,296, and Establishing a $25,000 Project Contingency**

RECOMMENDATION:

The Banning Utility Authority adopt Resolution 2018-13 UA:

1. Approving an agreement with Hazen and Sawyer of Palm Desert, CA for the Design and Inspection Services for the City of Banning Well C-8, Project No. 2018-02W in the amount of $671,296 for Fiscal Years 2018/2019 and 2019/2020.

2. Authorizing the Interim City Manager or her designee to execute the Agreement with Hazen and Sawyer.

3. Establishing a $25,000 Project Contingency and Authorizing the Interim City Manager to Execute Amendments to the Agreement within the Contingency Amount.

BACKGROUND:

The City of Banning currently owns a 1.34 acre-property adjacent to Roosevelt Williams Park, comprised of APNs 541-045-018 and -019, overlying the Cabazon Basin. To supplement existing production facilities, the City wishes to drill and equip an approximately 2,000 gpm municipal well. Design of all offsite improvements associated with Well C-8, including water mains, sewer connection, pump-to-waste piping, and electrical service will be included in this project.

In addition to design, the City wishes to have the same firm perform inspection and construction management services, which will streamline the project as this removes the need to have City staff coordinate among several different consultants.

A Request for Qualifications (RFQ) was prepared and advertised on March 30, 2018. Five proposals were received and Hazen and Sawyer was ranked the highest by the evaluation committee.

Proposer	Total Score	Rank
Hazen and Sawyer	417.5	1
Michael Baker International	402.5	2
Tetra Tech	397.5	3
Albert A. Webb	380.0	4
CivilSource, Inc.	365.0	5

The Qualifications Based Selection (QBS) method was used, due to the high price tag of the anticipated construction costs, estimated at $4,000,000 in the Integrated Master Plan. In instances where there is the potential to save a substantial amount of money during construction by having innovative design solutions, it is advantageous to select a consultant based on qualifications only, as in this case. An experienced team, willing to think outside the box, can arrive at a more cost-effective solution than a less experienced or less motivated team that competes primarily on price. After selection, the price proposal was opened for the highest ranking firm and staff reviewed to ensure a reasonable level of effort was proposed, and at reasonable rates. Staff then proceeded to negotiate a best and final offer for a savings of $10,957 less than the original proposal.

The contract award to Hazen and Sawyer will be for a term that extends until project completion per the Schedule of Performance, Exhibit "D" of the Agreement (Attachment 4), in the amount of $671,296. The first task will be to determine if the proposed location is viable for a new domestic water well. If it is found not to be a viable location, the contingency funds will be used to evaluate other City properties before continuing with the remaining scope.

JUSTIFICATION:

With expected population growth, and the associated increase in water demands, the City needs to supplement its existing production facilities to offer reliable service to all customers. Consultant services are necessary due to the highly technical and specialized nature of well design. The scope of work requires the consultant to provide hydrologic and hydrogeological, architectural, civil, structural, mechanical, electrical, instrumentation, plumbing, and environmental support services along with project management, and inspection services to achieve construction of a functional facility.

FISCAL IMPACT:

The contract agreement will be funded through the Water Capital Facilities Fund, account 661-6300-471.90-78 Planning/Design-Capital. The contract will be for $671,296, with the possibility of administratively amending the scope of work for up to an additional $25,000 before it is necessary to seek Banning Utility Authority approval.

ALTERNATIVE:

1. Do not approve Resolution 2018-13 UA. Without the development of new production wells it will be difficult to meet future peak demands.

ATTACHMENTS:

1. Resolution 2018-13 UA
2. Request for Qualifications (RFQ)
3. Hazen and Sawyer Proposal
4. Professional Services Agreement

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Resolution 2018-13 UA

RESOLUTION 2018-13 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AWARD OF PROFESSIONAL SERVICES CONTRACT FOR DESIGN SERVICES OF BANNING WELL C-8 TO HAZEN AND SAWYER OF PALM DESERT, CALIFORNIA IN THE AMOUNT OF $671,296.00

WHEREAS, the City of Banning currently owns a 1.34 acre property adjacent to Roosevelt Williams Park, overlying the Cabazon Basin; and

WHEREAS, to supplement existing production facilities, the City wishes to drill and equip an approximately 2,000 gpm municipal well; and

WHEREAS, staff advertised a Request for Qualifications using the PlanetBids system and the Press Enterprise; and

WHEREAS, five proposals were received; and

WHEREAS, Hazen and Sawyer of Palm Desert, California, was the highest-rated firm by an evaluation committee; and

WHEREAS, City staff negotiated a best and final offer of $671,296.00.

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

SECTION 1. That the Contract Agreement for the design and inspection services of Banning Well C-8 is hereby awarded to Hazen and Sawyer of Palm Desert, California, in the amount of $671,296.

SECTION 2. That a contingency in the amount of $25,000 be authorized for this project.

SECTION 3. That the Interim City Manager or her designee is authorized to make all necessary budget adjustments, appropriations and transfers and approval of the use of the contingency.

SECTION 4. That the Interim City Manager is authorized to execute the Contract Agreement award with Hazen Sawyer, of Palm Desert, California.

PASSED, APPROVED AND ADOPTED this 10th day of September, 2018.

George Moyer, Chairman
Banning Utility Authority

ATTEST:

Sonja De La Fuente, Secretary
Banning Utility Authority

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin G. Ennis, Authority Counsel
Richards, Watson & Gershon

CERTIFICATION:

I, Sonja De La Fuente, Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution 2018-13 UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 10th day of September, 2018, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

_____
Sonja De La Fuente, Secretary
Banning Utility Authority
City of Banning, California

ATTACHMENT 2

Request for Qualifications (RFQ)

REQUEST FOR QUALIFICATIONS

FOR

18-012

GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR THE CITY OF BANNING WELL C-8, PROJECT NO. 2018-02W

CITY OF BANNING

Public Works Department

99 East Ramsey Street

Banning, California 92220

Released on March 30, 2018

REQUEST FOR QUALIFICATIONS (RFQ) NO. 18-012

GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR THE CITY OF BANNING WELL C-8, PROJECT NO. 2018-02W

Dear Proposers:

The City of Banning (hereinafter referred to as the "City") is requesting proposals from a qualified public entity or private firm, to establish a contract for Geohydrologic and Engineering Design Services for the City of Banning Well C-8.

NOTICE IS HEREBY GIVEN that online proposals and document submittal must be uploaded to the online bid system in accordance with the instructions included within proposal documents for Banning Well C-8, on or before the hour of 10:00 a.m. on April 27, 2018 (approximately one (1) month from date published.) It shall be the responsibility of the proposer to upload his proposal by the announced time. However, submittals may be submitted at any time prior to the deadline. (Submitted Proposals may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

PROPOSAL DOCUMENTS: To obtain a copy of the proposal documents, please visit http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view and download the bid documents, which include the complete Notice Inviting Proposals document. Firms must also check the web site periodically for addenda information as failure to download any and all addenda, and acknowledge in the proposal submittal, will result in proposal disqualification.

Proposals must be submitted electronically by visiting the City of Banning, Planet Bids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Qualifications (RFQ). Click on "Place eBid" and follow the instructions.

A **Pre-Proposal Meeting will be held on April 13, 2018 at 10:00 a.m.** at 99 E. Ramsey St., Banning, CA 92220 to discuss the Description of Work. Site walkthrough will immediately follow. Attendance of the pre-proposal meeting is **mandatory**.

1. BACKGROUND

A. City of Banning

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Gorgonio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Gorgonio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

B. Project Overview

The City of Banning currently owns property adjacent to Roosevelt Williams Park in the northeast quadrant of the City. To supplement existing production facilities, the City wishes to drill and equip an approximately 2,000 gpm municipal well. Because the pressure zone where the proposed well is located in does not have gravity storage, it is proposed to be equipped with a Variable Frequency Drive and possibly a surge tank. Design of all offsite improvements associated with Well C8, including water mains, sewer connection, pump-to-waste piping, and electrical service will be included as part of this scope.

2. SCHEDULE OF EVENTS

This REQUEST FOR QUALIFICATIONS will be governed by the following schedule:

Release of RFQ	March 30, 2018
Deadline for Written Questions	April 6, 2018
Pre-Proposal Meeting	April 13, 2018
Responses to Questions Posted on Web	April 20, 2018
Proposals are Due	May 1, 2018
Interview (if held)	Week of May 15, 2018
Approval of Contract	May 22, 2018

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The consultant shall perform and provide all hydrologic and hydrogeological, architectural, civil, structural, mechanical, electrical, instrumentation, plumbing, design, calculations, environmental, specifications and project management services to achieve construction and

installation of a functional facility located west of the intersection of Cherry St. and Christie St., APN 541045018 and APN 541045019. The combined area is 1.34 acres.

Task 1: Project Management

Project management duties include, but are not limited to:

- Project Kick-off and progress meetings
- Council representation as required (assume 2 meetings)
- Monitoring of project budget and schedule
- Project Coordination, including coordination of consultant's sub-consultants
- Quality control and assurance
- Invoicing

Deliverables:

- Schedule and timelines
- Monthly invoices
- Conference calls
- Agenda for in-person meetings

Task 2: Data and Literature Review

Deliverables:

- Memo verifying the viability of the Well C8 project at the proposed site

Task 3: Preliminary Well Design

- Draft technical specifications and drawings.
- Estimated production capacity (gallons per minute).
- Identify contaminants with the potential to be above applicable drinking water standards. Include mitigation strategies that can be implemented by casing design.
- Project cost estimate, schedules and timelines.
- Identify any logistical issues, site access, available space for drilling, overhead obstructions, above ground and underground utilities, location of water source, potential discharge options, and noise constraints.

Deliverables:

- Preliminary Design Report for Well C-8
- Preliminary Drawings
- Engineering Calculations

Task 4: Environmental and Permitting Support

- Prepare MND
- Coordinate Public Review and Filing with City Planning Department
- Prepare DWSAP documents and coordinate with the California State Water Board
- Amend the City's existing Drinking Water Permit

Deliverables:

- Draft and final DWSAP
- Amended Drinking Water Permit

Task 5: Technical Plans, Specifications and Cost Estimates (PS&E) for drilling

- Develop 50%, 90%, and 100% PS&E
- Coordinate necessary permits

Deliverables:

- 50%, 90%, and 100% PS&E
- Summary of permits obtained
- Final stamped project documents and specifications

Task 6: Drilling Bidding Assistance

- Finalize bid documents
- Provide bid phase services that includes facilitating a pre-bid meeting, responding to bidder questions, and assisting with bid evaluations
- Review Requests for Information (RFIs)
- Facilitate pre-construction meeting

Task 7: Drilling Construction Management

- Identify and describe key challenges associated with the project and the firm's approach to overcoming these challenges.
- Outline processes or steps that the firm will take to ensure quality deliverables. The process shall include a monthly work status summary report (1-2 pages) where the project status and schedule adherence shall be reported and challenges identified.
- Full-time CM is required

Task 8: Drilling Inspection, Hydrogeological Services and Well Water Quality Testing

- Inspect Conductor Borehole Drilling, Casing Installation, and Sanitary Seal
- Inspect Pilot Borehole Drilling, Sampling of Cuttings, and Geophysical Borehole Logging
- Evaluate Geophysical Borehole Logs, Select Zones for Isolated Aquifer Zone Testing
- Review Lithology and Perform Mechanical Grading Analyses
- Prepare Design of Casing, Screen, Filter Pack, and Annular Seal
- Inspect Reaming (Enlargement) of Pilot Borehole and Caliper Survey
- Inspect Installation of Casing, Screen, Filter Pack, and Annular Seal
- Inspect Initial Development by Swabbing and Airlifting, or other methods
- Inspect Final Development by Pumping and Surging, or other methods
- Inspect Aquifer Pumping Tests, Collect Title 22 Water Quality Samples
  - City will send samples to a State certified lab under a separate contract
- Inspect Downhole Video Survey, Plumbness and Alignment Surveys, and Final Disinfection

- Evaluate Aquifer Pumping Test Analyses and Prepare Letter Presenting Recommendations for Pump Setting, Design Discharge Rate, and Estimated Drawdown Conditions
- Shop drawings (assume 5)
- RFI review (assume 5)

Deliverables:

- Hydrogeologic analysis, water well design, and construction support
- Summary of well water testing results and findings

Task 9: Wellhead Facility: Improvements

Wellhead will be in an enclosed block wall building, with provisions for disinfection facilities (NaOCl) and VFD. Well may need a surge tank if identified during preliminary design. Site work requirements to include paving, perimeter fencing and site security

- Develop 50%, 90%, and 100% PS&E
- Coordinate necessary permits
- Surge Analysis
- Power Quality Monitoring
- Pump selection
- Well equipping

Deliverables:

- 50%, 90%, and 100% PS&E
- Summary of permits obtained

Task 10: Wellhead Facility: Bidding and Pre-Construction Activities

- Finalize bid documents
- Provide bid phase services that includes facilitating a pre-bid meeting, responding to bidder questions, and assisting with bid evaluations
- Review Requests for Information (RFIs)
- Facilitate pre-construction meeting

Task 11: Wellhead Facility: Construction and Post-Construction Support Services

- Provide project oversight for construction. Full-time CM and inspection are required
- Attend construction progress meetings
- Inspect site conditions during construction for compliance with contract requirements
- Provide general assistance as needed to help ensure work is completed in compliance with contract documents
- Prepare construction inspection reports following each site visit

- Review contractor pay requests, assist with contract change orders, and compile final construction documents
- Provide post-construction services, including as-built drawings and final recommendations for well pump specification
- Shop drawings (assume 30 submittals)
- RFIs (assume 15 submittals)

  Deliverables:
  - Construction reports, contract change orders, as-built drawings, and final recommendations for well pump operations

Task 12: Electrical Service – Bring the three-phase lateral up at least three poles. An additional inline power pole may be required.

- Assist Banning's Electrical Department in preparing the offsite plans for the infrastructure improvements.
- Prepare the onsite plans for the distribution panel.

4. PROPOSAL FORMAT GUIDELINES

Interested entities or Consultants are to provide the City of Banning with a thorough proposal using the following guidelines:

Proposal should be typed and should contain no more than 20 typed pages using a 12-point font size, including transmittal letter and resumes of key people, but excluding Index/Table of Contents, tables, charts, graphic exhibits and required City forms. Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFQ instructions, responding to the RFQ requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer's response:

- **Vendor Cover Letter**

A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the Consultant's office located nearest to Banning, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFQ.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFQ. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFQ; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.

2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.

3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.

4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.

5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.

6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual. Include a resume for each designated individual.

Upon award and during the contract period, if the Consultant chooses to assign different personnel to the project, the Consultant must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's or entity's demonstrated capability, including length of time that your firm has provided the services being requested in this RFQ.

For private Proposers, provide at least three references that received similar services from your firm. The City of Banning reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

  - Client Name
  - Project Description
  - Project start and end dates
  - Client project manager name, telephone number, and **e-mail address**.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **Fee Proposal (Separate Document/Upload as Cost File)**

Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Proposer's must include a "Not to Exceed" project estimate within the cost file. Proposals shall be valid for a minimum of 180 days following submission.

All Proposers are required to upload the Fee Proposals as a separate document from the qualification proposal online as a "Cost File". This document will remain sealed until the evaluation process is complete.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services with the City. The form of the Agreement is enclosed as an online attachment, but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement. See Section 13, below.

- **Checklist of Forms to Accompany Proposal**

As a convenience to Proposers, following is a list of the forms, included as online attachments to this RFQ, which should be included with proposals:

(1) Ex Parte Communications Certificate

(2) Fee Proposal (Cost File)

(3) Disclosure of Government Positions

(4) Disqualifications Questionnaire

5. PROCESS FOR SUBMITTING PROPOSALS

- **Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.

- **Preparation of Proposal**

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Submission of Proposals**

Complete proposals must be submitted and received no later than the deadline.
Proposals will not be accepted after this deadline.
Proposals submitted in paper form, faxed or e-mailed will not be accepted.

Submit proposals electronically by visiting the City of Banning Planet Bids Vendor Portal at http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Qualifications (RFQ). Click on "Place eBid" and follow the instructions.

- **Inquiries**

Questions about this RFQ must be directed in writing, via the City of Banning, Planet Bids Vendor Portal: http://www.planetbids.com/portal/portal.cfm?CompanyID=33077.

The City reserves the right to amend or supplement this RFQ prior to the proposal due date. All addendums, responses to questions received, and additional information will be posted to the Banning online bid system. Proposers should check the web page above regularly for new information. The City will endeavor to answer all written questions timely that are received no later than the deadline listed in the schedule of events. The City reserves the right not to answer all questions.

From the date that this RFQ is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFQ with any City employee other than the contracting officer listed above regarding this RFQ. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFQ does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFQ, to negotiate with any qualified source(s), or to cancel this RFQ in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Banning, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with the City's Purchasing and Procedures Policy (Policy). The overall responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within the particular evaluation criteria may also be considered even if not specified below.

1. Qualifications of Entity and Key Personnel-------40%

Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

2. Approach to Providing the Requested Scope of Services-------25%

Includes an understanding of the RFQ and of the project's scope of services, knowledge of applicable laws and regulations related to the scope of services.

3. Schedule-----15%

Developed a clear, concise and realistic schedule.

4. Innovative and/or creative approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----10%

5. Optional tasks and/or services not identified in RFQ that would result in a better product. ----10%

7. EVALUATION OF PROPOSALS AND SELECTION PROCESS

In accordance with its Policy, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is not a basic factor for award, it is the City's sole discretion to award the contract to a firm other than the top-rated if a price cannot be agreed upon during negotiations. Only the price of the selected proposal will be made public.

A. Responsiveness Screening

Proposals will first be screened to ensure responsiveness to the RFQ. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFQ. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

B. Initial Proposal Review

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the overall responsible bidder. Alternatively, the City may elect to negotiate

directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

C. **Interviews, Reference Checks, Revised Proposals, Discussions**

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for the week of **May 15, 2018** and will be conducted at City of Banning City Hall, 99 E. Ramsey St., Banning, CA 92220. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the overall responsible bidder. The City may recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFQ.

8. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFQ Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFQ Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFQ Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFQ Facilitator, and pursue its protest at the Council meeting, it will notify the RFQ Facilitator of its intention at least two days prior to the scheduled meeting.

9. CONFIDENTIALITY

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFQ, protest, or any other written communication between the City and Proposer, shall be available to the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

10. EX PARTE COMMUNICATIONS

Proposers and Proposers' representatives should not communicate with the City Council members about this RFQ. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFQ with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFQ

Facilitator, regarding this RFQ until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the ***"Ex Parte Communications Certificate"*** form (See Online Attachment) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

11. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

12. DISCLOSURE OF GOVERNMENTAL POSITION

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months using the attached ***"Disclosure of Government Positions"*** form. (See Online Attachment).

13 CONDITIONS TO AGREEMENT, IF ANY.

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as (See Online Attachment, ***"Professional Services Agreement Sample"***), to this RFQ, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFQ and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City

may consider the scope and number of conditions in evaluation proposals and determining the overall responsible bidder.

14. DISQUALIFICATIONS QUESTIONNAIRE

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation. (See Online Attachment, ***"Disqualifications Questionnaire"***).

15. STANDARD TERMS AND CONDITIONS

Addendums

The City reserves the right to amend or supplement this RFQ prior to the proposal due date. All addendums and additional information will be posted to the Banning Procurement Registry, http://www.planetbids.com/portal/portal.cfm?CompanyID=33077. Proposers should check this web page daily for new information.

Cost for Preparing Proposal

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

Insurance Requirements

City requires that licensees, lessees, and vendors have an ***approved*** Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

FEE PROPOSAL

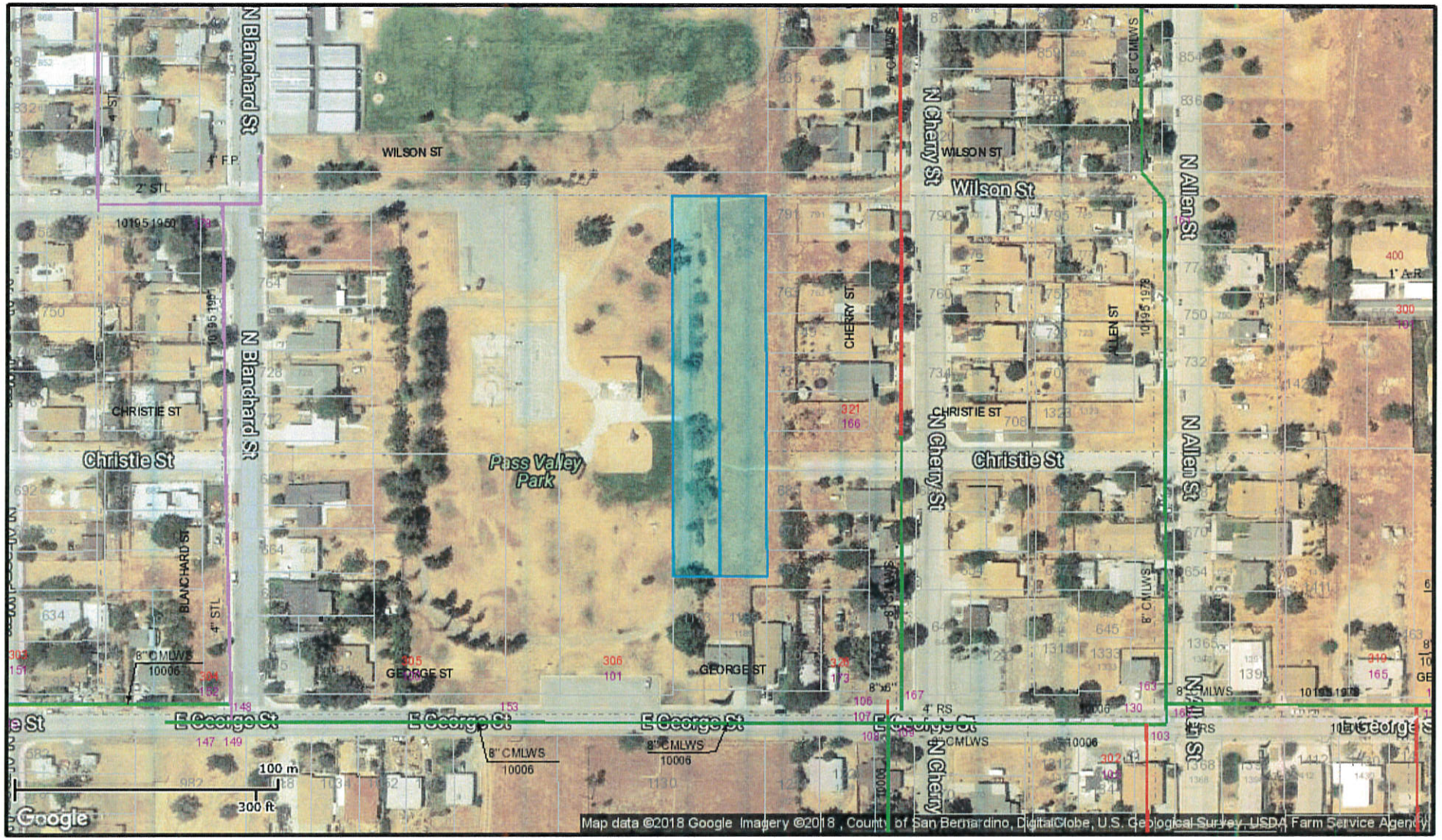
GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR THE CITY OF BANNING WELL C-8, PROJECT NO. 2018-02W

TASK NO.	DESCRIPTION OF ITEM	TOTAL
1.	Project Management	
2.	Data and Literature Review	
3.	Preliminary Well Design	
4.	Environmental and Permitting Support	
5.	Technical Plans, Specifications and Cost Estimates (PS&E) for drilling	
6.	Drilling Bidding Assistance	
7.	Drilling Construction Management	
8.	Drilling Inspection, Hydrogeological Services and Well Water Quality Testing	
9.	Wellhead Facility: Improvements	
10.	Wellhead Facility: Bidding and Pre-Construction Activities	
11.	Wellhead Facility: Construction and Post-Construction Support Services	
12.	Electrical Service	

TOTAL PROPOSAL AMOUNT IN FIGURES: $_____
(Task Item No.'s 1 through 12)

TOTAL PROPOSAL AMOUNT IN WORDS: _____
(Task Item No.'s 1 through 12)

Well C-8 Property



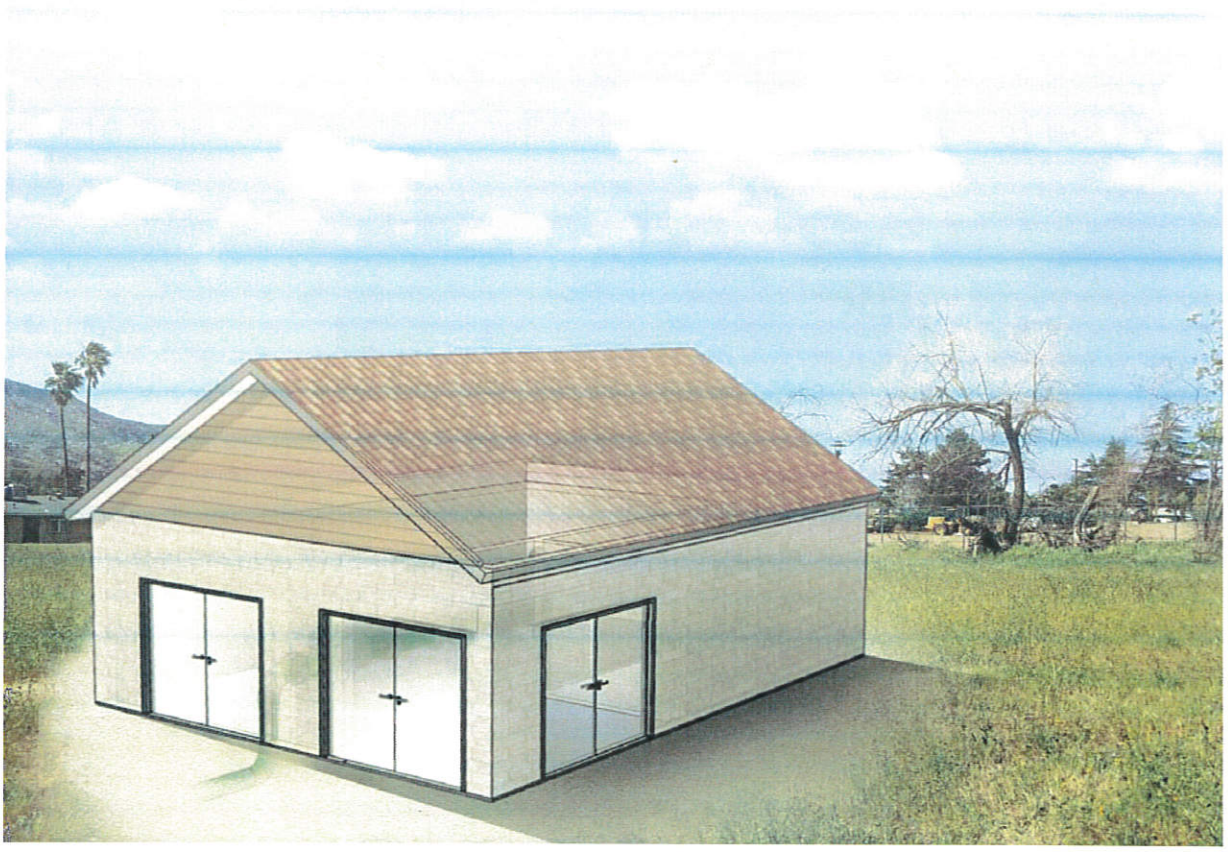
1" = 188 ft	APN 541045018 APN 541045019 116' x 481'	01/17/2018	N W E S	BANNING, CA Proud History Prosperous Tomorrow

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

ATTACHMENT 3

Hazen and Sawyer Proposal

Hazen



Proud History
Prosperous Tomorrow

Statement of Qualifications for

Geohydrologic and Engineering Design Services for the City of Banning Well C-8

May 8, 2018 | RFQ 18-012 | Project No. 2018-02W

Table of Contents

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B Fee Proposal *(Uploaded Separately)*

C Schedule

Appendices

A Required Forms

1 Ex Parte Communications Certificate

2 Fee Proposal (Cost File - *Uploaded Separately)*

3 Disclosure of Government Positions

4 Disqualifications Questionnaire

B Audited Financials

C Signed Addenda

D Resumes

Hazen and Sawyer
36-923 Cook Street, Suite 101
Palm Desert, CA 92211 • 442.227.4980

May 8, 2018

Mr. Luis Cardenas, PE
City of Banning
Public Works Department
99 East Ramsey Street
Banning, CA 92220

Re: Proposal to Provide Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project No. 2018-02W

Dear Mr. Cardenas:

The City of Banning is looking to expand the City's water supply by constructing a new Well C-8 to ensure there is adequate supply to meet the growing population within the region. Hazen is prepared to provide knowledgeable and reliable technical resources to the City that will ensure the project is a success by addressing the concerns associated with the project by address CEQA, future SCADA improvements, well bypass discharge water, and water quality treatment needs.

Our highly qualified team will address the City's concerns and provide practical solutions to deliver a successful project.

Our Local Team. Hazen's local Palm Desert office has detailed knowledge of the City's water distribution system through our work on the study of Chromium-6 treatment and through working in the City's hydraulic model. Scott Rogers and Sam Valdez have experience in well design, distribution hydraulic analysis and system operation that can benefit the City.

Technical Experts with Regional Experience. The Hazen Team has regional experts that can provide expertise to successfully deliver a new production well. Members of the Hazen Team have worked on numerous well projects in various locations throughout southern California. For example, Russell Kyle, our hydrogeologist, has been responsible for the installation of 145 water supply wells and was the technical lead and primary author of the hydrogeological study and preliminary design for the proposed City of Banning Well C-7, located approximately ¾-mile east of the new well site. Steve Conner, our well equipment and site layout expert has designed over 30 well equipping projects over the past 10 years, providing value to the City in terms of efficient engineering design.

Cohesive Team. Moreover, Russ, Steve, Scott, and Sam have seamlessly work together on numerous well projects throughout Southern California with Steve and Russ recently completed the Raub 4-R and 5-R Wells for the City of Riverside. The City will benefit from a well-seasoned team of experts that will work effectively and efficiently toward meeting the goal of a successful well installation and equipping project.

The proposal price is valid for a period of 180 days from the date of this letter. Please do not hesitate to call at (442) 227-4988 or by email at SRogers@hazenandsawyer.com should you have additional questions or need clarification with our proposal.

Very truly yours,

Scott Rogers, PE
Project Manager

Marc Solomon, PE, BCEE, D.WRE
Principal-in-Charge

Section 1

Background and Project Summary



Section No. 1

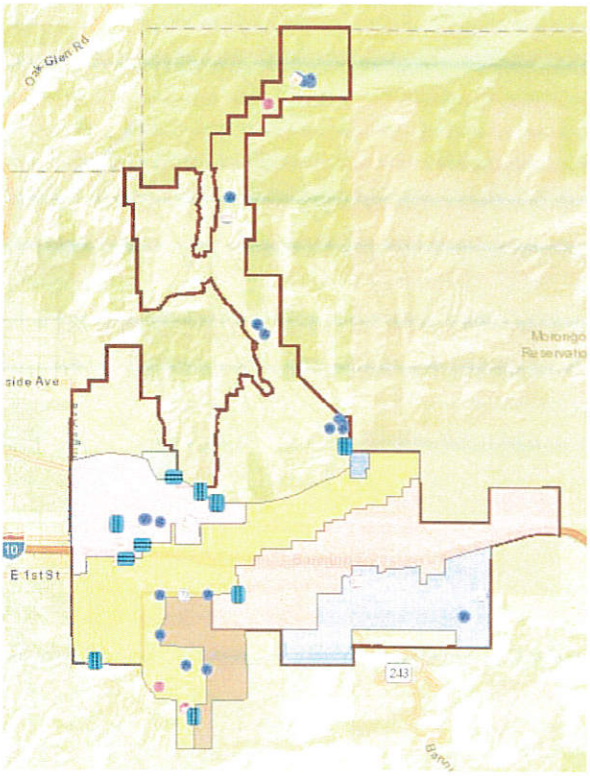
Background and Project Summary

The addition of Well C-8 will improve the City's water reliability and quality, while leveraging the currently owned property. This project will also position the City to manage increasingly complex regulatory requirements and water scarcity.

Located between Mt. San Gorgonio and Mt. San Jacinto, the tallest peaks in Southern California, the City of Banning provides water services to over 30,000 residents and businesses through 11,006 water connections.

The City of Banning's potable water distribution system is comprised of 21 active groundwater wells and 3 wells co-owned with Beaumont Cherry Valley Water District (BCVWD) with a total nominal production capacity of 39,199 acre-feet per year (AFY). With the uncertainty of canyon well capacity, chromium-6 MCL, and the need for additional supply capacity to meet future demands, the City is moving forward with the design and construction of Well C-8.

Hazen understands the City of Banning is requesting the design, development, and construction management of a well named C-8 located on a property adjacent to Roosevelt Williams Park (also known as the Pass Valley Park) in the northeast portion of the City (west of the intersection of Cherry St. and Christie St., APN 541-045-018 and APN 541-045-019, approximately 1.34 acres). The well will supplement the City's existing production facilities and the City desires that the well produce a flow rate of approximately 2,000 gpm. We understand that the well will discharge into a "closed" pressure zone, or one that has no "floating" gravity storage, so a variable frequency drive is desired to maintain system pressure with efficient and reliable pump operation. The proposed well is located within the proposed Lower Main Pressure Zone. While the Lower Main and Upper Main pressure zones are currently operated as a single zone, which results in pressures in excess of 150 psi at the Well



City of Banning Existing Potable Water System

C-8 site, it is understood that the City will perform the pressure zone split prior to the completion of this project, which would reduce the system pressure to approximately 80 psi at Well C-8. Additionally, the City is requesting an analysis be performed to determine if a surge tank will be required. The project includes the design of all offsite improvements associated with Well C-8, including water mains, sewer connection, pump-to-waste piping, disinfection equipment, and electrical service.

The primary driver for this project is to supplement existing groundwater production. The project will:

- Provide approximately 2,000 gpm capacity well driven by a variable frequency drive
- Pump into a closed pressure zone (no gravity storage)
- Provide a surge tank (if required)
- Include a diesel backup generator
- Include a sodium hypochlorite disinfection system
- House the well, electrical equipment, and disinfection system within a concrete block building



Proposed Well C-8 Site Surrounding Area

Project Goals and Objectives

Provide a site layout and building that considers:

- Maintaining pedestrian access to park
- Well construction equipment requirements
- Well maintenance access
- Chemical deliveries
- Air Quality Management District requirements
- California Well Standards requirements
- California Fire Code requirements
- CEQA compliance

Design well pump and control system to:

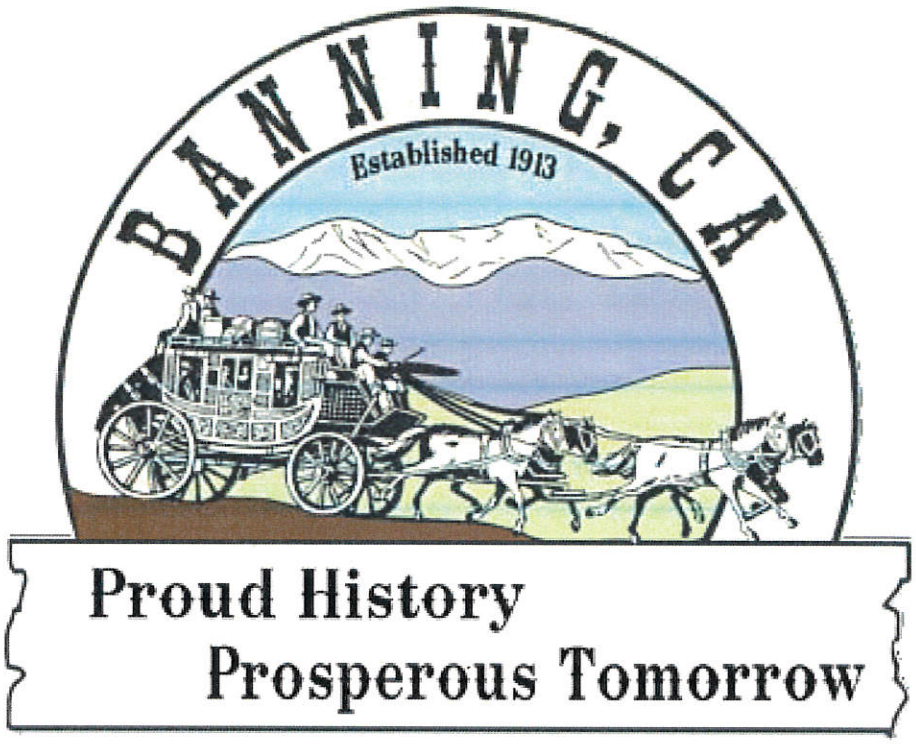
- Protect distribution system from surges during well operations
- Prevent well pump from starting and stopping frequently
- Operate efficiently during low flow, average flow, and peak flow conditions
- Protect shaft bearings above static water level during startup
- Ensure proper chemical dosing and mixing prior to first user
- Be compatible with City's existing SCADA system with ability to integrate with future upgrades

Design well screen and casing to:

- Resist corrosivity of water
- Consider installation and long-term costs savings

Section 2

Methodology



Section No. 2

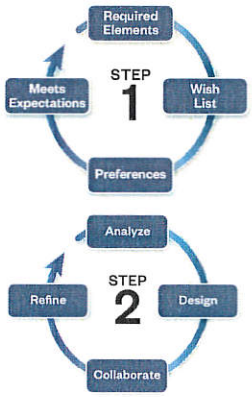
Methodology

2.1 Approach

Engaging the City in the Design Process

The design process involves two facets. One facet deals with meeting the requirements for proper equipment sizing, safety, operability, and code compliance. In a well design and equipping project, these items include proper sizing and selection of the well casing, pump, and motor; design of discharge and pump-to-waste piping to ensure the pump is operating on its curve within the preferred operating range; and required equipment clearances and adequate accessibility.

We will engage and work side-by-side with the City throughout the duration of this project.

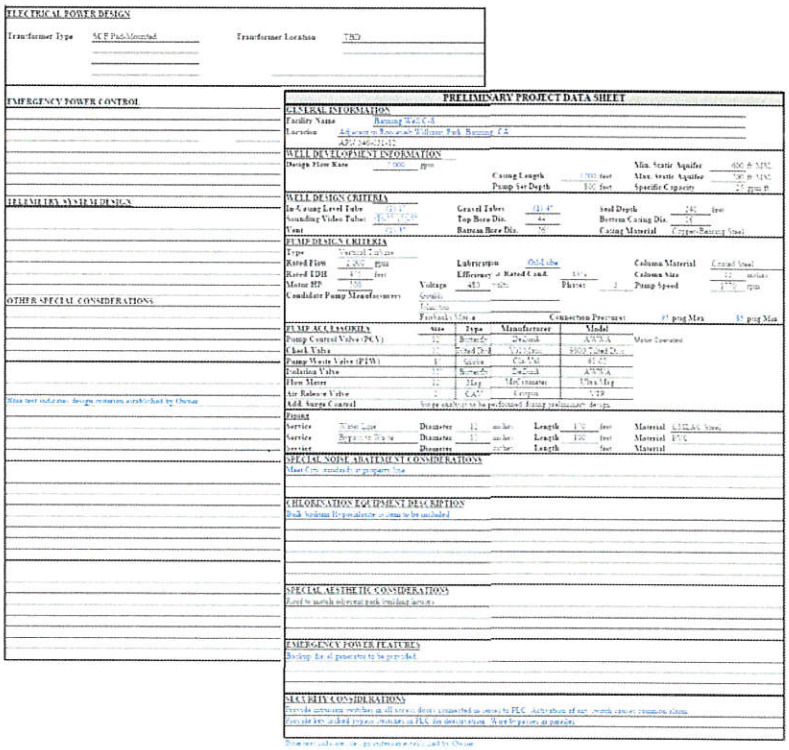


The other facet of design is the preferential one. Preferential items could include piping material, pump-to-waste valve type, pump start-up sequence and check valve type, pump lubrication system, isolation valve type, flow meter type and location, and building type.

The first step in our technical approach involves following an iterative process of identifying the required elements for the project, then working with City staff to identify wish list and preference items. We then make sure each of the project components we have identified fully meet the expectations of the City and the requirements of the project. For example, if the City is planning on upgrading their SCADA system in the near future, this can be incorporated into the well control design.

Once we have identified all of the components for the project (both required and preference items), we then proceed into analysis and design. The second step begins in preliminary design and continues into final design.

In order to ensure that all requirements and City preferences are captured early during design, Hazen will summarize the well design criteria and equipment preferences in a Project Data Sheet that has been developed from past projects. The data sheet will be substantially filled out prior to and discussed during the kick-off meeting as the starting point of collaboration with City staff.


ELECTRICAL POWER DESIGN

EMERGENCY POWER CONTROL

TELEMETRY SYSTEM DESIGN

OTHER SPECIAL CONSIDERATIONS

PRELIMINARY PROJECT DATA SHEET

GENERAL INFORMATION

WELL DEVELOPMENT INFORMATION

WELL DESIGN CRITERIA

PUMP DESIGN CRITERIA

PUMP ACCESSORIES

PIPING

SPECIAL NOISE ABATEMENT CONSIDERATIONS

CHLORINATION EQUIPMENT DESCRIPTION

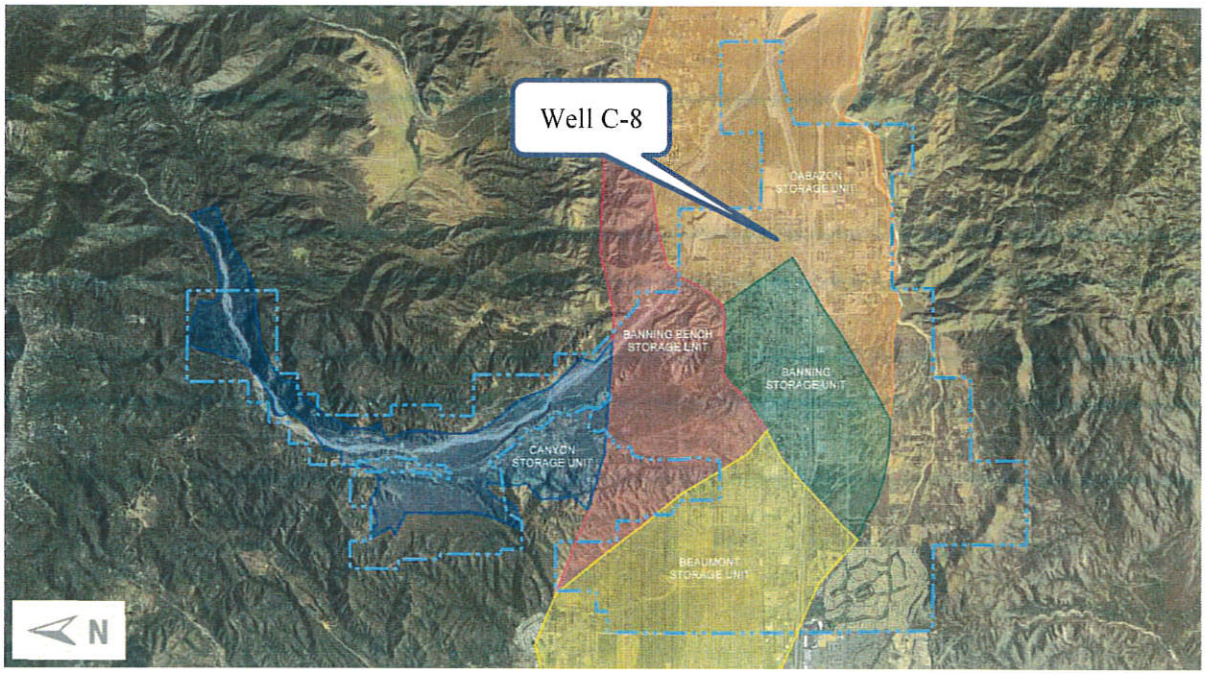
SPECIAL AESTHETIC CONSIDERATIONS

EMERGENCY POWER FEATURES

SECURITY CONSIDERATIONS

Hydrogeologic Methodology

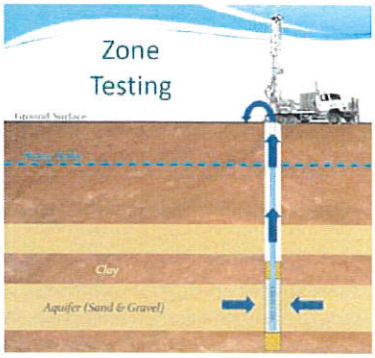
The proposed well site is located within the Cabazon Storage Unit of the Coachella Groundwater Basin, a hydrologic unit delineated based on groundwater elevation patterns and geophysical bedrock studies. Alluvial sediments in this area include older alluvium overlying the Upper and Lower San Timoteo Formation. The sand and gravel layers of the San Timoteo Formation dip beneath the older alluvium, may extend in depth from approximately 300 to more than 2,000 feet bgs, and are known to yield appreciable quantities of groundwater to wells. The older alluvium and upper San Timoteo Formation are referred to as the upper aquifer within the area, while the lower San Timoteo Formation is referred to as the lower aquifer. It is anticipated that the new well will target groundwater from portions of the Upper and Lower aquifers.



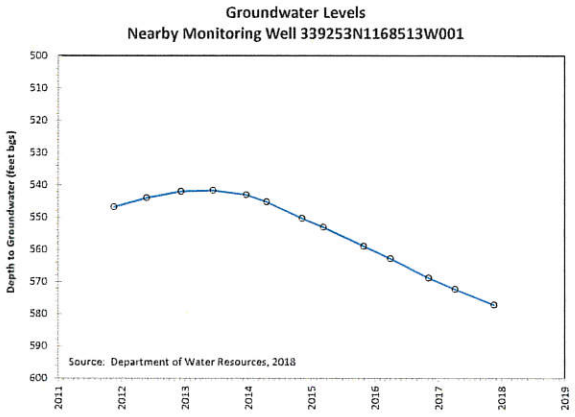
Source: City of Banning 2015 Urban Water Management Plan

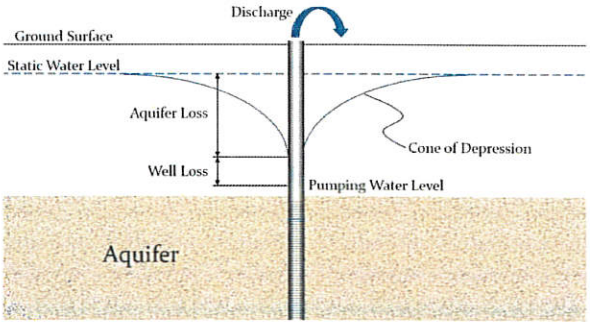
Groundwater in the area of the proposed well site generally flows to the east toward the Indio Subbasin. Historical depths to groundwater at the proposed well site are typically in excess of 500 feet bgs (see following figure) and show considerable fluctuation as a result of climate patterns. This relatively extreme depth to water will likely have implications on the final well design and pump selection such that that the well casing can accommodate the pump, and such that the pump can comfortably meet the desired production demand.

Improving water quality adds to the considerations for pump placement and well design. During well , variations in water quality within the different aquifer zones will be evaluated. The design to the well and position of the pump intake will be used to balance the best water quality with the pumping rate requirements. Hazen will also consider more advanced options for control of water quality such as inflatable packers to selectively pump from aquifer zones with the best water quality. Hazen's hydrogeologists have significant local experience with the water quality issues in the Banning area.



Specific capacity is a measure of the ability of a well to yield water and is a reasonable metric for aquifer yield in a given area. The specific capacity of City Well C-6, located approximately 1 mile southwest of the proposed Well C-8 was reportedly 26 gallons per minute per foot of drawdown (gpm/ft) at 900 gpm following its construction. City Well R-1, located approximately 1.5 miles southeast of the proposed well, exhibited a specific capacity of 20 gpm/ft and a pumping rate of 1,500 gpm at the time of construction. These parameters suggest that the City's production goal of 2,000 gpm is possible assuming a drawdown of 80 to 100 feet.





Constituents of Concern

- Nitrate
- Hexavalent Chromium

Design Concern

Groundwater in area has moderate potential to be corrosive to low carbon steel casings and screens.

Naturally-occurring constituents of concern within groundwater of Cabazon Storage Unit primarily include nitrate and hexavalent chromium. Based on recent groundwater quality from Well C-6, located approximately 2 miles southwest of the proposed well, groundwater quality at Well C-8 is expected to be generally good. Nitrate concentrations are expected to range from approximately 7 to 8 mg/L as NO_3 in the deeper aquifers, below the primary MCL of 45 mg/L. It is expected that the proposed well can be designed such that nitrate will be below MCL by installing a deep annular cement seal above the gravel envelope. Hexavalent chromium concentrations at Well C-6 range from 10 to 14 µg/L, in excess of the recently rescinded primary MCL of 10 µg/L. Assuming that the MCL will be reinstated at some future date, it will be critical to collect highly representative depth-specific groundwater quality data through isolated aquifer zone testing such that the best possible groundwater quality blend can be achieved through well design. There are no sites of environmental contamination concern within ½-mile of the proposed well site.

An analysis of groundwater quality in the area suggests a moderate potential for corrosion of low carbon steel well casing and screen, and as such, our preliminary recommendation is that the well casing and screen materials be manufactured entirely of ASTM A778 304L stainless steel. However, since the depth to groundwater is so great (in excess of 500 feet), a hybrid well comprised of ASTM A606 Type 4 HSLA steel blank casing above the water table and coupled to 304L stainless steel well casing and screen below the water table is also a viable option that will be explored during the preliminary well design phase. This option will provide considerable cost savings of up to 30% while still offering excellent corrosion resistance and service life.



Well Design Objectives

- Achieve production capacity of 2,000 gpm
- Depth-specific isolated aquifer zone groundwater quality testing
- Proper selection of casing diameter, depth, and material(s)
- On-site discharge of development water
- Efficient, reliable, constructible design

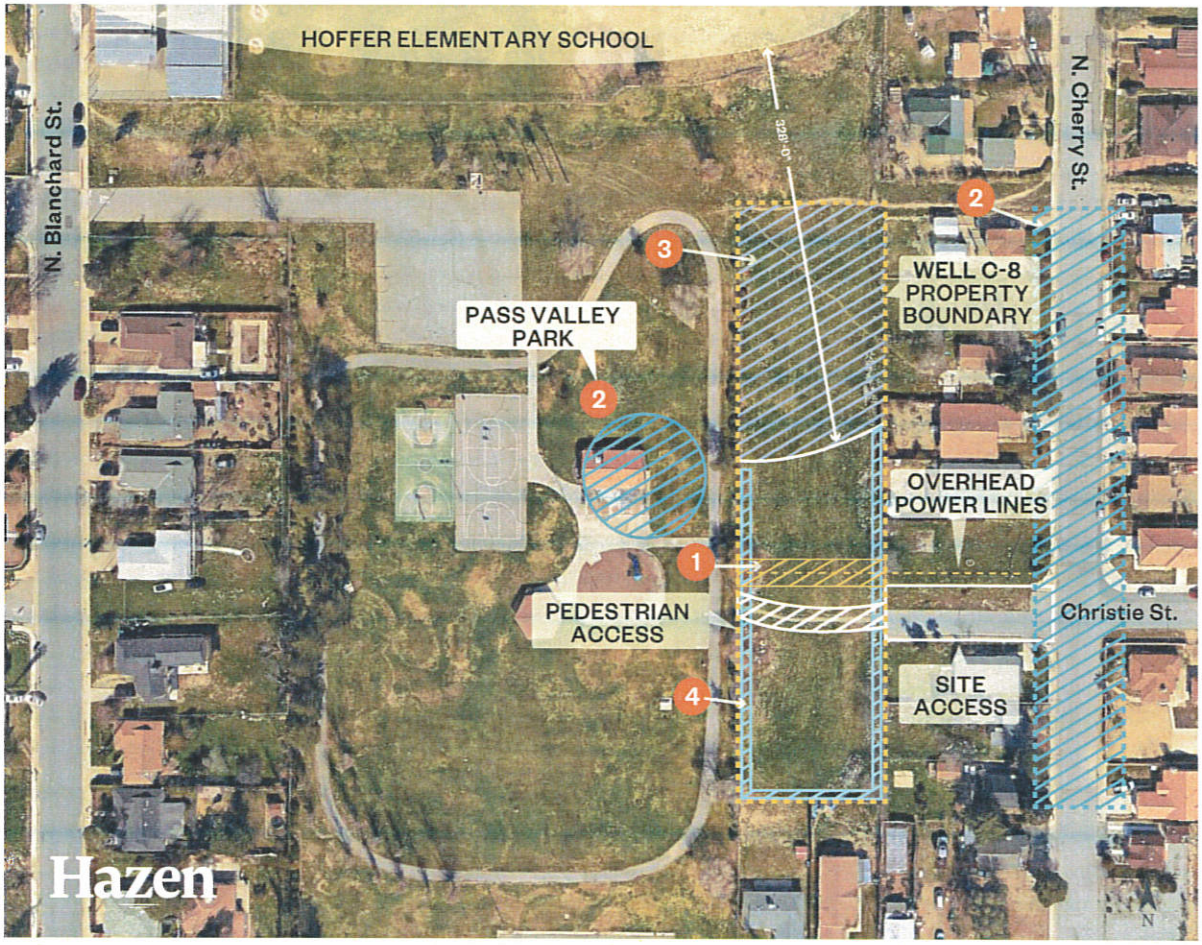
Due to the undeveloped nature of the proposed well site, it may be feasible to discharge water generated during isolated aquifer zone testing and initial well development to the site via spreading and or sprinkling, allowing it to percolate back into the subsurface. It may also be possible to discharge larger flows generated during final development and aquifer testing should a bermed percolation pond be constructed on the northern portion of the site. Assuming a lesser duration constant rate pumping test (i.e., approximately 12 hours), a pumping rate of 2,000 gpm, a percolation rate of approximately 2 feet per day, and a pond measuring approximately 90 by 300 feet, it should be possible to contain test waters on site. This will eliminate the need for expensive temporary conveyance pipelines and street crossings along George Street, and compliance with NPDES discharge requirements.

In the interest of cost and success of the project, it is important that this project be tailored to be desirable to contractors without compromising the integrity of the work. Much of this hinges on good working relationships between the drilling contractor, engineer, and hydrogeologist. Our team includes a seamless relationship between engineer and hydrogeologist, and maintains excellent working relationships with most of the contractors throughout the state – and all of the reverse-circulation drilling contractors in Southern California. These established working relationships remove many of the "unknowns" from a project, increasing the pool of bidders and reducing construction costs.

We will work with the City to develop an optimal and cost-effective plan to achieve the project goals with minimal impact to the local area. Our methodology is to find water of good quality and to develop well and pumping system designs and construction methods that result in an efficient and long-lived water supply. The Hazen Team members are local groundwater resource experts and have been successfully designing and equipping wells together for more than 20 years.

Well Site Considerations

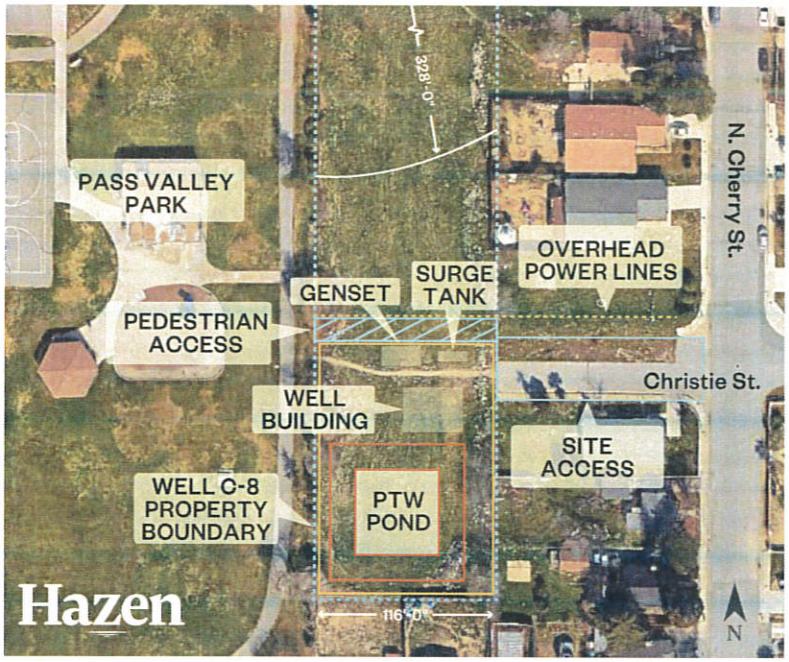
There are several design considerations that must be considered for the well site layout and design components such as location, site size and shape, proximity to sensitive receptors, existing utilities, code compliance, and constructability. Some of these considerations are summarized in the figure below. In addition, the potential ability to install future treatment and/or a new well on-site may also be considered.



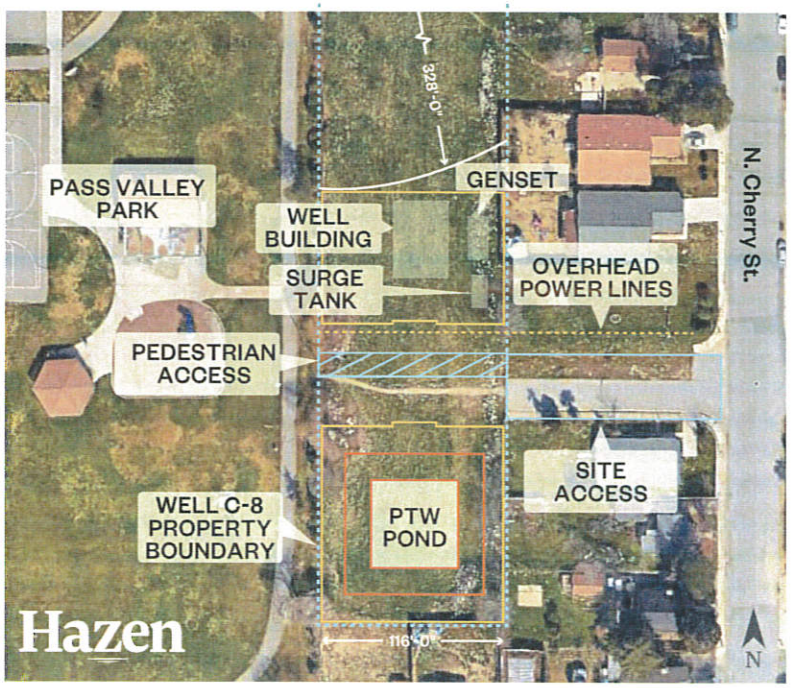
WELL C-8 SITE CONSIDERATIONS

1. Maintain clearance from overhead power lines
2. California Well Standards separation requirements
3. Genset AQMD regulations
   - **a.** Genset < 50 M (164 FT) of sensitive receptor (park and residence property line)
     - Emission rate = 0.01 G/BHP-HR
   - **b.** Genset < 100 M (328 FT) from school
     - Non-emergency operation cannot be performed 7:30AM-4:30PM on days school is in session
   - **c.** Genset > 100 M (328 FT) from school
     - No time restriction for non-emergency operation since emission rate = 0.01 G/BHP-HR
4. California Fire Code (clearance from Genset base fuel tank)
   - Less than or equal to 750 gallons
     - 10' from buildable lot line or public way
     - 5' from building located on same lot
   - Greater than 750 gallons
     - 15' from buildable lot line or public way
     - 5' from building located on same lot
5. Drilling equipment layout
6. Development discharge disposal
7. Site maintenance access
8. Maintain pedestrian park access

WELL C-8 SITE
POTENTIAL SITE LAYOUT OPTION 1



WELL C-8 SITE
POTENTIAL SITE LAYOUT OPTION 2



Well Site Objectives

- Maintain setback requirements
- Avoid overhead power lines
- Provide construction and O&M accessibility
- On-site pump to waste discharge
- Minimize impacts to school, park, and residences

Two potential site layout concepts have been developed.

Option 1: *The well building and generator are located south of the existing power lines.*

Option 2: *The well building and generator are located north of the existing power lines.*

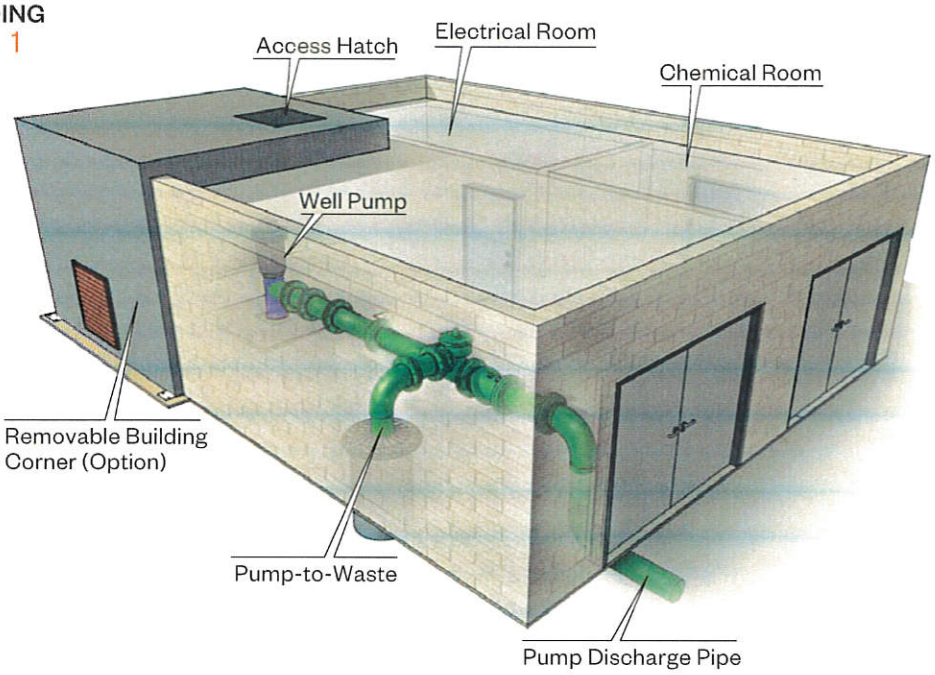
The site layout will be confirmed during preliminary design based on facility sizing and spacing requirements, and based on City preference.

Two potential well building concepts have been developed as shown in the figures below. The ultimate building configuration will be developed based on City preferences for cost, accessibility, and impact to the surrounding community.

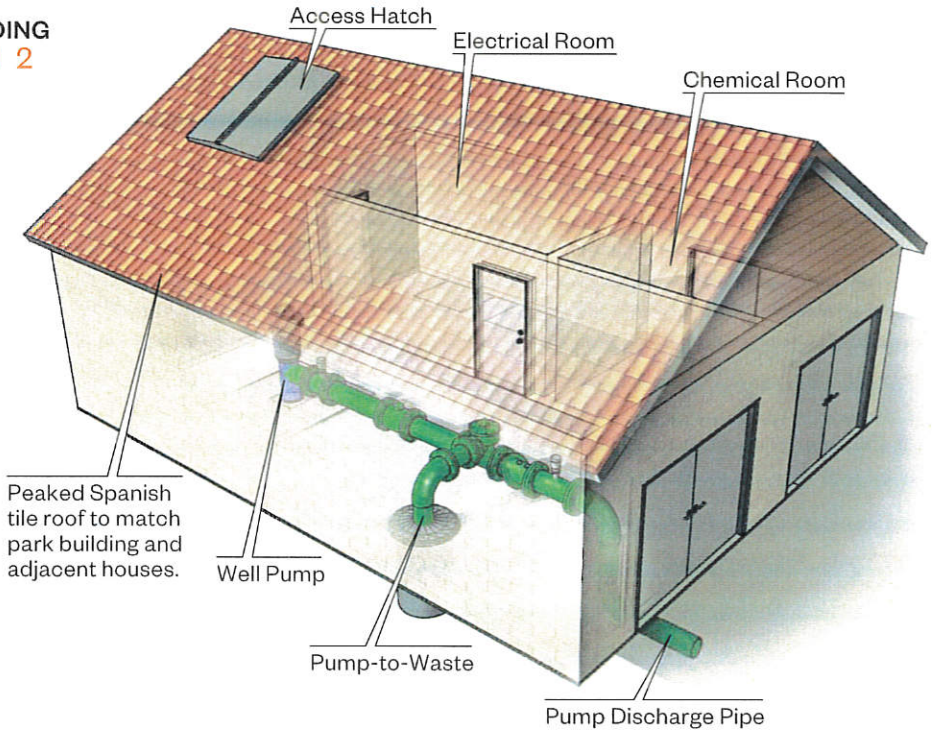
Well Building Objectives

- Protect equipment from elements
- Provide security
- Provide accessibility for well maintenance
- Maintain equipment spacing requirements
- Minimize sound and visual impacts to community

WELL BUILDING OPTION 1



WELL BUILDING OPTION 2



Well Operational Considerations

How will Well C-8 operate during periods of low demand?

A key to project success is to ensure proper design of equipment and controls for pumping into a closed distribution system (no gravity storage). Operating a high capacity well within a closed system presents challenges that need to be addressed to prevent:

- Over pressurization
- Pressure surges
- Frequent starts and stops of the well
- Well operation too far left on curve
  - low efficiency
  - bearing damage
  - impeller damage

While using a variable frequency drive helps to lessen starting frequency issues, the low flow limit for the pump still needs to be considered. For a 2,000 gpm vertical turbine pump, the low flow limit would likely be above 1,000 gpm and would correspond with a very low pump efficiency. Operating at minimum speed would cost more money in electricity even when using a variable frequency drive. Pump selection needs to consider the entire operating range to maximize the efficiency, but operational controls are required to keep the pump operating above the minimum efficient flowrate. During preliminary design, the Hazen Team will work with the City to identify and provide solutions for the design challenges. The following table identifies challenges and solutions associated with operating a high capacity well during periods of low demand.

Challenge	Solution
Over Pressurization	Install pressure relief valve that discharges to the percolation pond.
	Install variable frequency drive to allow pump to adjust to changing demands.
	Install a surge tank or hydropneumatic tank to give more time for variable frequency drive to adjust to a rapid change in demand.
Pressure surges	Install surge tank to mitigate surges during pump trips.
	Install variable frequency drive or solid-state controller with torque controlled starting and stopping to prevent surges during pump startup and shutdown.
Frequent starts and stops	Install variable frequency drive to allow pump to better match system demand.
	Oversize the surge tank and operate it as a hydropneumatic tank (the hydropneumatic tank supplies low flows).
	Utilize pressure reducing valves to supply flow to a lower zone to maintain a higher demand for the well.
Well operation too far left on curve	Oversize the surge tank and operate it as a hydropneumatic tank (the hydropneumatic tank supplies low flows).
	Utilize pressure reducing valves to supply flow to a lower zone to maintain a higher demand for the well.

Potential Cost Saving Measures and Project Enhancements

This project presents some opportunities for capital cost saving measures.

Potential Capital Cost Saving Measures

- Dual casing material
- Prefabricated metal or concrete building
- On-site pump-to-waste pond
- Temporary development water pond

Hazen will evaluate these value engineering items with City staff to ensure that the City's performance expectations are in line with the City's budget for construction. Operational efficiencies will be realized with proper system curve development and pump selection as well as variable frequency drive control and hydropneumatic tank design.

Hazen is experienced in the traditional design/bid/build (DBB) project delivery method as well as alternative project delivery methods including design/build (DB), and construction management at risk (CMAR). An alternative delivery method could present an opportunity for project enhancement depending on the City's priorities for factors including time, cost, quality, value engineering, owner control, contractor relations, and risk.

2.2 Implementation

Project Management and Communication. Hazen utilizes a team approach for project delivery with Scott Rogers as the City's Project Manager who will be your day-to-day point of contact for this project. Scott will also be responsible for overseeing the project delivery and coordination of assigned tasks to the team. Marc Solomon will be our Principal-in-Charge, who is directly responsible to the client for the performance of the office and firm. We maintain close communication with our clients throughout our projects, not only discussing technical issues, but making sure we are on track with deliverables and budget. We use a variety of project management tools to track budgets, schedules, and to ensure effective communication throughout the duration of the project.

Progress Reporting. Proper reporting of progress is essential to maintaining the project schedule and cost as well as early identification of any issues which may lead to scope, cost, or schedule variances. The Project Manager will track the schedule and budget of the work. We utilize several management tools including critical path scheduling, budget projections, and monthly project budget updates, to ensure that high quality deliverables are submitted on time and within budget. For this project, Hazen proposes the following approach to progress reporting:

- Monthly Progress Reporting - A monthly Progress Report will be submitted by Hazen. The Progress Report will include information related to work completed that month, work expected for the next month, important upcoming milestones and updates on schedule and budget. The actual percent complete, budget expended and any scope, budget or schedule issues for each task will be included.
- Monthly Progress Meeting – Monthly progress meetings will be attended by the City's Project Manager, Hazen's Project Manager, and key team members as required. The meetings will include discussion of work completed, work planned, and any variances in schedule or cost and potential mitigation efforts.

During the design, Hazen proposes monthly meetings with City staff including Engineering and Operations to discuss project progress either in-person or via conference calls utilizing screen sharing software. Meeting minutes will be circulated for concurrence. Hazen also utilizes SharePoint, a web-based application that can integrate with Microsoft Office and can also be used simply for file storage and transfer. It allows for live file editing by multiple parties for more dynamic interaction between the City and Hazen.

A detailed proposed scope of work is included as **Exhibit A.**



Quality Assurance. Hazen adheres to corporate Project Quality Assurance guidelines that outline policies and procedures required for execution of all projects. However, quality doesn't enter our projects simply as a result of any company procedures; it is an attitude within each of our staff about providing the highest quality work to our clients while remaining within our budgetary constraints. To support this commitment, Hazen has developed a Quality Assurance Policy Manual to provide guidance to staff during the execution of projects undertaken by the Firm. The Manual defines our corporate Project Quality Control Program. In accordance with Hazen's QA Policy Manual, QC reviewers should be independent of the design process, so that reviews have a broad perspective. Hazen performs internal QC reviews prior to each submittal to ensure quality deliverables to the City's satisfaction. Hazen also conducts constructability reviews along with safety reviews in accordance with Cal/OSHA standards. Designs will be done in accordance with City of Banning Standard Specifications, Standard Specifications for Public Works Construction (Greenbook), and in accordance with local, state, and federal requirements. Built into each budget and schedule is time to complete a quality assurance and quality control review for each project deliverable.

2.3 Schedule

Hazen is committed to delivering projects efficiently and to schedule milestones developed at the project onset. We have resources available to begin immediately on this project and will dedicate the same resources to the project to the end, keeping a focus on tracking decisions and achieving milestones. A commitment to a project plan and schedule by all parties will result in streamlined project delivery that engages stakeholders at the appropriate frequency and decisions will be made in a timely manner.

Hazen's proposed schedule is included as **Exhibit C.** Based on past experience delivering similar types of projects and the scopes of work, Hazen estimates that from Notice to Proceed to construction completion will take approximately 21 months, including approximately 10-weeks of City review.

2.4 City Roles

The following tasks are anticipated to be required of the City:

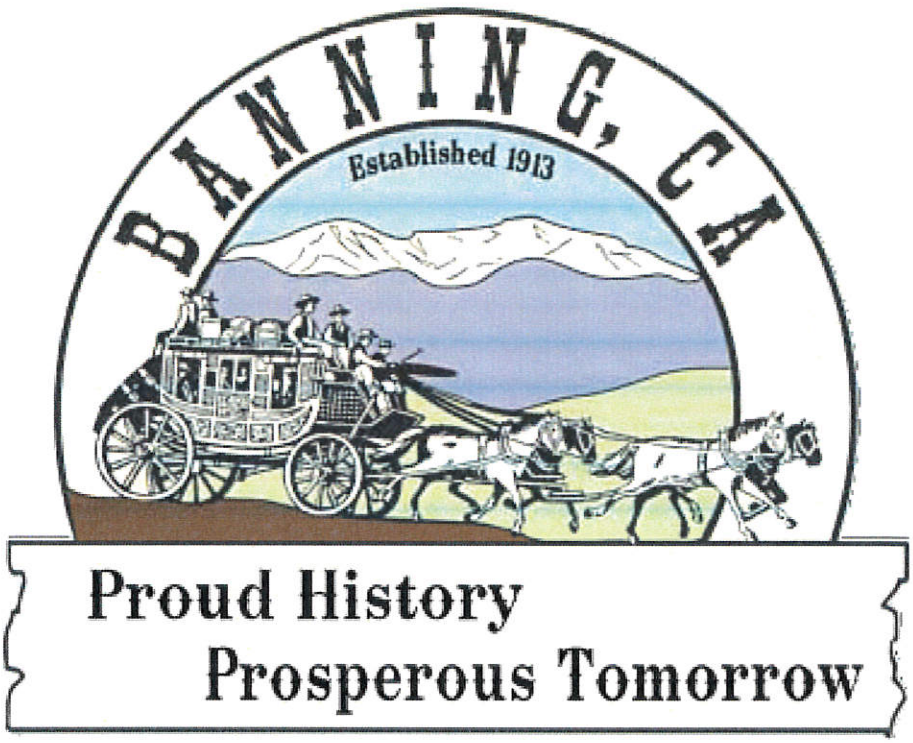
- Provide requested background information
- Meeting attendance
- Invoice processing
- Provide site access
- Review and provide comments on submittals
- Public, stakeholder, governing agency, and utility provider outreach

2.5 City Facilities

Hazen does not anticipate leasing, renting, or purchasing any City-owned facilities or property in connection with the services to be performed. City-owned facilities or property may be proposed to be used only to the extent of field gathering of information necessary for design.

Section 3

Staffing



Section No. 3

Staffing

We have assembled a team of highly qualified professionals with local experience working collaboratively to deliver well design and equipping projects.

Our project team has been assembled based on the project needs and the team members' qualifications.

1. Local team members will be designated for each phase of the project because of its utmost importance to understand the local conditions and concerns of City staff. The local team will be supplemented by technical expertise and a bench of resources located throughout California.
2. Our proposed team has worked together on numerous local projects, which results in both high quality and cost-effective projects.
3. The firm's culture has been to avoid the creation of unnecessary management, administration, and marketing layers, thus minimizing excessive overhead and total costs to the project.

This section outlines the Hazen Team organizational structure, as well as the qualifications and responsibilities of our team's key members. This indicates reporting/accountability relationships and proposed points of contact for interaction with City staff. In addition, we propose to subcontract Cozad & Fox for surveying services and Leighton for geotechnical services whom Hazen has worked with on a variety of projects in California.



Principal-in-Charge
Marc Solomon, PE, BCEE, D.WRE

Project Manager
Scott Rogers, PE

QA/QC
Cindy Miller, PE
Kent O'Brien, PG, CEG

Well Design
Russ Kyle, PG, CHG

Well Equipping & Site Layout
Steve Conner, PE

Pipeline Design
Sam Valdez, PE

Civil
Sam Valdez, PE

Structural
Wyatt Dressler, PE

Architectural
Bill Russell, AIA, LEED AP

HVAC
Swaid Alhajri, PE

Electrical, Site Security
Chris Thunhorst, PE

Instrumentation & Control
Justin Irving, PE

Environmental & Permitting
Katie Hoek, PE

Cost Estimating
Chris Portner, PE

Surge Analysis
Crystal Broadbent, PE

Drilling Inspection, Hydrogeological, and Well Water Quality Testing
Kim Makar, GIT

Construction Management/ Inspection
Jim Littrell

Water Quality
Vivy Dong, PhD, PE

Surveying
Cozad & Fox*

Geotechnical
Leighton*

** Subconsultant*



Scott Rogers, PE

Project Manager

Scott is Hazen's Operations Manager for the Palm Desert office with over 20 years of experience managing and delivering successful groundwater well, pump, and facility improvement projects in both the private and public sector. Scott is intimately familiar with the issues and challenges facing the local communities and is committed to working with water agencies to execute projects on schedule and on budget to improve their effectiveness and quality of service.



Marc Solomon, PE, BCEE, D.WRE

Principal-in-Charge

Marc's broad project experience has exposed him to all phases of project planning, design, system modeling, system controls, construction management, and operational reliability. This unique and diverse experience enhances his ability to work effectively with project teams and externally with elected officials, engineers, operators, contractors, and the general public.



Cindy Miller, PE

QA/QC - Equipping Design

Cindy has been responsible for delivering some of the largest groundwater supply projects in Southern California over the past two decades. Her experience includes well siting evaluations, well equipping mechanical and civil layouts, hydraulic analysis and pump selection, operational control strategies, wellhead disinfection, and wellhead treatment analysis and design.



Kent O'Brien, PE

QA/QC - Well Design

Kent has over 26 years of experience specializing in the design and construction groundwater production systems with hands-on experience in field operating procedures and data collection programs required for aquifer testing and water treatment pilot testing. He also has comprehensive knowledge of drilling techniques, well design, well installation, aquifer tests, groundwater monitoring programs, and sampling procedures. Due to the specialized nature of well design, Kent will serve as a quality control reviewer the well design portion of the project.



Russ Kyle, PG, CHG

Well Design

Russ has 20 years of experience specializing in a wide variety of groundwater resources development throughout Southern California. His technical experience includes groundwater basin evaluations, water supply studies, well siting investigations, artificial recharge feasibility evaluations, well field condition assessments, well rehabilitation, desalination feedwater supply studies, and geophysical surveys. Throughout his career

he has been responsible for installation of more than 145 water supply wells and 70 monitoring wells and exploratory borings, including management of a team of field inspectors, coordination with drilling contractors and regulatory agencies, well design, and construction management for the City of Banning, Indio Water Authority, Mojave Water Agency, and City of Riverside among many others.



Sam Valdez, PE

Pipeline Design/Civil

Sam is a Senior Principal Engineer with professional experience that includes pipeline routing analysis and design, site layout, pump selection, well equipping, and valve station design. Sam has served in lead roles on large well and pump station projects preparing construction drawings and specifications, and serving as key point of contact for inter-discipline coordination. Sam is also experienced in providing bidding and engineering construction support services working closely with construction management and inspection staff. He was also a key team member on the City of Banning Chromium 6 Treatment and Compliance Study leading the infrastructure evaluation and hydraulic modeling.



Steve Conner, PE

Well Design & Site Layout

Steve is a professional civil engineer with 22 years of experience in the planning and design of water and wastewater infrastructure including production wells, storage tanks, treatment systems, pipelines, booster stations, lift stations, and sewer facilities. Steve specializes in complex pumping and piping system layout, hydraulic design, groundwater supply and treatment design, and construction phase assistance including start-up and operation of pumping and treatment facilities. Steve coordinates all engineering support disciplines (civil, architectural, structural, process, mechanical, electrical, and I&C) during project design and construction phases.



Wyatt Dressler, PG, CEG

Structural

Wyatt is a Senior Principal Engineer specializing in structural and seismic design for water and wastewater treatment facilities, water storage facilities and support systems for conveyance pipelines and mechanical equipment. Wyatt specializes in reinforced concrete, reinforced masonry and steel design for both building and non-building applications, and has a comprehensive understanding of structural engineering principles and practices. Wyatt has experience with structural modeling as well as seismic and structural evaluation and assessment of existing structures. Additionally, he has field experience with structural observations of concrete, masonry, and steel construction.



Bill Russell, AIA, LEED AP

Architectural

Bill has extensive experience in the architectural design of water and wastewater treatment plants, maintenance buildings, laboratories, and other industrial facilities. As Architect, his responsibilities include preliminary and final design, technical specifications, cost estimation, and project administration during construction. Bill utilizes computer applications during all phases of design.



Swaid Alhajri, PE

HVAC

Swaid is our HVAC and Discipline Lead for the West Region. He has a strong background in planning, design, and construction coordination that includes includes treatment systems in the water and wastewater industry with a special emphasis on infrastructure improvements. Swaid has a solid understanding of HVAC, plumbing, and fire-protection design systems within the water and wastewater industry.



Chris Thunhorst, PE

Electrical, Site Security

Chris is Hazen's Electrical and Instrumentation Group Leader for the West Region. Chris has over 17 years of experience in electrical engineering for building systems, water and wastewater treatment facilities, and pumping stations associated with water distribution and wastewater collection systems.



Justin Irving, PE

Instrumentation & Control

Justin has over 10 years of experience in the water/wastewater industry. He has worked for the public and private sectors and takes a team-oriented approach to problem solving. He has in-depth experience in project management, water/wastewater process monitoring, data analysis, pumping system hydraulics, and field engineering. His background working for an instrumentation and controls vendor provides Justin with unique insights for process control.



Katie Hoek, PE

Environmental & Permitting

Katie is committed to shepherding projects through federal, state and local environmental review processes and ensuring all project permits are properly identified, tracked and obtained. She works closely with regulators and approving agencies to facilitate project designs that are responsive to applicable requirements, plans and laws. She is experienced in stakeholder facilitation and works with the design team to address stakeholder concerns and preferences. She has prepared environmental reviews under NEPA and CEQA and regularly works with federal (USACE, USFWS, FEMA) and state agencies. Katie brings a strong background in the preparation of CEQA Plus documents. She was involved in the CVWD Cr6 EIR and CWD Cr6 Mitigated Negative Declaration.



Chris Portner, PE

Cost Estimating

Chris is a Civil Engineer with experience in process engineering, wastewater treatment plant design, cost estimating and construction management. He has performed cost estimating from planning level through construction for both water and wastewater projects, including conveyance and treatment facilities. Mr. Portner is an AACEi Certified Estimating Professional.



Crystal Broadbent, PE

Surge Analysis

Crystal specializes in surge modeling, water and sewer modeling, and hydraulic analysis and design. Her experience includes model creation from GIS shapefiles, AutoCAD files, and/or paper data; hydraulic calculations and model calibration using SCADA data and field tests; and problem identification and prioritization.



Kim Makar, GIT

Drilling Inspection, Hydrogeological, and Well Water Quality Testing

Kim is a geologist with six years of experience in the water resource and mining industries. Kim has been responsible for developing and executing multi-million-dollar groundwater dewatering programs, including installation of vertical dewatering wells, horizontal drains, and monitoring wells. Since 2014, she has been providing professional consulting services to the water resources industry in Southern California with an emphasis on new well installation and well rehabilitation.



Jim Litrell

Construction Management/Inspection

Jim has thirty years of successful leadership in water and wastewater design, construction, and operations and maintenance management working in both the public and private sectors. Jim has experience as an end-user, consultant, and manager during the design, construction, start up, and operation of water and wastewater systems. This diversified experience allows him to monitor installations during the construction and start up phases of projects to optimize end-user satisfaction, with budget and schedule in mind as well.



Vivy Dong, PhD, PE

Water Quality

Vivy works on variety of groundwater projects. She has experience with screening large water quality data sets for contaminants of concern and evaluating treatment options for common groundwater contaminants such as volatile organic carbon, 1,2,3-trichloropropane, and hexavalent chromium. She is also experienced with field work relating to treatability, drinking water residual management, water treatment process design.

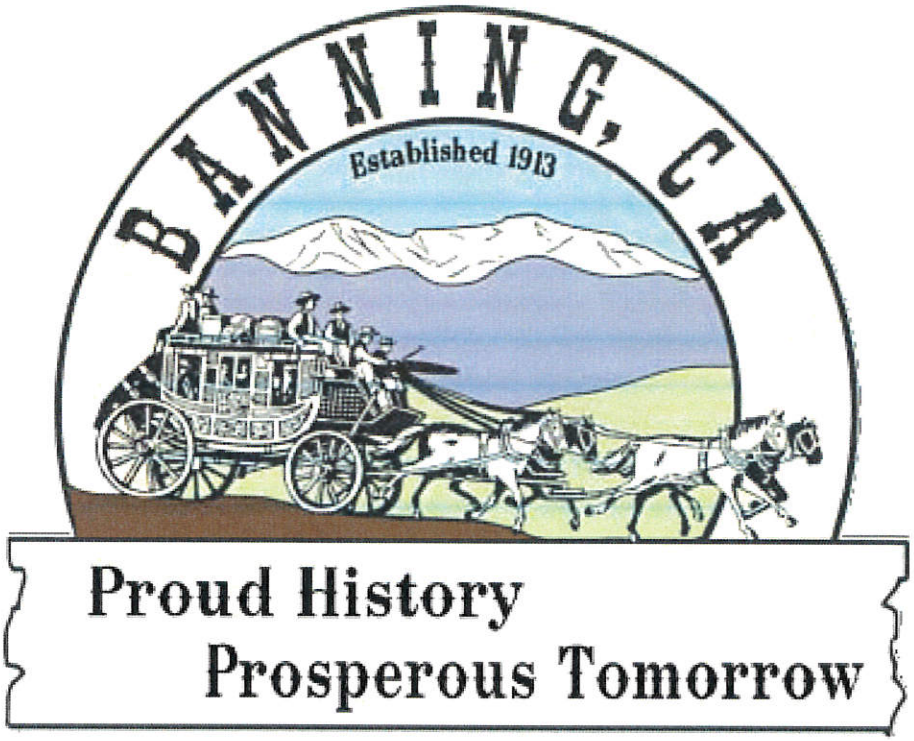
Subconsultants

Cozad & Fox, Inc. has been providing surveying services to municipal agencies throughout Southern California, including the City of Banning. Since 1977, Cozad & Fox has led over 200 projects, providing surveying and design for over 60 miles of street improvements, water, recycled water and sewer pipelines and assisting regional water agencies on lift stations, pumping plants, water storage tanks, and other agency facilities.

Leighton Consulting, Inc. provides geotechnical engineering services to public agencies and private developers throughout southern California for over 55 years. Their Temecula office will take the lead on providing the required services supported by seven other offices located in southern California. Leighton routinely completes geotechnical explorations and materials testing services for numerous sewer/water pipelines, lift stations, wastewater facilities throughout Southern California, and specifically Riverside County and Coachella Valley Area. With this experience, Leighton understands the needs of the owner, design team, and contractors, preparing reports to enable a safe, sustainable yet cost effective design and testing procedures.

Section 4

Qualifications



Section No. 4

Qualifications

Hazen is a nationally-recognized environmental engineering and consulting firm, specializing in the engineering and management of wastewater collection, treatment, and disposal; recycled water treatment and distribution; and water supply, distribution, and treatment.

From source to tap, managing supply, treatment, and distribution can present a steady stream of complex challenges. Since 1951, Hazen has a singular focus on **"All Things Water"**, and can bring the required expertise and specialists to each project. ENR has consistently ranked Hazen as one of the top firms in the nation entirely devoted to water and wastewater. By providing excellent engineering to our clients, Hazen has grown to over 1,000 technical professionals located in 50 offices throughout the United States and around the world.

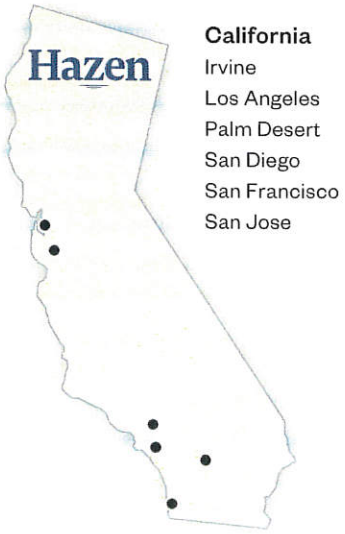
Our strength is in our deep project experience gained through years of designing, constructing, and helping agencies operate their systems. In the last five years alone, we have completed over 1,300 water and wastewater projects around the globe, providing planning, modeling, assessment, design, program and construction management, and operations assistance services. We inherently consider O&M concerns from the outset of a project. We are able to do this because our key team members bring a working background in operations.

Our deep bench of qualified resources will address the technical requirements for this project. We are dedicated to delivering the best value solutions for the City that meets your schedule and quality expectations.

The Hazen Team offers a combination of local knowledge and experience, reliable, technical resources, and expertise ideally suited for this project, providing in-house engineering services throughout the State of California.The following projects identify our team's experience in particular areas of expertise similar to the requested scope of work in the RFP. From straight-forward pipelines to complex treatment plant projects, our team works together to provide the best solutions to meet the needs of our clients.

Hazen Located Throughout California

Hazen's Palm Desert office is a short 30 minute drive to the City of Banning and the project location. The proximity of our office allows for quick response and practical cost-effective solutions for the City.



Project Experience

The Hazen Team has the experience and expertise to deliver the engineering services needed for this project. The following selection of the Hazen Team's reference projects demonstrates a proven track record with project-relevant experience. In fact, our key team members proposed for this work had significant roles in these project tasks. The client references listed in this section can attest to the quality of our services, delivery capabilities, and the level of ownership. Others can attest to our local commitment to the communities we serve.

*Bellflower High Capacity Well

City of Bellflower

Bellflower, CA



Key Features

- Developed three (3) alternatives for the improved site
- Final design of 3,500 gpm well
- Construction management, inspection, and start-up assistance

The Bellflower High Capacity Well project included preparation of a siting study, preliminary design report, final engineering design, and construction management and inspection services for the well drilling and equipping of the City's new high-capacity groundwater well. The well was designed to produce 3,500 gpm. The well is equipped with a 400 HP variable frequency drive-driven vertical turbine well pump enclosed in a building for noise mitigation and well security. The project included design of a sodium hypochlorite disinfection system, backup generator, and HVAC. Noise mitigation was a key issue for this project, with sound dampening design for the building and emergency back up generator.

Team
Cindy Miller, *PIC*
Steve Conner, *Proj. Mgr.*
Russ Kyle, *Geohydrologist*

Project Duration
2009-2012

Client Reference
Steve Bucknam
Project Manager
City of Bellflower
(Contract PM)
16600 Civic Center Drive
Bellflower, CA 90706
(949) 363-6461
steve@bucknam.net

*Raub 4-R and Raub 5-R Well Replacement Project

City of Riverside

San Bernardino, CA



Key Features

- Preliminary design
- Final design (well equipping, site layout, pipelines)
- Construction management, inspection, and start-up assistance

Provided engineering design and construction management services for the Raub 4-R and Raub 5-R Well Replacement Project. The project included the drilling, equipping, and testing of two groundwater extraction wells (Raub 4-R and Raub 5-R) with disinfection of both wells; installation of discharge and pump-to-waste pipelines for two new wells and existing Raub 7; and installation of a pre-lube system, abandonment of three wells, and demolition of two wells. In addition, electrical improvements, approximately 4,400 linear feet of 12", 20", and 24" DIP pipelines, approximately 1,300 linear feet of 20" CML&CMC bypass line, conduits, and equipment to handle or carry raw water to a nearby treatment facility was also provided. Portable emergency generator receptacles were installed at each well.

Team
Cindy Miller, *PIC*
Steve Conner, *Proj. Mgr.*
Russ Kyle, *Geohydrologist*

Project Duration
2014-2016

Client Reference
Ned Sciortino, VP
Development Hillwood
Investment Properties
1350 South E Street
San Bernardino, CA 92408
(909) 382-21631
Ned.Sciortino@hillwood.com

*This project was performed by key team members while working with another firm.

*Wells 21 and 22 Wellhead Facilities and Pipelines

Irvine Ranch Water District

Tustin, CA



Key Features

- PS&E for Wellhead Facilities and Pipelines
- 2013, Irvine Ranch Water District received the Project of Merit Award, American Society of Civil Engineers, Orange County Branch, February 22, 2013

Site civil, mechanical, structural, and electrical and I&C plans for the design of Wells 21 and 22. Both wells are submersible turbine pump / motor assemblies, installed within vaults to provide maximum noise mitigation. This project also included design of 20,000 LF of 24-inch diameter in the City of Irvine.

Team
Cindy Miller, *PIC*
Steve Conner, *Well Equipping Lead*
Russ Kyle, *Geohydrologist*

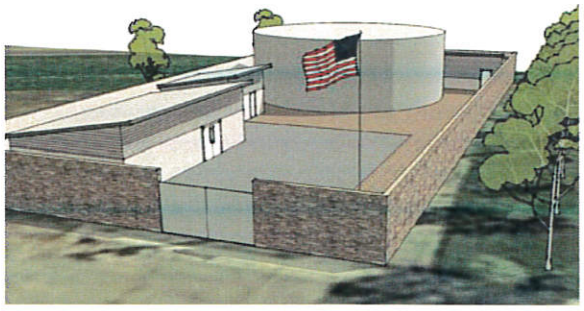
Project Duration
2010-2013

Client Reference
Steve Malloy
Principal Engineer
Irvine Ranch Water District
15600 Sand Canyon Avenue Irvine, CA 92618
(949) 453-5695
malloy@irwd.com

Well 274 Replacement Project

City of Modesto

Modesto, CA



Key Features

- Well equipping design
- Well site layout design

Well drilling and well equipping design to replace Well 274, originally installed in 1967. The well requires replacement due to excessive sanding, and being pulled water from a shallow aquifer impacted by nitrates at concentrations exceeding the MCL. The project includes site design for a future reverse osmosis treatment system and storage tank.

Team
Marc Solomon, *PIC*
Kent O'Brien, *Project Manager and Geohydrologist*
Steve Conner, *Well Equipping Lead*
Chris Thunhorst, *Electrical, I&C*

Project Duration
2017-Current

Client Reference
Robert Davalos, PE
Associate Civil Engineer
City of Modesto
1010 10th Street
Modesto, CA 95354
(209) 571-5869
rdavalos@modestogov.com

*This project was performed by key team members while working with another firm.

*Mojave Water Agency Regional Recharge and Recovery (R3) Project

Mojave Water Agency

Hesperia, CA



Key Features

- Design of six (6) hight capacity groundwater wells
- Design of reservoir pump station, and four (4) turnout facilities
- Design of 84,000 linear feet of 12" – 48" diameter pipelines

The R3 Project is a regional conjunctive use groundwater project that recharges and stores State Water Project Water within the Alto Groundwater Subbasin and then extracts and delivers this water when needed to the various end user turnout locations. The R3 source supports the base flow water supply for most of the region, along with proposed surface water treatment plants, and existing wells to fulfill supply peak demand requirements.

The Phase I project included construction of six wells to extract up to 15,000 acre-ft. per year, 16 miles of 12- to 48-inch diameter pipe, a 2.65 MG reservoir, a 40,000 gpm flow control recharge facility, and a 25,000 gpm pump station with 15,000 gpm/year (3,000 gpm per well) of pumping capacity initially installed, and four turnout flow control facilities with disinfection systems for delivering potable water to member agencies.

Team
Cindy Miller, *PIC*
Steve Conner, *Well Equipping Lead*
Russ Kyle, *Geohydrologist*

Project Duration
2008-2013

Client Reference
Gary Martin
gmartin@scvwa.org
(661) 297-1600

*La Brea Subarea Groundwater Supply

City of Beverly Hills

Beverly Hills, CA



Key Features

- Comprehensive preliminary design report
- Provided well equipping and site layout preliminary design for two (2) well sites
- Project completed on schedule and on budget

Developed a comprehensive Preliminary Design Report (PDR) to expand local water supply by developing local groundwater in the La Brea Subarea. The project includes developing approximately 1,700 acre-feet per year (AFY) of new potable water supply from local groundwater in the La Brea Subarea of the Central Groundwater Basin by drilling new wells. The production wells were optimally located to provide the highest sustainable groundwater production, on sites that can be permitted by Division of Drinking Water. Conveyance facilities (20,000+ LF) from the well sites to the City's existing reverse osmosis water treatment plant.

Team
Cindy Miller, *PIC*
Steve Conner, *Well Equipping Lead*

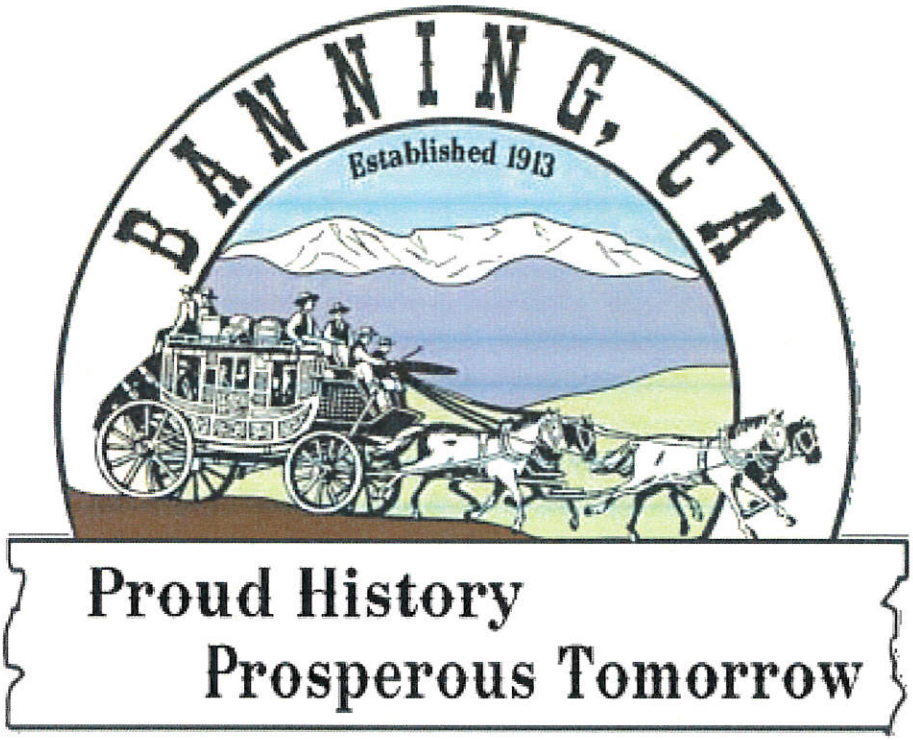
Project Duration
2016-2017

Client Reference
Vincent Chee
Project Manager
City of Beverly Hills
345 Foothill Road
Beverly Hills, CA 90210
(310) 285-2521
vchee@beverlyhills.org
malloy@irwd.com

*This project was performed by key team members while working with another firm.

Section 5

Financial Capacity



Section No. 5

Financial Capacity

Hazen is a professional corporation wholly owned by employees of the firm who are licensed professional engineers. During its more than 60 years of existence, it has consistently operated profitably. Management has always followed a conservative philosophy. In this way, the firm's growth has been sustained and supported by a strong financial base. The firm is in a strong financial position in its industry and there are no unique risks which would affect its continued existence. To demonstrate our stability, we included our audited financial statements for 2017 in Appendix B. Please treat all financial materials confidentially.

Additionally, as an additional aid in your evaluation of our financial stability, we suggest confirmation from the following sources:

Gordon L. Smith
Executive Director
JPMorgan Chase Bank
(212) 270-1810
gordon.l.smith@chase.com

Dun & Bradstreet
Identification No.
06-496-6138

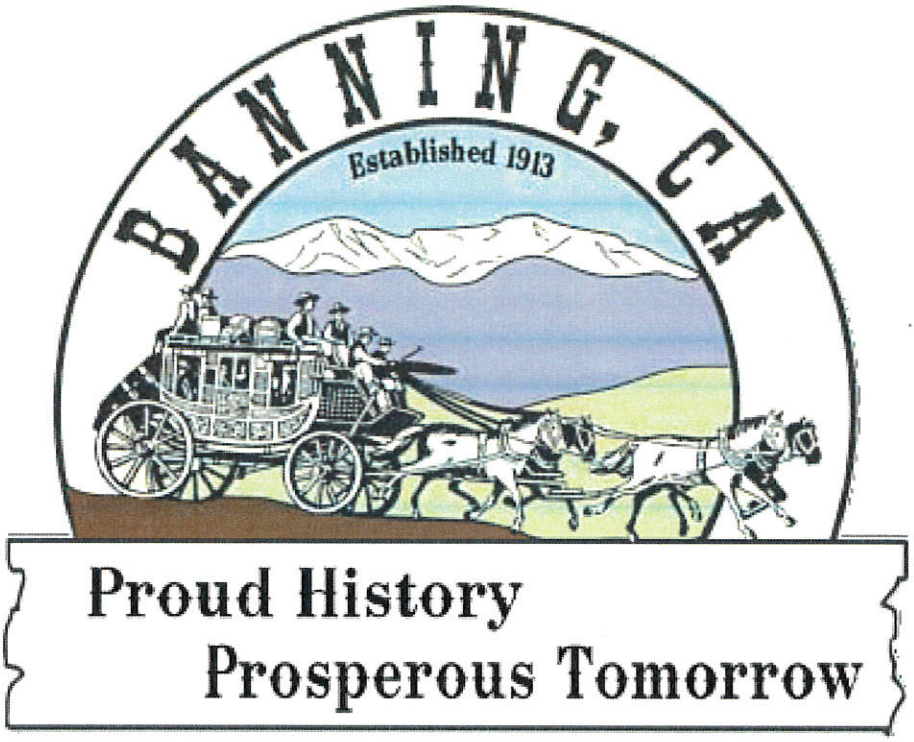
Pending Litigation

Hazen has a longstanding reputation for outstanding engineering work, and despite completing thousands of projects, issues leading to arbitration or litigation on our projects are extremely rare, especially in light of the litigious nature of the design and construction industry at the present time. As requested in the RFP, Hazen has not been involved in any litigation brought by clients. We have only one instance of contractor lawsuits in connection with construction project disputes.

Case Name	Description	Status
R. J. Sullivan Corp., a Florida Corporation v. Hazen and Sawyer, P.C.	Contractor R. J. Sullivan brought suit in connection with noise issues associated with pump bearings.	Suit filed: 5/7/14; Still open

Section 6

Fee Proposal



Section No. 6

Fee Proposal

Our Fee Proposal is separately uploaded in accordance with the RFP guidelines.

Exhibit A

Scope of Work

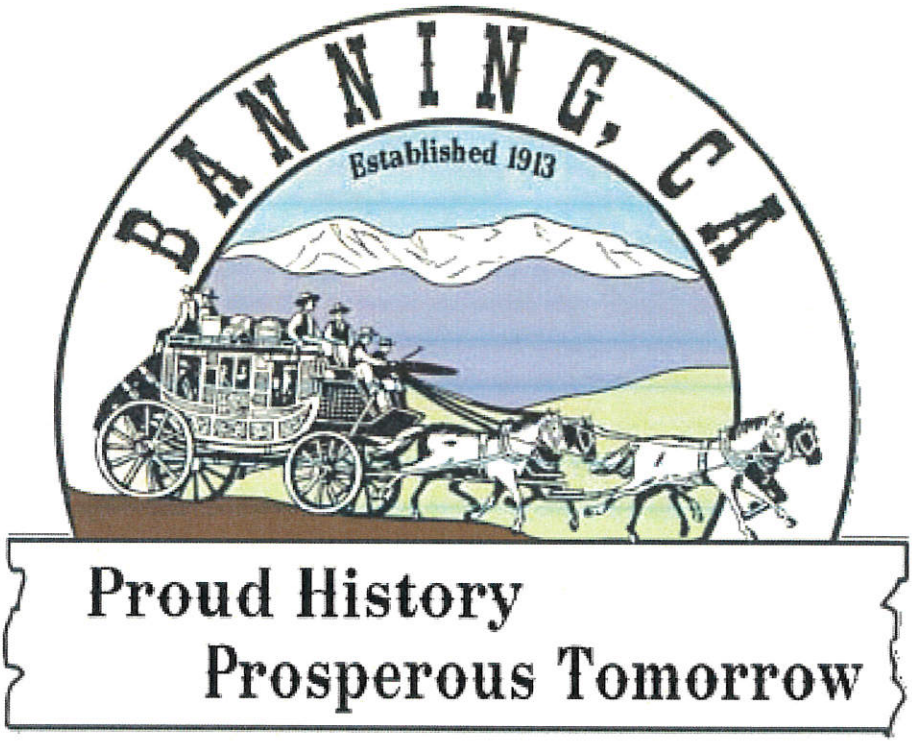


Exhibit A

Scope of Work

Task 1.0 – Project Management

This task includes the work necessary to prepare and submit the schedule to the City, manage the project, budget, subconsultants, and prepare monthly invoices and progress reporting. Hazen will attend one kick-off meeting at the project onset and up to ten progress meetings. Hazen will submit to the City the agenda and minutes for these meetings. Hazen will also attend up to two City Council meetings. Other meetings will be conducted via conference call as required. In accordance with Hazen QA/QC guidelines, deliverables will be reviewed by Hazen staff with expertise in the corresponding category prior to submittal to the City.

Task 2.0 – Data and Literature Review

Hazen will obtain and review relevant and readily available hydrogeologic data and literature for the project area and vicinity, including details of well construction for nearby active, inactive, and destroyed/abandoned wells, historical groundwater quality data, static and pumping groundwater levels, instantaneous pumping rates, specific capacity data, historical plant efficiency tests, and nearby sites of environmental concern. Groundwater quality data will be obtained from the California Division of Drinking Water online database. Much of these data were collected by Hazen during the "Chromium-6 Treatment and Compliance Study" completed in July 2016 and will be updated and augmented by the City as necessary. The data will be utilized to conduct a high-level review of the well site for construction feasibility and identification of any fatal flaws prior to preparing the preliminary well design. Factors to be considered will include construction logistics, regulatory and permitting requirements, discharge considerations, optimization of the site layout, and hydrogeology. Results of the data review will be presented to the City as a brief letter-style technical memorandum.

Task 3.0 – Preliminary Well Design

Hazen will prepare a Preliminary Well Design Report (PDR) for Well C-8 utilizing the information obtained in Task 2.0. The PDR will include a summary of local groundwater conditions (including water quality and levels), aquifer production potential, environmental issues, construction logistics, and permitting and regulatory requirements. The report will also include a preliminary well design and planning-level engineer's estimate of costs. Hazen will submit an electronic (i.e., PDF) Draft version of the PDR to the City for review and comment. Three (3) bound copies and an electronic of the 100% Final PDR will be submitted.

Task 4.0 – Environmental and Permitting Support

Task 4.1 – Drinking Water Source Assessment and Protection (DWSAP) Documents

Hazen will prepare preliminary DWSAP documents for submittal to the State Water Resources Control Board Division of Drinking Water (DDW) to further the Domestic Water Supply Permit Amendment process. Preparation of the permit documents requires identification of potential sources of contamination (PCAs) that pose a risk to groundwater quality at the proposed well site. Protection zones will be delineated using the modified fixed radius method, incorporating local groundwater flow direction, pumping rate, and aquifer porosity. These protection zones will be presented in map with all identified PCAs. It is assumed that the preliminary DWSAP documents will be submitted to DDW prior to drilling of the well. Once the well has been completed and tested, the preliminary documents will be updated to reflect actual conditions (i.e., aquifer information, well as-built details, and pumping dynamics), and re-submitted to DDW.

Hazen will also complete the Well Permit Application through County of Riverside Department of Environmental Health and develop Best Management Practices (BMPs) for the disposal of well development discharge water.

Task 5.0 – Technical Plans, Specifications, and Cost Estimates for Drilling

Hazen will prepare detailed technical plans and specifications for construction of Well C-8, modify the City's standard front-end contractual documents, and prepare detailed bid schedules with specific line items showing units and unit quantities for the work. Engineer's estimates of construction costs will be prepared based on recent winning bids for similar work within the Southern California area. Items to be included in the technical specifications will include the following critical items:

- Well location, depths, dimensions, and materials
- Anticipated hydrogeologic conditions
- Regulatory and permitting requirements
- Compliance with discharge requirements
- Site requirements (i.e., noise monitoring and mitigation, waste disposal, BMPs, power, lighting, construction water source, security, sanitation facilities, staging, parking, and traffic control)
- Mobilization, demobilization, site preparation, and site restoration
- Drilling methods and fluids requirements
- Equipment, materials, and records to be furnished by the contractor
- Well drilling, zone testing, and construction procedures, including:
  - Conductor and sanitary seal installation
  - Pilot borehole drilling
  - Geophysical borehole logging
  - Isolated aquifer zone testing
  - Borehole reaming
  - Alignment, plumbness, borehole integrity, and drilling speed
  - Installation of well casing, screen, and ancillary tubing
  - Gravel envelope design and placement method
  - Annular cement seal installation
  - Well development procedures (initial and final)
  - Aquifer pumping and recovery tests
  - Flowmeter survey
  - Downhole video camera, plumbness, and alignment surveys
  - Well disinfection
  - Well head completion

Hazen will submit 50%, 90%, and 100% Draft versions of the plans and specifications to the City for review and comment, and one (1) electronic copy in native and PDF formats, and one (1) bound hard copy of the 100% Final version, including professional stamps and signatures.

Task 6.0 – Drilling Bidding Assistance

Hazen will finalize the bid documents and prepare the complete package for bidding. Hazen will prepare for and attend a pre-bid meeting with prospective drilling contractors and City personnel at the beginning of the bidding phase to discuss key points within the bid package, and to answer questions regarding site conditions, staging, preliminary well design, schedule, and other hydrogeologic or contractual matters. During the bidding process, Hazen will respond to bidder's questions and prepare bid addenda as necessary (assumes up to five RFIs). Once the bidding process is complete, Hazen will evaluate bids and will provide recommendations regarding award.

Hazen will conduct a pre-construction meeting and site walk with City and selected drilling contractor to establish the final location of the well and address any logistical issues with equipment setup. Discussion will also include, but not be limited to submittal, permit requirements, noise mitigation, discharge issues, construction water source location, site access, work schedules, submittal of pay requests, and communication protocol. Hazen will prepare a pre-construction meeting agenda and minutes.

Task 7.0 – Drilling Construction Management

Hazen will provide full-time construction management during the drilling phase of the project. Construction management activities will include: construction schedule maintenance, review of contractor submittals and pay requests, response to RFIs and change order requests, and preparation of a final "punch list". Daily updates will be provided by email and/or phone during active construction, and on a weekly basis when no construction is taking place. Monthly project summary reports will be provided to the City, which will summarize project status, including schedule, cost, and identification of any anticipated problems.

Task 8.0 – Drilling Inspection Hydrogeological Services, and Water Quality Testing

Task 8.1 – Conductor Casing and Sanitary Seal

Hazen will provide full-time inspection during drilling of the conductor borehole and installation of the conductor casing and sanitary cement seal to a minimum anticipated depth of 50 feet below ground surface (bgs). Hazen will inspect the conductor casing material, borehole and casing diameters, and casing wall thickness to verify conformance with the technical specifications and final design. The cement mix used for the sanitary seal will be compared to design and the time of mixing will be noted to ensure that an extended period has not taken place between mixing and delivery to the site. Cement samples will be collected during installation and submerged in drilling fluid to simulate downhole conditions. These samples will be monitored to ensure that the cement has sufficiently set, particularly when multiple cement pours are specified. Additionally, Hazen will coordinate with the drilling contractor and County inspector to ensure that the sanitary seal is in conformance with regulatory requirements.

Task 8.2 – Pilot Borehole Drilling

Hazen will provide part-time inspection during drilling of the pilot borehole to an anticipated depth of approximately 1,200 feet bgs. Composite formation cuttings will be collected at 10-foot intervals or at major changes in the character of formation materials. Each sample will be classified utilizing the Unified Soil Classification System (USCS) visual method. During drilling, Hazen will witness measurement of pertinent drilling fluid parameters to optimize protection of water-bearing formations and borehole integrity. Additionally, Hazen will witness borehole drift surveys for confirmation of borehole verticality, to be measured every 100 feet of depth. For cost estimating purposes, assuming an average drilling rate of 10 feet per hour, and a 24-hour per day work schedule, it is anticipated that borehole drilling will take approximately five days to complete.

Task 8.3 – Geophysical Logging

Upon completion of pilot borehole drilling, Hazen will provide full-time inspection services of downhole geophysical borehole logging for the following geophysical suite to be identified in the Technical Specifications:

- Short- and long-normal resistivity
- Focused resistivity (i.e., Laterolog 3 or guard)
- Conductivity
- Temperature
- Spontaneous-potential
- Single-point resistance
- Gamma-ray
- Sonic velocity / variable density

These geophysical logs, in combination with the borehole lithology, will be used to identify target aquifer intervals for isolated aquifer zone testing, and will ultimately inform the final well design.

Task 8.4 – Select Isolated Aquifer Zone Test Intervals

Hazen will review borehole lithology and geophysical survey logs and will select up to four 20-foot aquifer intervals for isolated aquifer zone testing. Recommended zone test intervals will be presented to the City in electronic letter format within 24-hours of the completion of geophysical logging. Upon approval by the City, the recommended zone test intervals will be provided to the drilling contractor for implementation.

Task 8.5 – Isolated Aquifer Zone Testing

Hazen will provide part-time inspection during isolated aquifer zone testing and will provide close monitoring during construction and testing of each zone. We recommend that zone testing be performed at discharge rates exceeding 200 gallons per minute (gpm), if possible, to ensure that representative sampling of the aquifer is taking place and that the aquifer is being sufficiently stressed to provide the best available field data. Instantaneous discharge rate, and static and pumping water levels, will be measured frequently during pumping of each zone to allow an assessment of aquifer pumping dynamics (including pressure head and specific capacity).

After each zone has been appropriately developed to the satisfaction of Hazen personnel, water samples will be collected and delivered to a State-certified water quality testing laboratory for analysis. Our fee assumes that the drilling contractor will contract with the laboratory directly and will be responsible for laboratory fees. Field water quality measurements will be collected during pumping and at the time of sample collection, including pH, temperature, electrical conductivity, dissolved oxygen, total dissolved solids, and turbidity. It is further recommended that, whenever possible, turbidity measurements taken from pumped groundwater be less than 10 nephelometric turbidity units (NTUs) for at least three hours prior to collecting water quality samples. The recommended water quality analytical suite will be presented to the City for approval prior to implementation in the field. It is recommended that the groundwater quality samples collected from each zone be analyzed on a 72-hour (i.e., 3-day rush) turn-around-time as the results of these analyses are integral to the final well design.

Task 8.6 – Review Lithology and Perform Mechanical Grading Analysis

Up to ten (10) formation samples will be selected for mechanical grain size (i.e., sieve) analysis based on visual observation of the actual samples, and geophysical survey logs. The selected samples will be analyzed at a soils laboratory using established ASTM protocol and procedures. The results of these analyses, along with knowledge of regional aquifer characteristics, will be used as a basis for preparing a custom gravel envelope and well screen design for the production well that will offer optimal well efficiency and extended well life.

Task 8.7 – Final Well Design

A properly designed gravel envelope will control production of formation sand while allowing for a highly efficient pumping well. Proper design of the gravel envelope can be accomplished through conformance with Terzaghi migration and permeability criteria, as well as appropriate uniformity coefficients and pack-to-aquifer ratios. These factors allow design of a gravel envelope which is sufficiently fine and graded to control the finest formation sand through stabilization, and coarse and uniform enough to allow efficient water flow. Once an appropriate gravel envelope gradation has been designed to complement the formation materials, a screen opening size is selected to stabilize the gravel envelope. The gravel envelope gradation will be designed based on the results of Task 8.6.

The location of the well screen interval(s), annular cement seal, and well appurtenances will be selected based on borehole lithology, geophysical borehole logs, and the results of isolated aquifer zone testing. Recommendations will also be provided regarding the suitability of borehole/casing depths and diam-

eters, and materials to be used. The final well design will be presented to the City in letter format for discussion prior to implementation.

Task 8.8 – Borehole Reaming

Hazen will provide part-time inspection during reaming (i.e., enlargement) of the pilot borehole to an anticipated depth of approximately 1,100 feet bgs. During drilling, Hazen will witness measurement of pertinent drilling fluid parameters to optimize protection of water-bearing formations and borehole integrity. Additionally, Hazen will verify that borehole depths and diameters are in conformance with the final well design and technical specifications. Our fee assuming an average drilling rate of 10 feet per hour, and a 24-hour per day work schedule, it is anticipated that borehole reaming will take approximately five days to complete. Following borehole reaming, Hazen will witness a caliper survey of the enlarged borehole, the purpose of which is to measure and verify borehole diameters and depths prior to well construction.

Task 8.9 – Well Construction

Hazen personnel will inspect all construction materials as they are delivered to the site, including the well casing, well screen, ancillary tubing, gravel envelope, and sealing materials. Casing materials will be inspected to verify that dimensions and material types are in conformance with the final well design. Each load of the gravel envelope material will be sampled upon delivery and sieved to verify that the as-delivered gradation meets design parameters. Cement mixes will be compared to design and the time of mixing will be noted to ensure that an extended period has not taken place between mixing and delivery to the site. Cement samples will be collected during installation and submerged in drilling fluid to simulate downhole conditions. These samples will be monitored to ensure that the cement has sufficiently set, particularly when multiple cement pours are specified.

Hazen will provide full-time inspection during installation of the well casing, screen, ancillary tubing, gravel envelope, and annular seals to ensure placement in accordance with the final well design and technical specifications. Installed volumes of gravel envelope and cement seal will be checked throughout the construction process to verify that there are no bridges or voids within the annular space between the well casing and borehole wall.

Task 8.10 – Initial Well Development by Airlifting and Swabbing

Well development is a critical phase of well installation, and successful well development will provide for an efficient well from which aquifer yield and groundwater quality can be assessed. The goal is to remove as much residual drilling fluids as is considered practical and to grade the gravel envelope and near-well zone such that water can be transmitted as efficiently as possible without producing formation sand.

The first phase of well development is particularly critical and typically consists of simultaneous airlifting and swabbing of the entire length of well screen in 10-foot increments. For each interval of screen, sand production will be measured immediately following swabbing, and as the discharge clears. Those intervals exhibiting significant sand production (i.e., greater than 1 ml/L) or high turbidity will be targeted for additional development on subsequent passes through the well screen. Hazen will provide part-time inspection during initial well development.

Based on the preliminary well design, it is estimated that approximately 144 hours of airlift development will be sufficient to develop the well. This can vary based on many factors, including the drilling fluid properties, formation characteristics, well design, and the actual length of well screen. As such, Hazen will review data collected during the development process and provide real-time recommendations regarding the need for additional development. Following demobilization of the

drilling rig, Hazen will coordinate with the drilling contractor regarding installation of the test pump to ensure that the pump is suitably sized, and that the intake is set at an appropriate depth within a blank section of well casing.

Task 8.11 – Final Well Development by Pumping and Surging

The second phase of well development consists of pumping and surging with a temporary test pump to be furnished by the contractor. During the final development process, pumping will begin at low rates, with no surging, slowly building to the maximum specified pumping rate (typically 1.5x the anticipated design pumping rate). Gentle surging will then begin at lower rates, becoming increasingly aggressive as development progresses. Tests for sand production and specific capacity will be performed throughout the process to measure the progress of development. Once specific capacity approaches its maximum, sand production approaches its minimum, and well performance criteria are met, development is considered complete and the aquifer pumping test phase can begin. Hazen will provide part-time inspection during final well development.

Typically, approximately 60 hours of final well development is sufficient to properly develop a well of this depth. However, this can vary based on many factors, including the drilling fluid properties, formation characteristics, and well design. As such, Hazen will review data collected during final development and provide real-time recommendations regarding the need for additional development.

Task 8.12 – Aquifer Pumping Tests

Hazen will provide full-time inspection during an 8-hour step-drawdown pumping test, the purpose of which is to allow calculation of well efficiency and determine an appropriate rate for the constant rate pumping test. During the test, static and pumping water levels, totalizer flowmeter readings, and sand production, will be measured at specified intervals. A pressure transducer will be utilized to accurately measure groundwater levels.

Following the step-drawdown test, Hazen will provide part-time inspection during the 24-hour constant rate drawdown test, the purpose of which is to determine recommended instantaneous pumping rate, allow calculation of short- and long-term pumping dynamics, and establish an optimal pump intake setting. As with the step-drawdown test, totalizer flowmeter readings and sand production will be measured at specified intervals, and pressure transducers will be utilized to accurately measure static and pumping groundwater levels. Recovering water levels will be measured with the pressure transducers for a period of 24-hours following cessation of pumping.

Toward the end of the constant rate pumping test, groundwater samples will be collected by Hazen personnel and relinquish them to the City for submittal to a State-certified laboratory under chain-of-custody protocol for Title 22 analysis. Field water quality measurements will be collected at the time of sample collection, including pH, temperature, electrical conductivity, dissolved oxygen, total dissolved solids, and turbidity. A flowmeter (i.e., spinner) survey will be conducted approximately 2 hours before cessation of pumping as a means of quantifying depth-specific groundwater flow contribution with across the well screen(s).

Task 8.13 – Downhole Video, Plumbness and Alignment Surveys, and Disinfection

Hazen will provide full-time inspection for a downhole dual-cam video survey to verify and document well construction details and to serve as a record of the as-built condition of the well. Hazen will also provide full-time inspection during plumbness and alignment testing of the well to verify acceptable verticality. It is anticipated that this testing will take the form of a gyroscopic alignment survey and will take place at the time of the video survey. Hazen will provide full-time inspection services during final disinfection of the well structure to ensure that suitable chemicals, concentrations, and methods of mixing and emplacement are employed.

Task 8.14 – Analyze Aquifer Pumping Test Data

Data collected from the aquifer pumping tests will be analyzed immediately following completion. Hazen will use the results of the analysis to make recommendations regarding optimal operational parameters, including instantaneous pumping rate, short- and long-term drawdown characteristics, well efficiency, and recommended pump intake setting. Analysis, results, and recommendations will be presented to the City in letter format with appropriate charts, figures, and data.

Task 8.15 – Well Construction Summary Report

Hazen will assemble all relevant construction records from the project and provide this information in a comprehensive written summary report. The report will include a summary of the project, project construction timeline, all daily field reports, an inventory of the materials installed, an as-built well profile of the well, borehole lithology, pumping test plots, recommended well capacity and pumping dynamics, geophysical surveys, video survey DVDs, field data, and groundwater quality.

Task 9.0 - Wellhead Facility: Improvements

Task 9.1 - Preliminary Engineering

Hazen will perform preliminary engineering tasks required to determine equipment sizing and permit requirements. This task includes the development of pump and system curves, pump selection, hydraulic surge analysis, chemical system design, HVAC calculations, electrical equipment sizing, power quality monitoring, and permit coordination.

Task 9.2 - Develop Construction Documents & Estimated Construction Costs

Hazen will prepare a set of Construction Documents: Plans, Specifications, and Engineer's Opinion of Probable Construction Cost (PS&E) required for obtaining Contractor bids for the Wellhead Facility Improvements. The Client will provide "front end" documents to Hazen for incorporation in the project's Contract Documents. Hazen will prepare technical specifications in pre-2004 CSI format. Specifications will be prepared using Microsoft Word. Submittals of PS&E documents will be made to the City for review at the 50%, 90%, and 100% stages. Hazen will coordinate with the State Water Resources Control Board (SWRCB) Division of Drinking Water (DDW), as required throughout the design phase of the project. At the 90% submittal stage, Hazen will submit a full-size set of plans to DDW for their review and comments. Hazen will incorporate DDW comments into the final submittal. Hazen will coordinate power requirements or modifications with the City. Associated application and permit fees to be paid by City.

The level of effort for this task is based upon the following assumptions:

- One bid set will be prepared.
- The wellhead, electrical equipment, and disinfection equipment will be housed within a concrete block building.
- The well pump will be a vertical turbine deep well pump with electric motor. Anticipated capacity of the well is 2,000 gpm.
- The well pump will be driven by a variable frequency drive.
- A permanent diesel-driven backup generator will be provided in an outdoor sound attenuating enclosure.
- A hydropneumatic surge tank will be provided
- An antenna for radio communication will be provided at the well site. Client to provide height and details required for the antenna.
- New discharge piping will be designed from the new well to a connection point in North Allen Street.
- Landscaping and irrigation design is not included in this Scope of Work.
- Disinfection system will be bulk sodium hypochlorite with approximately 800 gallons storage.

- Hazen will coordinate with the DDW to obtain necessary approvals for the well equipping design.
- Well pump-to-waste will be discharged to an on-site pump-to-waste pond (i.e., design of storm drain piping is excluded)
- The City's Electrical Department will be preparing the off-site electrical plans with Hazen providing coordination.

Task 10.0 - Wellhead Facility: Bidding and Pre-Construction Activities

Task 10.1 - Finalize Construction Bid Documents and Engineer's Estimate

Hazen will provide a final bid-ready set of PS&E documents.

Task 10.2 - Bid Phase Services

Hazen will provide construction bidding services including facilitating a pre-bid meeting, responding to contractor questions, issuing addenda, review of bids, and recommendation for contract award.

Task 10.3 - Respond to RFI's

Hazen will respond to requests for information during the bid process. For cost estimating purposes, Hazen has budgeted for a total of 5 RFI's.

Task 10.4 - Facilitate Pre-Construction Meeting

Hazen will conduct one pre-construction meeting, including preparation of agenda, supporting the City during the meeting and or facilitating the meeting, and preparation of meeting minutes.

Task 11.0 - Wellhead Facility: Construction and Post-Construction Support Services

Task 11.1 - Construction Management and Inspection

Hazen will provide construction management and inspection services for oversight of contractor construction and compliance with Contract Documents, and monitor the contractor's survey and geotechnical subcontractor. Hazen will also be responsible for completing project forms, inspection reports, documentation, monthly contractor progress payments, assisting with contract change orders, and filing for the project.

- Shop drawing and RFI log maintenance
- Evaluate substitute materials/equipment proposed by contractor
- Review and enforce construction schedule
- Evaluate change order requests
- Review contractor monthly progress payments
- Review contractor's "as-built" drawings for conformance

Task 11.2 - Attend Construction Progress Meetings

Conduct construction progress meetings bi-weekly. For cost estimating purposes, Hazen has budgeted for a total of 30 construction progress meetings.

Task 11.3 - Attend Field Meetings

Hazen's Project Engineer will attend periodic meetings in the field, as requested by the Client. For cost estimating purposes, Hazen has budgeted for a total of four field meetings during construction attended by the Project Engineer. Hazen has also budgeted for the Project Manager and Electrical Engineer to attend one field meeting during construction.

Task 11.4 - Shop Drawing and RFI Review

Hazen will review shop drawings, material submittals, working drawings, requests for information, samples and all other data required to be submitted by the Contractor for conformity with the contract plans and specifications. For cost estimating purposes, Hazen has budgeted for a total of 30 shop drawings and 15 RFI's for review, including shop drawing resubmittals.

Task 11.5 -Start-up Assistance

Hazen will provide two (2) days of start-up assistance by the Project Engineer and Electrical Engineer upon substantial completion of construction. This is to include start-up and testing of the well pump and all associated system mechanical and electrical. Start-up assistance will be overseen by the Project Manager.

Task 11.6 - Prepare Record Drawings

Hazen will prepare Record Drawings based upon the Contractor's redlined "As-Built" drawings. Hazen will provide a PDF submittal of the record drawings, along with the Contractor's "As-Built" drawings for review. Hazen will incorporate the Client's comments into the final Record Drawings submittal, which will include a PDF and native format.

Task 11.7 - Close-out Services

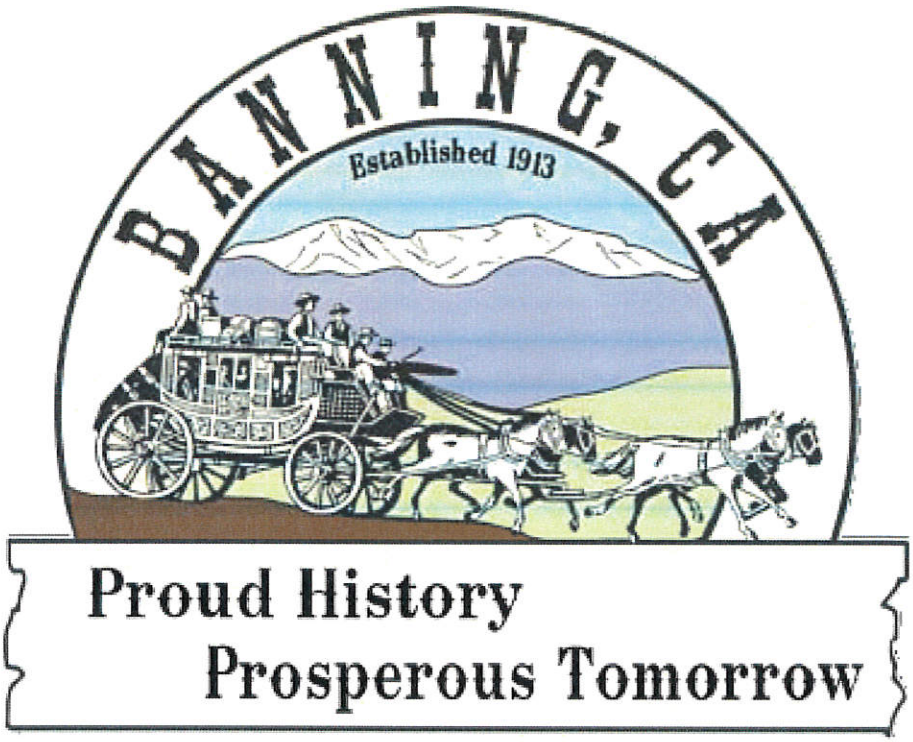
Hazen will schedule the final walk through and produce a final punch list, review and forward record quantities, provide final recommendation for well pump operation, and submit a final construction file to the Client.

Task 12.0 - Electrical Service

Hazen will assist the City's Electrical Department in preparing the offsite plans for the infrastructure improvements. Hazen understands the City's electrical utility department will prepare a plan to be included in the bid documents.

Exhibit B

Fee Proposal (Cost File)



Ehibit B

Fee Proposal

Exhibit B is included with our separately uploaded Fee Proposal.

Exhibit C

Schedule

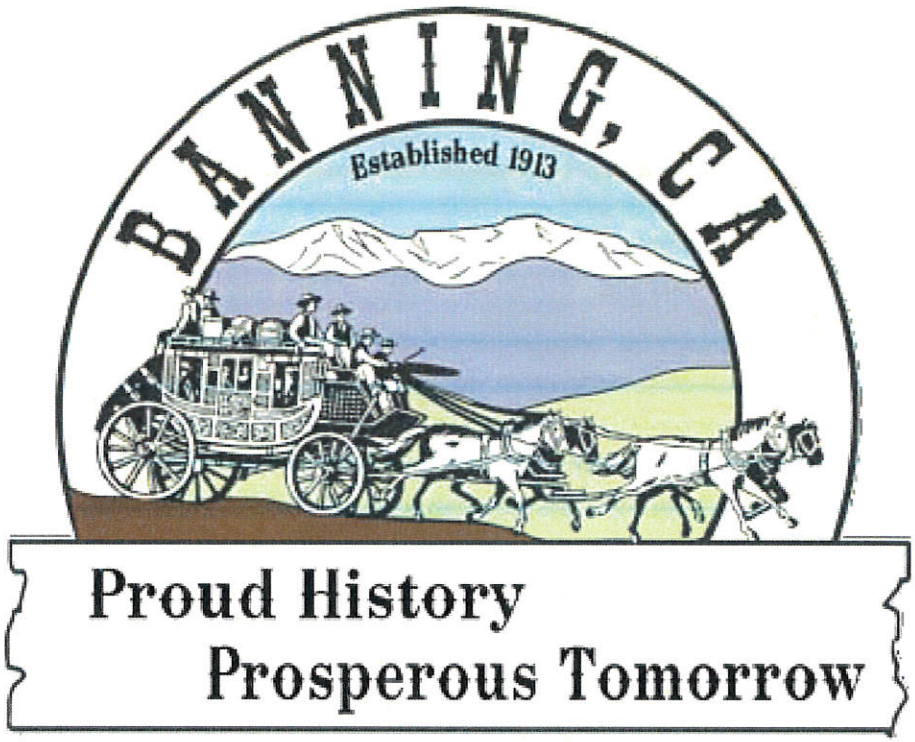


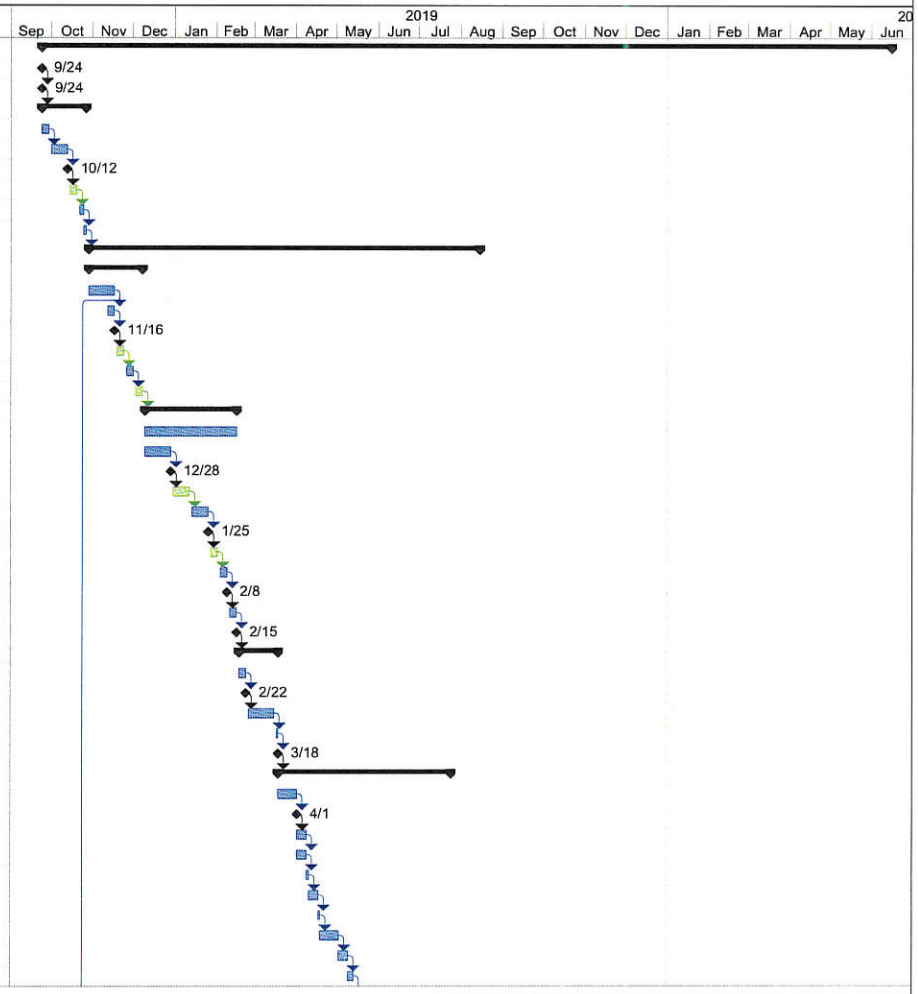
Exhibit C

Schedule

Hazen's proposed schedule is based on our team's proven experience in delivering projects of similar type and scope. We have developed a realistic schedule identifying critical path items based on the required scope of work. Our in-depth knowledge of the well design and equipping process also allows our team to strategically reduce schedule while minimizing the amount of potential re-work. For example, the well equipping design can coincide with the well drilling operation with the knowledge of the critical design factors and items that can impact design.

PROPOSED PROJECT SCHEDULE
CITY OF BANNING
GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR WELL C-8

ID	Task Name	Duration	Start	Finish	Predecessors
1	Banning Well C-8	451 days	Mon 9/24/18	Mon 6/15/20	
2	Notice-to-Proceed	0 days	Mon 9/24/18	Mon 9/24/18	
3	Kickoff Meeting	0 days	Mon 9/24/18	Mon 9/24/18	2
4	Memo Verifying Well C-8 Viability	25 days	Mon 9/24/18	Fri 10/26/18	3
5	Date and Literature Review	1 wk	Mon 9/24/18	Fri 9/28/18	
6	Prepare Draft Memo Verifying Viability of Well C-8 Project at Proposed Site	2 wks	Mon 10/1/18	Fri 10/12/18	5
7	Submit Memo to City for Review and Comments	0 days	Fri 10/12/18	Fri 10/12/18	6
8	City Review Period	1 wk	Mon 10/15/18	Fri 10/19/18	7
9	Finalize Memo and Submit to City	3 days	Mon 10/22/18	Wed 10/24/18	8
10	Receive City Approval of Memo	2 days	Thu 10/25/18	Fri 10/26/18	9
11	Well Drilling	208 days	Mon 10/29/18	Wed 8/14/19	10
12	Preliminary Design Report (PDR) for Well C-8	30 days	Mon 10/29/18	Fri 12/7/18	
13	Prepare Preliminary Design Report and Preliminary Drawings	3 wks	Mon 10/29/18	Fri 11/16/18	
14	Prepare Preliminary Schedule and Engineer's Estimate	1 wk	Mon 11/12/18	Fri 11/16/18	13FS-1 wk
15	Submit Draft PDR to City for Review and Comments	0 days	Fri 11/16/18	Fri 11/16/18	14
16	City Review Period	1 wk	Mon 11/19/18	Fri 11/23/18	15
17	Finalize Report and Submit to City	1 wk	Mon 11/26/18	Fri 11/30/18	16
18	Receive City Approval of PDR	1 wk	Mon 12/3/18	Fri 12/7/18	17
19	Prepare Well Drilling Bid Documents	50 days	Mon 12/10/18	Fri 2/15/19	18
20	Environmental and Permitting Support	10 wks	Mon 12/10/18	Fri 2/15/19	
21	Prepare 50% PS&E	3 wks	Mon 12/10/18	Fri 12/28/18	
22	Submit 50% PS&E to City for Review	0 days	Fri 12/28/18	Fri 12/28/18	21
23	City 50% PS&E Review Period	2 wks	Mon 12/31/18	Fri 1/11/19	22
24	Prepare 90% PS&E	2 wks	Mon 1/14/19	Fri 1/25/19	23
25	Submit 90% PS&E to City for Review	0 days	Fri 1/25/19	Fri 1/25/19	24
26	City 90% PS&E Review Period	1 wk	Mon 1/28/19	Fri 2/1/19	25
27	Prepare 100% PS&E	1 wk	Mon 2/4/19	Fri 2/8/19	26
28	Submit 100% PS&E to City for Review	0 days	Fri 2/8/19	Fri 2/8/19	27
29	Prepare Final Bid Documents	1 wk	Mon 2/11/19	Fri 2/15/19	28
30	City Approves Final Bid Documents	0 days	Fri 2/15/19	Fri 2/15/19	29
31	Well Drilling Bidding	21 days	Mon 2/18/19	Mon 3/18/19	30
32	Advertise	1 wk	Mon 2/18/19	Fri 2/22/19	
33	Pre-Bid Meeting with Drillers	0 days	Fri 2/22/19	Fri 2/22/19	32
34	Bid Opening	3 wks	Mon 2/25/19	Fri 3/15/19	33
35	Review Bids / Make Recommendation for Award	1 day	Mon 3/18/19	Mon 3/18/19	34
36	City Council Awards Drilling Contract	0 days	Mon 3/18/19	Mon 3/18/19	35
37	Well Construction	92 days	Tue 3/19/19	Wed 7/24/19	36
38	City issues Notice-to-Proceed to Well Drilling Contractor	2 wks	Tue 3/19/19	Mon 4/1/19	
39	Pre-Construction Meeting	0 days	Mon 4/1/19	Mon 4/1/19	38
40	Driller Obtains Permits	1 wk	Tue 4/2/19	Mon 4/8/19	39
41	Driller Mobilizes on Site (Assumes no sound panels)	1 wk	Tue 4/2/19	Mon 4/8/19	40FS-1 wk
42	Conductor Casing and Sanitary Seal	2 days	Tue 4/9/19	Wed 4/10/19	41
43	Pilot Borehole Drilling	5 days	Thu 4/11/19	Wed 4/17/19	42
44	Determines Zones for Isolated Aquifer Zone Testing	1 day	Thu 4/18/19	Thu 4/18/19	43
45	Isolated Aquifer Zone Testing	2 wks	Fri 4/19/19	Thu 5/2/19	44
46	Receives Water Quality Results from Isolated Aquifer Zone Testing	1 wk	Fri 5/3/19	Thu 5/9/19	45
47	Prepares Final Well Design	2 days	Fri 5/10/19	Mon 5/13/19	46

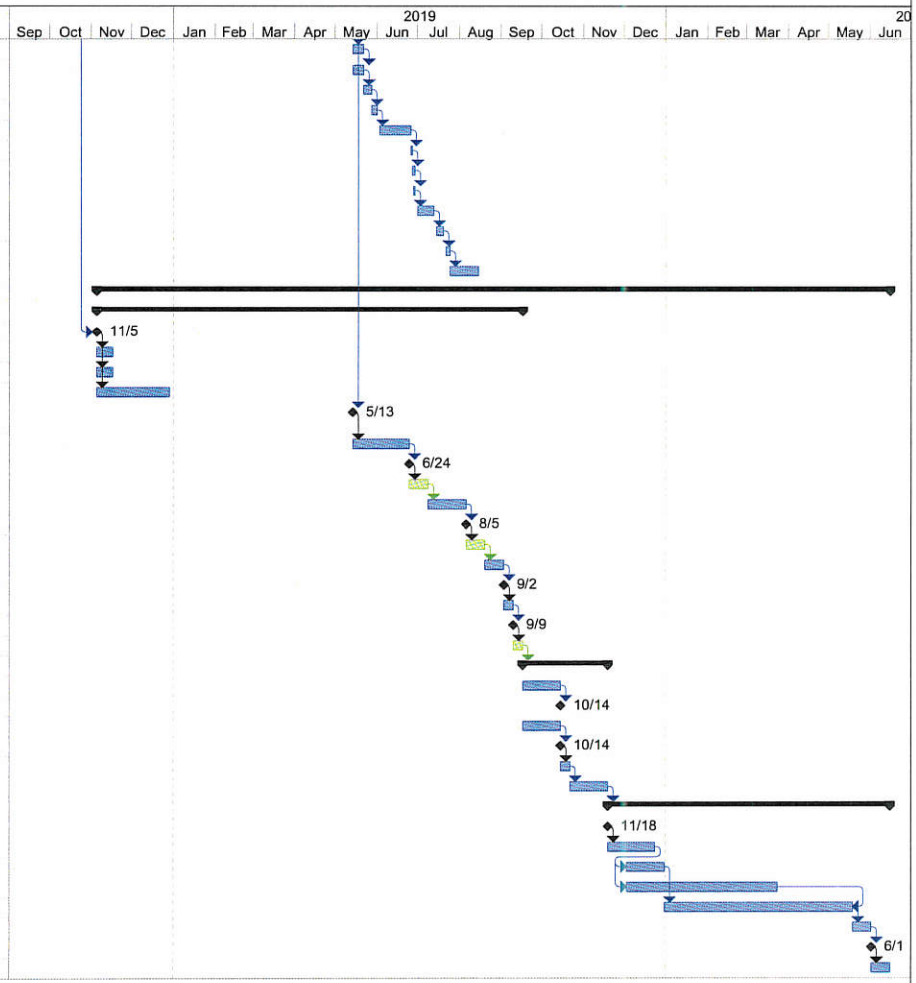


Project: City of Banning Well C-8
Date: Tue 8/14/18

Task | Split | Milestone | Summary | Project Summary | External Tasks | External Milestone | Inactive Milestone | Inactive Summary | Manual Task | Duration-only | Manual Summary Rollup | Manual Summary | Start-only | Finish-only | External Tasks | External Milestone | Progress | Deadline

PROPOSED PROJECT SCHEDULE
CITY OF BANNING
GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR WELL C-8

ID	Task Name	Duration	Start	Finish	Predecessors
48	Borehole Reaming	6 days	Tue 5/14/19	Tue 5/21/19	47
49	Casing Fabricated and Delivered to Site	6 days	Tue 5/14/19	Tue 5/21/19	48FS-6 days
50	Install Casing, Screen, Filter Pack and Annular Seal	4 days	Wed 5/22/19	Mon 5/27/19	49
51	Well Development by Airlifting and Swabbing	4 days	Tue 5/28/19	Fri 5/31/19	50
52	Well Development by Pumping and Surging	17 days	Mon 6/3/19	Tue 6/25/19	51
53	Step Drawdown Testing	1 day	Wed 6/26/19	Wed 6/26/19	52
54	Constant Rate and Spinner Survey Testing	2 days	Thu 6/27/19	Fri 6/28/19	53
55	Water Quality Testing	1 day	Fri 6/28/19	Fri 6/28/19	54FS-1 day
56	Video and Gyroscopic Alignment Survey / Final Disinfection	2 wks	Mon 7/1/19	Fri 7/12/19	55
57	Cleanup and Demobilization	1 wk	Mon 7/15/19	Fri 7/19/19	56
58	Prepares Pump Design Recommendation Letter	3 days	Mon 7/22/19	Wed 7/24/19	57
59	Well Completion Summary Report	3 wks	Thu 7/25/19	Wed 8/14/19	58
60	Wellhead Facility	421 days	Mon 11/5/18	Mon 6/15/20	
61	Design	226 days	Mon 11/5/18	Mon 9/16/19	
62	Receive Preliminary Capacity Estimate from Hydrogeologist	0 days	Mon 11/5/18	Mon 11/5/18	13FS-2 wks
63	Prepare Preliminary Layouts / Sanitary Hazards Exhibits	2 wks	Mon 11/5/18	Fri 11/16/18	62
64	Prepare Hydraulic Analysis	2 wks	Mon 11/5/18	Fri 11/16/18	62
65	Coordinate with DDW	8 wks	Mon 11/5/18	Fri 12/28/18	62
66	Receive Notice to Proceed from City / Receive Pump Design From Hydrogeologist	0 days	Mon 5/13/19	Mon 5/13/19	47
67	Prepare 50% PS&E	6 wks	Tue 5/14/19	Mon 6/24/19	66
68	Submit 50% PS&E to City for Review	0 days	Mon 6/24/19	Mon 6/24/19	67
69	City 50% PS&E Review Period	2 wks	Tue 6/25/19	Mon 7/8/19	68
70	Prepare 90% PS&E	4 wks	Tue 7/9/19	Mon 8/5/19	69
71	Submit 90% PS&E to City for Review	0 days	Mon 8/5/19	Mon 8/5/19	70
72	City 90% PS&E Review Period	2 wks	Tue 8/6/19	Mon 8/19/19	71
73	Prepare 100% PS&E	2 wks	Tue 8/20/19	Mon 9/2/19	72
74	Submit 100% PS&E to City for Review	0 days	Mon 9/2/19	Mon 9/2/19	73
75	Prepare Final Bid Documents	1 wk	Tue 9/3/19	Mon 9/9/19	74
76	Submit Final PS&E to City	0 days	Mon 9/9/19	Mon 9/9/19	75
77	City Accepts Final PS&E	1 wk	Tue 9/10/19	Mon 9/16/19	76
78	Bidding	45 days	Tue 9/17/19	Mon 11/18/19	77
79	Advertsie for Bid	4 wks	Tue 9/17/19	Mon 10/14/19	
80	Pre-Bid Meeting	0 days	Mon 10/14/19	Mon 10/14/19	79
81	Bid Period	4 wks	Tue 9/17/19	Mon 10/14/19	
82	Bid Opening	0 days	Mon 10/14/19	Mon 10/14/19	81
83	Review Bids / Recommend Award	1 wk	Tue 10/15/19	Mon 10/21/19	82
84	City Issues Notice-to-Proceed to Contractor	4 wks	Tue 10/22/19	Mon 11/18/19	83
85	Construction	150 days	Mon 11/18/19	Mon 6/15/20	84
86	Pre-Construction Meeting	0 days	Mon 11/18/19	Mon 11/18/19	
87	Shop Drawing Submittals	5 wks	Tue 11/19/19	Mon 12/23/19	86
88	Mobilization	4 wks	Tue 12/3/19	Mon 12/30/19	87FS-3 wks
89	Long Lead Item Fabrication and Delivery	16 wks	Tue 12/3/19	Mon 3/23/20	87FS-3 wks
90	Construction	20 wks	Tue 12/31/19	Mon 5/18/20	88,89FF+2 wks
91	Start-up and Testing	2 wks	Tue 5/19/20	Mon 6/1/20	90
92	Well Commissioned	0 days	Mon 6/1/20	Mon 6/1/20	91
93	Cleanup and Demobilization	2 wks	Tue 6/2/20	Mon 6/15/20	92



Project: City of Banning Well C-8
Date: Tue 8/14/18

Task | Split | Milestone | Summary | Project Summary | External Tasks | External Milestone | Inactive Milestone | Inactive Summary | Manual Task | Duration-only | Manual Summary Rollup | Manual Summary | Start-only | Finish-only | External Tasks | External Milestone | Progress | Deadline

Appendix A

Required Forms



EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. 18-009 Design of Altitude Valves at San Gorgonio & Southwest Reservoirs RFP at any time after March 16, 2018.



OR

I certify that Proposer or Proposer's representatives have communicated after March 16, 2018 with a City Councilmember concerning the RFP No. 18-009 Design of Altitude Valves at San Gorgonio & Southwest Reservoirs RFP. A copy of all such communications is attached to this form for public distribution.

_____

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

None

DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

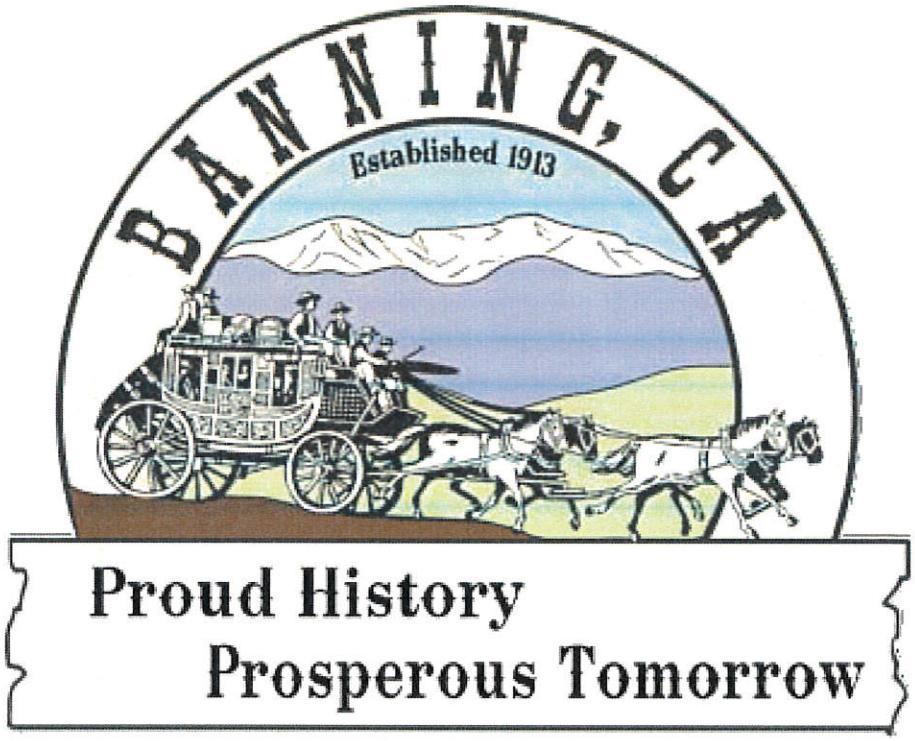
Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No _X_

If the answer is yes, explain the circumstances in the following space.

Appendix B

Audited Financials



HAZEN AND SAWYER, D.P.C.

FINANCIAL STATEMENTS

Years Ended December 31, 2017 and 2016

CERTIFIED PUBLIC ACCOUNTANTS

INDEPENDENT AUDITORS' REPORT

To the Stockholders and Board of Directors
Hazen and Sawyer, D.P.C.
New York, New York

We have audited the accompanying financial statements of Hazen and Sawyer, D.P.C. (the "Company") which comprise the balance sheets as of December 31, 2017 and 2016, and the related statements of income, changes in stockholders' equity and cash flows for the years then ended, and the related notes to the financial statements.

Management's Responsibility for the Financial Statements

Management is responsible for the preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America; this includes the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free of material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Company's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Company's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Hazen and Sawyer, D.P.C. as of December 31, 2017 and 2016, and the results of its operations and its cash flows for the year then ended in accordance with accounting principles generally accepted in the United States of America.

Hauppauge, New York
March 23, 2018

HAZEN AND SAWYER, D.P.C.
BALANCE SHEETS
December 31, 2017 and 2016

	2017	2016
ASSETS		
Current Assets		
Cash and cash equivalents	$ 6,693,402	$ 6,693,279
Accounts receivable	78,351,742	73,257,579
Stock receivable	1,097,483	1,206,438
Employee advances and loans receivable	16,124	46,615
Prepaid expenses	1,791,219	1,523,207
Other assets	15,000	15,000
Total Current Assets	87,964,970	82,742,118
Fixed Assets	4,439,593	3,139,174
Other Assets		
Stock receivable	1,728,695	1,766,666
Security deposits	253,034	222,599
	$ 94,386,292	$ 87,870,557
LIABILITIES AND STOCKHOLDERS' EQUITY		
Current Liabilities		
Line-of-credit	$ 10,000,000	$ 10,000,000
Notes payable - stockholders	939,051	1,020,751
Accounts payable	16,085,264	12,417,950
Accrued expenses	23,022,287	22,876,520
Deferred revenue	7,032,087	8,517,025
Reserves on contracts	3,293,000	3,500,000
Total Current Liabilities	60,371,689	58,332,246
Long-Term Liabilities		
Notes payable - stockholders	1,214,295	1,215,728
Deferred rent	1,735,945	740,167
Deferred income taxes	650,000	650,000
	63,971,929	60,938,141
Commitments and Contingencies		
Stockholders' Equity		
Common stock	11,552,530	10,618,140
Retained earnings	18,861,833	16,314,276
	30,414,363	26,932,416
	$ 94,386,292	$ 87,870,557

See notes to financial statements.

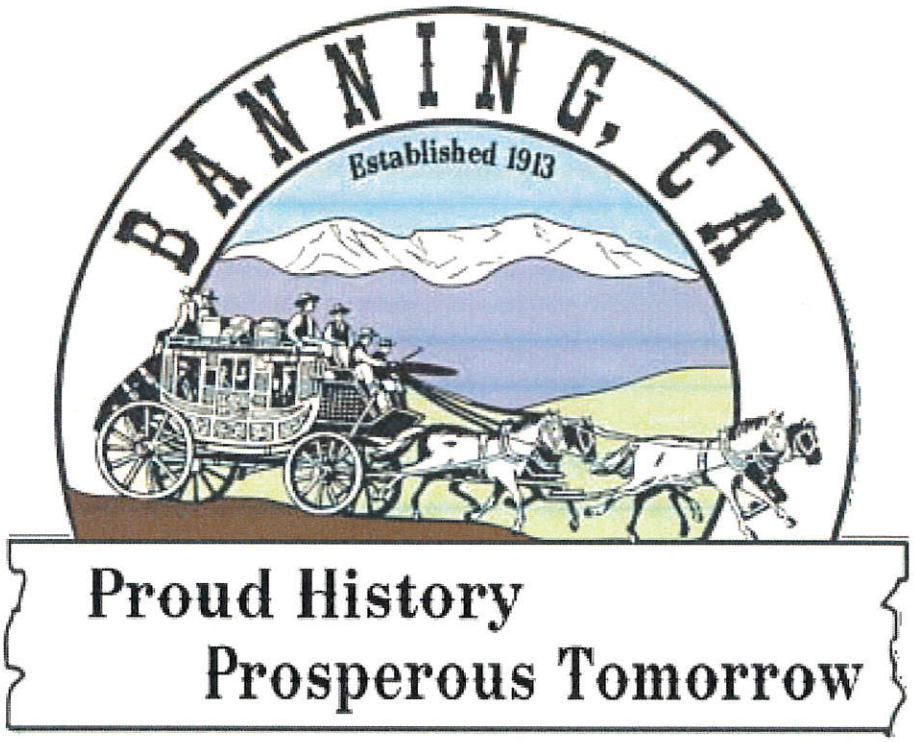
HAZEN AND SAWYER, D.P.C.
STATEMENTS OF INCOME
Years Ended December 31, 2017 and 2016

	2017	2016
Gross Revenues	$ 244,020,900	$ 217,893,373
Direct Expenses:		
Subcontractor expenses	58,345,788	44,810,977
Other direct costs	4,756,193	5,576,758
	63,101,981	50,387,735
Net Revenues	180,918,919	167,505,638
Direct Labor	62,481,241	57,614,400
Gross Profit	118,437,678	109,891,238
General and Administrative Expenses		
Salaries	47,510,006	43,637,819
Employee taxes and benefits	37,617,566	34,017,478
Occupancy	8,727,051	7,784,738
Insurance	2,717,094	2,515,120
Depreciation and amortization	1,570,542	1,264,601
Other	16,447,613	16,701,017
	114,589,872	105,920,773
Operating Income	3,847,806	3,970,465
Other Income and (Expenses)		
Interest income	3,736	12,673
Interest expense	(153,189)	(157,407)
Total Other Expenses	(149,453)	(144,734)
Income Before Provision for Taxes	3,698,353	3,825,731
Provision for Taxes	161,720	226,713
Net Income	$ 3,536,633	$ 3,599,018

See notes to financial statements.

Appendix C

Signed Addenda



ADDENDUM NO. 1

REQUEST FOR QUALIFICATIONS

FOR

GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR THE CITY OF BANNING WELL C-8, PROJECT NO. 2018-02W

RFQ No. 18-012

PUBLIC WORKS DEPARTMENT

CITY OF BANNING

RFQ Released on March 30, 2018

Addendum #1 Issued on April 13, 2018

The referenced document has been modified as per the attached Addendum No. 1

Please sign this Addendum where designated and return the executed copy with submission of your bid. Addendum must also be acknowledged on PlanetBids. This addendum is hereby made part of the referenced RFQ as though fully set forth therein.

Any questions regarding this addendum should be submitted online through Planet Bids.

RFQ SCHEDULE MODIFICATIONS

2. SCHEDULE OF EVENTS

This REQUEST FOR QUALIFICATIONS will be governed by the following schedule:

Release of RFQ	March 30, 2018
Deadline for Written Questions	~~April 6, 2018~~ April 20, 2018, by 3:00 p.m.
Pre-Proposal Meeting	April 13, 2018
Responses to Questions Posted on Web	~~April 20, 2018~~ April 25, 2018
Proposals are Due	May 1, 2018, by 10:00 a.m.
Interview (if held)	Week of May 15, 2018
Approval of Contract	May 22, 2018

All dates are subject to change at the discretion of the City.

All other provisions of the request for qualification shall remain in their entirety.

Vendors hereby acknowledge receipt and understanding of the above Addendum. Complete and submit this Addendum with your bid.



5/8/2018

Signature Date

Scott Rogers, Senior Associate

Typed Name and Title

Hazen and Sawyer

Company Name

36-923 Cook Street, Suite #101

Address

Palm Desert CA 92211

City State Zip

ADDENDUM NO. 2

REQUEST FOR QUALIFICATIONS

FOR

GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FO THE CITY OF BANNING WELL C-8, PROJECT NO. 2018-02W

RFQ No. 18-012

PUBLIC WORKS DEPARTMENT

CITY OF BANNING

RFQ Released on March 30, 2018

Addendum #1 Issued on April 13, 2018
Addendum #2 Issued on April 24, 2018

The referenced document has been modified as per the attached **Addendum No. 2**

Please sign this Addendum where designated and include the executed copy with submission of your bid. Addendum must also be acknowledged on PlanetBids. This addendum is hereby made part of the referenced RFQ as though fully set forth therein.

Any questions regarding this addendum should be submitted online through Planet Bids.

Addendum No. 2

RFQ SCHEDULE MODIFICATIONS

2. SCHEDULE OF EVENTS

This REQUEST FOR QUALIFICATIONS will be governed by the following schedule:

Release of RFQ	March 30, 2018
Deadline for Written Questions	April 20, 2018, by 3:00 p.m.
Pre-Proposal Meeting	April 13, 2018
Responses to Questions Posted on Web	April 25, 2018
Proposals are Due	May 8, 2018, by 10:00 a.m.
Interview (if held)	Week of May 21, 2018
Anticipated Approval of Contract	June 12, 2018

All dates are subject to change at the discretion of the City.

SCOPE OF WORK MODIFICATIONS

3. SCOPE OF WORK
Task 4: Environmental and Permitting Support

Add the following:

- Complete Well Permit Application through County of Riverside DEH
- Develop Best Management Practices (BMPs) for Disposal of Well Development Discharge Water

FORMAT GUILDELINES MODIFICATIONS

4. PROPOSAL FORMAT GUIDELINES

Replace first sentence in second paragraph in its entirety:

Proposal should be typed and should contain no more than 30 typed pages using a 12-point font size, excluding transmittal letter, resumes of key people, Index/Table of Contents, tables, charts, graphic exhibits and required City forms.

ADDITIONAL DOCUMENTS PROVIDED

EXHIBIT A – Map Showing Point of Connection
EXHIBIT B – Phase I Environmental Site Assessment

Answers to Questions Received through Planet Bids:

1. **Will all field inspection be performed on a full time (24hr/day) basis for both well construction and equipping services, or would well work be part time with full time inspection at key events?**

Inspection will be during normal working hours, typically 7:00 a.m. to 3:30 p.m., with 24 hr/day inspection during key drilling activities.

2. **What type of chlorination system does the City prefer? On-site generation or bulk? If on-site generation, what system does the City currently have at other well facilities?**
   The City uses bulk sodium hypochlorite. The design would need to include a storage tank for approximately 800 gallons of 12.5% NaOCl, and a dosing pump.

3. **Will the city extend the proposal due date as indicated at the pre-proposal meeting? If so, to which date and time?**
   The proposal due date is being extended to May 8th by 10:00 a.m., as indicated in Addendum No. 2.

4. **Will the City provide a map showing existing water network for the area near proposed Well C-8 location and anticipated connection point?**
   A map, showing the anticipated connection point to the existing distribution system is included in Addendum No. 2.

5. **What would be the network static pressure at the anticipated connection point?**
   Existing static pressure at the anticipated connection point is approximately 152 psi. However, there are plans to split the City's Main Zone in the near future and the HGL at the point of connection will be reduced from 2721 feet to 2560 feet. Design should anticipate the lower HGL.

6. **How many number of isolated aquifer zones are expected?**
   Assume testing at 4 isolated zones will be required. Final number to be determined after drilling of pilot borehole.

7. **Is the proposal due date changing as mentioned in the mandatory pre-proposal meeting?**
   The proposal due date is being extended to May 8th by 10:00 a.m., as indicated in Addendum No. 2.

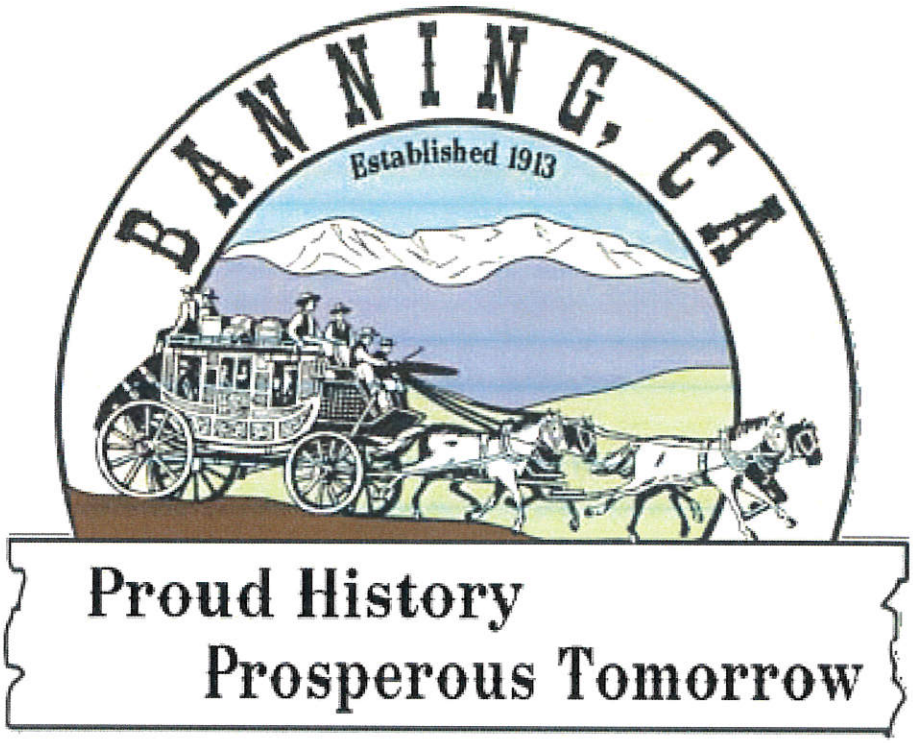
All other provisions of the request for qualifications shall remain in their entirety.

Vendors hereby acknowledge receipt and understanding of the above Addendum. Complete and submit this Addendum with your bid.

5/8/2018	Hazen and Sawyer
Signature Date	Company Name
Scott Rogers, Senior Associate	36-923 Cook Street, Suite #101
Typed Name and Title	Address
	Palm Desert CA 92211
	City State Zip

Appendix D

Resumes





Scott Rogers, PE

Project Manger

Mr. Rogers is a professional engineer with an extensive experience in operations, and maintenance of both private and public utility improvement projects. Proficient at analyzing, understanding and solving complex water/ wastewater project challenges to meet the constraints of limited budgets and short timelines. Highly organized, resourceful, and energetic; committed to the highest level of professional and personal excellence.

Education

BS, Mechanical Engineering, Washington State University

MBA, University of Redlands

PhD, Business Administration, Northcentral University

Areas of Expertise

- Water & Sewer system modeling
- Electrical design
- Odor Control Design
- Water & Sewer system design
- Capital Budgeting
- Wastewater Treatment
- Operation and Maintenance Management
- Supervision & Personnel Development
- Project Management
- Asset Management

Experience

- 24 years

Professional Activities

ASME, WEF, AWWA, GRA, NGWA

Chromium-6 Treatment Facilitiies at Well 1E, Well 13 and Well AA, Indio Water Authority, CA

Project Manager. Assumed responsibility for the construction of $6 million treatment systems at three well sites upoon hiring. Construction schedule was a short three month period with operational deadline of July 1, 2015.

Electric Street Well Electrical Upgrades, Riverside Public Utilties, CA

Project Manager/Construction Manager. In conjunction with the electric division, upgrade historic transformers to new transformers. Installation of new switchgear with emergency generator connection, replaced original pump panel and upgrade with soft starter versus across the line starter. All new piping and automated well for remote operation by SCADA.

Basis of Design Report for the Chromium-6 Treatment Facilities

Project Manager. The initial development of the basis of design for a strong based anion exchange treatment systems for water wells at Coachella Water Authority. Reviewed the basis of design report for the $35 million treatment system for the treatment, resin regeneration facility for the removal of naturally occurring chromium-6 from the groundwater supply for five wells within the Coachella Water Authority system.

Well U and Z Well Modification Study

Design Report. The initial study to look at the modification of Wells U and Z for bringing the chromium-6 levels under the maximum contaminate level (MCL). The study did well flow and discrete water quality sampling over a variety of well zones to determine the flow capacity of each zone and level of chromium-6. It was determined to be feasible and project is currently underway.

Well 1 Upgrades, Union Hill Water Association, WA
Project Engineer/Construction Manager. Responsible for selection and design of the well pump. Performed hydraulic analysis to determine the head conditions for the flow rate. Selected a pump and specified the pump. Worked as part of a design build team to install and upgrade the pump to supply the Association with 1,300 gpm. Brought system in compliance with DOH, cross connection control by providing air gaps on the pump bypass lines.

Well No. 7 Pump Station, Northeast Sammamish Sewer and Water District, WA
Project Engineer. Design and construction management of 350 gpm well station and 500 linear of feet of water main. Determine the system head and selected pump best suited for design conditions. Save client time and money by creatively constructing small well building structure and vault in order to minimize excavation and minimizing permitting.

Well No. 4 Pump Station Rehabilition, Northeast Sammamish Sewer and Water District, WA
Project Engineer/Hydraulic Modeling. Sized the appropriate generator for provide electrical power to well pump and equipment. Upgraded the electrical components and determined the appropriate size of main breakers, conductors, and conduit. Laid out the conduit and provide electrical service to equipment.



Marc S. Solomon, PE, BCEE, D.WRE

Principal-in-Charge

Mr. Solomon is an accomplished project manager on a wide range of wastewater projects. Marc's broad project experience has exposed him to all phases of project planning, design, system modeling, system controls, construction management, and operational reliability. This unique and diverse experience enhances his project management abilities and his ability to work effectively with project teams and externally with elected officials, engineers, operators, contractors, and the general public.

Mr. Solomon is known as a collaborator and consensus-builder. Through collaboration he is able to gain the trust of people and therefore lead them in problem solving. As a consensus-builder Marc can bring together diverse opinions and develop a clear vision of the long-term strategies. His roll-up-the-sleeves style and good interpersonal skills allows Marc to develop trust within his teams.

Installation of Replacement Well to Improve Water Quality Using In-Well Blending for Small Disadvantaged Community, Modesto, CA
Principal-in-Charge for designing a replacement well for the City of Modesto on behalf of the City of Grayson. The existing Well 274 is one of two wells that are the only source of municipal water for the City of Grayson's approximately one thousand residents. The existing Well 274 is shallow and extracts groundwater from the upper portion of the aquifer system degraded by nitrate at concentrations exceeding the MCL. The intent of this project is to design and install a well with two screen sections to extract and blend contaminated and uncontaminated water to meet MCL requirements. The Project also includes consideration of space and utility upgrades for a future treatment system and / or storage tank. To this end, the concept-level design considers a future Reverse Osmosis (RO) treatment plant or appli¬cation of emerging technology for the biological treatment of nitrate.

Education

BS, Civil Engineering, Duke University, North Carolina

MS, Public Health, Tulane University, Louisiana

Certification/License

Professional Engineer: CA, LA, OH, OR, PA, WA

Water Treatment Plant Operator

Water Distribution System Operator

AAEE Board Certified Environmental Engineer

ASCE Diplomat, Water Resource Engineer

Value Engineering Certification

OSHA Confined Space Entry

Areas of Expertise

- Managing complex water and recycled water projects
- Design of wells and pump stations
- O&M consulting
- Workshop Facilitation using Multi-Criteria Decision Analysis

Experience

- 36 years

Professional Activities

Water Environment Federation

AWWA

American Society of Civil Engineers

American Academy of Environmental Engineers

WateReuse Association

Hazen

Esposti Well Water Quality Testing and Treatment Feasibility Study, Town of Windsor, CA
The project included the redevelopment and treatment evaluation for an existing Town well that had low production and very high concentra¬tions of arsenic and manganese. Well pumping evaluation indicated that extracting water from isolated zones can significantly simplify and reduce costs of water treatment. Additional pilot testing and design of improvements is underway to verify operation and implement treatment concepts.

Raw Water Transmission Line and Iron/Manganese Plant Modifications, Marine Corps Base Camp Pendleton, CA
Project included the design of a 36-inch water transmission line connecting to seven water wells to the existing Iron/Manganese treatment plant. Additional services included treatment plant evaluation and modifications, pump systems, and instrumentation and controls.

City of Chino, Chino, CA
The project involved the design and construction of 14,000 linear feet of 16- and 24-inch diameter steel transmission pipelines serving water to 2 lower zone storage reservoirs, 2 deep wells and pump stations, and a telemetry control system.

Contra Costa Water District, Concord, CA
Thornwood Drive and Salvio Street transmission mains including 10,200 feet of 24-inch diameter tape-wrapped, mortar-lined welded steel pipe with deep well anode bed.

Parkland Pump Station, San Diego, CA
Marc served as Project Manager for the study, design and construction management of the upgrade to this 6,000-gpm existing booster pump station to increase reliability and flexibility to pump to multiple locations.

Geysers Recharge Project, Santa Rosa, CA
The project included an Environmental Impact Report for a new $350MM recycled water system including 40-miles of 42-inch diameter pressure pipe and 4 pump stations.

Otay Water District 1004-2 Pipeline, Reservoir and Pump Station, Spring Valley, CA
Design of a 10-inch water main, site improvements, 1.4 MG steel reservoir with a recirculation pump station and disinfection facility to replace an existing 0.3 MG tank.



Cindy Miller, PE

QA/QC

Ms. Miller has extensive experience in the planning, design and construction of water supply, treatment, storage and conveyance facilities.

Education

BS, Civil Engineering, University of California, Irvine

Certification/License

Professional Engineer: CA, UT

Areas of Expertise

- Well Equipping Planning and Design
- Pipeline Planning and Design
- Project Management
- Program Management
- Project Delivery
- Groundwater Supply
- Pump Station Planning and Design
- Reservoir Storage Planning and Design
- Drinking Water

Experience

- 22 years

Professional Activities

AWWA, ASCE, AMTA

CA-NV AWWA,

CA Water Reuse Assoc.

Her assignments have included providing Program Management services for a $150 million groundwater supply project, which includes pipelines, wells, pump stations, and an advanced treatment system for R.O. concentrate reduction; Project Manager for preliminary and final design of a 28 MGD microfiltration treatment facility, and Project Manager for a 10 MGD R.O./Ion Exchange groundwater treatment plant.

Mojave Water Agency Regional Recharge and Recovery (R3) Project, Victor Valley, CA

Responsible as overall Project Manager. Provided engineering services to the Mojave Water Agency for the Regional Recharge and Recovery (R3) Project, a high profile water supply project in San Bernardino County. The project will ultimately recharge up to 40,000 acre-feet per year of State Water Project water into the Upper Mojave River flood plain, and will include the construction of up to 22 extraction recovery wells, three reservoirs, a 25,000 gpm pump station, and a fully integrated conveyance system to deliver water to a variety of retail agencies in the High Desert. The Phase I project included construction of six wells to extract up to 15,000 acre-ft per year, over 16 miles of 12-inch to 48-inch diameter pipe, a 2.65 MG welded steel reservoir, a flow control and recharge facility with 40,000 gpm capacity and up to 235 psi pressure drop, a pump station sized for 25,000 gpm with pumps installed to provide 15,000 gpm, and four turnout flow control facilities for delivering the water to member agencies.

Bellflower High Capacity Well, City of Bellflower, Bellflower, CA

Project Manager. Prepared a preliminary design report and provided final engineering design and construction management and inspection services for the well drilling and equipping of the city's new high-capacity groundwater well. The well is designed to produce 3,500 gallons per minute of high-quality groundwater to replace a large portion of the city's water supplies. Electrical design services included a motor control center, a variable-frequency drive for the well pump, interior and exterior lighting, an automatic transfer switch, and an emergency diesel-fueled generator. Control design included preparation of process and instrumentation diagrams and specification of control components to provide consistency with control components installed in existing city facilities. Provided engineering support during testing and start-up of the well.

Hazen

Wells 21 and 22 Wellhead Facilities and Pipelines, Tustin, CA

Project Manager, responsible for the design of the wellhead facilities, untreated water pipeline, brine disposal, and product water pipeline. Responsible for engineering services necessary to support the final design, bidding, and construction of the wellhead facilities, untreated water, product water and brine disposal pipelines. Deliverables included plans, specifications and engineers estimates of probable construction costs for each the wellhead facilities and all pipelines. Well 21 and Well 22, with capacities of 3,300 gpm and 1,600 gpm respectively, are submersible turbine pump / motor assemblies, installed within vaults, and one well is equipped with a bladder-type surge tank. Project included 7,000 ft. of 24-inch steel untreated water pipeline, 13,000 feet of 36-inch steel product water pipeline and 1,700 LF of 10-inch HDPE brine concentrate pipeline. The pipelines required jack-and-bores to cross the OCTA Metrolink train tracks, an Orange County Flood Control District channel, BNSF train tracks, a box culvert, and Peter's Canyon Channel. As Project Manager, responsible for overseeing processing of Orange County Flood Control encroachment and discharge permits, cities of Tustin and Irvine encroachment permits, OCSD class 1 wastewater discharge and trunk sewer connection permits, SCRRA/OCTA Metrolink right of entry/crossing agreements, an OSHA tunneling permit, a Caltrans encroachment permit, and a BNSF - right of entry/crossing agreement.

Raub 4-R and Raub 5-R Well Replacement Project, Hillwood Properties San Bernardino, CA

Principal-in-Charge. Provided engineering design and construction phasing for the Well Replacement Project, which included the drilling, equipping, and testing two ground water extraction wells, Raub 4-R & Raub 5-R, with disinfection of both wells. The project also included installation of discharge and pump-to-waste pipelines for Raub 4-R, Raub 5-R, and existing Raub 7, to carry raw water to a nearby treatment facility and detention pond; approximately 4,400 linear feet of 12-inch, 20-inch, and 24-inch DIP pipelines; approximately 1,300 linear feet of 20-inch CML and CMC bypass line; installation of a gravity pre-lube system; abandonment of three wells; demolition of two wells; electrical improvements; conduits and wiring; and emergency generator connections at each well.

La Brea Subarea Groundwater Supply Project, City Beverly Hills, Beverly Hills, CA

Principal-in-Charge. Developed a comprehensive Preliminary Design Report (PDR). The City of Beverly Hills (City) is moving forward with a project to expand its local water supply by developing local groundwater in the La Brea Subarea, which is located outside of City limits within the City of Los Angeles. The project includes developing approximately 1700 acre-feet per year (AFY) of new potable water supply from local groundwater in the La Brea Subarea of the Central Groundwater Basin by drilling new wells near Interstate 10 and La Cienega Boulevard, located approximately 1 - 2 miles south of the City's southerly boundary. The production wells were optimally located to provide the highest sustainable groundwater production, on sites that can be purchased and developed in the most efficient manner and permitted by Division of Drinking Water. The project required water treatment that is reliable, efficient, and cost effective, with a priority on ease of operation for City staff. Conveyance facilities (20,000+ LF) from the well sites to the City's existing reverse osmosis water treatment plant that includes a combination of new pipeline and rehabilitation of an existing inactive transmission main. Related tasks included drilling an exploratory test hole on a private property to obtain projected production rates and projected water quality, potholing and CCTV to locate and investigate an inactive 18-inch transmission main to determine if it could be used for the purpose of the project, coordination with Division of Drinking Water, property research, environmental studies on potential well site locations, and evaluation of the optimal treatment alternatives. All aspects of the related tasks and analysis were included in a comprehensive Preliminary Design Report.



Kent O'Brien, PG, CEG

QA/QC - Well Design

Kent is a Senior Hydrogeologist with over 26 years' professional experience. He specializes in the planning and implementation of strategies to resolve groundwater supply problems.

He combines hands-on experience in design and construction to cost effectively implement groundwater production systems and evaluate treatment options to improve water quality. He applies his experience with groundwater production and treatment systems in his preparation of geology, hydrogeology and water quality reports developed to support water supply environmental and permitting documents.

He has extensive experience in field operating procedures and data collection programs required for aquifer testing and water treatment pilot testing. He also has comprehensive knowledge of drilling techniques, well design, well installation, aquifer tests, groundwater monitoring programs, and sampling procedures. He has extensive experience in the collection and interpretation of hydrogeological data used for well siting analyses. In order to obtain reasonable permit conditions he works closely with the regulatory agencies at the City / County level in addition to the State agencies including the State Water Resource Control Board Division of Drinking Water (SWRCB-DoDW) and the Regional Water Quality Control Boards (RWQCB).

Installation of Replacement Well to Improve Water Quality Using In-Well Blending for Small Disadvantaged Community, Modesto, CA
Kent is currently designing a replacement well for the City of Modesto on behalf of the City of Grayson. The existing Well 274 is one of two wells that are the only source of municipal water for the City of Grayson's approximately one thousand residents. The existing Well 274 is shallow and extracts groundwater from the upper portion of the aquifer system degraded by nitrate at concentrations exceeding the MCL. The intent of this project is to design and install a well with two screen sections to extract and blend contaminated and uncontaminated water to meet MCL requirements. The Project also includes consideration of space and utility upgrades for a future treatment system and / or storage tank. To this end, the concept-level design considers a future Reverse Osmosis (RO) treatment plant or appli¬cation of emerging technology for the biological treatment of nitrate.

Education

BS, Geological Science, San Diego State University, San Diego CA

MS, Geology/Hydrogeology, San Diego State University, San Diego, CA

Certification/License

Registered Geologist: CA

Certified Engineering Geologist: CA

8-Hour HAZWOPER Annual Courses

Areas of Expertise

- Groundwater Planning
- Groundwater Treatment
- Well Design and Construction
- Well Rehabilitation
- Groundwater CEQA Analysis
- Water Resource Management
- Litigation Support

Experience

- 26 years

Professional Activities

CA-NV AWWA

- Water Well Technology Committee

Groundwater Resource Association (GRA).

Hazen

Design and Permitting of Injection Wells, MCAS, Camp Pendleton, San Diego, CA
Kent has completed the design of 16 injection wells and related groundwater monitoring wells for the injection of 870 acre-ft/year of tertiary treated waste water into the aquifer along the coast north of San Diego, CA. The purpose of the project is to protect the drinking water aquifer from seawater intrusion caused by inland groundwater well pumping and to manage the salt and nutrient loading in the groundwater basin. Mr. O'Brien is also completing the Waste Discharge Requirements technical report and developing a strategy for managing salinity changes in the injection area.

New Well Installation and Rehabilitation of Existing Well, Ukiah, CA
Kent is the Project Manager for fast-track project to install a municipal well in response to drought conditions. The drought has resulted in the severe reduction in surface water supplies and a sharp increase in the use of groundwater. The new well is scheduled to be installed and brought on line within a four month work schedule. In addition, the project requires the simultaneous evaluation of an existing well which has been losing production capacity and has elevated bacteria. Both wells are being designed concurrently and include the installation of a multi-zone monitoring well.

Groundwater Storage and Recovery Project EIR, City and County of San Francisco, CA
Kent's role is developing the hydrogeologic section for the project level CEQA document related to the aquifer storage and recovery (ASR) project proposed by the San Francisco Public Utilities Commission (SFPUC). The SFPUC proposes to provide surface water to Partner Agencies (the cities of San Bruno, Daly City and Cal Water) to be used in lieu of the agencies pumping groundwater during normal and wet rainfall years. The reduction of pumping by Partner Agencies would ultimately increase groundwater storage within the South Westside Groundwater Basin. Stored groundwater would be utilized by pumping 16 new Project wells during periods of insufficient surface water supplies (i.e., dry years). The Draft EIR is currently in circulation.

Power Efficiency Evaluation 19 Municipal Wells, City of Redlands, CA
Kent was the lead Hydrogeologist in City-wide evaluation of operational efficiency. The broad reaching study evaluated the City's operations to identify cost savings. A focus of the study was the power consumption of the water supply system, half of which consists of 16 operating municipal wells with flow rates up to 2,000 gpm. Mr. O'Brien developed a program to use existing data to identify the most cost effective wells to operate and those wells which should be redeveloped or used only for backup.

Well Construction Expert for City of Davis, Davis, CA
Kent provided litigation support as a technical expert in well construction standards and standards of municipal well operation on behalf of the City of Davis. The City of Davis was subject to litigation related the construction and operation of their well field and the spread of contamination from a hazardous waste site. The case was settled out of court in 2014 on terms beneficial to the City of Davis.

Groundwater Supply Evaluation | Marine Corps Base Camp Pendleton, Carlsbad, CA
Kent led an investigation of eight water supply wells which will supply water to a newly designed water treatment plant. The study evaluates the production capacity and sustainable yield of the eight wells. Based on the results of the well investigation and pipeline design, the existing pumps in each well will be replaced with new pumps to more effectively match the water demands of the new pipelines. The project also includes evaluating the water quality with respect to constituents which could interfere with the operation of the proposed membrane filtration plant.



Russ Kyle, PG, CHG

Well Design

Mr. Kyle has 20 years of experience with a wide variety of groundwater resource related projects for public and private clients, with a focus on groundwater resources development in Southern California.

Education

MS Geological Sciences, California State University - Los Angeles

BS Geology, California State Polytechnic University - Pomona

Certification/License

Registered Professional Geologist: CA

Certified Hydrogeologist: CA

Areas of Expertise

- Groundwater Resource Development
- Groundwater Planning
- Well Design and Construction
- Well Rehabilitation
- Well Field Condition Assessments
- Permitting
- Regulatory Compliance

Experience

- 20 years

Professional Activities

AWWA CA-NV Water Well Technology Committee, Chair

AWWA National Well Standards Committee, Voting Member

The scope of his technical experience includes groundwater basin evaluations, water supply studies, well siting investigations, artificial recharge feasibility evaluations, well field condition assessments, well rehabilitation, desalination feedwater supply studies, and geophysical surveys. Over the course of his career he has been responsible for installation of more than 145 water supply wells and 70 monitoring wells and exploratory borings, including management of a team of field inspectors, coordination with drilling contractors and regulatory agencies, well design, and construction management. Recent notable projects include installation of a potable water supply wells for California Water Service Company, Golden State Water Company, and Long Beach Water Department, and development of well rehabilitation, replacement, prioritization plans for the Cities of Riverside and Long Beach Water Department.

Preliminary Design for City of Banning Well C-7, City of Banning, CA
Mr. Kyle prepared a site assessment and preliminary design for proposed well C-7 to be located at in the northeastern portion of the City's service area at the future home of a planned industrial business park. Mr. Kyle provided an assessment of the proposed well site, including anticipated well capacity and groundwater quality, preliminary design, construction logistics, and identification of construction constraints and required permits.

Wells W and Z, Indio Water Authority, Indio, CA
Mr. Kyle an evaluation of Wells W and Z with the goal of assessing the feasibility of reducing hexavalent chromium concentrations below the California MCL through well modification rather than application of expensive water quality treatment. The work involved time-series, variable-flow, and depth-specific water quality and flow profile testing. Results suggested that well modification may result in a positive outcome which led to follow-on verification testing through use of inflatable pneumatic packers. This testing also indicated that favorable results could be achieved but further work was placed on hold due to revocation of the MCL.

Hazen

Wells 3B and U, Indio Water Authority, Indio, CA
Mr. Kyle was tasked with evaluating Wells 3B and U and preparing a recommended course of action and associated work plan to rehabilitate and redevelop the wells. Additionally, a plan for evaluating depth-specific water quality was prepared as it is the desire of IWA to evaluate the wells as to feasibility of improving water quality by well modification should the hexavalent chromium MCL be reinstated.

Design and Construction of High Capacity Well No. 1, City of Bellflower, CA
Mr. Kyle was technical lead providing professional hydrogeologic services during installation of a new municipal supply well for the City, the purpose of which was to replace several active wells identified for retirement by the Department of Drinking Water. The project included well siting, preliminary and final design, bidding, construction management, and inspection services during construction. The well was successfully completed with a recommended pumping rate of 3,500 gpm, with an associated specific capacity of 110 gpm/ft.

Regional Recharge and Recovery Project (R-Cubed), Mojave Water Agency, Hesperia, CA
The Mojave Water Agency was formed to manage ground water resources, and coordinate water producers in the high desert area, also receiving and distributing State Water Project (SWP) water to various recharge facilities. The ultimate goal of the project was to recharge up to 40,000 acre-ft of SWP water through a system of extraction wells, monitoring wells, pumping stations, reservoirs, and conveyance pipelines. A preliminary hydrogeological feasibility assessment was conducted to assess groundwater level response to aquifer recharge, and to determine the optimal locations for extraction wells. Mr. Kyle was the lead project manager for the hydrogeological portions of the project, providing groundwater modeling support, well field interference evaluations, steel corrosion studies, and installation of six high capacity wells. All Phase 1 wells have been successfully completed and have been pumped at rates exceeding 4,000 gpm with specific capacities in excess of 140 gpm/ft.

West Coast Basin Well 1, Long Beach Water Department, Long Beach, CA
The Long Beach Water Department (LBWD) installed a new potable water supply well in the West Coast Basin. This well will be the only well within the system which will not be treated by the District's centralized water treatment facility, and as such, water quality was of paramount import. Mr. Kyle served as project manager to provide design, permitting, construction management, and inspection services during the project. The well was successfully competed despite significant logistical challenges and was tested at 2,000 gpm with a specific capacity of approximately 100 gpm/ft.

Preliminary Design for City of Banning Well C-7, City of Banning, CA
Mr. Kyle prepared a site assessment and preliminary design for proposed well C-7 to be located at in the northeastern portion of the City's service area at the future home of a planned industrial business park. Mr. Kyle provided an assessment of the proposed well site, including anticipated well capacity and groundwater quality, preliminary design, construction logistics, and identification of construction constraints and required permits.

Municipal Well Relocation Project, Hillwood Investment Properties, San Bernardino, CA
Mr. Kyle was the technical project lead for a project involving relocation of two existing production wells to make room for construction of a large warehouse. This time-critical project involved constructing two new wells prior to destruction of the existing wells, all of which occurred under clear and immovable deadlines on the part of the developer. Mr. Kyle worked with the developer, the equipping engineer, the City of Riverside, the City's hydrogeologist, and the drilling contractor to accomplish this goal and provided technical specifications, bidding support, construction management, design, and inspection services. Both wells have been successfully constructed, developed, and tested at production rates of up to 5,500 gpm.



Steven Conner, PE

Well Equipping & Site Layout

Mr. Conner is a professional civil engineer with 22 years of experience in the planning and design of water infrastructure including production wells, pipelines, storage tanks, treatment systems, and booster stations.

Education

BS, Civil Engineering/Water Resources, University of California at Irvine

Certification/License

Professional Engineer: CA

Transportation Worker Identification Credential (TWIC), California, 2011

Areas of Expertise

- Well Equipping Design
- Pipeline Design
- Trenchless Pipeline Rehabilitation and Installation
- Planning and design of major water and wastewater facilities
- Pump station design
- In-depth evaluation of system requirements for proposed new facilities as well as for rehabilitation, upgrade, or replacement of existing pump stations

Experience

- 22 years

Professional Activities

American Society of Civil Engineers, Member

Mr. Conner is responsible for project management, design supervision, contract administration, client interaction and development, and personnel management. His expertise includes: complex pumping and piping system layout, hydraulic design, groundwater supply and treatment design, and construction phase assistance including start-up and operation of pumping and treatment facilities. Mr. Conner coordinates all engineering support disciplines (civil, architectural, structural, process, mechanical, electrical, and I&C) during project design and construction phases.

Bellflower High Capacity Well, City of Bellflower, Bellflower, CA
Project Manager. Prepared a preliminary design report and provided final engineering design and construction management and inspection services for the well drilling and equipping of the city's new high-capacity groundwater well. The well is designed to produce 3,500 gallons per minute of high-quality groundwater to replace a large portion of the city's water supplies. Electrical design services included a motor control center, a variable-frequency drive for the well pump, interior and exterior lighting, an automatic transfer switch, and an emergency diesel-fueled generator. Control design included preparation of process and instrumentation diagrams and specification of control components to provide consistency with control components installed in existing city facilities. Provided engineering support during testing and start-up of the well.

Raub 4-R and Raub 5-R Well Replacement Project, Hillwood Properties San Bernardino, CA
Project Manager. Provided engineering design and construction phasing for the Well Replacement Project, which included the drilling, equipping, and testing two ground water extraction wells, Raub 4-R & Raub 5-R, with disinfection of both wells. The project also included installation of discharge and pump-to-waste pipelines for Raub 4-R, Raub 5-R, and existing Raub 7, to carry raw water to a nearby treatment facility and detention pond; approximately 4,400 linear feet of 12-inch, 20-inch, and 24-inch DIP pipelines; approximately 1,300 linear feet of 20-inch CML and CMC bypass line; installation of a gravity pre-lube system; abandonment of three wells; demolition of two wells; electrical improvements; conduits and wiring; and emergency generator connections at each well.

Hazen

Wells 21 and 22 Wellhead Facilities and Pipelines, Irvine Ranch Water District, Tustin, CA
Task Manager. Task manager responsible for the design of the wellhead facilities and untreated water pipeline. Deliverables included plans, specifications and engineers estimates of probable construction costs for each the wellhead facilities and all pipelines. Well 21 and Well 22, with capacities of 3,300 gpm and 1,600 gpm respectively, are submersible turbine pump / motor assemblies, installed within vaults, and one well is equipped with a bladder-type surge tank. Project included 7,000 ft. of 24-inch steel untreated water pipeline, 13,000 feet of 36-inch steel product water pipeline and 1,700 LF of 10-inch HDPE brine concentrate pipeline. The pipelines required jack-and-bores to cross the OCTA Metrolink train tracks, an Orange County Flood Control District channel, BNSF train tracks, a box culvert, and Peter's Canyon Channel.

Mojave Water Agency Regional Recharge and Recovery (R3) Project, San Bernardino County, CA
Design Manager - Wells, Pump Station, Recharge Facility, Turnout Facilities, Reservoirs, Disinfection System, and pipelines. Mr. Conner provided engineering services to the Mojave Water Agency for the Regional Recharge and Recovery (R3) Project, a high-profile water supply project in San Bernardino County. The project will ultimately recharge up to 40,000 acre-feet per year of State Water Project water into the Upper Mojave River flood plain for later distribution to member agencies. The Phase I project included construction of six wells to extract up to 15,000 acre-ft per year, over 16 miles of 12-inch to 48-inch diameter pipe, a 2.65 MG welded steel reservoir, a flow control and recharge facility with 40,000 gpm capacity and up to 235 psi pressure drop, a pump station sized for 25,000 gpm with pumps installed to provide 15,000 gpm, and four turnout flow control facilities for delivering the water to member agencies.

Installation of Replacement Well to Improve Water Quality Using In-Well Blending for Small Disadvantaged Community, Modesto, CA
Well Equipping Lead. Designing a replacement well for the City of Modesto on behalf of the City of Grayson. The existing Well 274 is one of two wells that are the only source of municipal water for the City of Grayson's approximately one thousand residents. The existing Well 274 is shallow and extracts groundwater from the upper portion of the aquifer system degraded by nitrate at concentrations exceeding the MCL. The intent of this project is to design and install a well with two screen sections to extract and blend contaminated and uncontaminated water to meet MCL requirements. The Project also includes consideration of space and utility upgrades for a future treatment system and / or storage tank. To this end, the concept-level design considers a future Reverse Osmosis (RO) treatment plant or appli¬cation of emerging technology for the biological treatment of nitrate.

City of Santa Ana Well 29 Improvements Alternatives Analysis, Santa Ana, CA
Project Manager. The City of Santa Ana owns and operates Well 29, located at the southeast corner of Flower Street and First Street, adjacent to City owned tennis courts. Well 29 pumps directly to an existing 8 MG reservoir. The existing well site includes the well head and discharge piping assembly, control equipment, a chlorination system in a building, and an SCE transformer. An alternatives analysis was conducted to recommend upgrades at the site including site improvements, structural, mechanical, and electrical upgrades. Highlights of the study include developing three (3) alternatives for the improved site, providing 3D renderings for each site alternative, and developing a preliminary opinion of probable cost for the design and construction of each alternative discussed. The City is moving forward with implementing the recommended alternative from this analysis.



Sam Valdez, PE

Pipeline Design/Civil

Mr. Valdez experience includes developing and analyzing hydraulic models and master planning for domestic water distribution and wastewater collection systems, utility coordination with various agencies, preparation of design calculations, plans, specifications, cost estimates, and engineering construction support for domestic water, recycled water, and sanitary sewer conveyance facilities in southern California.

Education

BS, Summa Cum Laude, Civil Engineering, California State University at Long Beach

Certification/License

Professional Engineer: CA

Areas of Expertise

- Design and engineering construction support of pipelines, storage reservoirs, pump stations, and valving stations
- Domestic, recycled, and wastewater distribution and transmission system master planning
- Development, calibration, and analysis of computer hydraulic models for pressurized and gravity systems

Experience

- 10 years

Professional Activities

American Society of Civil Engineers

Mr. Valdez is proficient in a variety of modeling software including WaterGEMS, WaterCAD, SewerGEMS, SewerCAD, InfoWater, H2OMAP Water, InfoSewer, H2OMAP Sewer, H2ONET, as well as FlowMaster and AutoCAD software.

Chromium 6 Treatment Facilities, Coachella Valley Water District (CVWD), Riverside County, CA

Principal Engineer. Responsibilities include: preparation of calculations, design of pipelines, pumps, wells, and preparation of technical specifications for six (6) WBA transfer well sites, two (2) WBA finished water booster stations, and one (1) well blending site with booster station. Hazen and Sawyer has prepared a Domestic Water Source of Supply and Treatment Study and is currently providing design services to CVWD for treatment facilities to remove hexavalent chromium from groundwater including 23 strong base anion (SBA) exchange sites, 2 weak base anion (WBA) exchange sites, a central resin regeneration facility for strong base resins, and 10 miles of transmission pipelines. Work is continuing with design, construction engineering with construction management at risk contractor, and operations optimization with a design fee of $22 million.

Tesoro Water Facilities, Santa Margarita Water District (SMWD), Orange County, CA

Project Engineer. Responsibilities included: preparation of hydraulic calculations, design of pipelines, reservoirs, and preparation of technical specifications. Provided preliminary and final design services for approximately 15,500 LF (combined) of 24-inch domestic and 20-inch recycled water transmission mains, 3.0 MG of domestic water storage and 2.0 MG of recycled water storage, and the relocation of approximately 730 feet of existing 18-inch trunk sewer. The project also included: alternative pipeline alignment analysis for routes through environmen-

tally sensitive areas and agricultural areas; grading phasing analysis; and coordination with the Rancho Mission Viejo Company, California Department of Public Health, San Diego Gas and Electric, and the California Department of Fish and Wildlife.

White Stallion Transmission Booster Pump Station Upgrade, California America Water, Ventura, CA
Design Engineer. This Project included the installation of new vertical multi-stage pumps with a total capacity of 450 gpm, piping, electrical, instrumentation and control, and valving with bladder surge tank, to increase the capacity of the existing undersized White Stallion Transmission Booster Pump Station. The upsized equipment was designed to fit in the existing space-constrained building without making significant modifications to the existing building or piping. The pumps were also designed with variable speed drives with revised operational control strategy as the system has significant demand variations and is operated by serving an offsite at-grade reservoir with pressure sustaining inlet valve. Engineering construction support was provided and the pump station is now in operation.

Blackstone (Formerly Known as Tonner Hills), Shea Homes LP, So Cal Div., Brea, CA.
Project Engineer. Water Facilities. Mr. Valdez provided engineering design and construction support services for a 2.0 million gallon water reservoir, pump station, pressure regulating station, and water pipelines serving the Blackstone development. Responsible for the planning and civil engineering for the 800-acre, 781-unit Blackstone development that consists of seven defined planning areas in the hills of northeast Brea. The project is located within an active oil field with more than 250 operating oil wells and an on-site gas processing/cogeneration plant. The project integrates the residential units among the existing oil wells, within seven defined planning areas. The complexity of the project required the project team to address not only the traditional challenges of infrastructure improvements in hillside development with extensive grading, stormwater detention, and water quality, but also vaulting and abandonment of oil wells, methane gas mitigation, rerouting of oil facilities, management of oil impacted soil, oil seeps mitigation, and proposed oil field operational issues.

Middle Chiquita Canyon Water Facilities, Santa Margarita Water District (SMWD), Orange County, CA
Project Engineer. Responsibilities included: preparation of hydraulic calculations; design of pipelines, reservoirs, pressure reducing station, and pressure relief station; preparation of technical specifications; and providing bid phase support and engineering construction support including shop drawing review, response to RFIs, and preparation of construction bulletins. Provided preliminary and final design services for approximately 23,000 LF (combined) of domestic and recycled water transmission mains, 4.0 MG of domestic water storage and 4.0 MG of recycled water storage. The project also included: alternative pipeline alignment analysis for routes through environmentally sensitive areas and agricultural areas; grading phasing analysis; and coordination with the Rancho Mission Viejo Company, California Department of Public Health, San Diego Gas and Electric, and the California Department of Fish and Wildlife.

20-inch Recycled Water Pipeline, Irvine Community Development Company (ICDC), Orange County, CA
Provided professional engineering services to ICDC for the design and construction of approximately 6,000 lineal feet of 20-inch pipeline in the City of Irvine. The pipeline provides a connection between GSWC's Placentia and Yorba Linda service areas and includes three pressure regulating stations. Provided extensive utility research; topographic survey and right-of-way verification; preparation of plans, specifications, and estimates (PS&E); and traffic control plans. The project also required coordination with the Orange County Flood Control District for crossing of the Atwood Channel and coordination with Orange County Transportation Agency for the future grade separation project at Lakeview Avenue.



Kim Makar, GIT

Drilling Inspection, Hydrogeological, and Well Water Quality Testing

Ms. Makar is a geologist with six years of experience in the water resource and mining industries.

Education

BS Geosciences, University of Arizona - Tucson

Certification/License

Geologist-in-Training: CA

Areas of Expertise

- New Well Installation
- Well Rehabilitation
- Inspection
- Permitting
- Regulatory Compliance
- GIS

Experience

- 6 years

She began her career as a manager of the dewatering program at an open-pit copper mine in Nevada, for which she was responsible for developing and executing multi-million-dollar groundwater dewatering programs, including installation of vertical dewatering wells, horizontal drains, and monitoring wells. Since 2014 she has been providing professional consulting services to the water resources industry in Southern California with an emphasis on new well installation and well rehabilitation.

Replacement Well 10A, City of Hemet, Hemet, CA
Ms. Makar assisted in the production of technical specifications and provided field inspection during construction of the new well.

West Coast Basin Well 1, Long Beach Water Department, Long Beach, CA
Ms. Makar provided field inspection during the installation of a new potable water supply well located in the West Coast Basin.

Test Well TW-16, Nuevo Water Company, Nuevo, CA
Ms. Makar provided assistance in the field during water quality sampling for a new well located in an area associated with high TDS and nitrate.

Plant 211 Well 3, Suburban Water Systems, Whittier, CA
Ms. Makar provided field inspection during the drilling, construction, and well testing of a triple-completion monitoring well installed to assess depth-specific groundwater quality prior to installing a potable water supply well. She provided lithologic classification and interpretation in the reporting phases.

Well No. 8, South Montebello Irrigation District, Montebello, CA
Ms. Makar assisted in the implementation of a technical specifications report for drilling of a production well using the reverse circulation method. The report outlines the specifications requirements for a borehole to be drilled, logged, isolated aquifer zone testing, reaming, constructed, and tested.

Plant 409 Well 3, Suburban Water Systems, La Mirada, CA
Ms. Makar provided field inspection during rehabilitation of Plant 409 Well 3. This included inspection during mixing, injection, and swabbing of chemical, neutralization and discharging of chemical, initial development using swab and airlift, final development utilizing pumping and surging, step-drawdown aquifer test, constant rate test, and final disinfection.

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Commission Well 20, Long Beach Water Department, Long Beach, CA
Ms. Makar provided field inspection during rehabilitation of Commission Well 20. This included inspection during pump removal, brushing, bailing, downhole video surveys, installation of a liner, development utilizing pumping and surging, and step-drawdown aquifer test.

Well No. 11, City of Downey, Downey, CA
Ms. Makar provided field inspection during rehabilitation including during brushing, bailing, development using swabbing and airlifting, development utilizing pumping and surging, step-drawdown aquifer test, and constant rate test.

Well No. 17, City of Downey, Downey, CA
Ms. Makar provided field inspection during rehabilitation including inspection during brushing and bailing.

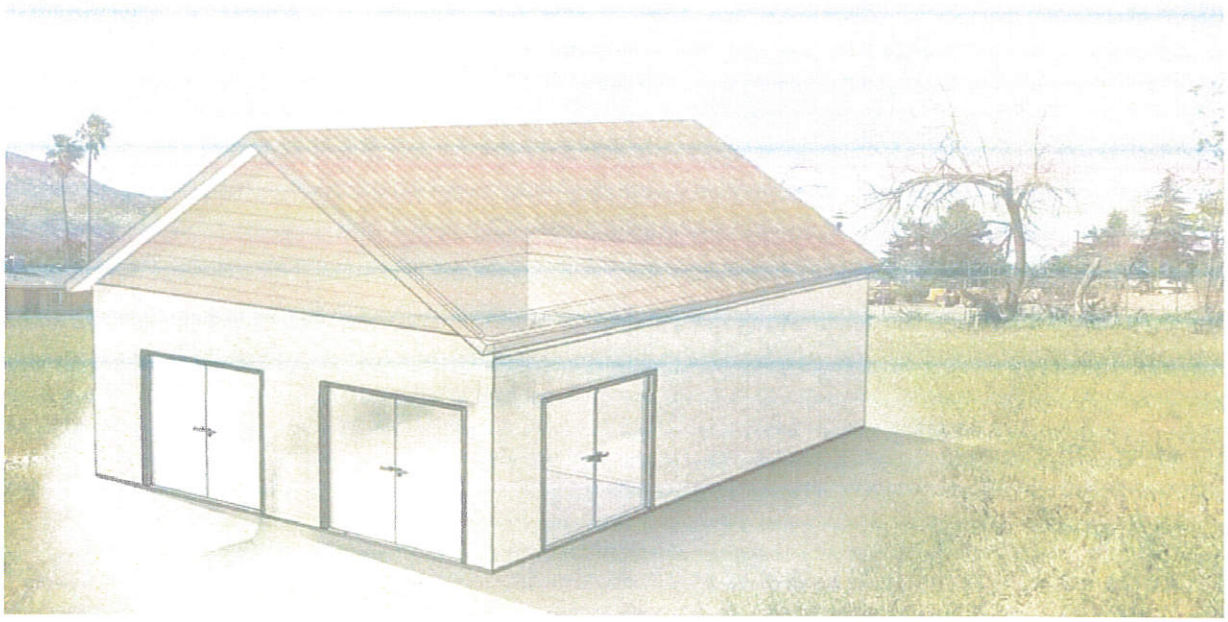
Well No. 8, City of Downey, Downey, CA
Ms. Makar provided field inspection during rehabilitation including inspection during brushing, bailing, downhole video survey, development utilizing pumping and surging, step drawdown aquifer test, and constant rate test.

Well No. 9 – City of Torrance, CA
Ms. Makar provided field inspection during rehabilitation including inspection during injection and swabbing of chemical, neutralization and discharging of chemical, initial development using swab and airlift, final development utilizing pumping and surging, step drawdown aquifer test, and final disinfection. She also assisted in the analysis and writing of the rehabilitation and testing technical memorandum.

Well No. 9 Efficiency Testing – City of Torrance, CA
Ms. Makar assisted with an onsite well and pumping plant efficiency test on a well which was exhibiting a decline in production capacity.

ELA 62-01 – California Water Service Company – Commerce, CA
Ms. Makar provided field inspection during redevelopment of the modified well. She also provided field inspection during the constant rate pumping test and assisted in the analysis and writing of the redevelopment and testing technical memorandum.

Monitoring Network Evaluation – City of Riverside, CA
Ms. Makar inventoried more than 200 monitoring points, including monitoring wells and inactive production wells, literature review, identified groundwater production well fields by management zone, and recommended additional monitoring wells based on seasonal groundwater piezometric contours and xyz position in multiple groundwater models.



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Hazen and Sawyer
36-923 Cook Street, Suite #101 • Palm Desert, CA 92211

Fee Proposal
City of Banning
Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project No. 2018-02W
June 8, 2018

Task / Hourly Rate	VP/QC $250	SA $220	CHG $185	SPE $165	PE $145	INSP $125	GE $125	AE $118	TECH $110	Total Hours	Labor Cost
Task 1 - Project Management and Quality Control	46	160		30	0	0		0	0		$ 52,760
Task 1.1 - Project Kickoff & Progress Meetings	2	26	6	22						56	$ 10,960
Task 1.2 - City Council Meetings	4	4								8	$ 1,880
Task 1.3 - Monitor Project Budget, Schedule, Invoicing		42								42	$ 9,240
Task 1.4 - Project Coordination		8		8						16	$ 3,080
Task 1.5 - QA/QC	40	80								120	$ 27,600
Task 2 - Data and Literature Review	0	4		4	0	0	10	4	0		$ 4,742
Task 2.1 Collect & Review Data and Literature		4	4	4			8	4		24	$ 3,752
Task 2.2 Technical Memo Well Site Viability			4				2			6	$ 990
Task 3 - Preliminary Well Design	0		24	0	0	0		0	32		$ 11,940
Task 3.1 - Draft Technical Specifications and Well Design Drawings			8				16		32	56	$ 7,000
Task 3.2 - Estimate Well Production, Identification of Contaminates Above MCL, Mitigation Strategies			8				12			20	$ 2,980
Task 3.3 - Project Cost Estimate and Schedule			4							4	$ 740
Task 3.4 - Constructability Issues (site access, noise, water source, etc.)			4				4			8	$ 1,240
Task 4 - Environmental and Permitting Support	23	34	10	0	122	0	20	330	100		$ 64,975
Task 4.1 - Prepare Mitigated Negative Declaration	8	10	0	0	40	0	0	206	40	304	$ 38,708
Task 4.2 - Coordination of Public Review and Filing with Planning Dept	1	1	0	0	1	0	0	16	20	38	$ 4,468
Task 4.3 - Prepare DWSAP Documents & Coordination with SWB	8	14	10	0	29	0	20	38	40	159	$ 22,519
Task 4.4 - Amend DDW Drinking Water Permit	2	5	0	0	12	0	0	40	0	59	$ 8,060
Task 4.5 - Complete Well Permit Application through County of Riverside DEH	2	2	0	0	20	0	0	20	0	44	$ 6,200
Task 4.6 - Develop Best Management Practices for Disposal of Well Development Discharge Water	2	2	0	0	20	0	0	10	0	34	$ 5,020
Task 5 - Plans, Specification, and Cost Estimate For Drilling	0		38	0	0	0	44	0	88		$ 22,210
Task 5.1 Develop 50% Drilling Construction Documents & Estimated Construction Costs			16				24		48	88	$ 11,240
Task 5.2 Develop 90% Drilling Construction Documents & Estimated Construction Costs			12				16		32	60	$ 7,740
Task 5.3 Develop 100% Drilling Construction Documents & Estimated Construction Costs			8				4		8	20	$ 2,850
Task 5.4 Obtain Necessary Permits			2							2	$ 370
Task 6 - Drilling Bidding & Pre-Construction Assistance	0	0	24	0	0	0	2	0	0		$ 4,690
Task 6.1 Finalize Construction Bid Documents and Engineer's Estimate			2				2			4	$ 620
Task 6.2 Bid Phases Services (pre-bid meeting, respond to bid questions, evaluate bids)			12							12	$ 2,220
Task 6.3 Respond to RFI's			4							4	$ 740
Task 6.4 Facilitate Pre-Construction Meeting			6							6	$ 1,110
Task 7 - Drilling Construction Management	0	0	16	0	0	0	16	0	0		$ 4,960
Task 7.1 - Drilling Construction Management			16				16			32	$ 4,960
Task 8 - Drilling Inspection, hydrogeological Services and Well Water Quality Testing	0	0	76	0	0	0	305	0	0		$ 77,685
Task 8.1 - Inspect Conductor Casing and Sanitary Seal			1				12			13	$ 1,685
Task 8.2 - Inspect Pilot Borehole Drilling			4				48			52	$ 6,740
Task 8.3 - Inspect Geophysical Logging			1				8			9	$ 1,185
Task 8.4 - Review Borehole Lithology and Geophysical Logs, and Select Isolated Aquifer Zone Intervals			3				4			7	$ 1,055
Task 8.5 - Inspect Isolated Aquifer Zone Testing (assumes four [4] zones)			8				96			104	$ 13,480
Task 8.6 - Mechanical Grading Sieve Analysis (assumes ten [10] formation samples)			2				3			5	$ 745
Task 8.7 - Prepare Final Well Design			12				16			28	$ 4,220
Task 8.8 - Inspect Borehole Reaming			2				32			34	$ 4,370
Task 8.9 - Inspect Well Construction (full-time)			4				72			76	$ 9,740
Task 8.10 - Inspect Initial Well Development by Swabbing and Airlifting (assumes 144 hours development)			4				48			52	$ 6,740
Task 8.11 - Inspect Final Well Development by Pumping and Surging (assumes 60 hours development)			6				48			54	$ 7,110
Task 8.12 - Inspect Aquifer Pumping Tests (including step drawdown, constant rate, and recovery testing)			3				34			37	$ 4,805
Task 8.13 - Inspect Downhole Video, Plumbness and Alignment Surveys, and Disinfection			2				24			26	$ 3,370
Task 8.14 - Analyze Aquifer Pumping Test Data			12				16			28	$ 4,220
Task 8.15 - Prepare Well Construction Summary Report			12				48			60	$ 8,220
Task 9 - Well Head Facility: Improvements	0	120		848	54	0	0	167	445		$ 193,386
Task 9.1 Preliminary Engineering	0	20		40	22	0	0	44	0	126	$ 19,382
Task 9.1 Develop Construction Documents & Estimated Construction Costs	0	100		508	32	0	0	123	445	1208	$ 173,924
Task 10 - Wellhead Facility: Bidding and Pre-Construction Activities	0	6	0	20	4	0	0	0	12		$ 6,520
Task 10.1 Finalize Construction Bid Documents and Engineer's Estimate				4	4				8	16	$ 2,120
Task 10.2 Bid Phase Services		4		6						10	$ 1,870
Task 10.3 Respond to RFI's				6					4	10	$ 1,430
Task 10.4 Facilitate Pre-Construction Meeting		2		4						6	$ 1,100
Task 11 - Wellhead Facility: Construction and Post Construction Support Services	0	56		182	0	800	0	0	40		$ 146,759
Task 11.1 - Construction Management and Inspection						800				800	$ 100,000
Task 11.2 - Attend Construction Progress Meetings				60						60	$ 9,900
Task 11.3 - Attend Field Meetings		16		8						24	$ 4,840
Task 11.4 - Shop Drawing (assume 30) and RFI Review (assume 15)				90						90	$ 14,850
Task 11.5 - Start-up Assistance		32		8						40	$ 8,360
Task 11.6 - Prepare Record Drawings				16					40	56	$ 7,040
Task 11.7 - Close-out Services		8								8	$ 1,750
Task 12 - Electrical Service	0	30		0	0	0	0	0	0		$ 6,600
Task 12.1 Assist City in Preparing Off-Site Electrical Plans		30								30	$ 6,600
Labor Total	69	410	188	784	180	800	601	501	717	4,249	$ 617,158

HAZEN AND SAWYER
VP/QC - Vice-president / QAQC Manager
SA - Senior Associate / Project / Technical Manager/ QAQC
CHG - Certified Hydrogeologist
SPE - Senior Principal Engineer, Associate
PE - Principal Engineer
INSP - Construction Manager / Inspector
GE - Geohydrologist Engineer
AE - Assistant Engineer
TECH - CAD Technician

Hazen

Subconsultant			Total $
Surveying	1	LS	$ 24,000
Geotechnical	1	LS	$ 19,000
Total			$ 43,000

Expenses	Units	Unit Cost	Total $
Reproduction	2,000	$ 0.10	$ 200
Reproduction	44	$ 3.00	$ 132
Travel	1	$ 3,518	$ 3,518
Mileage	13,372	$ 0.545	$ 7,288
Other Direct Costs Subtotal			$ 11,138

Grand Total (Labor + Sub + ODCs)	$ 671,296

ATTACHMENT 4

Professional Services Agreement

DESIGN SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

HAZEN AND SAWYER

AGREEMENT FOR DESIGN SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
HAZEN AND SAWYER

THIS AGREEMENT FOR DESIGN SERVICES (herein "Agreement") is made and entered into this 10th day of September, 2018 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **HAZEN AND SAWYER, a New York corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties.".

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project Number 2018-02W prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project Number 2018-02W prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required

under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase "highest professional standards" shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant's Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids ("Contract Documents") and the Scope of Service shall include the Consultant's scope of work or in Consultant's accepted bid proposal ("Accepted Bid") shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant's performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City's risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or $25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed SIX HUNDRED SEVENTY-ONE THOUSAND TWO HUNDRED NINETY-SIX DOLLARS ($671,296.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

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

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

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

Marc Solomon	Principal-in-Charge
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant 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 the 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 the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

$2,000,000 per occurrence for bodily injury and property damage

$1,000,000 per occurrence for personal and advertising injury

$4,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than $1,000,000 per accident 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.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of $2,000,000 per claim/occurrence and $2,000,000 policy aggregate.

In the event Consultant 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).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant 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 City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

5.2 General Requirements.

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 has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant 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 Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.

2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City 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 City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, 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 Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City 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 Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.

5.3 Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs

associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c)(2).

B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph B.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or

employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The hold harmless and indemnification provisions in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, Claims, tax, assessment, penalty or interest asserted against City.

E. Survival of Terms. The indemnification in this Section shall survive the expiration or termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the

estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

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

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and

to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable ($0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City,

the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

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

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this

Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

Rochelle Clayton, Interim City Manager

CONSULTANT

By: _____

NAME: Lynn Grijalva

TITLE: Vice President

By: _____

NAME: DAVE JONES

TITLE: VICE PRESIDENT

ATTEST:

_____

Sonja De La Fuente, Deputy City Clerk

13-2904652

Tax ID No.

APPROVED AS TO FORM:
Richards, Watson, Gershon

_____

Kevin G. Ennis, Esq., City Attorney

Two signatures are required if a corporation

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT **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 Los Angeles)

On August 13, 2018 before me, Pamela K. Thompson, Notary Public,
Date *Here Insert Name and Title of the Officer*

personally appeared David Robert Jones
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.

PAMELA K. THOMPSON
Notary Public - California
Los Angeles County
Commission # 2198649
My Comm. Expires Jun 21, 2021

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 or Type of Document: City of Banning Design Services Agreement Document Date: Future date: September 10, 2018
Number of Pages: 20 Plus Exhibits A-D Signer(s) Other Than Named Above: yes

Capacity(ies) Claimed by Signer(s)

Signer's Name: David Robert Jones	Signer's Name:
☑ Corporate Officer — Title(s): Vice President	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing: Olsson and Sawyer	Signer Is Representing:

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California All-Purpose Acknowledgment

The so-called "all-purpose" acknowledgment wording, as prescribed in California Civil Code Section 1189(a), is mandatory for all acknowledgments taken in the state, whether the acknowledger is signing as an individual or a representative (partner, corporate officer, attorney in fact, trustee, etc.).

Law permits California Notaries to use an out-of-state acknowledgment form on a document that will be filed in that other state or U.S. jurisdiction, but only if "the form does not require the Notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law" (Civil Code Section 1189(c)).

Still, however, any acknowledged document notarized and filed or recorded in California must bear only an all-purpose certificate.

State law requires the "all-purpose" certificate wording to be used exactly as it appears in statute.

The optional section at the bottom can deter alteration of the document or fraudulent reattachment of this form to an unintended document. The insertions in this section are not required by law. Failure to fill out this section will not affect the validity of the certificate.

Instructions:

1 NAME OF COUNTY where Notary performs notarization.

2 DATE OF NOTARIZATION. Actual month, day and year on which signer(s) appear(s) before Notary.

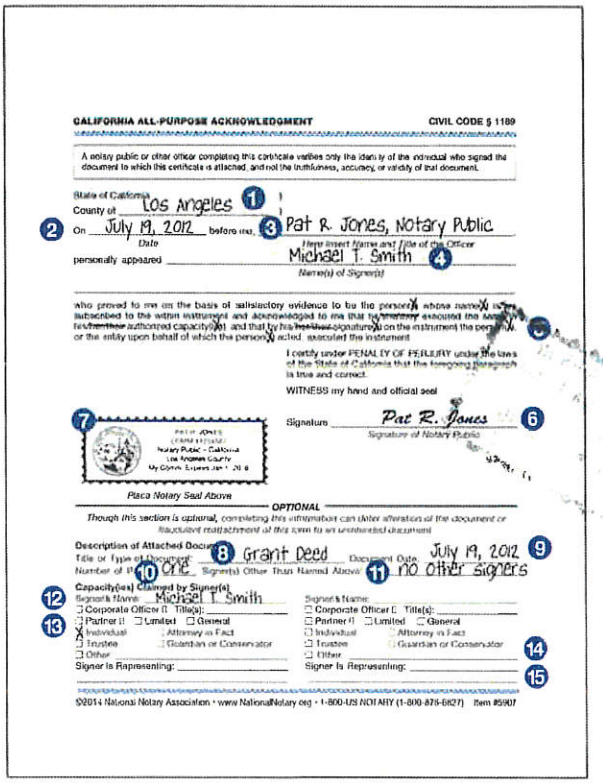
3 NAME & TITLE OF NOTARIZING OFFICER. In the case of a Notary, "Notary Public" would be the title.

4 NAME(S) OF SIGNER(S) appearing before Notary. Initials and spelling of names should agree with name(s) signed on document and ID card.

5 NUMBER AND GENDER OF SIGNER(S). Cross out letters and words that do not apply — person(s), name(s), is/are, he/she/they, his/her/their, capacity(ies), signature(s) — or **circle** words that apply, to agree with number and gender of signer(s) in space 4.

6 SIGNATURE OF NOTARY exactly as name appears on commissioning papers, in space 3 and in seal.

7 NOTARY SEAL IMPRINT, clearly and legibly affixed.



SPACES 8–15 ARE OPTIONAL.
Omission of information here will not affect the document's validity. However, completing these spaces can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

8 TITLE OR TYPE OF DOCUMENT notarized, such as "Grant Deed."

9 DATE OF DOCUMENT notarized. Most but not all documents will have a date, usually at the top or following the signature. If none, insert "No Date."

10 NUMBER OF PAGES in the notarized document. This may point out fraudulent addition or removal of pages. Do not count the certificate as a page. However, the certificate will be regarded as a page by recording officials in assessing recording fees.

11 SIGNER(S) OTHER THAN NAMED IN SPACE 4. Since all signers might not be named on the same notarial certificate, insert name(s) of signer(s) here that appear(s) or will appear on other certificates — as many as space allows. If there are a large number of signers, a notation such as "Mary Smith and 28 other signers" will suffice. If none, insert "no other signers."

12 NAME(S) OF SIGNER(S) from space 4 whose capacity and represented entity follow.

13 CAPACITY CLAIMED BY SIGNER. Check appropriate box to indicate whether signer is signing as individual (on his or her own behalf), or as corporate officer (indicate corporate title), partner (indicate whether "limited" or "general" partner), attorney in fact, trustee, guardian/conservator, or in another capacity.

14 DESCRIPTION OF OTHER CAPACITY(IES). A single capacity, such as "executor," may be indicated here; or a multiple capacity, such as "corporate officer signing for partnership in which corporation is partner."

15 NAME OF PERSON OR LEGAL ENTITY that signer is representing. It could, for example, be the name of an absent person represented by attorney in fact. It could be the name of a condominium association, such as "Blue Lagoon Condo Assn." Or it could be multiple entities, such as "XYZ Corp., partner in Mutual Enterprises, a partnership."

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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 Los Angeles)

On August 9th 2018 before me, Pamela K. Thompson, Notary Public
Date *Here Insert Name and Title of the Officer*

personally appeared Lynn A.H. Gijalva
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

PAMELA K. THOMPSON
Notary Public - California
Los Angeles County
Commission # 2198649
My Comm Expires Jun 21, 2021

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: City of Banning Design Services Agreement Document Date: Release date: September 18th 2018
Number of Pages: 20 plus Exhibits A-D Signer(s) Other Than Named Above: yes

Capacity(ies) Claimed by Signer(s)

Signer's Name: Lynn A.H. Gijalva	Signer's Name:
☑ Corporate Officer — Title(s): Vice President	☐ Corporate Officer — Title(s):
☐ Partner — ☐ Limited ☐ General	☐ Partner — ☐ Limited ☐ General
☐ Individual ☐ Attorney in Fact	☐ Individual ☐ Attorney in Fact
☐ Trustee ☐ Guardian or Conservator	☐ Trustee ☐ Guardian or Conservator
☐ Other:	☐ Other:
Signer Is Representing: Nazen and Sawyer	Signer Is Representing:

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Law permits California Notaries to use an out-of-state acknowledgment form on a document that will be filed in that other state or U.S. jurisdiction, but only if "the form does not require the Notary to determine or certify that the signer holds a particular representative capacity or to make other determinations and certifications not allowed by California law" (Civil Code Section 1189[c]).

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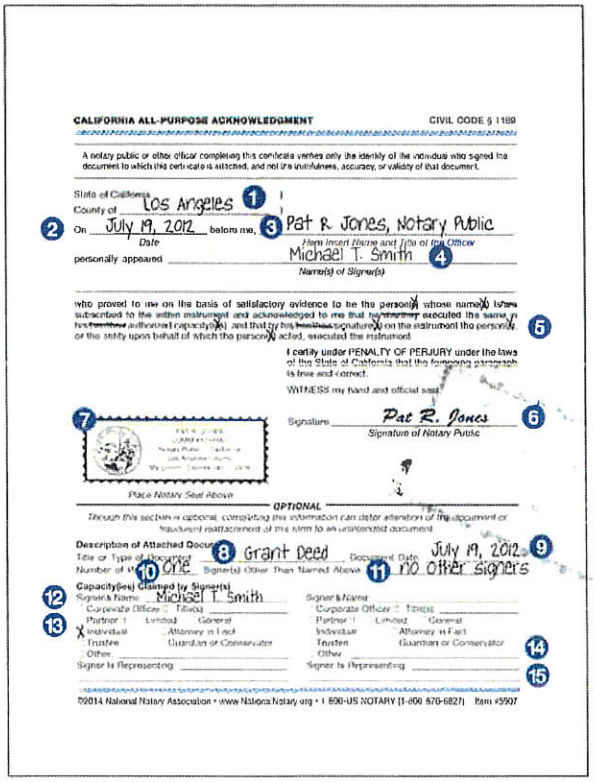
Instructions:



1 NAME OF COUNTY where Notary performs notarization.

2 DATE OF NOTARIZATION. Actual month, day and year on which signer(s) appear(s) before Notary.

3 NAME & TITLE OF NOTARIZING OFFICER. In the case of a Notary, "Notary Public" would be the title.

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5 NUMBER AND GENDER OF SIGNER(S). Cross out letters and words that do not apply — person(s), name(s), is/are, he/she/they, his/her/their, capacity(ies), signature(s) — or **circle** words that apply, to agree with number and gender of signer(s) in space 4.

6 SIGNATURE OF NOTARY exactly as name appears on commissioning papers, in space 3 and in seal.

7 NOTARY SEAL IMPRINT, clearly and legibly affixed.

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9 DATE OF DOCUMENT notarized. Most but not all documents will have a date, usually at the top or following the signature. If none, insert "No Date."

10 NUMBER OF PAGES in the notarized document. This may point out fraudulent addition or removal of pages. Do not count the certificate as a page. However, the certificate will be regarded as a page by recording officials in assessing recording fees.

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12 NAME(S) OF SIGNER(S) from space 4 whose capacity and represented entity follow

13 CAPACITY CLAIMED BY SIGNER. Check appropriate box to indicate whether signer is signing as individual (on his or her own behalf), or as corporate officer (indicate corporate title), partner (indicate whether "limited" or "general" partner), attorney in fact, trustee, guardian/conservator, or in another capacity.

14 DESCRIPTION OF OTHER CAPACITY(IES). A single capacity, such as "executor," may be indicated here; or a multiple capacity, such as "corporate officer signing for partnership in which corporation is partner."

15 NAME OF PERSON OR LEGAL ENTITY that signer is representing. It could, for example, be the name of an absent person represented by attorney in fact. It could be the name of a condominium association, such as "Blue Lagoon Condo Assn." Or it could be multiple entities, such as "XYZ Corp., partner in Mutual Enterprises, a partnership."

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, 20__ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER

- ☐ INDIVIDUAL
- ☐ CORPORATE OFFICER

_____
TITLE(S)

- ☐ PARTNER(S) ☐ LIMITED ☐ GENERAL
- ☐ ATTORNEY-IN-FACT
- ☐ TRUSTEE(S)
- ☐ GUARDIAN/CONSERVATOR
- ☐ OTHER_____

_____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

_____

_____

DESCRIPTION OF ATTACHED DOCUMENT

_____
TITLE OR TYPE OF DOCUMENT

_____
NUMBER OF PAGES

_____
DATE OF DOCUMENT

_____
SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

I. Consultant will perform the following services in connection with providing Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project Number 2018-02W as specified in fee proposal and prepared in connection therewith:

A. Task 1 - Project Management and Quality Control

B. Task 2 - Data and Literature Review

C. Task 3 - Preliminary Well Design

D. Task 4 – Environmental and Permitting Support

E. Task 5 – Plans, Specification, and Cost Estimate for Drilling

F. Task 6 – Drilling Bidding & Pre-Construction Assistance

G. Task 7 – Drilling Construction Management

H. Task 8 – Drilling Inspection, hydrogeological Services and Well Water Quality Testing

I. Task 9 – Well Head Facility: Improvements

J. Task 10 – Well Head Facility: Bidding and Pre-Construction Activities

K. Task 11 – Well Head Facility: Construction and Post Construction Support Services

L. Task 12 Electrical Services

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

A. Technical Memo Well Site Viability

B. Draft Technical Specifications and Well Design Drawings

C. Project Cost Estimate and Schedule

D. Prepare Mitigated Negative Declaration

E. Prepare SWSAP Documents & Coordination with SWB

F. Amend DDW Drinking Water Permit

G. Complete Well Permit Application through County of Riverside DEH

H. Develop Best Management Practices for Disposal of Well Development Discharge Water

I. Develop 50% drilling Construction Documents & Estimated Construction Costs

J. Develop 90% Drilling Construction Documents & Estimated Construction Costs

K. Develop 100% Drilling Construction Documents & Estimated Construction Costs

L. Obtain Necessary Permits

M. Construction Bid Documents and Engineer's Estimate

N. Final Well Design

O. Well Construction Summary Report

P. Shop Drawings (assume 30)

Q. Record Drawings

R. Assist City in Preparing Off-Site Electrical Plans

III. In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City appraised through periodic status reports regarding the performance of the services under this Agreement by the following means:

A. In-person meetings.

B. Email updates/questions to applicant team and City while reviews are underway.

C. Conference calls.

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

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

A. Marc Solomon, Principal-in-Charge

B. Scott Rogers, Project Manager

C. Cindy Miller, QA/QC

D. Kent O'Brien, QA/QC

E. Russ Kyle, Well Design

F. Steve Conner, Well Equipping & Site Layout

G. Sam Valdez, Pipeline Design & Civil Engineering

H. Wyatt Dressler, Structural Engineering

I. Bill Russel, Architectural Engineering

J. Swaid Alhajri, HVAC

K. Chris Thunhorst, Electrical, Site Security

L. Justin Irving, Instrumentation & Control

M. Katie Hoek, Environmental & Permitting

N. Chris Portner, Cost Estimating

O. Crystal Broadbent, Surge Analysis

P. Kim Makar, Drilling Inspection, Hydrogeological, and Well Water Quality Testing

Q. Jim Littrell, Construction Management Inspection

R. Vivy Dong, Water Quality

S. Sub Consultant - Cozad & Fox, Surveying

T. Sub Consultant – Leighton, Geotechnical

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks ("Tasks") at the following rates

TASK	DESCRIPTION	SUB-BUDGET
1.	Project Management and Quality Control	$52,760
2.	Data and Literature Review	$4,742
3.	Preliminary Well Design	$11,960
4.	Environmental and Permitting Support	$84,975
5.	Plans, Specification, and Cost Estimate for Drilling	$22,210
6.	Drilling Bidding & Pre-Construction Assistance	$4,690
7.	Drilling Construction Management	$4,690
8.	Drilling Inspection, hydrogeological Services and Well Water Quality Testing	$77,685
9.	Well Head Facility: Improvements	$193,306
10.	Well Head Facility: Bidding and Pre-Construction Activities	$6,520
11.	Well Head Facility: Construction and Post Construction Support Services	$146,750
12.	Electrical Services	$6,600
	TASKS TOTAL	**$617,158.00**
13.	Sub Consultants (Surveying & Geotechnical)	$43,000.00
14.	Expenses (Reproduction, Travel & Mileage	$11,138.00
	GRAND TOTAL	**$671,296.00**

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:

A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.

B. Line items for all materials and equipment properly charged to the services.

C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.

D. Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.

V. **The total compensation for services shall not exceed $671,296.00 as provided in Section 2.1 of this Agreement.**

VI. **The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

EXHIBIT "C-1"
CONSULTANT'S BILLING RATE AND TASK SCHEDULE

Fee Proposal
City of Banning
Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project No. 2018-02W
June 8, 2018

Task	VP/QC	SA	CHG	SPE	PE	INSP	GE	AE	TECH	Total Hours	Labor Cost
Hourly Rate	$250	$220	$185	$165	$145	$125	$125	$118	$110		
Task 1 - Project Management and Quality Control	**46**	**166**		**30**	**0**	**0**		**0**	**0**		**$ 62,740**
Task 1.1 - Project Kickoff & Progress Meetings	2	26	6	22						56	$ 10,960
Task 1.2 - City Council Meetings	4	4								8	$ 1,880
Task 1.3 - Monitor Project Budget, Schedule, Invoicing		42								42	$ 9,240
Task 1.4 - Project Coordination		8		8						16	$ 3,080
Task 1.5 - QA/QC	40	80								120	$ 27,600
Task 2 - Data and Literature Review	**0**	**4**		**4**	**0**	**0**	**10**	**4**	**0**		**$ 4,742**
Task 2.1 Collect & Review Data and Literature		4	4	4			8	4		24	$ 3,752
Task 2.2 Technical Memo Well Site Viability			4				2			6	$ 990
Task 3 - Preliminary Well Design	**0**		**24**	**0**	**0**	**0**		**0**	**22**		**$ 11,960**
Task 3.1 - Draft Technical Specifications and Well Design Drawings			8				16		32	56	$ 7,000
Task 3.2 - Estimate Well Production, Identification of Contaminates Above MCL, Mitigation Strategies			8				12			20	$ 2,980
Task 3.3 - Project Cost Estimate and Schedule			4							4	$ 740
Task 3.4 - Constructability Issues (site access, noise, water source, etc.)			4				4			8	$ 1,240
Task 4 - Environmental And Preliminary Support	**28**	**54**	**10**	**0**	**172**	**0**	**20**	**328**	**190**		**$ 84,976**
Task 4.1 - Prepare Mitigated Negative Declaration	8	16	0	8	40	0	0	208	40	304	$ 38,706
Task 4.2 - Coordination of Public Review and Filing with Planning Dept	1	1	0	0	1	0	0	16	20	38	$ 4,466
Task 4.3 - Prepare DWSAP Documents & Coordination with SWB	8	14	10	0	29	0	20	36	40	156	$ 22,518
Task 4.4 - Amend DDW Drinking Water Permit	2	5	0	0	12	0	0	40	0	59	$ 8,060
Task 4.5 - Complete Well Permit Application through County of Riverside DEH	2	2	0	0	20	0	0	20	0	44	$ 6,200
Task 4.6 - Develop Best Management Practices for Disposal of Well Development Discharge Water	2	2	0	0	20	0	0	10	0	34	$ 5,020
Task 5 - Plans, Specification, and Cost Estimate For Drilling	**0**		**34**	**0**	**0**	**0**	**44**	**0**	**88**		**$ 22,210**
Task 5.1 Develop 60% Drilling Construction Documents & Estimated Construction Costs			16				24		48	88	$ 11,240
Task 5.2 Develop 90% Drilling Construction Documents & Estimated Construction Costs			12				16		32	60	$ 7,740
Task 5.3 Develop 100% Drilling Construction Documents & Estimated Construction Costs			6				4		8	20	$ 2,860
Task 5.4 Obtain Necessary Permits			2							2	$ 370
Task 6 - Drilling Bidding & Pre-Construction Assistance	**0**	**0**	**24**	**0**	**0**	**0**	**2**	**0**	**0**		**$ 4,496**
Task 6.1 Finalize Construction Bid Documents and Engineer's Estimate			2				2			4	$ 620
Task 6.2 Bid Phases Services (pre-bid meeting, respond to bid questions, evaluate bids)			12							12	$ 2,220
Task 6.3 Respond to RFI's			4							4	$ 740
Task 6.4 Facilitate Pre-Construction Meeting			6							6	$ 1,110
Task 7 - Drilling Construction Management	**0**	**0**	**16**	**0**	**0**	**0**	**16**	**0**	**0**		**$ 4,960**
Task 7.1 - Drilling Construction Management			16				16			32	$ 4,960
Task 8 - Drilling Inspection, Hydrogeological Services and Well Water Quality Testing	**0**	**0**	**76**	**0**	**0**	**0**	**808**	**0**	**0**		**$ 77,448**
Task 8.1 - Inspect Conductor Casing and Sanitary Seal			1				12			13	$ 1,685
Task 8.2 - Inspect Pilot Borehole Drilling			4				48			52	$ 6,740
Task 8.3 - Inspect Geophysical Logging			1				8			9	$ 1,185
Task 8.4 - Review Borehole Lithology and Geophysical Logs, and Select Isolated Aquifer Zone Intervals			3				4			7	$ 1,055
Task 8.5 - Inspect Isolated Aquifer Zone Testing (assumes four [4] zones)			8				96			104	$ 13,480
Task 8.6 - Mechanical Grading Sieve Analysis (assumes ten [10] formation samples)			2				3			5	$ 745
Task 8.7 - Prepare Final Well Design			12				16			28	$ 4,220
Task 8.8 - Inspect Borehole Reaming			2				32			34	$ 4,370
Task 8.9 - Inspect Well Construction (full-time)			4				72			76	$ 9,740
Task 8.10 - Inspect Initial Well Development by Swabbing and Airlifting (assumes 144 hours development)			4				48			52	$ 6,740
Task 8.11 - Inspect Final Well Development by Pumping and Surging (assumes 60 hours development)			6				48			54	$ 7,110
Task 8.12 - Inspect Aquifer Pumping Tests (including step drawdown, constant rate, and recovery testing)			3				34			37	$ 4,805
Task 8.13 - Inspect Downhole Video, Plumbness and Alignment Surveys, and Disinfection			2				24			26	$ 3,370
Task 8.14 - Analyze Aquifer Pumping Test Data			12				16			28	$ 4,220
Task 8.15 - Prepare Well Construction Summary Report			12				48			60	$ 8,220
Task 9 - Well Head Facility Improvements	**0**	**120**		**648**	**54**	**0**	**0**	**167**	**445**		**$ 183,306**
Task 9.1 Preliminary Engineering	0	20		40	22	0	0	44	0	126	$ 19,362
Task 9.1 Develop Construction Documents & Estimated Construction Costs	0	100		508	32	0	0	123	445	1206	$ 173,924
Task 10 - Wellhead Facility: Bidding and Pre-Construction Activities	**0**	**6**	**0**	**28**	**4**	**0**	**0**	**0**	**12**		**$ 8,620**
Task 10.1 Finalize Construction Bid Documents and Engineer's Estimate				4	4				8	16	$ 2,120
Task 10.2 Bid Phase Services		4		6						10	$ 1,870
Task 10.3 Respond to RFI's				8					4	12	$ 1,480
Task 10.4 Facilitate Pre-Construction Meeting		2		4						6	$ 1,100
Task 11 - Wellhead Facility Construction and Post Construction Support Services	**0**	**56**		**152**	**0**	**800**	**0**	**0**	**48**		**$ 148,784**
Task 11.1 - Construction Management and Inspection						800				800	$ 100,000
Task 11.2 - Attend Construction Progress Meetings				60						60	$ 8,900
Task 11.3 - Attend Field Meetings		16		8						24	$ 4,840
Task 11.4 - Shop Drawing (assume 30) and RFI Review (assume 15)				90						90	$ 14,850
Task 11.5 - Start-up Assistance		32		8						40	$ 8,360
Task 11.6 - Prepare Record Drawings				16					40	56	$ 7,040
Task 11.7 - Close-out Services		6								6	$ 1,750
Task 12 - Electrical Service	**0**	**30**		**0**	**0**	**0**	**0**	**0**	**0**		**$ 6,600**
Task 12.1 Assist City in Preparing Off-Site Electrical Plans		30								30	$ 6,600
Labor Total	99	416	188	754	182	800	901	561	717	4,349	$ 617,158

HAZEN AND SAWYER
VP/QC - Vice-president / QAQC Manager
SA - Senior Associate / Project / Technical Manager/ QAQC
CHG - Certified Hydrogeologist
SPE - Senior Principal Engineer, Associate
PE - Principal Engineer
INSP - Construction Manager / Inspector
GE - Geohydrologist Engineer
AE - Assistant Engineer
TECH - CAD Technician

Hazen

Subconsultant				Total $
Surveying	1	LS	$	24,000
Geotechnical	1	LS	$	18,000
Total			$	42,000

Expenses		Units	Unit Cost	Total $
Reproduction		2,000	$ 0.10	$ 200
Reproduction		44	$ 3.00	$ 132
Travel		1	$ 3,518	$ 3,518
Mileage		13,372	$ 0.545	$ 7,288
Other Direct Costs Subtotal				$ 11,138
Grand Total (Labor + Sub + ODCs)				$ 671,296

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the Contract Officer.

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

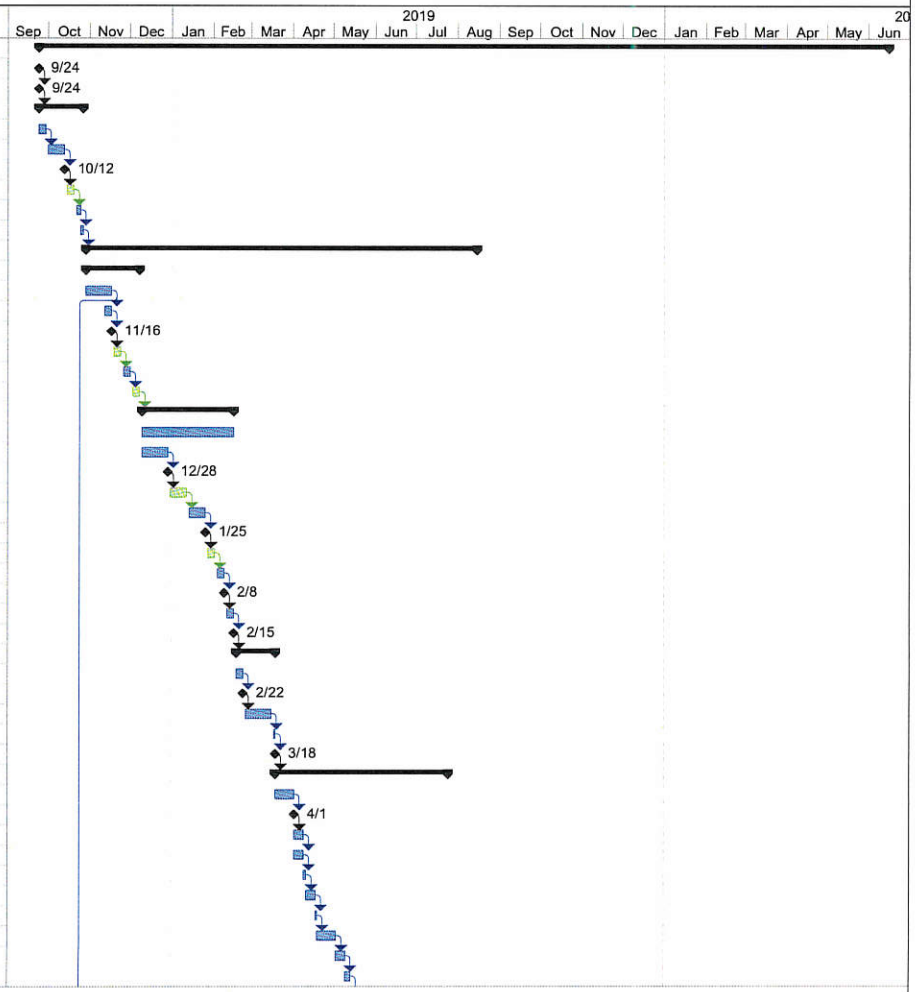
A. Proposed Project Schedule -- Attached as Exhibit D-1.

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

EXHIBIT "D-1"
PROPOSED PROJECT SCHEDULE

PROPOSED PROJECT SCHEDULE
CITY OF BANNING
GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR WELL C-8

ID	Task Name	Duration	Start	Finish	Predecessors
1	Banning Well C-8	451 days	Mon 9/24/18	Mon 6/15/20	
2	Notice-to-Proceed	0 days	Mon 9/24/18	Mon 9/24/18	
3	Kickoff Meeting	0 days	Mon 9/24/18	Mon 9/24/18	2
4	Memo Verifying Well C-8 Viability	25 days	Mon 9/24/18	Fri 10/26/18	3
5	Date and Literature Review	1 wk	Mon 9/24/18	Fri 9/28/18	
6	Prepare Draft Memo Verifying Viability of Well C-8 Project at Proposed Site	2 wks	Mon 10/1/18	Fri 10/12/18	5
7	Submit Memo to City for Review and Comments	0 days	Fri 10/12/18	Fri 10/12/18	6
8	City Review Period	1 wk	Mon 10/15/18	Fri 10/19/18	7
9	Finalize Memo and Submit to City	3 days	Mon 10/22/18	Wed 10/24/18	8
10	Receive City Approval of Memo	2 days	Thu 10/25/18	Fri 10/26/18	9
11	Well Drilling	208 days	Mon 10/29/18	Wed 8/14/19	10
12	Preliminary Design Report (PDR) for Well C-8	30 days	Mon 10/29/18	Fri 12/7/18	
13	Prepare Preliminary Design Report and Preliminary Drawings	3 wks	Mon 10/29/18	Fri 11/16/18	
14	Prepare Preliminary Schedule and Engineer's Estimate	1 wk	Mon 11/12/18	Fri 11/16/18	13FS-1 wk
15	Submit Draft PDR to City for Review and Comments	0 days	Fri 11/16/18	Fri 11/16/18	14
16	City Review Period	1 wk	Mon 11/19/18	Fri 11/23/18	15
17	Finalize Report and Submit to City	1 wk	Mon 11/26/18	Fri 11/30/18	16
18	Receive City Approval of PDR	1 wk	Mon 12/3/18	Fri 12/7/18	17
19	Prepare Well Drilling Bid Documents	50 days	Mon 12/10/18	Fri 2/15/19	18
20	Environmental and Permitting Support	10 wks	Mon 12/10/18	Fri 2/15/19	
21	Prepare 50% PS&E	3 wks	Mon 12/10/18	Fri 12/28/18	
22	Submit 50% PS&E to City for Review	0 days	Fri 12/28/18	Fri 12/28/18	21
23	City 50% PS&E Review Period	2 wks	Mon 12/31/18	Fri 1/11/19	22
24	Prepare 90% PS&E	2 wks	Mon 1/14/19	Fri 1/25/19	23
25	Submit 90% PS&E to City for Review	0 days	Fri 1/25/19	Fri 1/25/19	24
26	City 90% PS&E Review Period	1 wk	Mon 1/28/19	Fri 2/1/19	25
27	Prepare 100% PS&E	1 wk	Mon 2/4/19	Fri 2/8/19	26
28	Submit 100% PS&E to City for Review	0 days	Fri 2/8/19	Fri 2/8/19	27
29	Prepare Final Bid Documents	1 wk	Mon 2/11/19	Fri 2/15/19	28
30	City Approves Final Bid Documents	0 days	Fri 2/15/19	Fri 2/15/19	29
31	Well Drilling Bidding	21 days	Mon 2/18/19	Mon 3/18/19	30
32	Advertise	1 wk	Mon 2/18/19	Fri 2/22/19	
33	Pre-Bid Meeting with Drillers	0 days	Fri 2/22/19	Fri 2/22/19	32
34	Bid Opening	3 wks	Mon 2/25/19	Fri 3/15/19	33
35	Review Bids / Make Recommendation for Award	1 day	Mon 3/18/19	Mon 3/18/19	34
36	City Council Awards Drilling Contract	0 days	Mon 3/18/19	Mon 3/18/19	35
37	Well Construction	92 days	Tue 3/19/19	Wed 7/24/19	36
38	City issues Notice-to-Proceed to Well Drilling Contractor	2 wks	Tue 3/19/19	Mon 4/1/19	
39	Pre-Construction Meeting	0 days	Mon 4/1/19	Mon 4/1/19	38
40	Driller Obtains Permits	1 wk	Tue 4/2/19	Mon 4/8/19	39
41	Driller Mobilizes on Site (Assumes no sound panels)	1 wk	Tue 4/2/19	Mon 4/8/19	40FS-1 wk
42	Conductor Casing and Sanitary Seal	2 days	Tue 4/9/19	Wed 4/10/19	41
43	Pilot Borehole Drilling	5 days	Thu 4/11/19	Wed 4/17/19	42
44	Determines Zones for Isolated Aquifer Zone Testing	1 day	Thu 4/18/19	Thu 4/18/19	43
45	Isolated Aquifer Zone Testing	2 wks	Fri 4/19/19	Thu 5/2/19	44
46	Receives Water Quality Results from Isolated Aquifer Zone Testing	1 wk	Fri 5/3/19	Thu 5/9/19	45
47	Prepares Final Well Design	2 days	Fri 5/10/19	Mon 5/13/19	46

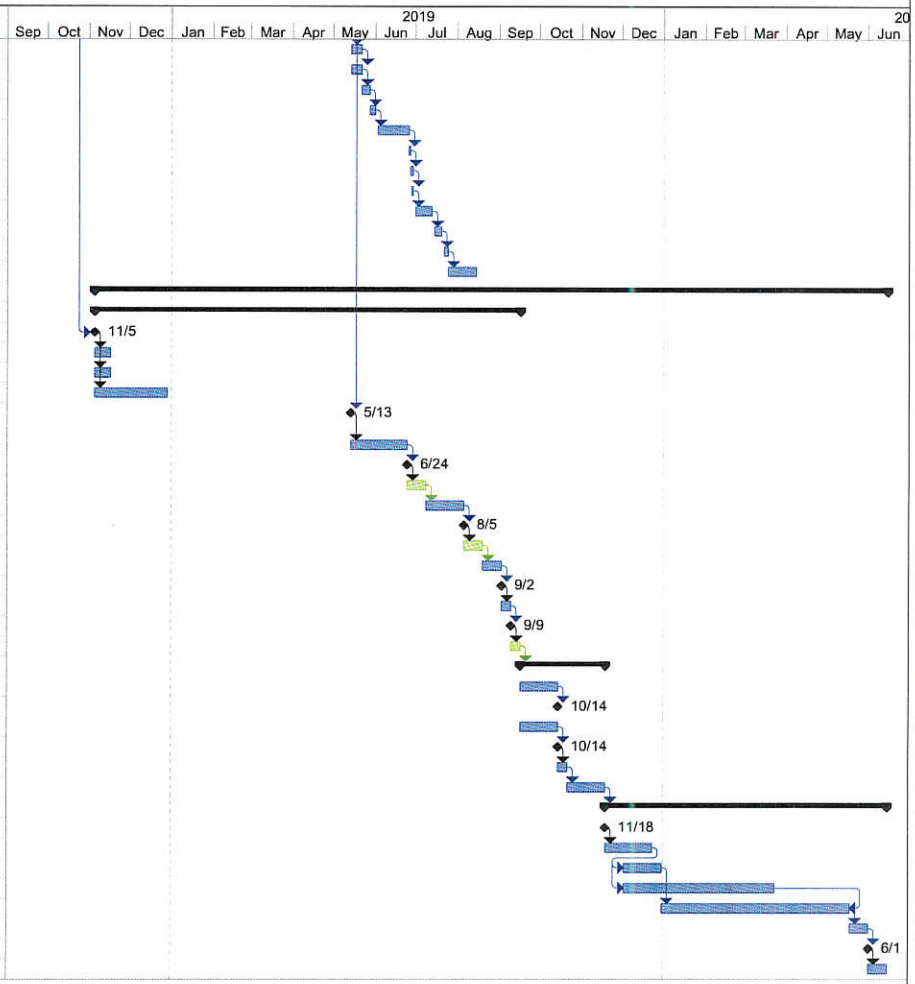


Project: City of Banning Well C-8
Date: Tue 8/14/18

Task	Project Summary	Inactive Summary	Manual Summary	External Milestone			
Split	External Tasks	Manual Task	Start-only	Progress			
Milestone	External Milestone	Duration-only	Finish-only	Deadline			
Summary	Inactive Milestone	Manual Summary Rollup	External Tasks				

PROPOSED PROJECT SCHEDULE
CITY OF BANNING
GEOHYDROLOGIC AND ENGINEERING DESIGN SERVICES FOR WELL C-8

ID	Task Name	Duration	Start	Finish	Predecessors
48	Borehole Reaming	6 days	Tue 5/14/19	Tue 5/21/19	47
49	Casing Fabricated and Delivered to Site	6 days	Tue 5/14/19	Tue 5/21/19	48FS-6 days
50	Install Casing, Screen, Filter Pack and Annular Seal	4 days	Wed 5/22/19	Mon 5/27/19	49
51	Well Development by Airlifting and Swabbing	4 days	Tue 5/28/19	Fri 5/31/19	50
52	Well Development by Pumping and Surging	17 days	Mon 6/3/19	Tue 6/25/19	51
53	Step Drawdown Testing	1 day	Wed 6/26/19	Wed 6/26/19	52
54	Constant Rate and Spinner Survey Testing	2 days	Thu 6/27/19	Fri 6/28/19	53
55	Water Quality Testing	1 day	Fri 6/28/19	Fri 6/28/19	54FS-1 day
56	Video and Gyroscopic Alignment Survey / Final Disinfection	2 wks	Mon 7/1/19	Fri 7/12/19	55
57	Cleanup and Demobilization	1 wk	Mon 7/15/19	Fri 7/19/19	56
58	Prepares Pump Design Recommendation Letter	3 days	Mon 7/22/19	Wed 7/24/19	57
59	Well Completion Summary Report	3 wks	Thu 7/25/19	Wed 8/14/19	58
60	Wellhead Facility	421 days	Mon 11/5/18	Mon 6/15/20	
61	Design	226 days	Mon 11/5/18	Mon 9/16/19	
62	Receive Preliminary Capacity Estimate from Hydrogeologist	0 days	Mon 11/5/18	Mon 11/5/18	13FS-2 wks
63	Prepare Preliminary Layouts / Sanitary Hazards Exhibits	2 wks	Mon 11/5/18	Fri 11/16/18	62
64	Prepare Hydraulic Analysis	2 wks	Mon 11/5/18	Fri 11/16/18	62
65	Coordinate with DDW	8 wks	Mon 11/5/18	Fri 12/28/18	62
66	Receive Notice to Proceed from City / Receive Pump Design From Hydrogeologist	0 days	Mon 5/13/19	Mon 5/13/19	47
67	Prepare 50% PS&E	6 wks	Tue 5/14/19	Mon 6/24/19	66
68	Submit 50% PS&E to City for Review	0 days	Mon 6/24/19	Mon 6/24/19	67
69	City 50% PS&E Review Period	2 wks	Tue 6/25/19	Mon 7/8/19	68
70	Prepare 90% PS&E	4 wks	Tue 7/9/19	Mon 8/5/19	69
71	Submit 90% PS&E to City for Review	0 days	Mon 8/5/19	Mon 8/5/19	70
72	City 90% PS&E Review Period	2 wks	Tue 8/6/19	Mon 8/19/19	71
73	Prepare 100% PS&E	2 wks	Tue 8/20/19	Mon 9/2/19	72
74	Submit 100% PS&E to City for Review	0 days	Mon 9/2/19	Mon 9/2/19	73
75	Prepare Final Bid Documents	1 wk	Tue 9/3/19	Mon 9/9/19	74
76	Submit Final PS&E to City	0 days	Mon 9/9/19	Mon 9/9/19	75
77	City Accepts Final PS&E	1 wk	Tue 9/10/19	Mon 9/16/19	76
78	Bidding	45 days	Tue 9/17/19	Mon 11/18/19	77
79	Advertsie for Bid	4 wks	Tue 9/17/19	Mon 10/14/19	
80	Pre-Bid Meeting	0 days	Mon 10/14/19	Mon 10/14/19	79
81	Bid Period	4 wks	Tue 9/17/19	Mon 10/14/19	
82	Bid Opening	0 days	Mon 10/14/19	Mon 10/14/19	81
83	Review Bids / Recommend Award	1 wk	Tue 10/15/19	Mon 10/21/19	82
84	City Issues Notice-to-Proceed to Contractor	4 wks	Tue 10/22/19	Mon 11/18/19	83
85	Construction	150 days	Mon 11/18/19	Mon 6/15/20	84
86	Pre-Construction Meeting	0 days	Mon 11/18/19	Mon 11/18/19	
87	Shop Drawing Submittals	5 wks	Tue 11/19/19	Mon 12/23/19	86
88	Mobilization	4 wks	Tue 12/3/19	Mon 12/30/19	87FS-3 wks
89	Long Lead Item Fabrication and Delivery	16 wks	Tue 12/3/19	Mon 3/23/20	87FS-3 wks
90	Construction	20 wks	Tue 12/31/19	Mon 5/18/20	88,89FF+2 wks
91	Start-up and Testing	2 wks	Tue 5/19/20	Mon 6/1/20	90
92	Well Commissioned	0 days	Mon 6/1/20	Mon 6/1/20	91
93	Cleanup and Demobilization	2 wks	Tue 6/2/20	Mon 6/15/20	92



Project: City of Banning Well C-8
Date: Tue 8/14/18

Task	Project Summary	Inactive Summary	Manual Summary	External Milestone
Split	External Tasks	Manual Task	Start-only	Progress
Milestone	External Milestone	Duration-only	Finish-only	Deadline
Summary	Inactive Milestone	Manual Summary Rollup	External Tasks	

CITY OF BANNING
CITY COUNCIL REPORT

TO:	**CITY COUNCIL**
FROM:	**Rochelle Clayton, Interim City Manager**
PREPARED BY:	**Ted Shove, Economic Development Manager**
MEETING DATE:	**September 10, 2018**
SUBJECT:	**Discuss and Consider Downtown Ad Hoc Committee Recommendations**

RECOMMENDED ACTION:

That Council consider Downtown Ad Hoc Committee recommendations and provide staff direction and prioritization for proposed action items.

GOAL STATEMENT:

Economic Development, Goal #3: Business attraction, retention, and job development. Recommendations outlined would promote economic activity within the downtown core through business attraction, job stimulation, and reduction of commercial vacancies within the downtown core area.

BACKGROUND:

In the summer of 2017, the City Council appointed Councilmembers Franklin and Andrade to a Downtown ad hoc Committee ("Committee"), to evaluate existing design criteria and aesthetic features and return to the City Council with recommendations for changes and updates. Since then, the Committee met with staff, residents, and downtown business owners and include:

- Approximately 8 meetings with downtown business owners;
- Two community meetings (March 7th, May 1st);

- Interfaced with at least 30 different business representatives within the Downtown Commercial zoning district; and

- Conducted an online survey (5/3-28) and received over 130 responses.

In addition to the above, on March 13, 2018, the Committee recommended to Council that staff investigate a micro-business incubator concept (receive and file report included on this agenda).

At the conclusion of the Committee's community engagement efforts, four primary findings were developed. Under the findings, specific recommendations were developed to address the findings, based upon the community input received and are being recommended to the Council for consideration.

Upon Council direction, for each identified recommendation, staff would formulate a plan addressing estimated cost (if any) and timing for completion.

JUSTIFICATION:

If the Council directs staff to proceed in researching the concepts outlined from the Committee's findings, it will require staffing resources and potential appropriation of resources. It is requested that the Council determine and prioritize which recommendations staff should research and return with proposed action plans.

COMMITTEE RECOMMENDATION:

The Committees Findings and *Recommendations* include:

1. Expand Citywide Communication

    a. *Website* – Establish a presence for the downtown district on the City website. Include description, photos, stories, historical information, and information about local businesses.

    b. *City communication* – Increase use of social media and event calendars for City (including enhancement of existing calendar) and other nonprofit organizations to promote community events in the downtown area.

    c. *Banner program* – Determine feasibility and establish guidelines for banners installed on light standards and elevated banners across Ramsey Street.

2. Increase Downtown Visual Appeal

    a. *Streetscaping* – Improvements and treatments to existing downtown corridor to enhance walkability, welcoming and secure feeling, including:

        i. *Trees* – Investigate new landscaping and enhancement efforts to existing trees and vegetation along Ramsey Street.

        ii. *Walkways* – Defining walkability in the downtown core with small visual aids (i.e. historic building site, mural description), wayfinding signage, and entrance/exit monument signage to define the area.

    b. *Periodic downtown clean up events* – City facilitated events focused on community volunteers to clean up litter and debris in the downtown core.

    c. *Addressing vacant storefronts (aesthetics)* – survey Southern California communities for solutions to addressing vacant (blighted) store fronts, return potential programming.

3. Initiate and Support Downtown Promotion and Branding Activities

    a. *Promotional campaign* – Work with Chamber of Commerce and local businesses to develop a line of souvenirs and similar promotional products to be showcased at community events, appealing to attendees residing outside of the community.

    b. *City Seal* – Direct staff to identify City seal inconsistencies citywide, develop a plan to update all outdated instances to include cost and timing for Council consideration.

4. Encourage and Sponsor Downtown Community Activities and Events – Attachment 3 includes examples of community events in Riverside County. A recommendation would be to direct staff to devise a plan (including budget considerations) to create, organize, and facilitate events with the intent to encourage local nonprofit organizations to participate and support a series of events long term in the downtown core.

FISCAL IMPACT:

None.

OPTIONS:

1. Approve as recommended.
2. Do not approve and provide alternative direction.

ATTACHMENTS:

1. Online Survey
2. Results of Online Survey
3. Examples of Downtown City Events

Approved by:



Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Online Survey

Downtown Revitalization Project

(untitled)

1. What would make downtown more attractive? *

2. What programs/incentives do you think would draw visitors and residents downtown? *

3. What businesses would you like to see downtown? *

4. What are Downtown Banning's best features?

*

5. How would you market downtown?

*

6. What activities would you like to see downtown?

*

7. Optional - For more information or to receive follow up communication, please include your contact information (name, phone number, and email address):

ATTACHMENT 2

Results of Online Survey

Report for Downtown Revitalization Project

Response Counts

Completion Rate:	100%	
	Complete	131
		Totals: 131

1. What would make downtown more attractive?



ResponseID	Response
1	N/A
2	More variety of businesses. The city should coordinate efforts to bring in more local business owners downtown.
3	Cleanup of existing infrastructure, addition of clean, well lit, gathering areas such as restaurants movies parks and recreational areas. Utilization of CPTED theories to reduce crime opportunity, and negative behavior. Increase sense of safety and security through physical, technological and perceived additions
4	Bring back Market Night and Car shows.

ResponseID	Response
5	Fix Ramsey St rd all the way down to Beaumont. Plant a couple more trees. A arcade for kids.
6	More places to shop like little boutiques.
7	More Dining and shops. Entertainment to bring in crowds. Sun Lakes has a lot of talent..and I'm sure others outside of Sun Lakes has talent. Strolling costumed people like they have in Oak Glen. Ukele players one weekend, barbershoppers singing another weekend, Hawaiian dress and dancing another. Talented musicians donating time We need roller skating for our youth!
8	Street fairs so that way out of town businesses can see the potential in our beloved town. Giant Planters on the sidewalks in the shape of pots with exotic plants? Better bus benches and hangers since the old ones look tacky.
9	A park w a lake. Horse drawn carriage rides. More bar/grills. Live music. Entertainment!!!!!!
10	Greenscape, trees
11	couple of restaurants, stores, park, entertainment (more breweries, bars, lounges, music venue,)
12	Better lighting. More benches and colorful flags. Maybe a roundabout.
13	Removing or updating and utilizing old abandoned buildings. More parks for children and families. Removing graffiti and trash of main highways.
14	Upscale restaurants, upscale movie theater and unique shops.
15	Maybe if we had some kind of activity for the younger generation
16	Upscale Restaurants Area to walk to shops. No cars
17	Run out the homeless and druggies. Clean up the town i.e.. weeds, old broken concrete. Plant flowers and lots of large trees. Reface old buildings. Place trees and flowers in center divided of Ramsey Ave. Paint
19	A safe open air shopping area with multiple eateries art stores fashion. A performing arts center.
20	Less fast-food places. Some trees. Incentives for fast-food places to leave! Incentives for upscale business to come here. Businesses requiring educated employees. How about a college?
21	I have lived in towns where, if a new restaurant opened, free meal tickets were given out to people to encourage them to try it. Enough tickets to fill the restaurant several nights in a row. You can bet people went back when something like that was given.

ResponseID	Response
22	Old boarded up empty buildings removed.
23	restaurants
24	demolish the unsightly business. Remove the Wrought iron on doors and windows. Driving through tells me "stay away" and makes the already tired looking area look uninviting. Why do we need so many bail bondman on one street? Really, we are only Banning. Surely they could find someplace else to provide their services.Nothing flows..Mixtures of old and new looks like a want a be fill in the blank. Either sell the area as historical and only accept designs of a particular genera or scrape the area for revitalizing. It won't work...Save yourself the money if your not willing to invest in this area.Ask the two major sub divisions in the area...Sun Lakes and Four Seasons....What would they like...you have thousands of home owners. Why not ask them what would it take to have them shop in our downtown Banning. Give a financial incentive to building owners to upgrade their property to reflect the new look.
25	Ramsey needs some tlc. Take a specific point on Ramsey that leads into downtown that needs weed abatement. Have a community project where donations of monies are allocated and start buying some nice shrubs.
26	Define the downtown "walking area" very clearly, and bring in shops and even mixed retail/condo uses into the area. It's tough because right now the primary growth is happening on the west side opposite of downtown.
27	My name is Stephen wisniewski and I think it would be nice to Make banning a tourist stop by making a huge wagon wheel that people can stop and take a picture next to on the way to the dinosaurs . Banning to me is a stick stuck in the mud and needs to focus on being family friendly and more health conscious. I move to a small town in Colorado and see the same type of city but the difference is they take pride in everything that happens in the city holiday lights should light Ramsey during the holidays and during the summer there should be health posters and community event s to raise money for a true recreation center or hiking trails . The city and the people in banning need goals and positive views .
28	Get rid of those vertical fabric sidewalk banners. They're ugly to begin with, then they fade and look even worse. They should all be buried in a landfill far, far away.
29	Twinkle lights on trees/light posts Themed Decorations (year round) Benches Bike & walk Path Community Bulletin Board Plants & Flowers Art / Statue for Social Media Photographs Neon lighting
30	Get rid of all the homeless, make bike lanes, and more big stores.
31	Parking, wide enough sidewalks, higher speed limit so you don't have to creep to get there, something to do (bakery, news stand, plaza with reflecting pool, affordable restaurant with a view (even of the freeway), Panera Bread would "ace" it!

ResponseID	Response
32	Shops with something to offer beyond a cell phone, vape, beauty supplies. Homeless? Bangers? Not much reason to "make an afternoon" in DT Banning. Things that are interesting (VAPE? no thanks) Empty Stores? Empty lots? Certainly not contributing to the attraction of downtown. you have a real "Chicken or Egg" problem - no neighborhood money = no store keeper investment. More housing for poor people = no incentive for entrepreneurial risk. Poor people have very little expendable income. The investments made in all the nice new buildings was nice - but a business in a nice building with no customers that spend, is a building that won't be occupied long.
33	There's nothing to downtown except for the movie theater, so just about anything would make it better. A nice restaurant, meaning fine dining or steakhouse. Something besides breweries.
34	All buildings occupied with businesses that can be sustained long term in this area. I'm not talking more fast food or antique type businesses either.
35	Trees and raised flower/herb planters night lighting misters at store fronts attractive trash cans/recycling bins good parking public washroom water fountains create rules for signage so that it is not cluttered or poorly done decorative night lighting pedestrian crosswalks bike racks repaint curbs clear way finding signage-attractive small venue plaza with an interactive water feature
36	The boarded up buildings from failed businesses is really the only downside about the downtown area. There seems to be transients in this area as well, but I haven't been here long enough to really say if that is a problem or not..
37	Art activities
38	Having more family-oriented establishments (skating rink, bowling alley, etc)
39	promoting it as a safe area. banning downtown or the east side of banning has been put out there as being a dangerous place to be after dark. More police presence perhaps is needed.
40	Preservation of historic buildings. Reflections of our western heritage. More businesses that reflect diversity of neighborhoods.
41	More everyday needs met
42	A restaurant that has seating also for groups and families that is "nice" but not too expensive and not so very noisy.
43	Being able to walk around and browse
44	Less section 8 housing. More like Redlands downtown.
45	Get rid of the homeless. Better lighting in the downtown area.

ResponseID	Response
46	Less County Service Buildings (DPSS, Court, Probation, etc...)
47	Businesses that are open.
48	Too many buildings that are empty and unattractive. The alley next to the theater is dark and could use a surface like brick to fix it up. Since Banning is a former stagecoach town why not use that history and play it up to make it more interesting to visit?
49	Nice eatery's and pleasant cobblestone walkways example like downtown Redlands shops keep it quaint
50	apply enough pressure to the homeless to keep them moving out of the area. get some fresh business to move in (food, Hardware, notions etc.) Stimulate construction in the empty lots
51	open and thriving businesses with attractive storefronts and signage
52	A theme for entire downtown areas stating from hargrave exit into downtown. Clean up all fwy exits and making them look as close as the sunset exit as possible. Many people mention how nice it is to exit on sunset because it gives you a feel of what our town should really look like. Most small towns have a theme and that attracts visitors.
53	what do you consider as downtown?
54	A mixture of more unique stores and chain stores. Either food or merchandise.
55	Less garbage, more lighting, more commerce to increase use. A place where families on a budget can hang out.
56	repainting, cleaner, rebuild historical sites
57	an up to date movie theater, more restaurants, newly paved streets, decorations
58	Less open area, less abandoned buildings, and maybe some repaved streets.
59	more entertaiment and more fun places like round pizza and more fancy restaruants and maybe a boot barn cause we have alot of people who like to ride
60	Park benches and trees
61	I think they should paint more of the buildings because the painting is fading. Clean around the town .
62	new a new look because of it looks old
63	I think a real hometown pizza place that sells by the slice. Or an arcade/bowling alley.
64	A mall and all better places around.

ResponseID	Response
65	one thing that might make downtown better would be better hotels and more parking spaces
66	What would make downtown more attractive is to have the fountain working again and have more decorations.
67	Maybe more modern attractions instead of not attractive rundown buildings and the other things can be more focused on making a more positive youth so more programs focused on good behaviors instead of bad.
69	More stores and activities for youth.
70	Have a common theme and decorations for the buildings and streets.
71	have a mall, also more places to go eat at and do things
72	A garden or maybe another park.
73	Ice cream parlor places to sit outside and eat, not a fast food patio Park/green areas/shade trees
74	Good security
75	More main attraction restaurants and stores, there are no main attractions in downtown banning Banning (TGI Friday, Pool Hall, Dave & Busters, Laser Tag arena, Amusement park, etc. and It can all be tied in to our cities stagecoach theme. Also, Downtown should be expanded and cover a larger area. An area covering Alessandro St. to 8th st. and Wilson st. to Lincoln st. Filling in field spaces with business buildings, amusement locations, and sit down restaurants such as TGI Fridays, Maestros, Dave & Busters, etc.
76	more landscaping that is scattered around the downtown area, not just at the city hall building. outside real dining , not fast food.
77	I think remodeled stores would look better.
78	More stores, nice but not overly expensive houses.
79	They could repave the streets and sidewalks and change and add street lights.
80	Less fast-food restaurants and more actual restaurants
81	More neon lights, not just Fox, make Banning like its hay day and make it look wonderful.
82	More flowers.
83	desert-scaping

ResponseID	Response
84	Pretty lucent lights
85	Restaurants/ night life/ shopping
86	fewer gangsters, might as have none. nicer restaurants, quite with the poor peoples unhealthy fast food restaurants and put my carrows back, I'm tired of having the same unhealthy fast food whenever I go out to eat, I want to be able to go and have nice food. Fox theaters make enough money to upgrade the theater, they should do so, just as long as they don't become retarded and charge more per ticket or food, the prices are fine as they are now. maybe a couple years ago banning would have been better if they let Walmart build their damn store here, but the banning counsel must have hit their heads back than, and lost intelligence, now Beaumont has it, and they are making tons off of taxes, we dont need any small stored, ans tons of liquer sotres, by the way, we look cheap as hell because of the several god damn dollar stores, who the hell has more than one dollar store next to eachother, even on the same god damn street. but, I doubt the school will do anything about this, so I'm wasting my time on this idiotic report.
87	More attractions, renovations, and restaurants/ fast food places
88	An Old Town area with shops, restaurants, and some night life. Something that resembles San Diego and Temecula with our own spin which would attract people.
89	nothing
90	Greenery, Street Cafes, more eateries.....better sidewalks.
91	More things like ice skating rink or just more things to do in banning
92	Better restaurants, no vacant lots, no weeds, better shopping.
93	Updated store fronts, bright hanging flowers.
94	Remove the homeless from our strees, highway exits.
95	Lots of trees on both sides of street
96	Clean up the buildings, emphasizing the historical appearance and add landscaping.
97	They should include more parks.
98	Restore older buildings, add restaurants, green areas, and boutiques. Make it feel more like a small town square and park like area.
99	A "market street" like Redlands State Street would be nice.
100	Remove transients. Update store fronts.

ResponseID	Response
101	A "cleaner" environment, especially the East Part Of Town! Send a CERTIFIED LETTER The the Actual Owner Of A Property (not a tenant) setting the "ground rules" for cleaning up "your" property. Whether it is simple trash or a lawn not being cut, set a rule for enforcement - then enforce the rule. The summer is coming and our kids need jobs. Hire them to do the clean up work then bill the derive that homeowner for their lack of maintenance ! ! !
102	Create plan to get rid of blight, abandoned homes, buildings and businesses. Consider updating to "Old Towne" status, with upgrades with that theme in mind.
103	more shopping department & Fun activity places such as Bowling Allies, Trampoline Parks, etc.
104	More commerce. We really don't have any nice places for shopping on the east side of Banning. Or much of any type of entertainment venues that are family friendly.
105	Store fronts with flowering and or blooming plants. A theme reflecting our community positively.
106	Cleaning up the trash, weeds and opening up business in vacant buildings
107	Something besides a bar and a theater. Btw, where is Downtown Banning?
108	More lighting and an out door mall scenery
109	More businesses that are thriving, family friendly events and a city wide clean up day.
110	Remove derelict buildings on Ramsey St.
111	Landscaping and upgrades to sidewalks and parking. Cities such as Temecula, Lake Elsinore, and Yucaipa have done a wonderful job at revitalization. Love the idea of the trendy pop Up businesses
112	A shopping center with more eaterys
113	It'd be more attractive if people were hanging out there! ...or maybe some More trees, landscaping, & things to do & see (??!)
114	Removal of the homeless, trash, graffiti and overgrown weeds on vacant lots. Also, businesses should be expected to maintain the exterior of the buildings so they don't look dilapidated. The homeless are taking over downtown and until they are removed, downtown will continue to be dirty and feel unsafe.
115	New, innovative entrepreneurs, unique businesses that don't try to compete with established businesses or corporate business. Establish a business zone that attracts this.

ResponseID	Response
116	What I think would make downtown Banning more attractive is to obviously make something attractive. You should have a street fair every Wednesday selling food and drink or even prizes. Such food like corn on the cob, hot dogs, and churros are great ideas. Money collected can go to fundraisers and campaigns.
117	More greenscape, pocket parks and similar theme of the buildings. More of a community feel.
118	Restrictions on panhandling and loitering. Weed abatement and trash cleanup. Bring in a Costco or Kaiser then other businesses will follow.
119	Hi end despnsiries and shops and casual fast food make it a distention
120	More restaurants. . Street fairs again.. date night destinations.. more stuff for kids
121	I'll put my thinking cap on and come up with some idea's that have a low possibility of being ruined by vandalism..
122	Make downtown Banning something the community could be proud of. A walkable, safe area that families are excited to spend a day in. Outdoor patios, restaurants, live music, bakeries, antique stores, etc. Open businesses that engage the community to shop locally. Exploring downtown Banning should be an experience, not a pass through. Invest in hanging baskets, street lights, require the uniformity of the Historic buildings, actively REDUCE vacancy, etc.
123	New buildings, cute shops, restaurants, and landscaping. No more run down, old buildings, empty lots, weeds, and drabness
124	People
125	Actually having a downtown area, but more importantly cleaning up the town, planting some trees and flowers, having more pop-up stores, possibly even a Farmer's Market. Also, shining light on some of the historic aspects of town.
126	Night clubs
127	More stores
128	Since we were incorporated in 1913 and we are the stagecoach Capital, I would suggest building out the town with old buildings from the stagecoach era with trendy shops and restaurants. Have stagecoach rides to local historical destinations.
129	More hotels, restaurants , shopping
130	Renovation and use of old buildings in the area.
131	Better stores fix up some of the old bulidings

ResponseID	Response
132	Open businesses that stay open.

2. What programs/incentives do you think would draw visitors and residents downtown?



ResponseID	Response
1	N/A
2	Events, involvement from the community on finding new ways to attract visitors. Improve marketing efforts. Urban planning or workforce development. It's all connected. Manifest partnerships to bring more knowledge into the city.
3	See prior; clean, safe, fun gathering points
4	Family activities
5	ArT show, flea market, dancers, peolpe dressed for a super hero day.
6	Art walk, farmers market,
7	Sorry I answered that in previous comments
8	Street fairs once again so it shows potential and also shows what a great outcome of residence attend.
9	Entertainment Live Music More Bars More Restauranrs

ResponseID	Response
10	Restaurants
11	food, outdoor activities, shopping, murals
12	Give any business some kind of break to open up .
13	There needs to be more programs for the youth. Gymnastics, dance, music . More appealing restaurants . We are in hug need of a shopping/grocerry center in Banning
14	Market night and similar events.
15	A pharaoh ice cream parlor maybe on ice/stake rink indoors
16	Street fair. Farmers mkt
17	Nothing is going to attract people until you make the town more attractive.
18	No Idea. But vocational course combine with some new industrial warehouse will help the young students to graduate and stay near of town in the future at list 30% of kids grown in town may stay and oparate a bussines or work in a warehose near of town. For those the town should offer a incentive to help them get the new home.
19	Security. Coffee, ice cream, open air entertainment as in The Promenade in Santa Monica.
20	Build a playhouse such as in Palm Springs. Maybe a modern movie theater. How about a park? How about some meetings to acquire some intelligent ways to get rid of homeless people?
21	I would like to see a weekly Farmer's Market.
22	How about a marketplace with small shops. Ice cream parlor candy shop with music playing. Couple waterfalls!
23	restaurants and attractions
24	I personally love the old downtown Redlands look. Lots or large trees. Eateries, Small and medium businesses. ..antiques shops, open concert vibe on Cinco de Mayo. Christmas, Mother's Day, Graduation get together for the seniors in high school. at a new establishment yet to be built. I think it would be a small town community draw.

ResponseID	Response
25	More business. No fast food restaurants. Banning already has too many mexican food restaurants. A bakery, coffee shop, candy store, good all american food restaurant (steaks, et al). Programs could be: specific events-done nicely. Some events could be street entertainers, Holiday events- on Ramsey from 1st St-vendors, snow blowing machines, all the store fronts decorated, food vendors (Ramona's level food trucks), discounts for Seniors so they will crawl out of their communities, entertainment on the street, give aways for kids, have a bakery on the side walk feature their goods, other vendors good crafts especially jewelry items, etc. Do a quarterly event and theme it.
26	Stagecoach Days could be preceded by a Country Music and Arts Weekend - where the downtown streets are shut down to put on the event. Maybe even have it on the same weekend as the Stagecoach Festival - to capture all of the people that can't afford Stagecoach. Look at the Yucaipa Music and Arts Festival the weekend of May 5.
27	Every one knows banning high school doesn't perform at its best with providing multiple electives for student to learn life trades or spark interest in physics, health, politics, or small business management which leads to young adults hustling selling drugs . The city should have clubs that could be community service or side jobs from college students to teach kids and adult s in banning subjects that are ignored in banning. There should also be more police patrols on the east side of banning so people don't think the cops are not good guys because the impression I've always heard in banning is we have cops that are to lazy to be involved with the youth and are police officers that are just getting by working in banning.
28	Music in the park, and live bands in local venues
29	Attract new companies Attract New/Skilled labor Use Banning Strengths of wind for Wind Energy Form public-private partnerships like public school & Boy & Girls Club Cultural / historical PROGRAMS Improve street mobility and saftey with stop signs at all corners and directions to places of interests Create a great sense of place at civic center
30	Activities to do like bike parks and fast food that they can go to after.
31	Pre and post theater dining, music (Mariachi in the previously suggested plaza), craft, art, farmers and seasonal markets. Pet adoption events and pet friendly environment.
32	what happened to the whole court house district idea? what killed it all? Thought that the courthouse was going to attract investment and activity. it all seems to have gone backwards. - I thought that Riverside was a nice model of what could happen. Lawyers have some money. Fully employed people have money. But something seems to have caused all those plans to crumble.
33	Activities, fine dining, live theater
34	Possibly short term tax reductions. Easy permitting rules. Other competitive measures equal to other cities in area(Beaumont).

ResponseID	Response
35	street art-like chalk music restaurants are open after 6pm no homeless parked at window fronts or doorways-safety is an issue
36	The small town feel is one of the reasons my wife and I chose to move here. The modern service buildings are blended and well planned. The city we used to live we were surrounded by tall buildings and it is miserable
37	Maybe sidewalk art contest? Food truck festival?
38	Beautifully- landscaped parks, walk areas, street posts with banners showing what makes Banning unique or what Banning offers
39	street fairs, festivals, fun things to do. more shopping. tax breaks, decrease some of the start up fees.
40	Shopping, restaurants and a Target or other anchor stores. A Park would draw people into the area also.
41	Discounts for seniors
42	A nice summer farmers market.
43	A Wine Walk to introduce residents to new businesses.
44	Boutiques, coffee shops, restaurants, art galleries, ice cream shops.
45	Good retail clothing stores . A true value hardware store . A good coffee shop that's open past 6 p.m. A BAKERY.
46	Make downtown a walkable area with sidewalks leading into it from all directions.
47	Thriving business.
48	Perhaps a regular downtown market night that would draw more businesses and vendors to the area. A museum might be interesting also
49	Outdoor music ....antique shops ... I would model after a community that has a successful downtown such as Redlands
50	Find a way to advertise the music events, the only time I hear about a concert or event is after its over people talk about how great it was. A farmers market night might work
51	special events, like the market night/street fair we used to have. Festive lighting making it inviting at night.

ResponseID	Response
52	Maybe market nights and western days. When you visit town that are themed they have themed merchandise and at times bands playing on weekends to attract visitors. Outdoor restaurants are also a great idea. When I visit Idyllwild there is always something going on for visitors.
53	same question
54	Car show
55	Better movie theater, better restaurants, more attractive downtown.
56	sports, concerts
57	dance: ballet, ballroom, hip-hop, pop etiquette practice fight classes defense classes arts and crafts
58	I think a large-scale outreach program might make the atmosphere of downtown less drab.
59	ads on youtube, tv, and on the billbords
60	Weekly evening street fair, like they do in Redlands.
61	our movie theater and the restaurants that are around there
62	by doing a grand opening for the new look.
63	Some new restaurants
64	Newer movie theater.
65	one thing that might make people want to go see more spaces downtown like maybe put some sky rises all up and downtown
66	I think people would like more things to do in the town besides the movies, which is fun but all we have out here.
67	More interactive shops, parks, or more ways to keep people safe there.
69	Having family-friendly activities would bring people downtown.
70	Street fairs/ farmers markets
71	Indoor swap meet, hooters, all that.
72	Fundraisers, food drives, Boys and Girls club.

ResponseID	Response
73	the homeless people make our downtown scarey good street fair with good food and entertainment
74	Good sites
75	In my personal opinion I think it would draw large crowds of visitors to our city if we engaged in the Music festival scene by using our lot that we use to host the annual stagecoach carnival. Music Festivals similar to the festivals in Coachella. It should be music from multiple facets of life such as hip-hop festivals, country music festivals, EDM festivals, etc. This would pack out our hotels and make our businesses around town flourish from increased sales while also creating jobs for residents.
76	market nights all year performances downtown Have a Taste of Banning event
77	An arcade or another park.
78	Stores. Maybe a skating rink, fun stuff.
79	They can add a skating rink or make the Fox Theatre bigger.
80	Fun activities like sports or restaurants with arcades
81	An arcade, it would be fun for the whole family. Right now all we have is a bar and Fox theater downtown. Kids can' t go in the bar and fox cineplex only shows three movies at a time. If we develop an arcade I can see many people having hours of fun, and don't build a small one , make it like Round 1 in the Moreno Valley Mall
82	A drive-in theater.
83	IDK
84	More entertainment bulidings
85	Insentives got businesses to come to banning
86	A fight club, it would help give several jobs, amazing entertainment. stagecoach actually really, really sucks it is small and sucks, it needs to be much bigger. some entertainment besides a bunch of children walking down a road a couple times every damn year. also, I hate governor brown, he raises gas prices thinking with his incredibly low IQ that, in turn, people will start using public transportation, but that's not how it works. how about we have a hobo clean up program, they walk around banning and clean, and get paid a bit, or, they actually find jobs, not homeless centers needed, as that will make them lazy, yes i feel bad for them, but life is life, get off your ass and try your hardest.
87	More food stores, museums, arcades.
88	Entertainment and safety. I believe people would be drawn if they they felt safe attending events

ResponseID	Response
89	An Arcade
90	Gift Stores & restaurants
91	I am not sure how to answer
92	More and better choices for eating and shopping.
93	Nice new family restaurant, Small inviting shopping mall with nick-nacks souvenirs and crafts.
94	Open air markets. Limited to foods and quality crafts.
95	New apartment buildings
96	Good restaurants, parks, and boutique stores. Use State St. In Redlands as an example.
97	Making the town look cleaner and more peaceful looking.
98	Arts and crafts fairs, farmers markets, food truck nights, brewery events.
99	Farmers market with local produce. I would like there to be some better parking.
100	Market night. Outdoor mall with shops and restaurants.
101	Like. Sad, a cleaner environment with stores and businesses that "people" want and need, not just a store selling . . . . Nothing Over $9.99
102	Boardwalks, more popular stores/ businesses and a much wider variety of restaurants, sit down & finer dining, not just take out & drive thru's.
103	Sports Bars, Clothes Stores, more Fast Food restaurants, an Amusement Park, etc.
104	Shopping. Handcrafted items, normal shopping, well known eateries. A normal grocery store etc.
105	Art shows. Taste of Banning local food booths or carts. Monthly music. At least monthly, local farm produce
106	Bars, restaurants, mom and pop shops
107	Farmer's Market.
108	Community outreach for businesses and consumers to better our city economically
109	I think that a cleaner downtown would be a safer downtown. Sprucing up some of the dilapidated buildings and allowing businesses to occupy them would be a great start.

ResponseID	Response
110	Community festivals, live music, comedy. Art & Wine festival. Food trucks
111	Having a brew and blues within the town not at a facility. Claremont is a great model of this. Market nights in the street that are affordable to local vendors on a weekly basis
112	Shopping center. We last stop before the desert
113	*See below. Something to give some life & vitality to the area! Get the youth down there!! I strongly suggest A FARMERS MARKET NIGHT A-N-D most importantly: AN INTERNET CAFE!
114	The Art Hop and the Phineas Festival need to be returned to the downtown area and not be held at the community center. Both of those events used to be well attended and brought energy to downtown, holding them away from downtown is counter productive.
115	Team up with UCR, UCLA and Business schools to Offer low-cost business fees for recent business grads that are entrepreneurs and want to start unique businesses (restaurants, art galleries, design shops,etc). A great model would be Ann Arbor, Michigan or Madison, Wisconsin. Create a zone name and advertise it to a young demographic. Go national to grad schools to recruit new business. Don't try to compete for same businesses as Beaumont or Palm Springs. Require multiple Year leases to keep businesses in the area.
116	I think visitors will be attracted to giveaways or anything money-related. Why not have an event where you mix in regular programs and add some fun into it like giving away gift cards, toys, and more.
117	Highlight whats the best of Banning. Is the town more of a community or a stopover to Palm Springs? Bring in more local merchants, music and a selection of foods.
118	The concerts work well when we have them, have food vendors though.
119	10% discounts or fuel voucher when you purchase from merchants down town to get you to get off of the frwy for a short time to stop down town and take a break from the frwy
120	Street fairs.. cook offs.. date night destinations. Stuff for kids
121	The street fair was always nice and the tree lighting and caroling at Christmas..
122	The opening of small businesses that can actually SURVIVE. Work with local real estate developers to lower lease rates and market properties to existing businesses within the Inland Empire. Start by engaging the community with the revival of Street Fairs. Make the process of obtaining a business permit and other locally mandated regulations an easier, more achievable process. Also, require business owners to maintain interior and exterior building codes. Hire a marketing/PR team to promote downtown Banning to those who commute to the courthouse and people driving through to destination cities in the desert.

ResponseID	Response
123	More things for kids to do, date night spots, restaurants, cute shops
124	weekly parades
125	A gardening/clean up project. Incentives, such as recycling, reusing, pop-up book stores, coffee/tea carts.
126	Night life activities
127	More things to do or places to shop
128	A lively, walkable, connected downtown. A cross between tuscon, az with the show and historical connection and the look of Holland, Mi.
129	Equal balance of local entrepreneurship and chain business. Chain business insures Financial stability while local entrepreneurship invites ownership in the community.
130	Make it look more friendly towards visitors
131	Bring back the street fair. More place to buy snacks ice cream date night
132	I think it should be a second hand Mecca. Angels view, goodwill, Salvation Army.

3. What businesses would you like to see downtown?



ResponseID	Response
1	N/A
2	Restaurants - maybe, with a hometown feel. But other businesses that have activity for certain demographics.
3	Addition/expansion of movies theater, sit down restaurants
4	Ice cream parlor, bakery, arcade.
5	Arcade, pet shop, toy store.
6	I think it'd be great to have a touristy shop downtown. Again, more places to shop.
7	Answered previously.
8	Gym/fitness center, grocery store, car wash, restaurants, art store/museum, trade school, school.
9	More Bars & Restaurants
10	Restaurants
11	clothing stores (main stream store, boutiques, family owned) restaurants (nationwide chains, cheesecake, BJs pizza, lucilles bbq, something that beaumont doesnt have)
12	Hardware store. Pizza place with games.
13	More appealing family restaurants (BJ brewhouse, claim jumpers). Target or other shopping center. A grocery store is a must in Banning. The one Walmart in Beaumont and traffic to get to the gorcerry stores is a nightmare. Perhaps more family places such as batting cages, bowling, roller blade rink, a place for young children parks , toddler centers
14	Already answered that question.
15	New supermarket, a family restaurant
16	Restaurant upscale shops Movie theater
17	TRADER JOES!!!!!
18	Chuck e cheese, auto, boat train bike craft warehouse. Offer cheap space for industrirs that need expand like amazon
19	Legal Cannibis bar. Town entertainment pavilion.

ResponseID	Response
20	Choices for real dining establishments such as Victor's in Beaumont. Upscale businesses requiring an educated work force.
21	Always more coffee shops, Smoothie Shops, perhaps an old fashioned Ice Cream Parlor. Something that would attract families.
22	Fast food place down near Hargrave. Descent donut shop! Coffee shop and sit down ice cream parlor.
23	variety
24	One or two medium anchor business like TraderJoes Aldi's, Corner Bakery to start with to attract anchor business with outdoor eateries, hair and nail salons, upscale pizza shops, sees candy, Ice cream parlors, fresh food...relocated Sizzler for better flow. Someplace for the kids...Chuck-E Cheese, etc. Baskin Robbins, Bass Pro Shop....I know, I'm aiming too high.
25	Bakery, candy store, jeweler, book store, a good restaurant or diner-such as Corky's in Yucaipa.
26	Short of shutting streets to build a "promenade" type area that is designated as a walking area only - it is difficult to draw larger chains and crowds of people. Downtown needs to be designed into a destination - think of the "Western Temecula Downtown".
27	Businesses that will help banning become a more attractive city are a big gym like 24 hour fitness/la fitness ,pet store ,paint ball arena just takes a grass lot , chick Fila, definitely making better parks then what banning has look up the parks in castle rock CO it's a shame banning takes so little care of the city for our youth. Ice cream shops. Steak house that is a bit up sacale.
28	More nightlife. We need more affordable and comfortable places to hang out & socialize, places that can host music and other live events.
29	Bakery / Pastry shop Specialty Food Shop (Organic food) Thrift & Antique shops Tutoring services Gym / Exercise Studio Ice cream shop Gift card shop Flower shop Book Exchange Store Electric Car Chargers
30	Fast food restaurants and restaurants where people can eat and people watch.
31	Those mentioned earlier, perhaps food truck night, a used book store, free Wi-Fi hot spot, rest rooms.
32	I have not considered what I'd like to see since it has been such a failure, my expectations have vaporized. i do like that this discussion is taking place. That's hopeful. Not sure anything will happen. With the tendency to focus development towards the poorest of the poor, what about Banning's current or future demographics will lure businesses to take a risk on investing here? Our skyrocketing land home values? How do they create revenue from neighborhoods with no income?

ResponseID	Response
33	Fine dining, restaurants other than chains and fast food, a tea room, shopping
34	Boutiques, upscale consignment clothing, Bistros, coffee&bakery.
35	Bookstore/coffee shop more bistros open after 6pm specialty culinary store like olive oils/wine cooking classes outfitters/hiking/rock climbing-like Hanger's 18 ceramic/art/craft center with wine sidewalk cafe soda fountain
36	I enjoy the antique stores in the Beaumont area, but it seems hard for small businesses to survive in our downtown. Sorry I don't have any useful input on some of these questions.
37	No opinion
38	family-oriented types
39	large chain grocery store and other chain store shopping. fun attractions.
40	Target, ethnic stores. Bumper car track. Golden Corral.
41	Drive-thrus, Target, costco
42	Trader Joes type store
43	Restaurants, Retail, target and Trader joes would be nice
44	Coffee shops, bookstores, clothing boutiques, ice cream shop, local restaurants, art gallery.
45	SEE ANSWER 2
46	I say research and benchmark other cities similar in size and look at the different options.
47	Night life.
48	I really enjoy visiting the downtown area of Buenaventura. Its so interesting to visit all the shops, boutiques, bakery, antiques, used book shops, restaurants, bar and grills and they have several thrift stores as well that are very popular. Someone should research that town I think it could work here as well
49	Various clothing shops , eatery's, vintage shops keep it quaint and simple
50	Hardware store so every time I need a nut bolt hinge or screw I wouldn't have to travel to Beaumont for it.
51	boutique style, skate shop, jeweler, ice cream shop, optometrist, art studio, flower shop, crafting store, things that people will return for. Think State St and Citrus in DT Redlands

ResponseID	Response
52	Some good restaurant that isn't fast food with outdoor patios. Areas for the youth to go like a skating rink or arcade.
53	same question
54	Trader Joes!
55	Revamp the fox theater, restaurants, indoor playground for kids, shops.
56	rec centers for basketball
57	sweets: candy, bread, cake, pie, scones toy store grocery store
58	A record shop, skating, biking equipment, and maybe some new restaurants.
59	six flags
60	Antique shop, Goodwill, Bookstore, Comic Book Store
61	a bowling alley, more fast food places around there
62	more restaurant, and stores
63	Bowling alley, arcade, shopping center
64	A mall.
65	i would like to see more mom and pops shops it would be nice to have
66	I would like to see the big field become something big like a mini-mall or just a mall or shopping center.
67	Downtown has a good opportunity in a lot of ways we do have competitors but we can use them to our advantage, for example, food businesses there are tons of fast food place and all are really "to known" it can be bad at this points some people have different taste and there isn't a lot of Mexican we can advertise a Mexican restaurant and other food businesses around us that appeals to the youth and some to the young making it colorful and have more interest to it and some coffee shops.
69	An arts and crafts store, a sweet shop, and an arcade/bowling alley.
70	A really good music store, ice cream parlor, a gym.
71	nicer restaurants, A MALL,
72	Fooooooddddd

ResponseID	Response
73	skateboard shop clothing store for young people bakery Ice cream store Pool/air hockey/ping pong hall for kids
74	Smart and finals, 99 cents store
75	I would like to see larger and more popular stores in our city such as Walmart, Costco, Sams Club, etc. It would also be nice to see sports bars or sports bar style restaurants such as Buffalo wild wings somewhere in the downtown area. The city of banning does not have any place where sports fanatics from all across the pass area can come and enjoy Multiple sports events at once while enjoying great food at the same time. Occasionally showing pay-per-view events such as boxing matches and UFC events.
76	ice cream shop, dining with outside seating,
77	A chic-fil-a
78	I don't really know. Something that allows people to get household items.
79	I would like to see a Food 4 Less or Walmart.
80	Any corporation, I don't care
81	I would love to see a used computer parts tech place, also an Arcade.
82	?
83	Antique shops, novelty/specialty shops
84	Clothing stores
85	Restaurants
86	I want a Walmart, I want a god damn carrows, a chick fillet would be nice, any restaurant that isn't to expensive, but is nice to take someone to, like family, like sizzlers is one of the only good places, all the other damn places are either Asian or Mexican, i want more than that, im tired of eating the same food.
87	Walmart, Chilis, In and Out, Ice Skating Rink, etc.
88	mostly dining and retail.
89	Animal center
90	Outback Steakhouse, Olive Garden, Soup Plantation. Office Supplies store of some kind. Post office with PARKING.
91	I would like to see maybe some clothing stores or some activities

ResponseID	Response
92	It seems to me that many Banning residents take their money either to the Palm Springs area or Redlands. So let's try to keep people here with better and more restaurants and shopping choices. I don't think any name restaurant or shopping will come here until we clean up the area.
93	JoAnns, Target, outback steak house, Barnes and Noble
94	Restrict the number of tire and junk car repairs business we already have.
95	Nice restaurants
96	Small specialty restaurants boutique stores.
97	I would like to see more retail businesses downtown.
98	Restaurants, antique shops, art galleries, more outdoor dining and park areas.
99	I like what is there. I love the "old town" feel.
100	Unique boutiques, resale bookstore, outside cafes. Some upscale restaurants with night entertainment.
101	A "cluster" of businesses that people want which are not available now in Beaumont. Develop an "incentive program" for businesses to come to Banning.
102	Better restaurants and shopping! Stop the blight!
103	In N Out Burger, Chipotle, Pizza Hut, Nike, Foot Locker, etc.
104	Comedy club, well known restaurants ie.. the Habit, Jersey Mikes etc. A regular grocery store. More upscale items to bring in better revenue for the city.
105	Book store/ coffee shop. Boutiques. Browsing venues.
106	Family fun business
107	Family food locations (like the hot dog place in Yucaipa). Bring the kids, eat on the patio.
108	Outdoor mall
109	Mom and pop shops, fine dining options, a gourmet pastry bakery, a toy store and maybe a bowling alley or roller skating rink.
110	More locally owned restaurants
111	Love the breweries. Such a great draw. Trader Joes would be amazing at the now vacant Aarons building.

ResponseID	Response
112	Gym. Multiplex theater
113	!! AN INTERNET CAFE !! - they're on every corner practically in Los Angeles. Some serve beverages/food; most are open late & are a HUGE draw for young people to gather, play games, & meet up! PLUS it provides a means to access the internet for those in Banning who might otherwise not be able to get online for whatever reason. Also maybe, an ICE CREAM place, maybe more Coffee houses, Bars, Clubs, something!!!
114	Non-fast food restaurants
115	Young entrepreneurs with a unique offering of art, restaurants, gift shops, etc.
116	I have two that Iwant to see: Spectrum TV (Time Warner Cable) Carrier providers like AT&T, T-Mobile, or cricket wireless I will look more into this question.
117	A mix of restaurants and local products. Not sure there are any chain stores. There are newer chains like moolath, poke, and flame broiler.
118	On the Eastside where there is available property Costco or Kaiser. Something to bring people to Banning.
119	if they allowed Marijuana dispenseries down town they would pull all the traffic off of the 10 frwy going through the pass bring a huge amount of tax beniffits to the city. This would be the hook to get people off of the 10 fray
120	Restuarants.. places to.entertain families. . Bars
121	I love what's happening now.. A nice authentic bakery.. See's candy.. A nice seafood restaurant..
122	I would love to see more businesses that engage the community in an experience. NO MORE offices, strictly retail and restaurants! Small boutiques, coffee shops, eateries, bars, hair salons, yoga studios, art galleries, toy shops, etc. I would also love to see City Council and Chamber of Commerce work cohesively to emphasize Banning's rich history and leverage what the local art community is already doing.
123	A gourmet ice cream shop, trendy restaurants, supermarket, cute shops
124	sidewalk & street vendors
125	Coffee shops, clothing stores/boutiques, bakeries, florists, and definitely a Farmer's Market, a yoga studio.
126	Sonys
127	Clothing stores , shoe stores arcade

ResponseID	Response
128	Ice cream shop like kilwin's And local small businesses, art and craft shops.
129	Chain grocery store , dicks sporting goods
130	Internet cafes would be an amazing feature because of the heaven in downtown
131	Ice cream, Starbucks, boba tea house maybe a verity of restaurants
132	Ice cream, restaurants,

4. What are Downtown Banning's best features?



ResponseID	Response
1	N/A
2	Fox cineplex, station tap house.. not much variety. Needs improvement.
3	Pass
4	Old style buildings renovated.
5	History
6	The fox theatre
7	Fox theater, library, The Haven.

ResponseID	Response
8	The murals, lighting, revamped stores. I honestly love the way it looks so far it has a cozy feeling to it.
9	Fox Theater
10	Nice City Hall Love our Fox Theatre Clean
11	the view of the mountains. small town feel, the weather, historic and old bldgs.
12	The nice looking buildings.
13	At this point the fox theater
14	Nothing yet. I don't go downtown.
15	Movie theater both new bars and court house
16	None
17	A few charming buildings.. Take hints from Redlands
18	Parks restaurants Hospital Old Ranchs Airport Mountains I-10 easy acces
19	Easy access from the 10. Free parking. Fox movies..
20	It has a movie theater, but it is archaic. The new city hall was a nice start. Other than that, it's a dump. What's with all the mobile homes and trailers along the freeway? Ugly.
21	Honestly, I can't think kof any.
22	None! Horrible place! Fox theater is old and smells inside. They only take cash. Never go there.
23	historic
24	History. Easy access by freeway. Idyllwild and Lake Gregory up the road. The future San Gorgonio Development. Perfect place to stop and eat after a motorcycle ride, classic car ride. If their was something there for them to go to.
25	The Haven is no 1; the Copeland Bldg is fabulous; the facade on Elegant Affair and others enhances the appearance of the downtown buildings; City Hall looks very nice. The older structures on 1st Street are hidden treasures.
26	The buildings have been redone very nicely using Redevelopment Funds, but right now they are simply "drive-by" buildings.

ResponseID	Response
27	There are not really any I visited banning a month ago seen a fight happing on Ramsey and people being arrested on hardgrave and tagging next to the donut shops cit needs green grass trees flowers maybe military mural tributes or bronco murals to support the local teams the city in my opinion has no features best new place is the shell gas station on 22nd street
28	The few older buildings that still retain their original character, such as the Fox theater. Too many of the older buildings have been either demolished or buried behind generic-looking facelifts.
29	It has a well layedout down town Great looking Buildings Centralized and walkable
30	Fox cineplex
31	??
32	Fox Theater - seems to have good audiences. The renovation is attractive. Nice "new" empty buildings. but walk the main street one evening and write down all the interesting stuff - gonna be a short list.
33	It's quaint, many of the buildings have been remodeled
34	Remodeled Fox theatre, police station, courthouse.
35	Fox Theater The Haven The Station Tap House murals
36	The fact that there are no towering buildings on the landscape The modern service building are very nicely designed., yet not overbearing.
37	The movie house. The pleasant library and post Office.
38	The fox theater, city hall
39	street lights and brick sidewalks. renovation of old buildings
40	Historical buildings. Rather small cizy size. Good parking but maybe more will be needed in future.
41	Old town feeling
42	A fairly picturesqe main street and surrounding several blocks.
43	It's a quaint downtown
44	The fox theatre.
45	MOVIE THEATRE. WINGS CAFE. THE STATION.

ResponseID	Response
46	The old town feeling and movie theater
47	Walk-ability.
48	I like what little sense of history remains in the downtown area. Don't do what San Bernardino did and tear it all down, just freshen it up
49	The old buildings... old theater .... ppl love to go to a place that shows history of where they live ....
50	Its a quaint and rustic little area very laid back and friendly
51	Authenticity.
52	The area is starting to look much better. I can see improvement in downtown area. Looks much cleanier and the new lighting down San Gorgonio Ave. is very nice.
53	same question
54	Own theater, small business restaurants.
55	Ummmmm... it has the potential to be historically "cute." But it just seems trashy right now, and unsafe.
56	restaurants
57	the rustic buildings that look old and new at the same time
58	City Hall is probably the best thing about Downtown Banning.
59	movies, outlets
60	easy access to freeway
61	theres a movie theater. Theres restaurants for u could take ur family out or your friends.
62	Nothing.
63	Nothing
64	The hamburger place across the street from the New courthouse.
65	downtown banning best futures are the older buildings are better
66	The best feature is the Fox Cinema Theater.
67	The movie theater.

ResponseID	Response
69	Downtown is very aesthetically pleasing.
70	The theater, the pub, and the small watchtower.
71	The theatre
72	Restaurants and businesses.
73	Movies boys and girls club
74	Market center
75	Downtown Bannings best feature is its movie theater which takes pride in its low cost rate. But due to the low cost there are alot of movies that do not show in Banning and cause for citizens to travel elsewhere to see movies such as 2pacs "All Eyez On Me" or be forced to wait until it makes it to our theater.
76	parking
77	The varieties they have to eat.
78	The food places.
79	Downtown Banning's best feature is the Fox Theatre.
80	fast-food restaurants and the DMV
81	Fox cineplex theaters
82	The movie theater
83	Movie Theater
84	Fox Theater, fast food restaurant, nearby small grocery stores
85	The old town look, doesn't mean it had to be a old town
86	A theater, dirt, wind, few good restaurants, very few good people. the banning library looks absolutely disgusting they took out all the grass and anything that made it look nice, now it looks like absolute garbage, with kids on the computers inside playing Roblox, when I was a kid without a computer, I was home, doing my own stuff, not rotting my brain on anything else besides tv.
87	Movie Theater, cafe, Zumba
88	I believe we have a great location and freeway access is also easy.

ResponseID	Response
89	all the fast food restraunts
90	The newest buildings ie courthouse & police station. It shows we take pride in our city by having buildings updated, painted & cleaned up.
91	It's originality
92	Can't think of any
93	Theater, station taphouse, courthouse
94	Hard to list one but maybe the city buildings.
95	New courthouse!!??
96	The old, historic buildings.
97	Best feature is the welcome sign.
98	Movie theater, restaurants
99	The Theater, the shops.
100	Concert in the park in summer. Good library. Good price theater. A couple good restaurants.
101	The Dorothy Ramon Learning Center / The Haven / The FOX / The Taphouse
102	Old churches.
103	I don't really know because i haven't been down there yet
104	Nothing.
105	Fox theater, Tap station house. Brewery, Rebellion Brewery, Haven
106	Beautiful buildings easy to get too you can walking distance
107	I can't even tell you where Downtown Banning is and I've lived here 5 years.
108	Theater, restaurants and farms
109	Fox Theater, The Haven, Wings, Brew Rebellion.
110	Fox theater
111	The breweries. The restored buildings.

ResponseID	Response
112	Small town feel with big town amenities
113	The fact that it's a "REAL DOWNTOWN" (albeit blighted & empty) but the fact that it's authentic is AWESOME. Its not a 'construct' or fake (like say CityWalk for example). It's not some corporate BS planned out, wanna be downtown; - it was (& is) a real functioning centralized small town USA downtown. I think it's great!
114	Station Taphouse, the Haven and the movie theater
115	Honestly, I can think of any reason I would go there other than to pay a parking ticket.
116	Pretty much the movie theater, otherwise I would have to say everything else is not that interesting and pretty dull and boring. You should add a theme park that is country styled not far from the heart of Banning. Title it "Ye Ole Stagecoach"
117	The history , older bulidings and Fox Theatre.
118	As much as I would like to contribute I cant think of anything.
119	Close to the frwy just need a hook to get them off the frwy to stop down town and shop
120	Beautiful buildings
121	The possibility of becoming the quaint downtown of yesteryear again.. The shops in close proximity of one another.
122	The Historic buildings! The Fox Theater, the old San Gorgonio hotel building, and the Women's Club just to name a few. The walkabilty of downtown Banning is already great, however it maybe needs small improvements with landscaping.
123	Some of the newly remodeled buildings, Fox Theater, remodeled bars for nightlife
124	wide streets and sidewalks
125	The Fox Cineplex, The Station Tap House, The Haven, and some of the older architecture. Also, movies in the park.
126	None
127	Movie theatre
128	The open space and connection
129	The corner of Ramsey and San Gorgonio Ave. Looks clean and inviting, unfortunately that is the only area that looks nice and welcoming.
130	Movie theatre and the food

ResponseID	Response
131	Super subs the movie theater and the k.k market
132	Fox theatre, a few nice looking buildings

5. How would you market downtown?



ResponseID	Response
1	N/A
2	Digital methods or partnerships with knowledgeable organizations.
3	Currently, I wouldn't. I would push to change the area into a walkable space, with lots to do, businesses to enjoy, and space for kids to safely play
4	Billboards, mailers, social media.
5	To Palm Springs and surrounding areas hemet redlands Riverside. Great scenery. Great hikes.
6	TripAdvisor, flyers at the cabazon outlets, Hadley's and downtown Palm Springs with coupons and incentives to come shop.
7	Stagecoach western theme. Old fashioned building facades.
8	School

ResponseID	Response
9	Ice Cream Shop
10	"It's the Place to Be!"
11	social media, that the new way of marketing.
12	Advertisement.
13	Back in time. In need of update
14	As "old town" sort of a vintage downtown.
15	Keep in the theme of stage coach and western town
16	Yes for Trader Joe or Gelsons
17	BANNING- OLD WORLD CHARM. (but first you have to make it charming)
18	Is good. No need to be touch. The court take away some of the old fashion but is wonderful just need a new plaza with and arquitecture that give and good look to the rest of the town right in front of the eyes of the I 10
19	Easy accessible from the 10. Theater and free entertainment pavilion. Safe family dining.
20	Drop the stagecoach stuff. Get modern. Attract upscale businesses with tax relief. How about a plaza with dining/shopping choices to compete with Cabazon?
21	I think by giving away freebies to new businesses. Happy people always return.
22	Reface all the shops and get more small businesses to invest.
23	festivals etc.
24	IWe have Stagecoach, Cochella, Palm Springs and lets not forget the Two malls right up the road. You would need to gets your act together if you want to have this crowd want to stop along their way. A lot of nothing after that. To become the "go to" you have to have something or someone. Right now you have nothing. Grabbing the attention of people with money requires your city to put effort into a plan that may take a few years,
25	Economic Development should have a plan in place to attract businesses that would make a good fit. I am sure there are avenues that Economic Development can advertise in to target specific business categories. Not just attract any business to get them to move in. Make it easy to buy in to Banning. Not only make it easy-give incentives for business to move in. We have a reputation for being the worst city for a business to even get a permit, let alone, other services. Do Rapid Response and get moving.
26	Re-Brand it to be a destination. Front Street in Temecula was just another street back when - and they spent multiple years developing a consistent plan.

ResponseID	Response
27	Every thing will be focused on positive views . Diabetes nutritional information and diet types and ways to make healthy life choices on a budget. I'd hold annual events drawing in people to banning with proceeds going to a big charity and some going toward city events
28	Word-of-mouth, and social media. Give Banning an identity so that there is something worth marketing; generic chains and franchises will not excite support. Businesses like the Fox theater and the Station could provide the foundation for a popular, pedestrian-friendly downtown.
29	Stage Coach and Native/ Historical themes
30	Making downtown a nice place to walk around and shop or window shop. Maybe a paint studio
31	Incentives to attract business and events and improvements to attract customers.
32	There has to be something interesting happening. Some kind of activities. Where are the professionals that know how a downtown works? Most people who go to downtown environments have no idea what makes them work. Just what they like to go do. Maybe that is the insight you are looking for. Build a reputation by making interesting things happen there. Move that reputation to attracting investment in shops and activities. (permanent is problematic - gotta prove that sustainable business is there.)
33	Banning is called Stagetown USA but there's nothing downtown to suggest why it's called that. I'd try to attract businesses that have a western theme
34	Weekly market night. Special music event. Major car show with venders, music, etc. like Route 66 in S.B./ Ontario.
35	Have better signage word of mouth event listings on social media consistent market nights flyers at supermarkets
36	We love the local theater. Performing arts venues are always nice to have, but now a days security can be an issue.. Seems that small shops cannot get the business to stay open in our downtown area??
37	Not too slick and over commercialized.
38	Visuals
39	it is a stagecoach town. maybe shops that cater to that theme. Or start a new theme. solvang has its thing, we need a thing. something that will draw people off of the freeway. Take advantage of I-10 traffic.
40	Yes.
41	Vintage

ResponseID	Response
42	For all income levels, friendly, safety oriented and as unique in the area.
43	More retail on the other side of the freeway from downtown.
44	Old downtown vibe. Like Redlands.
45	You don't have to market it if you have attractive need business there.
46	Internet, videos, reaching out to the younger generation.
47	Marketing is not a city job. That's why it's called free market.
48	Make a plan to fix it up, act on it, use all means of media to market it. Road signs showing an attractive quaint and fun place to visit. The most direct access to the downtown area isn't even close to it, but perhaps welcome to Historic Downtown Banning monuments (I don't even know what to call them) but Yucaipa built one at Oak Valley Parkway. How to address the direct access I have no idea
49	I would emphasize the small stagecoach town feel the attractions relating to and shops and structures (old buildings) create events relating to theme and market the small town comforts that could be enjoyed .... recreate things of the past that were the heartbeat of this area ...blend modern with old town but keep old town feeling ... that's after all why most were drawn here to begin with
50	Market night
51	A real hometown neighborhood downtown. The kind you'd see in a Hallmark movie, like Middleton on "The Good Witch"
52	?
53	where is downtown?
54	As a small town feel with a lot of people traffic. Sidewalk/ walking friendly. Plenty of shop space and opportunity.
55	History, focus on Stagecoach days. Make it historically beautiful. A safe place for families to hang out together. Sort of like old town Redlands but a bit more Wild West! A farmers market would be awesome!
56	a fun place
57	flyers and announcements
58	As a new spin on classic small-town America.
59	tv commercial

ResponseID	Response
60	billboards, newspaper, online website, and schools
61	advertising, western
62	by putting build boards and t.v, news, and radios.
63	Maybe a festival where all companies can showcase their business
64	I would but billboards advertise on tv and on newspaper and youtube
65	would market banning by putting up posters all over the town and be able to have billboards up so that people can see
66	I would have more food places.
67	As a fun place for the youth and some relaxing place for older adults and a good spot to stop when to festivals.
69	I would market it as a gathering place in a small town.
70	Billboards
71	A MALL
72	Food, household supplies.
73	bill boards flyers to homes
74	Good
75	I would market downtown Banning as Americas Original Stagecoach Town.
76	with activities that will bring in the surrounding cities
77	I would market it as very nice but it could be better.
78	I don't understand the context behind that. I don't live downtown, but for people who live there it would be convenient.
79	I would market it as ancient but cute.
80	I will like to market physical supplies like hobby lobby, but that's in Beaumont
81	A fun and happy place for family, friends, kids, teens, and adults
82	?

ResponseID	Response
83	advertise in magazines that announce Coachella events and other Desert attractions
84	I would take a walk with my family and enjoy the view/nature around me.
85	Like downtown Redlands
86	good food, maybe an Asian store, and of course, I want my god damn carrows.
87	I would market downtown a 6 out of 10
88	Hire a professional. Use Banning's history and its diverse culture.
89	Don't know
90	A place to work, shop & entertain all at the same time.
91	I am not sure how to answer
92	After it's cleaned up, do what Riverside did and build businesses with loft apartments above.
93	As suggested, clean, neat and safe
94	Remove the pan handlers, bring in small business, not food places. Move some of the small businessmen that have their business on the side streets to Ramsey, without raising rent or taxes. Give new business a tax break as an incentive.
95	!!
96	The feel of the past with the benefits of the present.
97	I have no opinion when it comes to marketing downtown.
98	Small town feel, modern attractions
99	Again, a local produce farmers market.
100	Flyers at businesses, Record Gazette, the Messenger.
101	You need something to market . . . . . Banning has missed the opportunity to attract businesses which are desired for our downtown area that residents want to use - a pinball arcade is not my idea of progress . . . . Attract New Business To Banning By Using An Incentive Program To Actually Bring In These New Bysinesses.
102	Balanced mix of retailers & stores like Costco, Lowe's and Kirkland. How about a downtown landscape/nursery/public garden for interested participants.

ResponseID	Response
103	Name Brand Stores that people would enjoy shopping at?
104	Not sure. Brea use to struggle like Banning is and now they are doing great once they changed and allowed commerce into the city.
105	I would like to buy local products
106	Old town charm
107	Depends on the businesses that would settle there.
108	What do you have that the people you are hoping to attract can't get or do closer to home? What makes you worth a special trip? What sets you apart from everyone else?
109	I would acclimate to each demographic represented in the city and reach them directly.
110	Market it as the "get away" from the casinos.
111	Billboards
112	Biggest little town in California
113	As AUTHENTIC!! - & charming. Also fun & modern. Maybe with historic informational pillars or placards (like downtown LA) that give a little info about where you're standing, with a historical photo of that said area, to view what it looked like then.
114	Other than the movie theater, the Haven and the Station Taphouse, there really isn't much to market in downtown.
115	Establish the business zone and then market. I would promote this and recruit young entrepreneurs at the national level. This demographic is mobile and, given opportunity, would quickly establish themselves.
116	I mark downtown a 5/10 because half of the stuff in Banning like fast food restaurant are pretty good and the movie theater is the most amazing ever but lack of entertainment in the main streets of the city cause the residents to feel likely depressed or unhappy at times.
117	Oldtown charm, community and easy living surrounded by rolling hills and the gateway to the desert.
118	Well, I live in Sun Lakes and my opinion is we want to be close to medical, good restaurants, healthy markets, movie theaters and a safe environment to walk downtown.
119	Bilboard signs on the 10 frwy advertising down town
120	Not sure

ResponseID	Response
121	"A step back in time with a modern twist" once its more revitatilized..
122	Social media presence! Accessible and user friendly website. Simply having events and reasons to market downtown Banning. Exposure brings engagement.
123	I think downtown Banning should be similar to downtown Redlands...street fair/farmers market, brick streets, cute shops, trendy restaurants, unique businesses....historic charm with a modern touch
124	people friendly
125	The Gem of The Pass Area - bringing life back to town
126	More action
127	More food places , shopping
128	Unsure
129	I have lived with my family here in the immediate area for the last 7 years. As of right now I have not witnessed much to market, we have no hotels, or entertainment here. Other than the Stagecoach rodeo I can't remember being attracted to any other venues. First you create something to market. Looking at the surrounding areas Yucaipa and Redlands have market nights down town. Beaumont has October fest, cherry festival just to name a couple. Surrounding city host bike races and running races. All three of those cities have a mix of local business and chain business that promotes growth. The homeless population downtown does not help matters. I understand that is a dynamic that is very difficult to tend with however I do not feel beaumont has such the impact that banning does.
130	It's a little bit of everyones interest
131	Welcome to the stage coach town
132	It's got to be a destination location. Something that feeds off cabazon shopping

6. What activities would you like to see downtown?



ResponseID	Response
1	N/A
2	Children based activities, or millennial demographic events, etc. We keep to modernize a little better.
3	See prior
4	Family time
5	Parades, flea markets, car shows community bar b que , lunch, dog show,
6	Farmers market, art walk, volunteer day
7	Hoe downs, square dances.maypoles.
8	Public events, music, art,
9	Live Music Horse Carriage Rides
10	The recent Diaster Expo was great. More like that. Maybe a street food truck area. They seem to be popular in other cities. Variety of food vendors without the cost of brick and mortar. Lease a spot from the city for 6 months a time.
11	anything that would attract local ppl to visit and be proud of there city.
12	Market night with a band.
13	More family orientated activities and places.
14	Already answered.

ResponseID	Response
15	Ice cream parlor, family restaurants again something for teens so there not getting into trouble
16	Bike path
17	weekly market night.
18	Hummm that question have to be combined with teenagers.
19	Food court type, roller ring.
20	How about a stadium where the old hotel used to be? With locks to keep out the homeless. With the capacity to attract various sports events.
21	Again, Farmer's Market and something for families. Bars do not attract families.
22	Open air market
23	community activities
24	anything family....
25	Holiday Events each year; quarterly activities tailored to the season. If you could attract good vendors people will drive down.
26	Outdoor eateries, Farm Market themes on Saturday morning or in the evening,
27	Close down the street between 8 th and the police station and have one or two slash days for the community with popcorn games and dunk tanks get creative hold high school comps to who can come up with the most creative booths and give out awards . Pig. Races box car races. Bean bag races if u can't get vendors then community bbq competition s or desert or both help the community make there own money for a day or two while showing off there cooking skills . There should be four banning citizens of the year awards that people vote for two to students for making banning a better place and two to adults
28	Live bands
29	5k walks & runs for health or fundraising Partnership activities with other Pass Events Promotion of cultural and art programs
30	More walking and bike riding activities. Limit cars and more stores
31	Previously suggested.

ResponseID	Response
32	perhaps something like a farmers market morning that attracts people to BE downtown. Build a knowledge of downtown and build a habit of visiting - but who cares about what is there now? Vape shop? No. Bar? Not really. Daytime sandwich shop with limited menu? No. Maybe Fiesta Fridays - Food truck Fridays? Art Walk events? Car Club events? Motorcycle Ride events? A Tamale Festival? Local Indian Tribe event? Begin drawing attention and engage in reputation building. Flea Market in the empty lot that was supposed to be built out now? build some pride. build some calendar of cool stuff that happens here. - do summer "POP UP" activities in the empty spaces. Band Nights - Karaoke nights - "underground" events DJ hopping night - 3 of the empty buildings get used for a night - food truck refreshments and DJ spinning tunes or bands. - Art walk - invite artists to exhibit and sell in the empty buildings for a weekend.
33	Market nights, street fairs
34	See answer to number 5.
35	market night street musicians and artists water park feature-fountains food truck night historic walking tour/ghost tour book fair community clean up days
36	We haven't explored all the activities that there are to do here. We like it pretty quiet.. Classic movies in the park?
37	Bands. Music.
38	marathon/ walk,
39	Look at what is successful in other cities. Redlands has a street market night that attracts people to the various businesses. We need attractions like Olvera Street in L.A. or China town.. I am sure we could come up with something to get the tourists to want to stop.
40	Parades. Days honoring members of community. Carousels and rides.
41	Walkable activity for seniors
42	Outdoor art sales and showings, live music maybe with high school or adult performers--dancers, choirs
43	A Wine Walk, Sidewalk Sales, etc. Let the people enjoy downtown by walking around.
44	Farmers market. Market night. Art walk. Family oriented activities. Community oriented activities.
45	A police presence
46	Activities for younger adults and young families
47	Events.

ResponseID	Response
48	Market nights and I also would like to see a community garden established in Banning as well, although I don't think that should be downtown
49	Dancing , music ,NICE RESTURANTS.... example BJs, Texas Roadhouse, too many fast food places already street festivals,movies,maybe a place created that can house history of our area as it was that can be visited
50	A park setting would attract more people than the dirt lots, Would go good for concert if you can keep the homeless from camping out and taking it over
51	Special events. Evening activities, art walk, food truck festival, live music
52	Stagecoach horse rides on weekends and music nights. Farmers market nights!
53	same question
54	Farmers Market, with fresh farm fruits and vegetables, at least once a week.
55	Farmers market, festivals, family focused events that aren't crazy expensive!
56	basketball, car shows
57	old fashion activities that tie into old banning that are year round and cheap EX: etiquette, ballroom dance, fencing, old dresses that require a corsage that type of thing to get us closer to our ancestors of banning
58	I'd like to see more stuff like the pinball expo which I felt was a good thing.
59	A brand new movie theaters and more food places and more fun places to go
60	4th of July Parade, Weekly Street Fair, like in Redlands, Art Shows more frequently, MLK Parade, and Cinco De Mayo Parade.
61	a car show
62	have a fun time.
63	After school places
64	Football or a car show or something like that
65	not known
66	I would like to see more things to do besides the movies.
67	Some more fun spots.

ResponseID	Response
69	Having street fairs or farmers markets would bring a lot of people downtown.
70	street fairs and farmers markets
71	A MALL
72	Fun stuff, I don't know.
73	good street fair summer carnival 4th of July fireworks
74	Attractive sites
75	A municipal pool for adults that is deeper than 4ft. I would like to see the return of the night time adult swim that use to take place at Banning Aquatic Center. Street fairs similar to the mardi gras fair of San Diego. Also if possible to block of streets and host music concerts/festivals in the street featuring main stream country, pop, hip-hop, and EDM artist.
76	music events, craft events, the taste of Banning events
77	I would like to see more activities for teens.
78	I honestly have no idea, I'm a recluse.
79	I would like to see more attractive stagecoach themed fixtures.
80	Arcades and sports
81	A classic car cruise
82	?
83	Entertainment, small venue concerts/ out door movies/concerts throughout the Summer...
84	Contests, sports
85	Street fair, car shows
86	I dont want to see any. I just want my carrows back. why would I need to see activities, im not 4.
87	More fast food, clothing stores.
88	I would like to see holiday festivals, music festivals , parades, promote more school activities, celebrations, and promotions of community activities.

ResponseID	Response
89	parades
90	I would only like to see activities if/when it gets cleaned up & modernized. We can't get people to shop and entertain if we have ugly sidewalks and old buildings.
91	Some bigger movies some tampolines some ice skating things like that
92	A theatre multiplex. Maybe a summertime evening street fair like Yucaipa does.
93	Western street dance, basketball hoop contest
94	Convention center with large hotel.
95	Nice movie theatre
96	Market night, street music
97	I would like to see more community activities.
98	Farmers markets, crafts fairs, concerts in the park all year.
99	Maybe a market night, or a Fiesta.
100	Get music entertainment to draw crowds. Market night.
101	Maybe a once a month street fair like Palm Springs Has Used For Years . . .
102	Public entertainment. Theaters & art galleries. Bistro, pubs
103	Bowling Allies, Arcades, Family Fun Places
104	More restaurants, more regular shopping, not the dollar store or discount stores. More entertainment venues.
105	Street festivals. See earlier suggestions
106	Community driven events
107	Open air activities.
108	Outdoor hiking , paint ball, dirt bike riding, horse back riding, go kart rides, bowling alley, outdoor shooting range, and shopping
109	More 5k walks, more things geared towards kids, and more places for teens to frequent such as a teen center.
110	Art & wine festivals. Music, comedy nights. High school football/basketball

ResponseID	Response
111	Market nights, live music, cultural events
112	Embrace our roots and celebrate our heritage
113	Everything. Maybe a 4th of July parade - maybe a street fair - maybe a FARMERS MARKET night!!! (Or an ORGANIC FARMERS MARKET, even better!) Maybe a HALLOWEEN fair - maybe an ARTS/CRAFTS FESTIVAL - or an ARTS CONTEST of some sort! - Or maybe a celebration that's a contingent or offshoot, or extension of Stagecoach days; one that's more exclusive of the broader community, & will draw people that aren't cowboys, or wear western wear. But you gotta breathe some life into that area - get the youth down there!!!
114	Art Hop and Phineas Festival
115	More vibrant presence with greater security. Although the stagecoach theme abounds, I would keep this theme in line with yearly celebration and market to a broader population of interests.
116	Street fairs Food Trucks Fundraising event for exercise Fundraising event for kids Fundraising event for teens and the adults
117	Dining, music, relaxing, entertainment and strolling.
118	A new movie theatre.
119	More craft breweries, beer, whisky, catch all the trafic going to Morongo and Palm Springs,Arizona
120	Date nights attractions. Kid attractive tions.. Street fairs.. cook offs
121	A place where you could enjoy dinner, a dessert and then some music for a date night.. We need something for our youth.. To keep them out of trouble and yet enjoying themselves.. Downtown doesnt really have the capacity to do a roller rink or bowling alley etc..
122	I would love to see street fairs brought back, or maybe farmer's markets. We could encourage non profits to host 5ks, and local bands to play music in the police courtyard (grass area). Again, yoga studios and anything that encourages wellness would be great for all members of the community.
123	Street fair, skating rink, bowling alley, restaurants, bars, shopping
124	parades - like Palm Springs has all the time
125	Farmer's Market, yoga in the park, free classes, community gardening, art shows
126	Night life activities

ATTACHMENT 3

Examples of Downtown City Events

Downtown City Events

- **Jurupa Valley Food Fest**
  The City of Jurupa Valley hosts a food fest every last Saturday of the month of September. It displays stations for local restaurants to showcase their diverse menus and plates. It is a great way for the community and its local restaurants to connect, and also increases exposure for local businesses. Below is a sample flyer of the event.



- **Temecula Art Of the Walls**
  The City of Temecula Community Services Department hosts first Fridays "Art Off The Walls" every first Friday in 2017 from 6pm-9pm, featuring art from over ten artists exhibiting in multi-genre forms. It is housed in a single building in Old Town Temecula.

  The First Friday's art events, in the ambiance of great music and food, are free and offer an exciting opportunity for varied artists to share their work with the community and the many visitors to Temecula.

- **Temecula Art & Street Painting Festival**
  This is a 3-day festival that is located in the heart of Old Town Temecula where artists of all mediums participate. Multiple artists create original chalk art masterpieces, some as large as 12 feet by 12 feet. This event draws thousands of visitors where artists, ceramicists, jewelry designers, and photographers display and sell their work in festival tents along a designated closed-to-traffic street space.

- **Riverside Arts Walk**
  This is a monthly community event that celebrates the diversity of arts and culture in Riverside and the Inland Empire. Visitors have the opportunity to visit 22 downtown

location, including museums, galleries and studios, presenting an eclectic mix of visual and performing arts. This event allows people from the surrounding cities to dine and shop in the restaurants, cafes, and stores in downtown before or after event. Additionally, local restaurants offer in-house specials in the duration of the event.

- **Jurupa Valley Community Run/Mission Inn Run**
  These are two neighboring cities that hold an annual community run-albeit at different scopes. Riverside hosts a 5k, 10k, and a half marathon. The much smaller Jurupa Valley hosts a local 5k. Yet, this is great opportunity for the city to bring the community together and promote public health. These events bring out hundreds of participants and attendees which allows sponsors and exhibitors to maximize their exposure prior and after the event. This benefits local business owners who might make up the majority of the sponsors and exhibitors.

- **Indio Winterfest**
  Indio Winterfest is an Indio holiday tradition located in downtown Indio that brings the community and visitors together with food, fun, and entertainment. Experience the winter and the holidays during warm cool nights in the City of Festivals! Enjoy the lights on Miles Avenue, listen to carolers and other live entertainment, eat great food, and watch holiday movies and shows at the Indio Performing Arts Center. Admission is free.

- **Indio Health and Wellness Fair**
  This is an annual community event that is open to the public and focuses on the health and wellness of those 50 years and older, and their families. This event is sponsored by the Friends of the Indio Senior Center, which is dedicated to enhancing the dignity and quality of the culturally diverse and aging population of the Coachella Valley.

- **Annual Desert mental Health Arts Festival**
  This event is part of Riverside County's month long observance of May as mental Health month, a national awareness campaign to promote a greater understanding of mental health. The event is designed to stimulate positive therapeutic arts programs and help reduce the stigma associated with mental illness, focusing on recovery and wellness of consumers and family members. The festival displays art and creative writing submitted by mental health consumers, family members, staff and community members whose lives intersect with the mental health community. Approximately 25 organizations provide information about their services in the community. It is located in the Taj Mahal building in Indio.

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CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Interim Chief of Police Robert Fisher**

MEETING DATE: **September 10, 2018**

SUBJECT: **Police Recruitment & Retention**

RECOMMENDED ACTION:

This is an informational item and no Council action is required.

BACKGROUND:

The Police Department faces severe shortage of recruits and identified that the number of applicants for police departments nationwide was down more than 90 % in some major cities as well as smaller urban police departments. The cause was attributed to low unemployment rate, the increasingly tougher standards for new officers and limited job flexibility, as well as the tarnished image of the position in the eyes of the potential recruit. Record low unemployment has made it harder for most industries to fill vacancies, but police recruiters have extra hurdles to overcome. Candidates must pass demanding physical and psychological tests in addition to extremely comprehensive background checks. Adding to the problem is the large number of officers taking early retirement due to concerns with pension stability and reform.

The California Police Chiefs Association has identified recruitment and retention as one of the two biggest issues facing Law Enforcement. The California Peace Officers Standards website lists over 275 California law enforcement agencies that are currently hiring officers. These are the obstacles the City faces in the very competitive field.

The Banning Police Department has essentially three options for hiring potential police officers. The first is to hire recruits with no experience and sponsor them fully through the academy. This is the least expedient option, with a typical time frame of over a year from job announcement to end of training. We experienced very little success in the past.

The second option is to hire an officer during or upon completion of the police academy. This is most problematic option. Most academies are filled by sponsored

cadets (already hired by an agency), which leaves a very limited field to choose for candidates. Police Academies in California are normally operated by junior colleges and follow the semester program. They offer two classes per year. This system limits the amount of potential recruits. There are very few candidates per class and the best candidates are very often hired immediately upon the initiation of the new class. This is the most difficult and least successful option.

The third option is the lateral candidate. Hiring officers that currently work for other agencies and have successfully completed a probationary period. The implementation of "refer a friend program" with $2,000 to the referral officer and $3,000 to the candidate. The incentive payment would be due in full at the end of the candidate's probationary period, provided that both are still employed by the City of Banning. Another incentive would be to provide similar pay to that of other agencies with step increases of 2.5 % per year.

Below shows the average annual pay of police agencies within 30 minute commute of Banning. These salaries do not include pay incentives or overtime compensation.

California Highway Patrol	$100,404
Riverside County Sheriff	$ 88,200
Beaumont Police	$ 81,536
Cathedral City Police	$ 98,232
Indio Police	$ 94,663
Desert Hot Springs Police	$ 70,765
Palm Springs Police	$101,328
Riverside Police	$ 90,276
San Bernardino Sheriff	$ 96,345
Redlands Police	$ 85,084

With some new penalties associated with pensions (lateral candidates revert to the new classic formula, when working for Banning. Sometimes leaving a 3% at 50 years old formula, to the City of Banning lower formula, subsequently new employees with recent service with CalPERS pay up to 9% of the employee's rate with the 2% @ 50 Plan and 3 Year Average formula. New hires with **No** CalPERS service as of January 1, 2013, will pay up to 12.25% of the employee rate and will be subject to the 2.7% @ 57 Plan with 3 Year Average formula and a mandatory contribution of normal costs as established by the new Pension Reform Act Law. The City also participates in Social Security.

JUSTIFICATION:

We continue to lose officers to local agencies to fill positions that offer higher pay and a chance to work in an investigative field. The City should examine new avenues to recruit officers with a lateral incentive program.

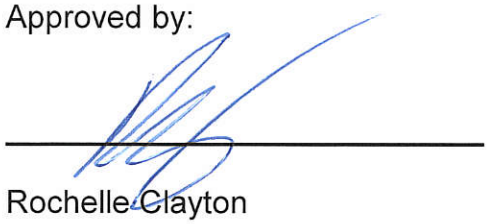
Lateral incentives are currently in place in numerous agencies throughout California. Some agencies provide a moving expense offset, a financial incentive for the lateral recruit, a financial incentive for the recruiting officer or employee, a vacation bank leave bonus, or a sick leave bank bonus. Most agencies offering a bonus, do so in a combination of the above items. The bonuses vary throughout the state with some incentives as low as $400 and others as high as $10,000 or 10% of their annual pay,

whichever is higher. Other bonuses offered include paid initial uniform costs and transferring sick leave banks from their previous agencies (absent a payout).

FISCAL IMPACT:
Unknown at this time.

OPTIONS:
1. Approve as recommended
2. Do not approve or provide staff with direction.

Approved by:



Rochelle Clayton
Interim City Manager

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CITY OF BANNING
CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Rochelle Clayton, Interim City Manager**

PREPARED BY: **Patty Nevins, Community Development Director**
Sandra Calderon, Development Project Coordinator

MEETING DATE: **September 10, 2018**

SUBJECT: **Planning Commission Resignation**

RECOMMENDATION:

Receive resignation letter from Planning Commissioner Henry Aldredge and discuss and consider selecting filling a vacated position on the Planning Commission.

BACKGROUND:

The Planning Commission ("Commission") consists of five (5) members appointed by the City Council. The Commissioners each serve a four year term, which is intended to stagger every two (2) years concurrent with the City's elections. The Commission's rules and responsibilities are governed by Chapter 2.28 of the Municipal Code (Attachment 2). The Commission's two main functions are to review land development applications for compliance with the Zoning Code and to make recommendations to the City Council regarding large projects and changes to the General Plan or Zoning Ordinance.

The City's last recruitment for Planning Commissioners was conducted in May/ June of 2018. At that time, the City Clerk advertised one Planning Commission opening and received four (4) applications. On June 26, 2018, the City Council interviewed three of the four applicants and subsequently appointed Henry Aldredge, to fill the open position.

ANALYSIS:

Due to the recent resignation of Commissioner Henry Aldredge (see resignation letter, attached) an unfilled position exists; this position will expire in February of 2019, along with one other position.

Government Code 54974 requires that the vacancy be posted for a minimum of ten days; however, the vacancy can be posted for a longer period if desired.

OPTIONS:

The City Council may direct staff to:

1. Query the remaining applicants from the previous recruitment as to interest in serving the remainder of the term and report back to City Council; or,

2. Direct the City Clerk to advertise the vacancy, providing direction as to the desired timeframe for the advertisement (i.e. for the minimum ten day period, or for a longer period).

ATTACHMENTS:

1. Commissioner Aldredge's Resignation Letter
2. Chapter 2.28 of the Banning Municipal Code

Approved by:

Rochelle Clayton
Interim City Manager

ATTACHMENT 1

Resignation Letter

Henry Aldredge
880 Foothill Drive
Banning, CA 92220

(951) 520-6734

aldredgeh.880@gmail.com

August 29, 2018

City of Banning

c/o Patty Nevins

99 E. Ramsey Street

Banning, CA 92220

Subject: RESIGNATION FROM PLANNING COMMISSION

Effective Immediately

Dear Mrs. Nevins,

I am overwhelmed with my own Civil Engineering Work and cannot proceed with Planning Commission responsibilities as planned. My apologies to the Planning Commission members and to City staff members. Thanks for the opportunity to serve.

Cordially,

Henry Aldredge

ATTACHMENT 2

Chapter 2.28 of the Banning Municipal Code

2.28.010 - Planning commission—Membership requirements.

A. Members of the planning commission shall be residents of the City of Banning who hold no other municipal office in the city. Members may not be employees of the city.

B. Proof of residency shall be submitted at time of application to the commission through voter registration, utility bill at a physical address within the city boundaries. Residency shall be confirmed prior to appointment and maintained throughout the term served.

(Code 1965, § 2-5.)

2.28.020 - Term and vacancies.

A. The planning commission shall consist of five members.

B. Planning commissioners shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.

C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.

D. Any member who is unexcused for two consecutive regular meetings of the commission or six meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of their term.

E. To be excused from any such meeting, a member shall notify the planning department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence.

(Code 1965, § 2-6.)

2.28.030 - Compensation.

A. Members of the planning commission shall not receive compensation; reasonable traveling expenses to and from conferences and/or special field trips and training sessions shall be reimbursed.

B. Upon authorization by the city manager, the planning commission and members of its staff, may attend city planning conferences or meetings, or hearings on city planning legislation, or matters affecting the planning of the city. The reasonable expenses of such attendance shall be charged upon the funds allocated to the commission.

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

(Code 1965, § 2-7.)

2.28.040 - Rules of procedure.

A. A quorum of the planning commission shall consist of a majority of the members (including any vacancies). A quorum must be present in order for the planning commission to hold a meeting.

B. In the event that only three commissioners are present, any actions recommending amendment to the Municipal Code or general plan must be unanimous; all other actions would require a majority vote of the commission in attendance. A tie vote shall constitute a denial of the matter or request brought before the planning commission.

C. The commission shall adopt rules for the transaction of business and shall keep a record of its transactions, findings, and determinations. The Brown Act and "Robert's Rules in Plain English" by Doris P. Zimmerman (Harper Perennial) shall be incorporated into such rules.

D. The commission shall follow all applicable city fiscal and administrative policies and procedures.

(Code 1965, § 2-8.)

2.28.050 - Duties and responsibilities.

A. The planning commission shall exercise those functions of the planning agency of the city delegated to it in the Banning Municipal Code.

B. At the regular February meeting, the planning commission shall choose a chairperson and a vice-chairperson from among the planning commission members. The chairman and vice-chairman shall serve for one term. Both positions shall rotate every year. All members must be present to conduct this business.

   1. The chairperson shall preside at all regular and special meetings and rule on all points of order and procedure during the meetings.

   2. The vice-chairperson shall assume all duties of the chairperson in his or her absence.

   3. In the event the chairperson and vice-chairperson are both absent, an acting chairperson shall be appointed from the commission for the meeting from those present.

C. The planning commission's scope of responsibility is to:

   1. Prepare, review, adopt, and recommend to the city council for its adoption, a long range, comprehensive general plan to guide the future physical

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

2. Prepare, review, adopt and recommend to the city council for its adoption of special area specific plans for identifiable areas, wherein more detailed guidelines are needed to supplement the objectives of the general plan;
3. Review development applications submitted to the city for consistency with adopted plans and ordinances. Approve or deny applications when final authority is granted to the planning commission by the Municipal Code. Make a recommendation on those actions for which the city council is the final reviewing approval body;
4. Act as the appeal body on decisions made by the community development director;
5. Perform such other functions and duties as the city council may from time to time direct and/or provide within the Banning Municipal Code.

D. The commission may form ad-hoc subcommittees in accordance with the Brown Act, and make appointments to that subcommittee, as it deems necessary. A quorum of commission members may not be appointed to serve in a single subcommittee. Before forming a subcommittee, the commission shall establish a specific mission and term for the subcommittee.

E. The planning commission is an important function within the City of Banning, and as such, certain expectations are held by the city council in making the appointment of individuals to the commission. These expectations include the following:

1. Commissioners will attend all regular meetings and special meetings as they arise;
2. Commissioners will communicate expected and unexpected absences to the planning department, prior to the meeting;
3. Commissioners will communicate any potential conflicts of interest on agenda items to the planning department in advance of the hearing to allow confirmation of a quorum;
4. Commissioners will arrive on time to each meeting, fully participate, and remain in attendance until the end of each meeting;
5. Commissioners will prepare themselves for each meeting by reading the agenda, reports and other materials, and visiting the site, as necessary, and communicate any questions to the secretary in advance of the hearing.

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

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

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

7. New commissioners are expected to become familiar with the city's general plan, the "Planning Commission Handbook" (prepared by the State of California), and relevant Municipal Code sections particularly those relevant to zoning to become familiar with these documents. The "Guide for New Members" distributed by the Planning Commissioners Journal and www.plannersweb.com are other valuable resources for new commissioners;
8. Applicants to the planning commission will be expected to attend a brief orientation session explaining the role of commissioners, the planning process, and the expectations of commissioners that are appointed; and
9. New commission members will attend an expanded orientation session with the liaison to the commission and other staff, as deemed necessary, to provide new appointees with a solid understanding immediately upon appointment. The orientation will include an overview of the planning process, a review of the commission's structure, policies and bylaws, a summary of available documents and resources, and a review of the commission's relationship with citizens, staff, developers, and the governing body.

F. The planning commission may serve on regional boards or commissions as directed by the city council.

G. The planning commission shall participate in annual meetings with the city council to discuss development activity, development doctrine, policies, etc.

(Code 1965, § 2-8.1.)

2.28.060 - Conflict of interest requirements.

A. The State of California Political Reform Act requires planning commission members to disclose interests in investments, real property, and income derived within the City of Banning or from sources doing business within the City of Banning. Filings are required within ten days of assuming office and on an annual basis.

B. Members shall not work for the "pass" cities, which include Beaumont, Calimesa, and Riverside County in roles, such as economic development, planning, or redevelopment.

C. If an apparent conflict of interest arises, the member shall inquire of the city attorney or staff prior to the meeting.

(Code 1965, § 2-8.2.)

2.28.070 - Staff liaison.

A. The staff liaison to the planning commission shall be the community development director.

B. The planning commission liaison, supported by the secretary to the planning commission (a staff position), shall be responsible for:

1. Confirming that a quorum will be present prior to each meeting;
2. Receiving and recording all exhibits, petitions, documents, or other material presented to the planning commission in support of, or in opposition to, any issue before the planning commission;
3. Signing all meeting minutes and resolutions upon approval;
4. Preparing and distributing agendas and agenda packets;
5. Facilitating the tape recording of meetings and preparation of minutes; and
6. Responding to all questions from planning commission members regarding agenda items in advance of meetings.

(Code 1965, § 2-8.3.)

2.28.080 - Meeting times and places.

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

B. Commissioners will attend special meetings as they arise.

(Code 1965, § 2-8.4.)

(Ord. No. 1427, § 1, 9-14-10)

2.28.090 - Adoption.

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

(Code 1965, § 2-9.)