

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

January 8, 2019
5:00 p.m.

Banning Civic Center
Council Chamber
99 E. Ramsey Street

The following information comprises the agenda for the regular meeting of the City Council.

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 – Chaplain Merle Malland
- Pledge of Allegiance
- Roll Call – Council Members Andrade, Happe, Peterson, Wallace, Mayor Welch

II. REPORT ON CLOSED SESSION

III. PRESENTATION

1. Riverside County Fair & National Date Festival Queen & Court **ORAL**
2. Order of the Purple Heart.....**ORAL**
3. Proclamation in Honor of Jorge Castillo.....**ORAL**

IV. AGENDA APPROVAL

V. PUBLIC COMMENTS, CORRESPONDENCE, 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.

APPOINTMENTS

1. 2019 Committee Assignments 1
(Mayor Welch)

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. Approval of Regular Meeting – 12/11/2018 Minutes 3
2. Contracts Signed Under City Manager Authority for December 2018..... 103
3. Resolution 2019-01, Approving Revised and New Job Descriptions, Reclassifications, and the Compensation and Classification Plan 107
4. Resolution 2019-07 Establishing a Pre-Approved Architect Services Vendor List 137
5. Accept the Right-of-Way Dedications from APN 541-220-017, 541-220-018 and 541-220-019 for Road and Utilities Purposes. 195
6. Notice of Completion for Project 2017-01 Community Center and Senior Center Improvements 133
7. 2nd Reading of Ordinance 1537, an Ordinance of the City of Banning Approving Zone Change 17-3501 to Amend the Zoning Classification for Real Property Located North of the Banning Municipal Airport and South of Interstate 10 and the Union Pacific Railroad Lines 243
8. 2nd Reading of Ordinance 1538, An Ordinance of the City of Banning Amending chapter 5.33 of Title 5 of the Banning Municipal Code related to the Process for Issuing Cannabis Retailer Regulatory Permits, and Related Appeals, and Making a Determination Pursuant to CEQA..... 249
9. 2nd Reading of Ordinance 1539, an Ordinance of the City of Banning Approving Zone Text Amendment No. 18-97505, Amending Chapter 17.54 of Title 17 of the Banning Municipal Code to Eliminate the Separation Requirement Between Cannabis Retailers and Clarifying Eligibility to Obtain a Cannabis Retailer Conditional Use Permit 263
10. 2nd Reading of Ordinance 1540, an Ordinance of the City of Banning, Modifying the City Manager’s Powers and Duties with Respect to the Appointment, Promotion, Demotion, and Removal of Officers and Employees 271

- Open Consent Items for Public Comments
- Make Motion

VII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORT OF OFFICERS

1. Resolution 2019-08, Approval of Employment Agreement **275**
(Staff Report – Doug Schulze, City Manager)
Recommendation: Adopt Resolution 2019-08, Approving an Employment Agreement for the Police Chief.

2. Resolution 2019-05, Awarding a Professional Services Agreement to Engineering Resources of Southern California **295**
(Staff Report – Art Vela, Public Works Director)
Recommendation: Adopt Resolution 2019-05, Approving the award of a Professional Services Agreement to Engineering Resources of Southern California (ERSC) in the amount of \$250,000 for services as needed including Plan Check, Inspection and related Administrative Services through June 30, 2020 with the option to renew for three (3) additional single years. 2) Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement with ERSC. 3) Authorizing the City Manager or his designee to execute the Professional Services Agreement with ERSC valid through June 30, 2020 with the option to renew for three (3) additional signal years.

3. Active Transportation Program (ATP) Cycle 2 Update, **355**
(Staff Report – Art Vela, Public Works Director)
Recommendation: Receive and File staff's update on the City of Banning's ATP Cycle 2 project.

VIII. DISCUSSION ITEMS

None

BANNING UTILITY AUTHORITY (BUA) – Next Meeting, January 22, 2019,
5:00 p.m.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

IX. ITEMS FOR FUTURE AGENDAS

New items –

Pending Items – City Council

1. Mills Act Update
2. Fee Suspension Update
3. Website Redesign
4. Street Naming Policy to Honor Land Owners
5. Contingency Plan for Residents During Emergencies
6. Appraisals Update
7. Honor Banning High School Senior Aliyah Amis

X. 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.

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COMMITTEE ASSIGNMENTS FOR - 2019
CITY COUNCIL
CITY OF BANNING

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG) <i>(receive stipend) (\$150.00)</i>	1 st Monday of each month.	Andrade	Happe	City Manager, Doug Schulze
Riverside Transit Agency (RTA) <i>(receive stipend) (\$150.00)</i> <i>(plus round-trip mileage)</i>	4 th Thurs. of each month – 2:00 p.m. (Dark-August) (Nov. & Dec. 3 rd . Thursday)	Welch	Happe	Community Services Director, Heidi Meraz
Riverside County Transportation Commission (RCTC) <i>(receive stipend) (\$100.00)</i>	2 nd Wednesday of each month - 10:00 a.m.	Welch	Andrade	Public Works Director, Art Vela and Community Services Director, Heidi Meraz
Pass Area Transportation NOW Committee	1 st Wednesday of each month at Noon	Welch	Happe	Community Services Director , Heidi Meraz
Regional Conservation Authority (RCA) <i>(receive stipend) (\$100.00 plus mileage)</i>	1 st Monday of each month.	Andrade	Wallace	Staff: Community Development Director,

GOVERNMENT ACCESS CHANNEL COMMITTEE <i>(as needed)</i>	OVERSIGHT BOARD to Successor Agency of Dissolved CRA <i>(as needed)</i>	LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative	LEAGUE OF CALIFORNIA CITIES (External Group)	SAN GORGONIO PASS WATER AGENCY (External Group)
Peterson Welch Staff: Public Information Officer	Welch Staff: Community Development Director	Welch	City Council	Happe Welch Staff: Public Works Director, Art Vela

Assignments - 2019 (Continued)

COMMUNITY ACTION AGENCY (External Group) <i>3rd Thurs. of each month at 7:00 p.m.</i>				
Andrade Wallace				

2 x 2 COUNCIL WORKING GROUPS

Groups meet as needed.

BANNING UNIFIED SCHOOL DIST.	MORONGO BAND OF MISSION INDIANS	MT. SAN JACINTO COLLEGE	SAN GORGONIO MEMORIAL HOSPITAL	BUDGET & FINANCE
Wallace Welch Staff: City Manager, Doug Schulze	Happe Welch Staff: City Manager, Doug Schulze	Peterson Andrade Staff: City Manager, Doug Schulze	Wallace Welch Staff: City Manager, Doug Schulze	Welch Peterson McQuown Staff: Deputy City Manager, Rochelle Clayton

AD HOC ECONOMIC DEVELOPMENT COMMITTEE	CITY OF BEAUMONT	HEALTHY LIVING CITY		
Peterson Welch Staff: Economic Development Manager, Ted Shove	Welch Andrade Staff: City Manager, Doug Schulze	Wallace Andrade Staff: Community Services Director, Heidi Meraz		

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

12/11/18
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Moyer on December 11, 2018, at 5:00 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 Doug Schulze, City Manager
Kevin Ennis, City Attorney
Rochelle Clayton, Deputy City Manager
Tim Chavez, Fire Battalion Chief
Michelle Devoux, Fire Marshall
Robert Fisher, Interim Police Chief
Heidi Meraz, Community Services Director
Tom Miller, Electric Utility Director
Maryann Marks, Interim Community Development Director
Art Vela, Public Works Director/City Engineer
Suzanne Cook, Deputy Finance Director
Robert Meteau, Deputy Human Resources Director
Ted Shove, Economic Development Manager
Stacy Bouslog, Utility Financial Analyst
Marie A. Calderon, City Clerk
Laurie Sampson, Acting Deputy City Clerk
Leila Lopez, Office Specialist

Mayor Moyer called the regular meeting of the City Council to order at 5:00 pm. The Invocation was given by Chaplain Merle Malland. Council Member Peterson led the audience in the Pledge of Allegiance to the Flag.

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

CERTIFICATION OF ELECTION RESULTS

1. Resolution 2018-150, Reciting the Facts of the Consolidated General Election Held in Said City on November 6, 2018.

City Clerk, Marie Calderon gave the staff report on this item as contained in the agenda packet.

Mayor Moyer opened the item for public comment. Seeing none called for a motion.

Motion Franklin/Peterson to approve Resolution 2018-150, Reciting the Facts of the Consolidated General Election Held in Said City on November 6, 2018 and Declaring the Result Thereof and Such Other Matters as Provided by Law. Motion carried, 5-0.

PRESENTATION TO OUTGOING COUNCIL MEMBERS

A plaque of appreciation was presented to George Moyer and Debbie Franklin by City Manager Doug Schulze. Ms. Franklin thanked everyone for their thoughts and prayers. She has enjoyed being involved in the community for that last twelve years. Ms. Franklin thanked the community, the staff and her fellow councilmembers and wished them good luck in the future.

PRESENTATION TO OUTGOING MAYOR

In appreciation for his tenure as Mayor, a plaque was presented to George Moyer by the City Manager Doug Schulze. Mr. Moyer thanked the staff for assistance given over the years he has been on council. He wished the Mr. Schulze all the luck in the future. Advised the new council to work together. Mayor Moyer thanked the council and the community for their involvement and support.

SWEARING IN OF COUNCIL MEMBERS

City Clerk, Marie Calderon gave the Oath of Office to new Council Members, David Happe for District 4 and Colleen Wallace for District 5.

Council Member Wallace thanked everyone that voted for her and is committed to making Banning a better place and help the city to grow.

Council Member Happe thanked all his supporters. He believes Banning deserves nothing but the best and thanked all the members of the community that have encouraged him.

REORGANIZATION OF COUNCIL

Motion Wallace/Happe to nominate Art Welch as Mayor. Motion carried 5-0.

Motion Welch/Happe to nominate Daniela Andrade as Mayor Pro Tem. Motion carried 5-0.

City Manager Doug Schulze mentioned the agenda had not been approved. He request it be amended. The Mayor agreed to entertain a motion. Mr. Schulze stated he would like to pull Section X, Item 2 Resolution 2018-156, consent item number 8, and would like to reorder the closed session to occur at the end of the meeting.

Motion Welch/Andrade to accept the changes to the agenda. Motion carried 5-0.

Mayor Welch reconvened the Regular Meeting of the Banning City Council.

PUBLIC COMMENTS / CORRESPONDENCE / PRESENTATIONS / APPOINTMENTS

PUBLIC COMMENTS

Mayor Welch opened Public Comment for items not on the Agenda.

Randon Lane, Southern California Gas Company, Public Affairs Manager discussed the State Legislature's attempts to force all new homes to be powered completely by electric by 2022 and all existing homes to be retrofitted by 2030.

Ellen Carr with Tender Loving Critters advised the Animal Action League will be at the Community Center with their low cost spay and neuter clinic. Low cost shots and microchipping is also available. Now that the City is under the County for animal control, microchipping is mandatory. Citizens may call Animal Action League at 760-366-1100 to be put on a list for spay and neuter. There is no appointment required for shots or microchipping.

John Hagan, Banning resident, does not agree with the process to elect the mayor. Feels it should go to the Mayor Pro Tem. Mr. Peterson answered Mr. Hagen's concerns, explaining in 2013 the council voted to change the process of how the council elected the Mayor.

Ken Fall, Banning resident, also congratulated the new council and thanked the outgoing council members. He spoke about the Ramsey/Hathaway Improvement Project. His parents Jim and Betty Fall own property that is impacted by the project. He feels the project will have an adverse economic impact on their property.

Meryl Nazareth of Faith in Action would like the City to pass an ordinance to deter panhandling at the freeway off ramps. She would also like to offer dignity to the homeless population by creating a system where showers could be offered on a weekly basis. Perhaps at the Aquatic Center.

Don Smith, Banning resident, offered congratulations to the newly elected council, Mayor and Mayor Pro Tem. He requested they revisit the new speed limits on many of the streets that had recently been increased.

Paul Perkins, Banning resident, also congratulated the new members. Requested the departments keep timelines of projects. The City website is not user friendly. It is difficult to find specific items.

Seeing no further comments, the Mayor closed Public Comment.

CORRESPONDENCE

There was no correspondence.

CONSENT ITEMS

Item 8, pulled and continued to the next regular City Council meeting. Items 6 and 7 were pulled for discussion by Council Member Peterson.

1. Minutes – Special Meeting – November 13, 2018 (Closed Session)

Recommendation: Approve the Minutes from November 13, 2018, Special Meeting of the Banning City Council.

2. Minutes – Regular Meeting – November 13, 2018

Recommendation: Approve the Minutes from the November 13, 2018, Regular Meeting of the Banning City Council.

3. List of Contracts Approved under the City Manager's Approval Authority in the month of November 2018.

Recommendation: Receive and file

4. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of October 2018.

Recommendation: Approval and Ratification

5. Receive and File Cash, Investments and Reserve Report for the Month of October 2018.

Recommendation: Receive and file

9. Receive and File Report for Downtown ad hoc Committee Recommendations Report.

Recommendation: Receive and File

10. Police Department Statistics for October 2018.

Recommendation: Receive and File

Mayor Welch opened Consent Items 1 through 5, and 9 through 10 for public comment. Seeing none, closed public comment.

Motion Peterson/Andrade to approve Consent Items 1 through 5, and 9 through 10. Motion carried, 5-0.

6. Resolution 2018-148, Amendment to Agreement with CV Strategies, LLC for Public Relations Outreach Services.

Recommendation: Approve Resolution 2018-148.

There was discussion between Council Member Peterson and Rochelle Clayton, Deputy City Manager, regarding the scope of services and what created the overages to the original contract.

Mayor Welch opened Consent Item 6 for public comment. Seeing none, closed public comment.

Motion Andrade/Wallace to approve Consent Item 6. Motion carried, 4-1 with Council Member Peterson opposed.

7. Resolution 2018-147, Approving the Banning Municipal Airport's Airport Capital Improvement Plan for 2019-2023.

Recommendation: Adopt Resolution 2018-147.

There was discussion between Council Member Peterson and Art Vela, Public Works Director.

Mayor Welch opened Consent Item 7 for public comment. Seeing none, closed public comment.

Motion Peterson/Andrade to approve Consent Item 7. Motion carried, 5-0.

PUBLIC HEARINGS

1. Ordinance 1539, Zoning Text Amendment 18-97505 to Amend Chapter 17.54 of the Zoning Ordinance (Title 17 of the Banning Municipal Code) to eliminate the Separation Requirement between Cannabis Retailers, and Clarifying the Eligibility to Obtain a Retail Conditional Use Permit.

Interim Community Development Director, Maryann Marks presented the staff report as contained in the Agenda packet as well as a Power Point Presentation (Attachment A).

Mayor Welch opened the Public Hearing for public comment.

Anna Harutian, Los Angeles resident: comments are included as Attachment B.

Paul Perkins, Banning resident, had questions regarding the background checks, providing bonds and the appeals process. Who will have the burden of paying for the appeal? He also feels the burden of proof should be on the party filing the appeal not the City.

Seeing no further comments from the public, the Mayor closed the Public Hearing.

Council Member Peterson was concerned by the idea there could be a monopoly on all three dispensaries. A property that is owned by one landowner but has multiple locations for cannabis retailers seems to create an unfair advantage.

City Attorney Ennis responded the system is set up that the three owners of the cannabis businesses must be different. The likelihood of all three retailers operating out of the same center are very slim as the lottery system is designed to keep the applicants that are pulled completely random. He would also like to point out if an applicant would like to appeal their denial, the appeal would not go to a city employee but to a third party hearing officer that is contracted with the City and completely independent.

Council Member Happe was concerned there may be a monopoly of the lottery system by applicants with money.

City Attorney Ennis responded the application process and lottery were designed to broaden the opportunities.

There was more discussion between Council Member Happe, Council Member Wallace, City Manager Schulze and City Attorney Ennis to define the process for regulatory and conditional use permits and how the lottery would work.

It was determined it would be more fair to have one applicant, one lottery opportunity. This would require Ordinance 1538 be amended.

Mayor Welch asked the City Clerk to read the title of Ordinance 1539.

The City Clerk read the title of Ordinance 1539.

Motion Happe/Andrade to waive further reading of Ordinance 1539. Motion carried, 5-0.

Motion Happe/Andrade Ordinance 1539 pass its first reading. Motion carried, 5-0.

2. Ordinance 1538, Municipal Code Amendments to Amend Chapter 5.33 of the Municipal Code to Establish Procedures for the Issuance of Cannabis Retailer Regulatory Permits.

Mayor Welch asked the City Clerk to read the title of Ordinance 1538.

The City Clerk read the title of Ordinance 1538.

Motion Andrade/Happe to waive further reading of Ordinance 1538 as Amended. Motion carried, 5-0.

Motion Andrade/Happe Ordinance 1538 pass its first reading as Amended. Motion carried, 5-0.

3. Resolution No. 2018-153, Adopting a Selection Process and Schedule for the Granting of Cannabis Retailer Regulatory Permits

Motion Andrade/Wallace to Adopt Resolution 2018-153, Adopting a Selection Process and Schedule for Granting of Cannabis Retailer Regulatory Permits. Motion carried, 5-0.

4. Resolution No. 2018-144, Approving General Plan Amendment 17-2501, Design Review 16-7002; and Certify an Environmental Impact Report (State Clearinghouse #2018011032), and Adopt a Statement of Overriding Considerations, and a Mitigation Monitoring and Reporting Program (Environmental Assessment 17-1504) for the Banning Distribution Center.

Interim Community Development Director Maryann Marks presented the staff report as contained in the Agenda packet as well as a Power Point Presentation (Attachment C).

Council Member Wallace requested more information about the use and potential tenant of the project.

A presentation was made by Stephanie Standifer, Vice President of Albert A. Webb Associates, CEQA Consultants.

Ms. Standifer answered several questions from the City Council regarding the environmental report and potential alternative uses.

Mayor Welch opened the Public Hearing for public comment.

John Hagen, Banning resident, is for the project. Concerned about the traffic from this and the I-10 Bypass without a plan for a grade separation.

Mayor Welch stated the City has taken a very strong stand with the County and the State regarding the traffic impact of the I-10 Bypass Project.

Paul Perkins, Banning resident, questioned what other types of projects can be built in this particular zone. This area seems to be ideal for Cannabis cultivation.

Council Member Happe answered Cannabis cannot be cultivated in this area as it falls under the FAA jurisdiction.

Mary Sarden, Banning resident, is concerned this project will be similar to the project planned in Cherry Valley.

Josh Bourgeois of the Golden State Environmental Justice Alliance stands by the letter they have submitted regarding this project.

Don Smith, Banning resident, would like to impress upon whoever is going to be appointed to represent the City with WRCOG and RCTC how important it will be to strongly fight for the Hargrave Grade Separation.

Correspondence received from Barbara Jesus, a Banning resident, - included as Attachment D.

Correspondence received from Abigail A. Smith, Esq. for the Sierra Club- included as Attachment D.

Council Member Happe had several questions regarding zoning, uses, public access and alternate uses for the property.

Seeing no further comments from the public, Mayor Welch closed the Public Hearing.

Mayor Welch recessed the meeting at 7:35 pm to enable the consultants to review the letter received from Abigail A. Smith representing the Sierra Club.

Mayor Welch reconvened the meeting at 8:01 pm.

Comments were made by the developer, Bill Patton, in answer to public comments.

Stephanie Standifer responded to questions submitted by the Sierra Club.

Motion Peterson/Wallace Adopt Resolution 2018-144, Approve General Plan Amendment 17-2501, Design Review 16-7002, and Certifying Environmental Impact Report (State Clearinghouse #2018011032), Adopt Statement of Overriding Considerations and Mitigation Monitoring Report (Environmental Assessment 17-1504) for the Banning Distribution Center. Motion passed 5-0

5. Ordinance 1537, Approving Zone Change 17-3501 to Amend the Zoning Classification for Real Property Located North of the Banning Municipal Airport and South of Interstate 10 and the Union Pacific Railroad Lines (APNS: 532-130-001 and 532-130-002) from Public Facilities- Airport(PF-A) to Airport Industrial (AI), and Making Finding Pursuant to CEQA.

Mayor Welch asked the City Clerk to read the title of Ordinance 1537.

The City Clerk read the title of Ordinance 1537.

Motion Peterson/Happe to waive further reading of Ordinance 1537 as Amended. Motion carried, 5-0.

Motion Peterson/Happe Ordinance 1537 pass its first reading as Amended. Motion carried, 5-0.

6. Resolution No. 2018-149, Finding that in Accordance with the California Environmental Quality Act (CEQA) Guidelines Section 15162 a Subsequent Environmental Document is Not Required under CEQA; and Approving the Modifications and Phasing of Tentative Tract Map No. 33540 and Approve Design review 18-7003, Subject to the Conditions of Approval.

Interim Community Development Director Maryann Marks presented the staff report as contained in the Agenda packet as well as a Power Point Presentation. Attachment E.

Alicia Bartley, of Gaines Law and a representative of the owner of the project, provided more information on the project and the requested action.

Council Member Peterson has several questions regarding the project. These questions were answered by Name and the engineer working on the project. Mr. Peterson would like to see the property taken better care of until the project starts.

Council Member Happe asked questions about the phasing of the project and traffic impact studies.

Council Member Andrade questioned the hold up on getting the project started. The response was the map modification to reduce the number of lots included in the project.

The phasing plan was explained to the Council by the project engineer.

Art Vela, Public Works Director, was asked to respond to questions regarding traffic impact of this project. Specifically to 8th Street. Improvements are not required with this project.

Mayor Welch opened the floor for public comment.

Paul Perkins, Banning resident, questioned if the historical significance of the area has been addressed and will the Morongo Tribe be involved. He also noticed there were some parks. The City cannot afford to maintain more parks. Will there be an HOA to maintain the parks?

Keith Cortez, Banning resident, lives right behind the proposed housing development. He feels the area will be impacted by the increase of traffic. Mr. Cortez requested improved signage in the area. Some of the street signs are unreadable. He wanted to ensure the City has considered the increased need of law enforcement and fire protection.

Seeing no further comment from the public, Mayor Welch closed public comment.

Art Vela, Public Works Director, was asked to clarify what the impact fees would be spent on also what are the plans for street sign replacement. Mr. Vela responded the fees would be used to purchase additional property to widen streets. A large order of street sign replacements have been ordered and should be coming in this week.

Ms. Bartley, responded to Mr. Perkins and Mr. Cortez' questions. The parks will be maintained by an HOA and the Morongo Tribe will be monitoring during the construction.

Motion Andrade/Wallace to adopt Resolution 2018-149, Finding a Subsequent Environmental Document is not Required under CEQA; and Approve the Modifications and Phasing of Tentative Tract Map No. 33540 and Approve Design Review 18-7003, Subject to Conditions of Approval. Motion carried 5-0.

ANNOUNCEMENTS & REPORTS

CITY COUNCIL COMMITTEE REPORTS

Mayor Welch reported the trolley had been used by the ranch hands and the Community Services Department at Gilman Ranch Holiday.

REPORT BY CITY ATTORNEY

None

REPORT BY CITY MANAGER

1. City Manager Doug Schulze asked the council if they would like to plan a strategic goals session and how they would like to structure it.
2. Mr. Schulze had a discussion with the Chamber of Commerce regarding the use of 98 E. Ramsey St. The City Attorney, Kevin Ennis, is drafting an MOU for its use.
3. There are four finalists for the Community Development Director position. Would like two council members to participate on one of the interview panels.
4. The Police Chief Draft Employment Agreement will be on the closed session agenda later.

5. Online retail sales tax update. Cities could see additional sales tax revenue.
6. The Chamber of Commerce Installation Dinner is scheduled for January 12, 2019 at the Morongo Resort and Ballroom.
7. The City Manager's Report goes out weekly. Text 92220 to 22828 to receive the reports.
8. The City is in the process of launching Nixle Notifications. The system sends out email or text messages to notify residents of emergencies Text 92220 to 888777 to receive notifications.
9. Power Point Presentation Attachment F.

REPORTS OF OFFICERS

1. Ordinance 1540, Modifying the City Manager's Powers and Duties with Respect to the Appointment, Promotion, Demotion, and Removal of Officers and Employees.

Mayor Welch opened the floor to public comment

John Hagen, Banning resident, spoke in opposition to the ordinance.

Don Smith, Banning resident, spoke in support of the ordinance.

The City Clerk read correspondence from Banning resident, Ed Miller Attachment G.

Seeing no further comment, Mayor Welch closed public comment.

Council Member Andrade supported this ordinance. The City Manager is the CEO of the City and the Council should give the authority to the City Manager to do his or her job.

Council Member Happe considered it is hard to answer to two bosses. The Council would be abusing their power by interfering in the day to day operations and undermining the authority of the City Manager.

Council Member Wallace as long as the City Manager is doing his job well she has no problem giving him the authority to carry out his responsibilities without council interference.

Mayor Welch, agreed with the other three council members that have already spoken. This body is not responsible for the day to day operations. This body changes every two years. The City needs stability.

Council Member Peterson felt the original ordinance was created to deter City Managers from going outside the process and not following proper procedures for hiring new employees.

City Manager Schulze explained his hiring process.

Mayor Welch asked the City Clerk to read the title of Ordinance 1540.

The City Clerk read the title of Ordinance 1540.

Motion Andrade/Happe to waive further reading of Ordinance 1540. Motion carried, 4-1 with Peterson opposed.

Motion Andrade/Happe Ordinance 1540 pass its first reading. Motion carried, 4-1 with Peterson opposed.

2. Resolution 2018-156, Pulled and continued to the next regular meeting of the City Council.
3. Resolution 2018-151, Approving Cancellation of the City's Application for Lions Park Expansion Funding for Fiscal Year 2018-2019 under the Community Development Block Grant Program and Resolution 2018-152, Approving the Submission of a City Application for the 2018-2019 Funding Cycle for Dysart Park Improvements under the Community Development Block Grant.

Economic Development Manager Ted Shove presented the Staff Report as contained in the Agenda packet.

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

Council Member Happe requested more information about why are we spending on Dysart Park instead of the Lions Park Expansion Project.

Mr. Shove explained some of the money required to complete the Lions Park Expansion Project did not materialize and the grant money provided by CDBG must be spent.

Motion Peterson/Wallace to adopt Resolution 2018-151, approving the cancellation of the City's application for Lion's Park Expansion funding for Fiscal Year 2018-2019 under the Community Development Block Grant Programs; and Adopt Resolution 2018-152, approving the submission of a City application for the 2018-2019 funding cycle for Dysart Park Improvements under the Community Development Block Grant Program. Motion carried, 5-0.

Mayor Welch called for a vote to extend the meeting beyond 10:00 pm.

Motion Andrade/Happe Motion carried 5-0.

4. Resolution 2018-154, Awarding a Construction Agreement for Project 2017-16, "Citywide Various Street Improvements" to Onyx Paving Company, Inc. of

Anaheim, CA in the amount of \$766,000 and Establishing a Total Project Budget of \$842,600 and Rejecting all Other Bids.

Public Works Director Art Vela presented the Staff Report as contained in the Agenda packet.

Mayor Welch opened the item for public comment.

Seeing no further comment, Mayor Welch closed public comment

Motion Peterson/Wallace to adopt Resolution 2018-154; 1) Approving a Construction Agreement for Project 2017-16, 'Citywide Various Street Improvements' to Onyx Paving Company, Inc. of Anaheim, CA, in the amount of \$766,000 and a 10% contingency in the amount of \$76,600 for a total project budget of \$842,000 and rejecting all other bids; and 2) Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Construction Agreement for Project 2017-16 "Citywide Various Street Improvements" and to approve change orders within the 10% contingency; and 3) Authorize the city Manager to execute the Construction Agreement with Onyx Paving Company, Inc. for Project 2017-16, "Citywide Various Street Improvements". Motion carried 5-0

DISCUSSION ITEMS

1. Highway Advertising Sign

City Manager Doug Schulze presented the staff report as provided in the agenda packet.

Seeing no further public comment, the mayor closed public comment.

Mr. Schulze was given direction from Council to pursue a zoning code amendment to allow signs in the downtown commercial zone.

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

Board Members Present: Andrade, Happe, Peterson, Wallace, and Chairman Welch

Board Members Absent: None

REPORT OF OFFICERS

1. Resolution 2018-155 and 2018-23 UA, Approving an Amendment to the Fiscal Year 2018-19 Budget for Encumbrance Carryovers and Continuing Appropriations of Unexpended Fiscal Year 2017-18 Appropriations

Deputy Finance Director Suzanne Cook presented the staff report as provided in the agenda packet.

Seeing no further comment Chairman Welch closed public comments

There was discussion between Ms. Cook and the Council to clarify the nature of the carryovers and continuing appropriations and if it would affect the budget.

Motion Peterson/Andrade to approve Resolution 2018-155 and the Banning Utility Authority approve Resolution 2018-23 UA, Authorizing an amendment to the Fiscal Year 2018-19 budget for encumbrance carryovers and continuing of unexpended Fiscal Year 2017-18 appropriations; and 2) Authorize the Administrative Director to make necessary budget adjustments, appropriations and transfers. Motion carried 5-0

Mayor/Chairman Welch recessed the joint meeting of the City Council and the Banning Utility Authority and called to order the Regular Meeting of the Banning Utility Authority.

Board Members Present: Andrade, Happe, Peterson, Wallace, and Chairman Welch

Board Members Absent: None

CONSENT ITEMS

1. Resolution 2018-20 UA, Approving an Increase of \$9,500 to the Purchase Order with Haaker Equipment Company for Services and Repairs to the City's Vacuum Trucks

Chairman Welch opened the Item for public comment. Seeing none, closed public comment.

Motion Peterson/Happe to approve Consent Item 1. Motion carried, 5-0.

REPORTS OF OFFICERS

1. Resolution 2018-21 UA, Approving an Agreement in the Amount of \$179,885 with Layne Christensen Company for Repairs to Well 3 Pelton Wheel, Wells 9, M-4, M-5, M-8 and MP-1; Establishing a Total Project Budget of \$197,874; and Rejecting all Other Bids

Public Works Director Art Vela presented the Staff Report and as contained in the Agenda packet.

Chairman Welch opened the Item for public comment.

Seeing no further comments, the Chairman closed public comment.

The Council had several questions regarding the scope of work and locations of the wells.

Motion Peterson/Wallace/Peterson to Approve an Agreement with Layne Christensen Company for Repairs to Well 3 Pelton Wheel, Wells 9, M-4, M-5, M-8 and MP-1 in the amount of \$179,885 and a 10% contingency in the amount of \$17,989 to cover unforeseen conditions and reject all other bids. 2) Authorize the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Agreement with Layne Christensen Company of Redlands, CA. 3) Authorize the City Manager or his designee to execute the Agreement with Layne Christensen Company, Redlands, CA for the repairs. Motion carried 5-0.

2. Resolution 2018-22 UA, Rejecting Bid for the "Iron Sponge Media Replacement"

Public Works Director Art Vela presented the Staff Report and as contained in the Agenda packet.

Chairman Welch opened the Item for public comment.

Seeing no further comments, the Chairman closed public comments.

Board Member Happe questioned why this work wasn't being done "in house". Mr. Vela explained the complexity of the project and specialized equipment required to do the work would preclude the City from performing the work.

Motion Happe/Wallace that Banning Utility Authority adopt Resolution 2018-22 UA rejecting the bid for the "Iron Sponge Media Replacement. Motion carried 5-0.

The Chairman adjourned the Banning Utility Authority Meeting and the Mayor reconvened the regular meeting of the Banning City Council and immediately went into closed session.

CLOSED SESSION

1. CONFERENCE WITH LABOR NEGOTIATIONS: Pursuant to Government Code Section 54957.6 Agency Designated Representative: Doug Schulze, City Manager. Unrepresented Employee: Police Chief Candidate

2. PUBLIC EMPLOYEE APPOINTMENT: Police Chief- Pursuant to Government Code Section 54957.

Mayor Welch reconvened the regular meeting of the Banning City Council. City Attorney Ennis, gave a report on the closed session items. Direction was given to City Manager Schulze regarding the two closed session items.

ITEMS FOR FUTURE AGENDAS

None

ADJOURNMENT

By common consent the meeting was adjourned at 11:18 P.M.

Minutes Prepared by:

Laurie Sampson, Acting 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=MmRezRNd3pU>, or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

Exhibit “A”
to the December 11, 2018, Regular Meeting Minutes

Cannabis Retailer Regulatory Process

City Council Meeting

December 11, 2018
5:00 P.M.

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

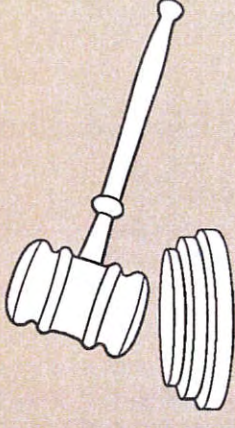


OVERVIEW

- Ballot Measure “O” Passage
 - Allows limited number of regulated retail Cannabis stores
- City Council Approved Retailer Regulatory Permit and CUP Requirement -
 - Ordinances 1527 & 1531
- Ordinances take effect January 1, 2019
- Staff Determine Permit Process & Procedures prior to January 1st



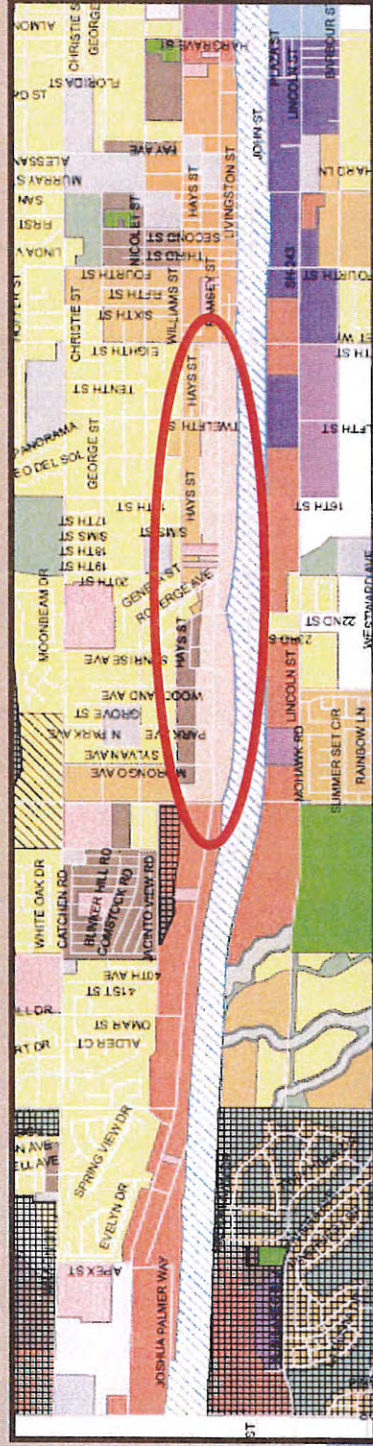
OVERVIEW



- Ordinance No. 1539
 - Amends Ordinance 1531 – Cannabis Retailer Conditional Use Permit
- Ordinance No. 1538
 - Amends Ordinance 1527 – Cannabis Retailer Regulatory Permit
- Resolution No. 2018-153
 - Selection Process for Issuance of Retailer Regulatory Permit

Highway Serving Commercial Zoning

- Cannabis retailer uses
- Bounded by the I-10 Freeway on the south, Hays Street on the north, Sunset Avenue on the west and 8th Street on the east.
- Limited to the Highway Serving Commercial zoning district.
- Further limited by separation requirements



-

Draft Ordinance 1539

- Ordinance includes a 600-foot separation from other retail stores.
- Staff tasked with creating processes and procedures
- Selection Process to be a Lottery
- Separation complicates lottery process unnecessarily



Draft Ordinance 1539

- Clarification of eligibility to obtain a CUP
- No financial interest in any other retail cannabis store in the City
- Only one Conditional Use Permit per owner/applicant.
- Conditional Use Permit is only for one **specific** location



Ordinance 1538

- **Amends Ord. 1527 - Regulatory Permit Ordinance**
 - Establishes a process for issuing Regulatory Permit
- Staff tasked with creating fair process
- Determined Lottery most fair process
 - Creates application requirements and procedures
 - Establishes appeal process
- Amended language for consistency with permit process & procedures



Resolution No 2018-153

- Adoption of Ordinances 1527 & 1531 created two-step process
 1. Apply for Retailer Regulatory Permit
 - (secure permit through the lottery process)
 2. Obtain a Cannabis Conditional Use Permit (CUP)
 - Only three (3) retailers will be issued a CUP
 3. Resolution authorizes and directs City Manager to develop schedule for processing applications



Resolution No 2018-153

1. Public Workshop To Be Announced
2. Staff will instruct public in applications, process and procedures
3. Information and dates will be soon available on the city website
4. Lottery held after time required to process applications
5. All numbers will be drawn



Recommendation

- Open the public hearing, take testimony, close the public hearing.
- Concur with staff that the adoption of these ordinances is exempt from the California Environmental Quality Act (CEQA) pursuant to State CEQA Guidelines Section 15060 (c)(3).
- Waive full reading and introduce Ordinances 1539 and 1538 as read by title and set both ordinances for second reading and adoption at the November 13, 2018 City Council Meeting.
- Adopt Resolution 2018-153.



Questions?



Contact Information:
City of Banning
951-922-3125
CommunityDev@ci.banning.ca.us
99 E. Ramsey Street
Banning, CA 92220



Exhibit “B”
to the December 11, 2018, Regular Meeting Minutes

*Submitted 12/11/18
M. Calderon
City Clerk*

12/11/18

My name is Anna Harutian. I am from Los Angeles, CA.

I am a potential applicant for a cannabis retail permit. After reading today's agenda I have consulted my attorney regarding the proposed changes, particularly about Ordinance NO. 1539 amendment 18-97505 to amend chapter 17.54 of the zoning ordinance to eliminate the 600 feet separation from each other for cannabis retailers and Ordinance NO. 1538 Section 3 B allowing Quote "multiple cannabis businesses may submit an application for each eligible property in the city" unquote. We are worried that these changes will result in an unfair lottery process.

On October 3rd of 2018 the planning commission considered ordinance 1531 and unanimously recommended that the city council adopt the ordinance but that it be revised to delete the 600-foot separation requirement between cannabis retailers. The planning commission was of the opinion that because the number of locations that retailers could operate in the Highway Serving Commercial zoning district of the city was already LIMITED, there was little value in further separating the three conditionally permitted uses from each other.

Well, the distance between Sunset Avenue and 8th street is approximately 1.5 miles which is about 7900 feet. We have identified at least 6 properties that are eligible and are 600 hundred feet apart from each other. That's twice as many properties as needed for the 3 permits that will be issued. We have looked into almost every city in CA that have cannabis retail ordinances. All of them have some kind of separation distances from each other. Eliminating the 600 feet separation distance and allowing multiple cannabis retailers to submit an application for each eligible property in the city may end up in, including but not limited to, aiding a creation of monopoly. For example, the property, which is a shopping center, located at 1484 W Ramsey St, which hosts the Sears Appliance Repair, consists of multiple units. Allowing multiple cannabis businesses to apply for each eligible property (in this case unit) in the city and not having any kind of separation between cannabis businesses means that the property with more than one eligible address has an advantage over the other properties that have only one eligible address and can be a cause for unfair lottery process and possibly monopolization. That defeats the whole spirit, merits and purpose of the lottery and by extension is an invitation for lawsuits. We are of opinion based on certain facts that removing the 600 feet separation will favor certain individuals who are one way or another favored by the city and have major influence on how the city conducts its business. Please do the right thing and do not remove the 600 feet separation or at least consider to lower it to 300 feet. Also please do the right thing and do not allow more than one applicant per each eligible property in the city.

Thank you!

Exhibit “C”

to the December 11, 2018, Regular Meeting Minutes

Banning Distribution Center GPA 17-2501, ZC 17-3501, DR 16-7002 and EA 16-1503

City Council Public Hearing

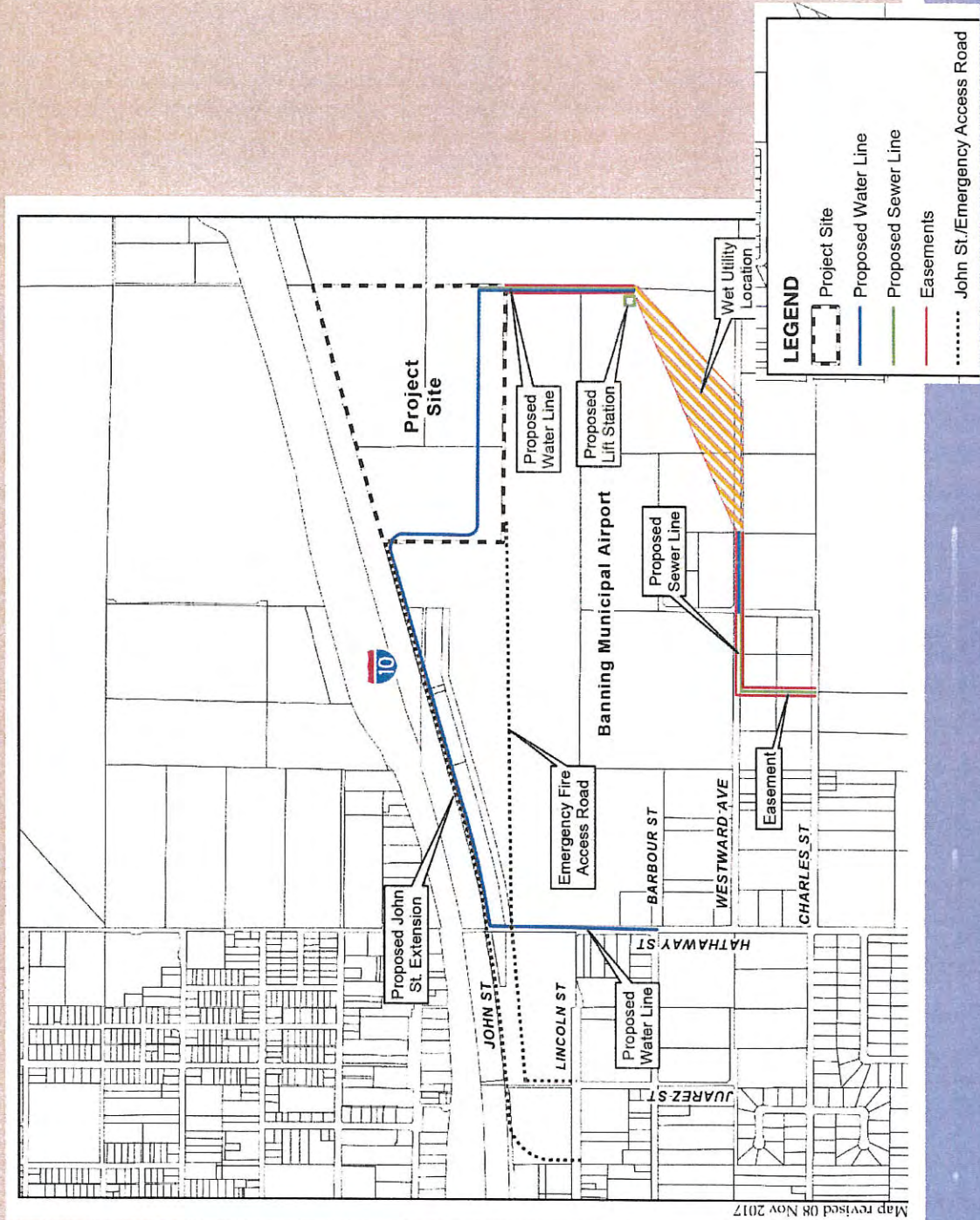
**December 11, 2018
5:00 P.M.**

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



STAGECOACH TOWN USA
Proud History • Prosperous Tomorrow

Project Location



Project Description

- 1,000,000 s.f. warehouse building
 - 10,000 s.f. office space included
- Three (3) vacant undeveloped parcels
- Current Zoning
 - 1 parcel - building site – Airport Industrial (AI)
 - 2 parcels - dual zoning on each parcel - PF-A
 - Requesting GPA & ZC from PF-A to AI

Project Background

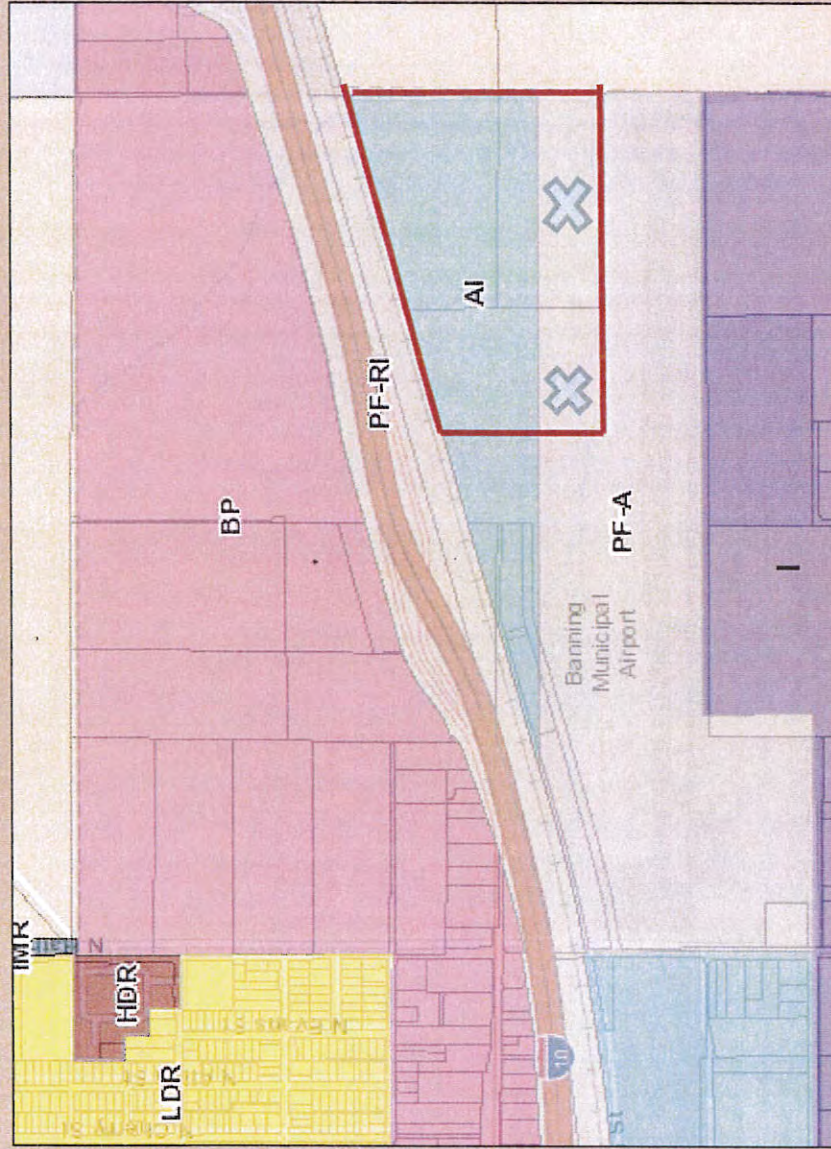
- TPM 34335 approved 2007
- MND approved 2007
- TPM extensions until October 22, 2019
- Prior to Map recordation Parcel Merger is required
- GPA and ZC are needed for Parcel Merger

Existing Land Use

Subject Site	Vacant Land	Airport Industrial (AI) and Public Facilities – Airport (PF-A)	Airport Industrial (AI) and Public Facilities – Airport (PF-A)
North	Union Pacific Railroad (Railroad) and Interstate 10 (I-10)	Public Facilities – Railroad/Interstate/(PF-RI)	Public Facilities – Railroad/Interstate/(PF-RI)
South	Banning Municipal Airport facility	Public Facilities – Airport/(PF-A)	Public Facilities – Airport/(PF-A)
East	Vacant Land owned by the Morongo Band of Mission Indians	Not in City's Sphere of Influence.	Not in City's Sphere of Influence.
West	Banning Municipal Airport facility	Public Facilities – Airport/(PF-A) / Airport Industrial/(A-I)	Public Facilities – Airport/(PF-A) / Airport Industrial/(A-I)

General Plan Amendment 17-2501

Zone Change 17-3501



Legend

- Airport Industrial
- Business Park
- Downtown Commercial
- General Commercial
- High Density Residential (HD)
- High Density Residential (H1-1)
- Highway Service Commercial
- Industrial
- Industrial-Mineral Resources
- Low Density Residential (LD)
- Medium Density Residential (MD)
- Mobile Home Parks
- Open Space - Hillside Presencia
- Open Space - Parks
- Open Space - Resources
- Professional Office
- Public Facilities - Airport
- Public Facilities - Cemetery
- Public Facilities - Fire Station
- Public Facilities - Government
- Public Facilities - Hospital
- Public Facilities - Railroad
- Public Facilities - School
- Ranch/Agriculture - Hillside 1
- Ranch/Agriculture (10 ac min.)
- Rural Residential - Hillside 1
- Rural Residential (0-1 du/ac)
- Very Low Density Residential (VLD)
- Parcels



From Public Facilities – Airport (PF-A) to Airport Industrial (AI)

General Plan Amendment

- Consistent w/General Plan
 - Industrial Goal:
 - Provides a balanced mix of non-polluting industrial land uses
 - Provides local jobs for the City's residents
 - GP Land Use Element
 - include industrial lands for manufacturing, warehousing and distribution
 - Compatible with adjacent residential lands

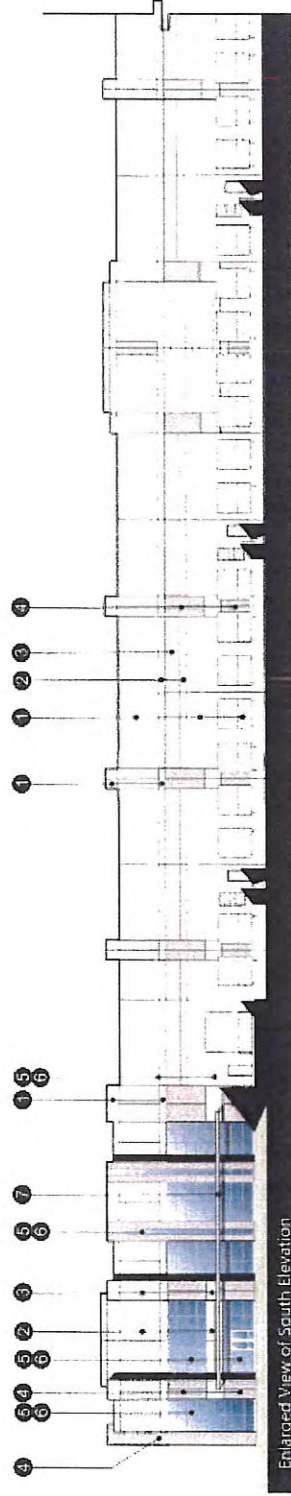
Design Review 16-7002

- Modern Industrial Building
- Height ranges from forty-two” to forty-eight”
- White tilt-up walls
- Articulation – alternating cream and beige horizontal and vertical accent bands
- Columns – 45-ft intervals
 - Multi-striped shades of cream, grey & beige
- Painted arches throughout



Elevation Articulation

- | | | | | | | |
|---------------------|------------------------------|----------------------------|-----------------------------|----------------------------|----------------------------|--|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 |
| Frazer
001 White | Frazer
8791W Gray Pennant | Frazer
8793M Gray Cliff | Frazer
8794M Fired Steel | Clear Anodized
MULLIONS | Blue Reflective
GLAZING | Sherwin-Williams Metallics
to match Frazer 001 White
(Clearcoat)
@ Metal CANOPY |



Banning Distribution Facility BANNING, CA



Job No 15104.00

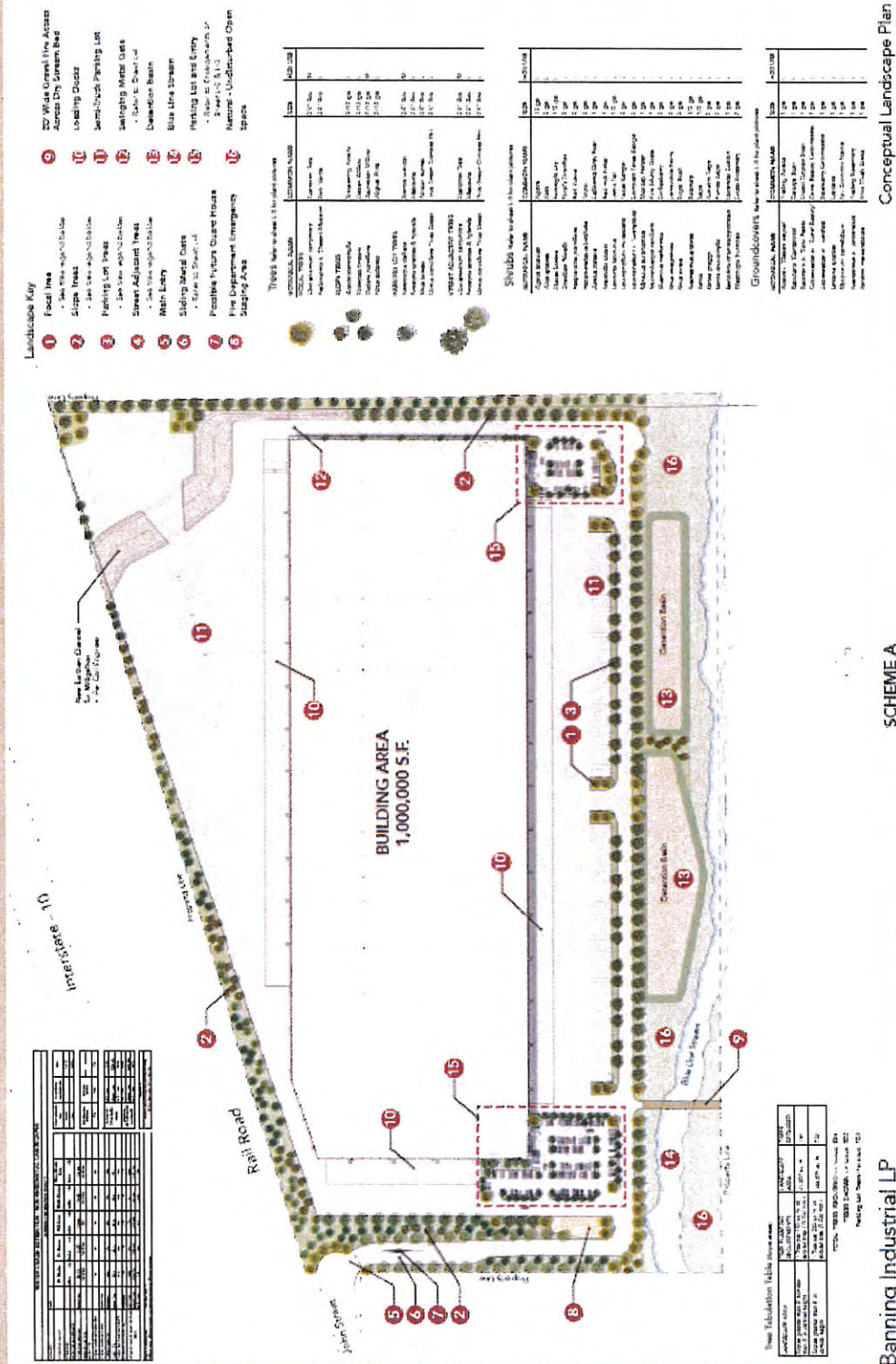
CONCEPTUAL COLORED ELEVATIONS & MATERIAL BOARD

09.15.2015



STAGECOACH TOWN USA
Proud History • Inspiring Future

Site Plan / Landscape Plan



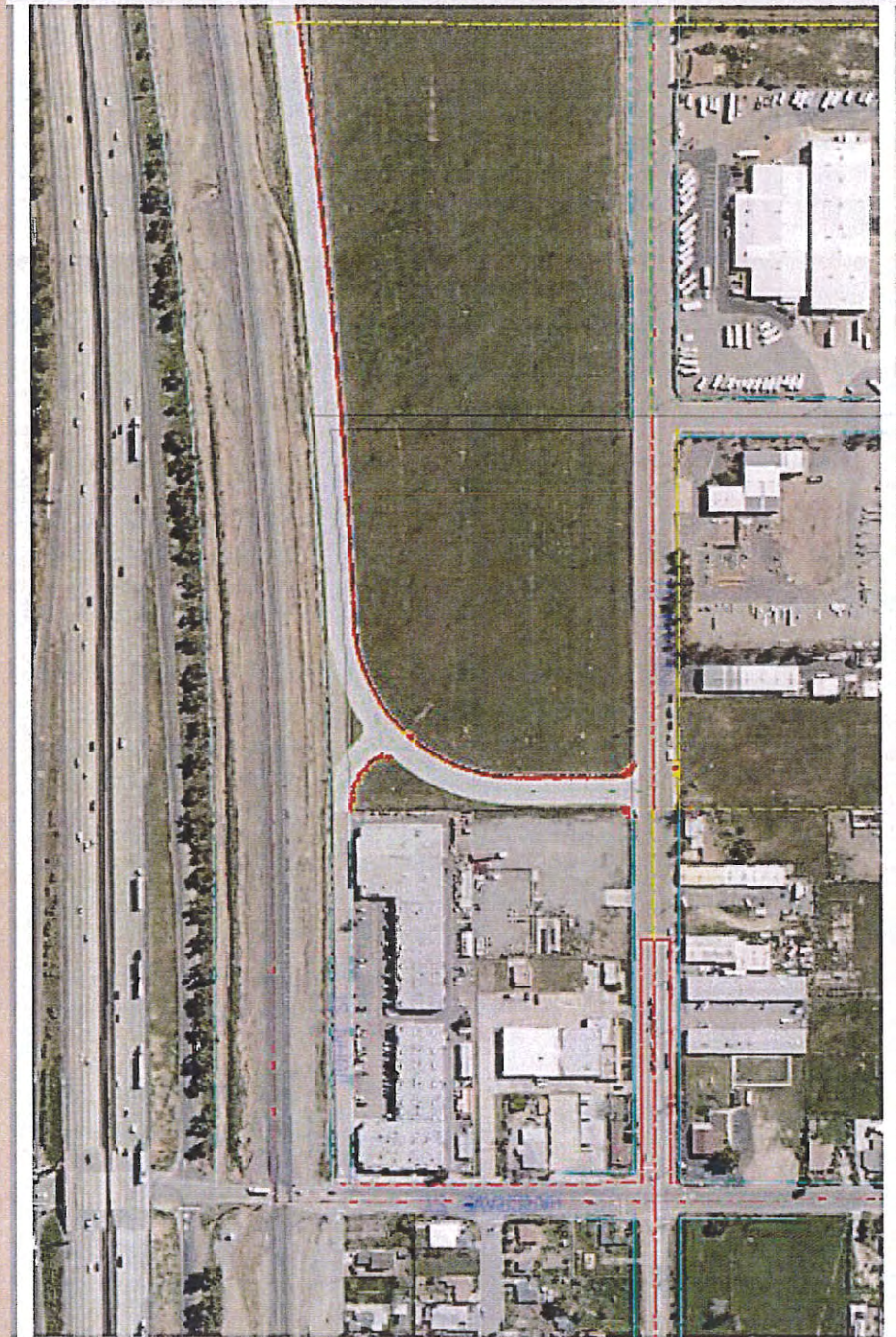
SCHEME A

Banning Industrial LP



[illegible]

John Street Realignment



Environmental Assessment 16-1503

- City of Banning - lead CEQA agency
- City finds and certifies that the EIR was reviewed and all information was considered
- Mitigation Monitoring & Reporting Program will addresses all areas with any potential impacts as required by CEQA



Environmental Assessment 16-1503

- Additional detail on the EIR will be presented by the Applicant's Environmental Consultant and Team



Questions?

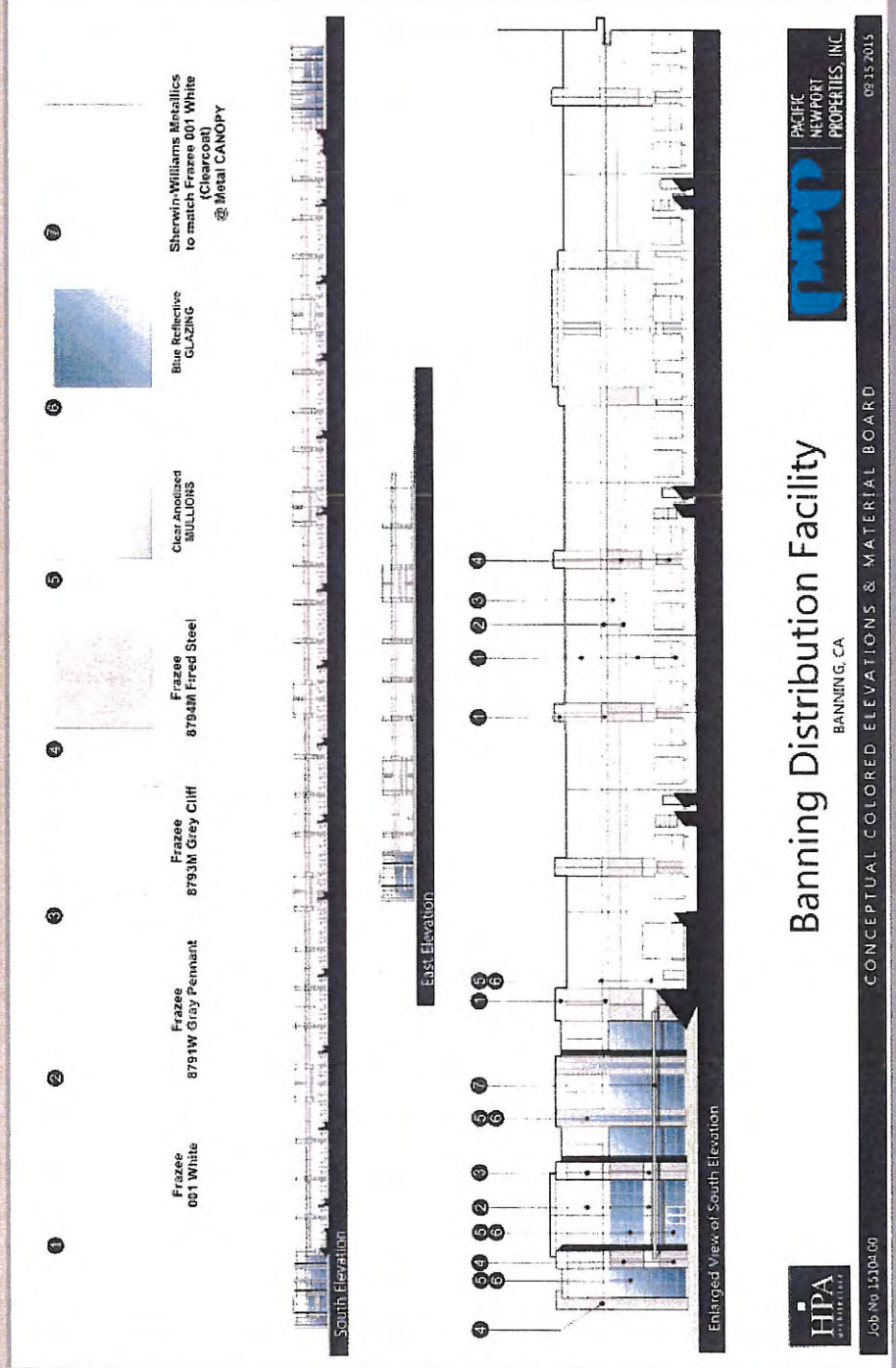


Exhibit “D”

to the December 11, 2018, Regular Meeting Minutes

To: Banning City Council

Fr: Barbara Jesus-540 Pine Valley, Banning

Re: Distribution Center at Hargrave/Jones



Date: Nov. 8, 2018

10:12 AM

I recently attended the Public Hearing for the Distribution Center Request on Nov. 7, 2018. The item was approved to send to the City Council.

State Clearinghouse #2018011032, General Plan Amendment #17-2501, Zone change No 17-3501 and Design Review #16-7002

It is my understanding there is no tenant, tentative or otherwise, at this time for the million square foot building proposed. Builder is intending to find one tenant per his minimal comments that night.

One thing Banning does not need is another empty building (or if leased out) that can create problems and costs to the city rather than be a definitive revenue source, if there is such a thing. As it is, the question of traffic has not been resolved satisfactorily in my opinion. Since we cannot get a simple thing like the Beaumont traffic turnoff situation on Highland Springs resolved to protect Banning's shopping center interest, I have not seen any evidence the traffic issues involving this project would be resolved without costs to Banning's taxpayers.

The Hearing made me think of some issues. I am just putting this out there for the council to review. No reply necessary. When this item is on the agenda, I would like this submitted as my comments.

- 1) What is the max revenue this building will bring into the city? What are the expenses that may result from the city "servicing" this new building?
- 2) Is there any information available about how many *possible tenants* are interested in this project, footage, and area? (Interest list/commitments/letter of intent) How many of these centers has this company built, average square footage, how many remain vacant, what was average time to obtain a tenant or tenants? What is the backup plan if one tenant won't take on the complete building?
- 3) I believe the "builder" said he had another building that was only 250,000 square feet and there were five tenants in that building.
- 4) There are numerous distribution centers being built along the 10 freeway from Moreno Valley thru the 60 freeway, from San Bernardino to Beaumont, and along the 215 freeway corridor.
- 5) Distribution Centers: How large is the existing supply between Riverside and San Bernardino counties? How quickly have tenants been obtained? How many remain empty and for how long? Does the "builder" of this project have the financial backing to sustain the project without a tenant?
- 6) Is there any type of insurance bond or performance bond that will ensure if the building remains empty and the owner bails, the city will not be left with another major problem?

Your attention to this will be appreciated.

Cc: Banning City Clerk

Law Offices of Abigail Smith

1455 Frazee Road, Suite 500, San Diego, CA 92108

Abigail A. Smith, Esq.
Email: abby@socalceqa.com
Telephone: (951) 506-9925
Facsimile: (951) 506-9975

VIA E-MAIL ONLY



December 10, 2018

City of Banning City Council
99 E. Ramsey Street
Banning, CA 92220
pnevins@ci.banning.ca.us
lsampson@ci.banning.ca.us

RE: *Public Comments—Banning Distribution Center (Resolution No. 2018-144 to certify an EIR and approve GPA No. 17-2501, Zone Change No. 17-3501, Design Review No. 16-7002); City Council Meeting December 11, 2018 – Agenda Item No. 4*

Dear City of Banning City Council:

On behalf of the Sierra Club—San Gorgonio Chapter, I submit the following additional comments regarding the Banning Distribution Center Project (“the Project”) including the Project’s Final Environmental Impact Report (“EIR”). This Project is scheduled for public hearing before the City Council on December 11, 2018 (Agenda Item No. 4).

The Project proposes the construction and operation of a one million square foot industrial/warehouse building on 63.9 acres north and east of the Banning Airport in the City. The Project also includes off-site improvements such as construction of a sewer lift station and major extensions of sewer and water lines. The Project site is currently vacant with natural terrain, vegetation and several drainages.

We urge you to deny the Project at this time. The Project’s EIR fails to comply with the California Environmental Quality Act (“CEQA”) in multiple important respects as discussed below. Our previous comments regarding the Project are fully incorporated herein.

The City Must Adopt Mitigation Measures For Significant Air Quality (NOx) Emissions

With respect to significant air quality impacts, the EIR still fails to propose feasible mitigation, and proposed mitigation measures have not been shown to be infeasible based on substantial evidence, including:

- A requirement that all trucks entering the site shall be 2010 model year or newer or powered by alternative fuels. This measure has not been shown to be infeasible. The fact that no tenant has been identified does not make the measure infeasible; on the contrary, it tends to show the measure is feasible because the owner can impose reasonable conditions on the future tenant lease. And, to the extent that model year 2010 trucks are legally required by year 2023, this is a feasible measure. (See, ARB website stating regulations) ¹ In fact, this measure was adopted by similar warehouse project in the City of Riverside. (See, Exhibit 1 hereto [Sycamore Canyon Business Park].) Enforcement of this measure is achievable by keeping a log of trucks that enter the site to verify compliance with this provision subject to inspection and verification by City Staff. The City must adopt all feasible mitigation measures with respect to NOx emissions. According to the AQMD regarding another warehouse project, “in order to meet federal requirements to achieve air quality standards, our air basin must reduce NOx emissions beyond existing regulations by up to 65% by 2023 and 75% by 2032.”
- A requirement that the Project be conditioned to require the phase-in of electric, hybrid electric, hydrogen electric, or battery operated (*i.e.*, non-diesel) trucks. Non-diesel trucks are reasonably foreseeable in the commercial market and therefore feasible within the life of the Project. The Project should at least be required to reevaluate whether some portion of the fleet serving the Project must be zero emission or battery powered in the future. The City has not made findings that electric or partially electric, or alternatively fueled, trucks are infeasible, that is, the City has not fully evaluated mitigation measures for zero or near-zero emission technologies that are commercially available over the course of the Project; or that the periodic review for feasibility of such technology is infeasible. The AQMD has suggested measures to implement zero and near-zero emission trucks including “periodic and frequent technology/feasibility reviews” for alternatively fueled trucks. (See, Exhibit 2 hereto).

¹ <https://www.arb.ca.gov/msprog/onrdiesel/documents/multirule.pdf>

This hyperlink and all hyperlinks cited herein are fully incorporated by reference.

- A requirement that all refrigerated trucks/ TRU's accessing the site must be equipped with electric hookup capabilities.
- A requirement that the Project be limited to the number of transport diesel trucks as assumed by the EIR. The Final EIR does not demonstrate that this measure is infeasible. The fact that a tenant has not been identified tends to show that reasonable conditions - such as limiting the number of trucks accessing the facility - can be imposed on the future tenant.
- A *prohibition* on refrigerated warehouse space consistent with the assumptions of the EIR's analysis. (Air Quality Technical Memorandum p. 3)
- All design or sustainability "features" shall be made requirements of the Project. Otherwise, they are unenforceable within the meaning of CEQA.
- A requirement to provide a lounge/rest area for truckers within the facility including with restrooms, vending machines, a television and seating area. The Project prohibits "overnight parking" on site. Hence the Project should provide a facility for truck operators to reduce the need to idle on surrounding streets or at the Project site. The FEIR's RTC states the closest rest areas are located 14 and 6.9 miles from the Project site.

Under CEQA, a project may not be approved with significant impacts unless all feasible mitigation is imposed. Public Resources Code § 21002. The requirement to adopt mitigation is an "affirmative legal obligation" that goes "[b]eyond [CEQA's] informational purpose." *Woodward Park Homeowners Ass'n, Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 914; *see also* Pub. Res. C. § 21002.1 (b). And, if the City wishes to approve a project with significant impacts, it must find mitigation measures to be infeasible based on *substantial evidence* in the record. Pub. Res. C. §§ 21081, 21081.5; Guidelines §15093 (a)(3), (b). *Without* adequate findings, the agency "shall not" approve the project. Guidelines §15092 (b)(2)(A). We submit that the above measures are feasible and must be adopted absent findings of infeasibility.

Furthermore, proposed air quality mitigation measures are inadequate. For instance, as written, MM AQ 6 implies that trucks accessing the Project site may be "older than 2007". Any *drayage* truck older than the model year 2007 *must* be prohibited from accessing the Project site pursuant to CARB regulations. *See*, <https://www.arb.ca.gov/msprog/onrdiesel/documents/multirule.pdf> (describing CARB regulation that "drayage fleets [diesel trucks transporting cargo to or coming from California's ports and intermodal rail yards] must comply with requirements by

operating only vehicles with 2007 MY engines or newer”). MM AQ-4 should be revised to state that the *signage shall state* that the idling of TRUs and APUs is limited to five minutes. MM AQ-4 should also be revised to state that no overnight/long-term parking *shall* be allowed. MM AQ 5 should be strengthened to state that no diesel-powered forklifts, yard trucks, o yard hostlers/goats are permitted.

The City Must Adopt Mitigation For Significant Greenhouse Gas Emissions

Although GHG impacts are significant, the EIR proposes only a single o te mitigation measure for GHG impacts, *i.e.*, that “high efficiency lighting shall be installed”. However, this measure is already a requirement of Title 24. *See*, <https://cltc.ucdavis.edu/publication/nonresidential-lighting-guide-2016-building-energy-efficiency-standards>; *see also*, [https://cltc.ucdavis.edu/sites/default/files/files/publication/2016 Title24 Nonresidential Lighting Guide 170419 web 0.pdf](https://cltc.ucdavis.edu/sites/default/files/files/publication/2016%20Title24%20Nonresidential%20Lighting%20Guide%20170419%20web%200.pdf)

The failure to adopt any GHG mitigation is unacceptable in light of California’s GHG emission reduction targets set forth in Assembly Bill (“AB”) 32 and subsequent legislation. *See*, <https://www.arb.ca.gov/cc/ab32/ab32.htm> (describing AB 32); <https://www.gov.ca.gov/2015/04/29/news18938/> (describing Executive Order B-30-15 establishing a GHG reduction target of 40 percent below 1990 levels by 2030); and, <https://www.arb.ca.gov/cc/cc.htm> (describing AB 32’s mandate to reduce GHGs by 80% below 1990 levels by 2050)

Electric power is one the largest sources of the state’s GHG emissions. *See*, <https://www.eia.gov/todayinenergy/detail.php?id=34792> (The transportation and electric power sectors are the two largest sources of California’s emissions, responsible for 37% and 19% of the state’s GHG emissions, respectively, in 2015.) In the United States, approximately 29% of GHG emissions come from the electricity sector. *See*, <https://www.ucsusa.org/clean-energy/renewable-energy/public-benefits-of-renewable-power#.XAlwWbMz-Y> *See also*, <https://www.eia.gov/tools/faqs/faq.php?id=77&t=11> Therefore, increasing renewables is a major component to the 2017 CARB Scoping Plan. *See*, https://www.arb.ca.gov/cc/scopingplan/scoping_plan_2017.pdf Yet, the EIR asserts that the use of solar power energy to reduce GHG emissions is impractical, because solar power will not substantially affect GHG emissions. This is untrue where GHG impacts are a cumulative problem, and because the Project is required by CEQA to adopt *all* feasible mitigation for Project impacts.

The use of solar power has not been shown to be infeasible. Solar panels on flat-roof warehouses in the Inland Empire is both logical and cost effective.^{2 3 4} The City must require that the Project utilize solar energy. *See*, <https://planning.rctlma.org/Portals/0/Postings/San%20Gorgonio%20Crossing/34260005%20Sec02-00%20Project%20Description.pdf?ver=2017-09-19-083918-033> (p. 2-10 - San Gorgonio Crossings Project in Riverside County will require 23% of project energy needs to be met by solar). The City has not shown that the utilization of solar power panels is infeasible within the meaning of CEQA. We submit that at least 50% of the Project's energy needs can be met by PV solar panels.

In addition to solar, the Project must also include EV charging units in the parking lot for some portion of the 6% of the parking stalls that are required to be designated and wired for EV parking per California code. EV charging units (Level 2 and QuickCharge) are readily available in the commercial market and inexpensive relative to other construction costs. The SCAQMD recommended that the Project "provide electric vehicle (EV) charging stations". There is nothing preventing the applicant from installing the charging stations in addition to designating and wiring the 6% of parking stalls for EV parking. This will promote and enable EV use by employees.

The Alternatives Analysis is Inadequate and the City Has Failed to Make Findings Supported by Substantial Evidence that Alternatives are Infeasible

The CEQA Guidelines specify that an EIR must "describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives," focusing on alternatives that would "avoid[] or substantially lessen[] any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." Guidelines § 15126.6 (a), (b). The EIR does not examine a "reasonable range" of project alternatives where it evaluates only one alternative apart from the "no project" alternative. Neither alternative is capable of meeting "basic" Project Objectives. *Id.* Three of the five Project Objectives involve the development of a warehouse building. The "no project" alternative (Alternative 1) assumes

² <https://www.prologis.com/logistics-industry-feature/prologis-and-amazon-partner-northern-californias-largest-solar>

³ http://www.nbcnews.com/id/25703283/ns/us_news-environment/t/warehouse-getting-solar-panels/#.XAmiFmbMwdU

⁴ <https://www.seattletimes.com/business/amazon/amazoncom-plans-big-solar-power-rollout-at-warehouses/>

no development on the site, while the Existing General Plan Land Use Designation alternative (Alternative 2) would not involve the development of a warehouse building. The EIR must evaluate a range of alternatives which are capable of meeting basic Project Objectives.

Alternative 2 has not been shown to be infeasible based on substantial evidence. The fact that the alternative would develop smaller buildings consistent with existing land use designations does not render the alternative financially or otherwise infeasible. There is no evidence in the record to support a claim of infeasibility.

Finally, as we have commented, the EIR should examine an alternative to the proposed warehouse building, *i.e.*, a reduced size *warehouse building* alternative. (See, Exhibit 3 hereto [EIR for Moreno Valley Logistics Center evaluating a Reduced Project Alternative].) Such an alternative would meet “basic” project objectives and would presumably reduce significant air quality and GHG emissions as a result of the smaller building and fewer diesel truck trips. The RTC and the findings of fact do not address a reduced size alternative; thus, the City has not shown that the alternative is infeasible based on substantial evidence, or any evidence.

The Statement of Overriding Considerations Is Not Supported by Substantial Evidence

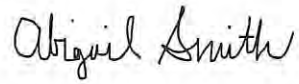
The proposed Statement of Overriding Considerations (“SOC”) is not supported by substantial evidence as required. The SOC contains vague claims that the Project will produce 500 permanent jobs, and that it will produce local jobs. There is no evidence to support these claims. Will the Project conduct local hiring events to encourage local applicants? How can the Project with no prospective tenant be sure that local jobs will be created, or that a certain number of any jobs will be created? Also, are there assurances that the jobs will be full-time, with benefits? (See, Exhibit 4 hereto; *see also*, <https://www.indeed.com/salaries/Warehouse-Worker-Salaries,-Inland-Empire-CA> (average hourly salary for a warehouse worker in the Inland Empire is \$12.47 per hour and typical tenure for a warehouse worker is less than 1 year). According to an article in the Los Angeles Times (November 28, 2018), fewer than half of the warehouse jobs in the Inland Empire pay a living wage. See, <https://www.latimes.com/business/la-fi-inland-empire-jobs-20181128-story.html>

Conclusion

The City should refrain from approving the Project until the EIR is revised and all feasible mitigation measures and alternatives are imposed.

7 | City of Banning
December 10, 2018
Banning Distribution Center – December 11, 2018 City Council Meeting

Sincerely,

A handwritten signature in cursive script that reads "Abigail Smith".

Abigail Smith
Law Offices of Abigail Smith

Enclosures – Exhibits 1 – 4

EXHIBIT “1”

EXHIBIT “1”

**CITY COUNCIL
FINAL APPROVED CONDITIONS**

CITY COUNCIL MEETING: FEBRUARY 14, 2017

PLANNING CASES: P14-1072 (Environmental Impact Report), P14-1081 (Design Review), P14-1082 (Minor Conditional Use Permit), P16-0101 (General Plan and SP Amendments), P16-0102 (Tentative Parcel Map) and P16-0103 (Variance and Grading Exceptions)

Case Specific

• **Planning**

1. All mitigation measures, as outlined in the Mitigation, Monitoring and Reporting Plan in the FEIR, shall be completed in accordance with the designated schedule.
2. Approval of this project is contingent upon the Certification of the Environmental Impact Report associated with this project.
3. **Advisory:** Signs shall be permitted in accordance with Chapter 19.620 of the Zoning Code. Any signs shall be subject to separate review and assessment, including any required variances. A separate sign application, including fees and additional sets of plans, if necessary prior to any sign permit issuance.
4. Covenants, Conditions and Restrictions (CC&R) for 2010 diesel engine standards shall be required. This condition shall be a requirement of all leases. lease
CC&R

Prior to Map Recordation

5. General Plan Amendment and Specific Plan Amendment (P16-0101) shall be finalized and/or adopted.
6. The General Plan Amendment and Specific Plan Amendment shall be finalized and adopted concurrently with the development of this site.

Prior to Grading Permit Issuance:

7. General Plan Amendment and Specific Plan Amendment (P16-0101) shall be finalized and/or adopted.
8. The applicant shall offer to remove the existing fence north of the property at the discretion of the property owner. neighbor

Prior to Grading Permit Issuance:

9. A 40-scale precise grading plan shall be submitted to the Planning Division and include the following:

EXHIBIT “2”

EXHIBIT “2”



South Coast
Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4182
(909) 396-2000 • www.aqmd.gov

E-Mailed: June 24, 2015
markg@moval.org

June 24, 2015

Mr. Mark Gross
Community and Economic Development Department
14177 Frederick Street
Moreno Valley, CA 92553

**Final Program Environmental Impact Report (Final PEIR)
for the Proposed World Logistics Center Project**

The South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to submit comments on the Final PEIR for the World Logistics Center Project. SCAQMD staff appreciates the time that city staff and the project applicant have taken to meet with us to discuss this project and the inclusion of some mitigation measures in the Final PEIR, such as the requirement for 100% Tier 4 construction equipment. However, we continue to have significant concerns about this project that were raised in previous comments, including those not adequately addressed in the Final PEIR.¹ Most importantly, given the magnitude of the air quality impacts, the project must provide more substantial mitigation for the significant emissions from the additional on-road truck trips generated by this project.

SCAQMD staff recognizes the critical role that warehousing and goods movement have in our regional and national economy. While there has been tremendous growth in warehousing in our region over the past several years to accommodate the needs of the logistics sector, the scale of the proposed World Logistics Center is unprecedented. The 40.6 million square feet of new warehousing in this single project make up almost ten percent of the total new warehousing space projected to be needed in the region by 2035², and also represents an area that is bigger than 32 individual cities in our jurisdiction. As a further indication of the scale of this project, the estimated ~14,000 trucks per day serving this project at project build out will be more than half the total number of trucks that currently visit the entire Port of Long Beach³. Below we present the major air quality issues that the lead agency must address before it considers approving this project.

¹ <http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2012/march/world-logistics-center-specific-plan.pdf>
<http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2012/may/world-logistics-center-specific-plan-may-2012.pdf>
<http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2013/april/world-logistics-center.pdf>
<http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2015/june/fpeirworldlog.pdf>

² Industrial Space in Southern California: Future Supply and Demand for Warehousing and Intermodal Facilities, Southern California Association of Governments (2010)
<http://www.freightworks.org/DocumentLibrary/Comprehensive%20Regional%20Goods%20Movement%20Plan%20and%20Implementation%20Strategy%20-%20Regional%20Warehousing%20Needs%20Assessment%20Final%20Report.pdf>

³ Based on the most recent emission inventory: <http://www.polb.com/civica/filebank/blobdload.asp?BlobID=12246>

AR 062977

Inadequate Mitigation of Trucking Emissions

While the proposed project includes a seemingly stringent requirement to only allow trucks that meet the 2010 emissions standard onsite, in reality this measure will do very little to reduce air quality impacts beyond current regulatory requirements. Due to the state Air Resources Board's existing Truck and Bus Regulation, by the time the first warehouse will become operational (likely no sooner than 2018), approximately 75 percent of all truck miles in our region will already be driven by trucks meeting the 2010 emissions standard. By 2023 (when half of this project is still unbuilt), the proposed mitigation will affect no more than about 1 percent of the project's trucking emissions from then onwards.

As currently proposed, the mitigated emissions from this project will reach between about one half and three quarters of a ton of nitrogen oxide (NOx) emissions each day for the majority of the project's life.⁴ To put this in perspective, this level of emissions is comparable to facilities in the top ten largest stationary sources of NOx in the air basin (e.g., power plants or refineries). Despite this substantial air quality impact, the proposed mitigation from this project does not include all feasible measures to reduce impacts, nor does it provide a fair-share reduction in NOx to meet air quality standards, as demonstrated below.

In order to meet federal requirements to achieve air quality standards, our air basin must reduce NOx emissions beyond existing regulations by up to 65% by 2023 and up to 75% by 2032⁵. If these ozone and particulate matter air quality standards are not achieved, the region faces two significant challenges. First, we will continue to experience poor air quality and the resulting health impacts, including lung damage and premature deaths. Second, federally mandated sanctions will be imposed, including higher operating costs for businesses with air permits and more importantly for this project, loss of federal transportation funding. It is for these reasons that we are disappointed that this project does not propose more measures to mitigate its air quality impacts. This project can and must do more.

The unprecedented scale of this project requires all feasible mitigation measures for the large amount of NOx emissions that will be generated by the project. Although the PEIR investigated the truck technologies currently utilized by the ports of Los Angeles and Long Beach to determine what is feasible to implement for this project today, it ignored the more important actions taken by both ports to encourage and implement newer technologies in the future. For example, because vehicle technology is evolving rapidly, both ports have programs in place to demonstrate and deploy newer truck tailpipe and infrastructure technologies as they become available.⁶ These actions are implemented both as mitigation measures within individual CEQA projects⁷, and as measures separate

⁴ NOx is a key ingredient to both ozone and particulate matter formation in the atmosphere, two pollutants for which the air basin and the Inland Empire in particular do not meet air quality standards.

⁵ Based on estimates from the 2012 Air Quality Management Plan.

⁶ <http://www.cleanairactionplan.org>.

⁷ See the following Mitigation, Monitoring, and Reporting Programs for examples of how projects have incorporated future technology reviews and implementation into project approvals:

from development projects. This approach has proven to be generally successful to ensure continued growth at the ports by bringing stakeholders together to build consensus regarding feasible mitigation measures without excessive litigation and corresponding delays, subsequently resulting in sizable air quality improvements.

The Final PEIR's response to SCAQMD staff and ARB staff comments regarding the implementation of an alternative technology truck phase-in was not sufficient and did not consider the feasible measures that are, or soon will be, available to implement new technologies early and throughout the life of the project. It is inappropriate to simply dismiss as 'speculative' the comments of two public agencies who have considerable expertise in truck engine technologies and who have devoted considerable financial resources to ensure that these technologies will be commercially available in the time frames specified. Establishing a program of enforceable mitigation that actually will reduce emissions for most of the project's life is particularly important at this juncture because the PEIR is being used to approve a Development Agreement, which may not receive any further environmental review.

More specifically, the lead agency and project applicant should consider developing strategies that are consistent with ARB's Draft Sustainable Freight Strategy (SFS) document⁸. For example, the project could include a project-wide cap (e.g., SFS page 45) that declines through time as newer truck engine types become commercially available and/or are required to be manufactured per future regulations. Today there are already many trucks that are commercially available that have certification levels that are below ARB's current NOx standard (Attachment A). Further, trucks that meet ARB's lowest Optional NOx standard (90% lower than the current standard) are expected to be commercially available in the 2018 timeframe, very early in the life of the project (Attachment B). Lastly, engine technologies that may achieve even greater reductions in emissions are being demonstrated widely today for potential commercialization well before project buildout (Attachment C).

Requested Modification to PEIR⁹: SCAQMD staff strongly recommends that the PEIR implement a program that includes elements such as:

- Steps to implement new truck and infrastructure technologies as a part of the project based on periodic and frequent technology/feasibility reviews as individual buildings are leased or sold.
- Project-wide or building-specific emissions caps that decline through time. The lowering of emission caps could be tied to the advancement of engine technologies. For example, in a set period of time after the commercial introduction of trucks meeting ARB's lowest Optional NOx Standard the emission caps could be reduced by a certain percentage. These caps could be implemented as individual buildings are leased or sold.

<http://www.polb.com/civica/filebank/blobdload.asp?BlobID=6261> (e.g., MMAQ-8 & 25)

http://www.portoflosangeles.org/FEIR/YTI/FEIR/MMRP_FINAL.pdf (e.g., MMAQ-8 & LMAQ-1 & 2 & 4)

⁸ Draft document available here: http://www.arb.ca.gov/gmp/sfu/Sustainable_Freight_Draft_4-3-2015.pdf

⁹ SCAQMD staff is available to help craft detailed revisions to the project's mitigation on an expedited basis.

- Similar to the SCAQMD Surplus Off-road Option for NOx (SOON) program for owners of off-road vehicles¹⁰, tenants that occupy buildings in the project site should be required to apply in good faith for incentive funding assistance¹¹ to replace and retrofit older trucks. Should awards be granted, the applicant must also be required to use them.

Misleading Discussion of Potential Health Risks

The PEIR misinterprets and then relies heavily on a single study published by the Health Effects Institute (HEI) to determine that “*new technology diesel exhaust does not cause cancer.*” (PEIR pg. 4.3-1). The PEIR should not make such sweeping conclusions based on a single study. While the study identifies real reductions in the mass of particulate matter with newer truck technologies, the study size was too small to identify potential cancer effects for exposures similar to what people will experience from this project. This study did not, nor was it designed to, evaluate the question of whether the toxicity per unit mass of diesel exhaust particulate (e.g., the cancer potency factor) was different compared to older engines. At the concentrations studied, one would not expect to find any tumors given the number of animals used, even if the carcinogenic potency of the new technology particulate emissions were the same as that of the particulate from the older technology engines. From the study results, it is not possible to make any conclusions on the relative carcinogenic potency of diesel exhaust particulates.

Further, the state Office of Environmental Health Hazard Assessment (OEHHA) is charged with determining the cancer potency factors of all pollutants for use in Health Risk Assessment (HRAs) throughout the state. The cancer potency factors from OEHHA have been used in the HRA prepared for this EIR, and the emission factors from the state Air Resources Board’s EMFAC model already account for the reduced diesel exhaust coming from 2010 trucks. Therefore, the EIR’s conclusions regarding diesel exhaust from this single HEI study are wholly unsupported by the volume of studies that OEHHA and ARB rely on to determine the carcinogenicity of diesel particulate matter coming from 2010 trucks.

We note that in response to ARB staff’s comments expressing concern about the misuse of the HEI study, the PEIR consultant provided a response using a partial quote taken from the study’s Executive Summary.

RESPONSE TO ARB STAFF’S CONCERNS ABOUT THE HEI STUDY IN
JUNE 10, 2015 MEMO FROM LSA ASSOCIATES TO MORENO VALLEY
PLANNING DEPARTMENT.

“The primary conclusion of the HEI ACES is ‘that the [New Technology Diesel Exhaust] would not cause an increase in tumor formation or substantial toxic health effects.’ (HEI ACES Report p.3)”

SCAQMD staff is concerned that the lead agency is selecting this quote out of the full context of the report and ignoring an important aspect of the HEI publication process, the

¹⁰ <http://www.aqmd.gov/home/programs/business-business-detail?title=off-road-diesel-engines&parent=vehicle-engine-upgrades>

¹¹ For example, Carl Moyer, Proposition 1B, VIP, or other similar funding programs.
<http://www.aqmd.gov/home/programs/business-business-detail?title=vehicle-engine-upgrades>

independent peer review. Importantly, in the Commentary prepared by HEI's own independent review panel, the peer reviewers felt it necessary to modify the quote from above to the statement below.

HEI PEER REVIEW PANEL CONCLUSION ON STUDY (PAGE 165 OF THE HEI STUDY) (**EMPHASIS ADDED**):

"Using appropriate statistical approaches to analyze the data, the investigators in this core study confirmed the a priori hypothesis, namely, that lifetime exposure to [New Technology Diesel Exhaust] at the concentrations studied would not cause an increase in tumor formation or substantial toxic health effects in rats, although some biologic effects might occur."

The HEI study as designed cannot determine whether diesel exhaust from the World Logistics Center project would pose a potential cancer risk in the surrounding community. The study does not contain sufficient information to determine whether 2010 diesel truck exhaust can cause cancer in humans. The number of animals in the study was too low to detect any cancer risk that would be expected at the concentrations evaluated. Therefore in SCAQMD staff's expert opinion, the whole of the scientific literature leads us to conclude that 2010 diesel truck exhaust be considered carcinogenic.

Requested Modification to PEIR: SCAQMD staff strongly recommends that the lead agency not rely on an approach that cherry picks and misuses a single study to conclude that diesel exhaust emitted from this project would not be carcinogenic. In particular, this study – which contradicts the general consensus of air quality experts that diesel exhaust is a carcinogen – should not be used as substantial evidence to support a Statement of Overriding Considerations. For significance determinations, the PEIR instead should only rely on the HRA that was already prepared following standard procedures to account for reduced emissions from 2010 trucks. If the lead agency chooses to keep references to the HEI study as part of the PEIR, then it should only be as supplementary information and characterized correctly.

Conclusion

As demonstrated in this letter, the project's mitigation is insufficient, but the city still has several options to improve this project and the PEIR prior to approval that would reduce the substantial and significant impacts on air quality. The choice is not about promoting jobs OR promoting clean air. It is about promoting a future that provides both. It has been done before and it should be done for this project.

EXHIBIT “3”

EXHIBIT “3”



roadway segments under short-term construction and Existing plus Project traffic conditions and would make cumulatively considerable contributions to LOS deficiencies at numerous Project study area intersections and roadway segments under short-term construction, Existing plus Project, Opening Year (2020) and General Plan Buildout (Post-2035) traffic conditions. In addition, under both scenarios the addition of traffic would result in cumulatively considerable contributions to LOS deficiencies at several intersections and freeway facilities, including I-215 and SR-91, included within the Riverside County CMP roadway network under Opening Year (2020) and General Plan Buildout (Post-2035) traffic conditions. The No Project Alternative would be required to implement the same mitigation measures as the Project; however, the required mitigation would be insufficient to reduce all direct and cumulatively considerable impacts to less-than-significant levels.

L. Conclusion

The No Project Alternative would have the same ground-disturbing physical impacts as the proposed Project, construct the same amount of building area, and attract the same types of building users as the proposed Project. None of the Project's significant and unavoidable impacts would be reduced in severity or avoided by the No Project Alternative, and the No Project Alternative would result in a significant air quality impact related to diesel particulate matter (DPM) emissions (requiring mitigation) that would not occur under the Project. Under this Alternative, the site's pervious surface area would increase by approximately 12.0 acres, which would be a landscaped area parallel to Indian Street. The streetscape along Indian Street would be wider than occurs on Indian Street north of Krameria Avenue and would likely look disjointed and awkward, but it would not result in a significant aesthetic impact associated with visual quality and character. More water would be needed for irrigation under this Alternative, which given the State of California's current drought situation, could be regarded as a wasteful and inefficient use of water and the energy needed to supply the water. The No Project Alternative would meet most of the Project's objectives, although some of them would be met to a lesser degree than the Project as indicated in Table 6-2 (see the end of this EIR Section).

6.3.3 Reduced Project Alternative

The Reduced Project Alternative was selected by the Lead Agency to evaluate the comparative environmental benefits of constructing a project with less building square footage. Under this Alternative, the Project's building area would be reduced by 326,385 s.f., which is an approximately 19 percent reduction in building area compared to the proposed Project. The reduced building coverage area would be used for parking. Under this Alternative, 1,409,800 s.f. of building space would be provided in three (3) buildings with the remainder of the property used as truck parking, as compared to the Project's proposal to provide four (4) buildings with a combined total of 1,736,180 s.f. of floor space. The analysis for this Alternative assumes 1,153,550 s.f. of high cube warehouse space in one (1) building and 256,245 s.f. of light industrial space in two (2) buildings.



A. *Aesthetics*

Under the Reduced Project Alternative, the visual character and quality of the site and the amount of artificial light that would be introduced on the property would be very similar to the proposed Project. As previously described in EIR Subsection 4.1, the Project site is not visible from any state- or locally-designated scenic highway. Accordingly, neither the proposed Project nor this Alternative would negatively impact a scenic highway. Also, neither this Alternative nor the proposed Project would damage scenic on-site resources, because such resources are not present on the property. The aesthetic quality and character of the property after development of this Alternative would be similar to that of the proposed Project. Although less building square footage would be constructed under this Alternative, the reduction in building intensity would occur interior to the subject property and the aesthetics of the site, as seen from off-site, would be very similar. Neither the proposed Project nor this Alternative would result in significant direct or cumulatively considerable impact to aesthetics. Impacts would be less than significant under both the proposed Project and the Reduced Project Alternative.

B. *Agricultural Resources*

The Reduced Project Alternative would have the same ground-disturbing physical impacts as the proposed Project. The property contains soils that have severe limitations for agricultural use and the site does not contain Prime Farmland, Unique Farmland, or Farmland of Statewide Importance designated by the State of California's Farmland Mapping and Monitoring Program (FMMP). Similar to the proposed Project, this Alternative would not impact significant agricultural resources.

C. *Air Quality*

Under this Alternative, the construction schedule would be slightly reduced as compared to the proposed Project, due to the approximately 19 percent reduction in building area. As such, construction-related air quality emissions would occur over a slightly shorter period of time, but total daily emissions during construction activities would be the same as the proposed Project. Therefore, air quality pollutant emissions associated with short-term construction and the overlap of construction and operational activities would be identical between the proposed Project and the Reduced Project Alternative. After the application of the same design features, mandatory regulatory requirements, and feasible mitigation measures as the Project, short-term construction-related NO_x emissions would still exceed the SCAQMD numerical thresholds for daily emissions, resulting in significant and unavoidable impacts. In the event that short-term construction activity and long-term operational activities overlap, the short-term overlapping emissions of VOC, NO_x, CO, PM₁₀ and PM_{2.5} would exceed the SCAQMD numerical thresholds for daily emissions, resulting in significant and unavoidable impacts.

Because the Reduced Project Alternative would construct approximately 19 percent less building area than the Project, the Alternative would produce a concomitant reduction in traffic compared to the proposed Project and require a concomitant reduction of energy use. As such, mobile source and energy source air emissions would be reduced compared to the Project. None of the Project's



significant impacts would be avoided and none of the Project's significant and unavoidable impacts would be eliminated. After the application of design features, mandatory regulatory requirements, and feasible mitigation measures, the Reduced Project's long-term operational-related VOC and NO_x emissions would still exceed the SCAQMD numerical thresholds for daily emissions. In addition, the VOC and NO_x emissions would cumulatively contribute to an existing air quality violation in the SCAB (i.e., NO_x and O₃ concentrations, which do not meet regional attainment status).

The Project would expose nearby sensitive receptors to DPM emissions concentrations that fall below the SCAQMD significance threshold of 10 in one million. Thus, the Project's impacts associated with the exposure of sensitive receptors to substantial pollutant concentrations would be less than significant. Because the Reduced Project Alternative would generate less traffic than the Project, there would be a concomitant reduction in DPM emissions at the Project site, which would further reduce the Project's less-than-significant impact.

D. Biological Resources

This Alternative would have an identical physical impact footprint as the proposed Project. As such, impacts to biological resources that would occur under this Alternative are the same as those of the proposed Project. Both the proposed Project and this Alternative would be subject to the same regulatory requirements and mitigation measures that would reduce impacts to less-than-significant.

E. Cultural Resources

No known historic, archaeological, paleontological resources, unique geological features, or human remains are present on the Project site under existing conditions. This Alternative would have an identical physical impact footprint as the proposed Project. As such, potential impacts to cultural resources that would occur under this Alternative are the same as those of the proposed Project. Both the proposed Project and this Alternative would be subject to the same regulatory requirements and mitigation measures that would reduce impacts to less-than-significant.

F. Greenhouse Gas Emissions

Due to the reduction in the amount of traffic associated with Reduced Project Alternative, mobile-source GHG emissions would decrease as compared to the proposed Project. Additionally, because the Reduced Project Alternative would involve less building area than the Project, non-mobile source operational GHG emissions (fossil fuel use for building operation) also would be reduced under this Alternative. Therefore, the Project's less-than-significant GHG impacts would be reduced under this alternative in comparison to the proposed Project. Regulatory requirements and mitigation measures to reduce GHG emissions, similar to those required of the proposed Project, also would be required of this Alternative. However, even with compliance with applicable regulations and implementation of mitigation measures, GHG emissions generated by the Reduced Project Alternative would still exceed the SCAQMD significance threshold of 10,000 MTCO₂e. Therefore, this Alternative would reduce the severity of Project's unavoidable cumulatively considerable GHG emissions impact, but not to below a level of significance.



G. Hazards and Hazardous Materials

The Reduced Project Alternative would have the same ground-disturbing physical impacts as the proposed Project and attract the same types of building occupants. For these reasons, this Alternative's potential hazards and hazardous materials impacts would be very similar to the proposed Project. As with the proposed Project, mandatory compliance to federal, state, and local regulations during construction and long-term operation would ensure that the proposed development would not create a significant hazard to the environment due to routine transport, use, disposal, or upset of hazardous materials. Assuming mandatory compliance with standard ALUC conditions of approval, the buildings constructed under the Reduced Project Alternative would have the same building heights as proposed by the Project, which were determined by the Riverside County Airport Land Use Commission (ALUC) to be consistent with the restrictions and requirements of the March ARB/IPA Compatibility Plan. Impacts would be less than significant under both the proposed Project and the Reduced Project Alternative.

H. Hydrology and Water Quality

The Reduced Project Alternative would have the same ground-disturbing physical impacts as the proposed Project, attract the same types of building occupants, and have a near-identical drainage system design. Impervious surface coverage also would be approximately the same because the reduction in building coverage would be offset by increased vehicle parking areas. Because this Alternative would have the same drainage system design as the proposed Project, this Alternative's hydrology and water quality impacts would be nearly identical to the proposed Project. Similar to the Proposed Project, implementation of this Alternative would require preparation of a Storm Water Pollution Prevention Plan (SWPPP) to address construction-related water quality issues, as well as compliance with a site-specific Water Quality Management Plan (WQMP) and its associated BMPs. Therefore, implementation of this Alternative would result in less-than-significant impacts with preparation of a SWPPP and compliance with a site-specific WQMP and its associated BMPs. The Reduced Project Alternative would result in similar hydrology and water quality impacts as the Project.

I. Land Use/Planning

Because a fewer number of traffic trips would be generated under the Reduced Project Alternative, the Project's significant and unavoidable cumulatively considerable traffic impact to CMP circulation facilities, including I-215 and SR-91, would be reduced but not avoided. Similarly, because air pollutant emissions would be reduced under this Alternative, as compared to the proposed Project, this Alternative would reduce the Project's degree of inconsistency with the SCAQMD's 2012 AQMP and the SCAG's *RTP/SCS* related to regional air quality. Regardless, this Alternative would not avoid the Project's cumulatively considerable traffic and air quality impacts and, therefore, would not avoid the Project's significant and unavoidable cumulatively conflicts with the Riverside County CMP, SCAQMD AQMP, and SCAG *RTP/SCS*.



J. Noise

As with the proposed Project, noise associated with this Alternative would occur during near-term construction activities and under long-term operation. The Reduced Project Alternative would have the same ground-disturbing physical impacts as the proposed Project and construct the same amount of building square footage. Therefore, noise associated with short-term construction would be identical between the proposed Project and the Reduced Project Alternative. Although building construction activities would be less intense associated with the smaller building sizes, construction would be located the same distance away from receiver locations. The same mitigation measure would be required, which is the installation of a temporary sound barrier during construction to reduce construction-related noise impacts to less than significant.

Similar to the proposed Project, under long-term operations, noise generated by this Alternative would be associated with vehicles traveling to and from the site and on-site vehicle idling, maneuvering and parking. This Alternative would generate fewer vehicle trips than would be generated by the proposed Project. As a result, the implementation of this Alternative would result in a reduction of long-term noise levels as compared to the proposed Project.

As with the proposed Project, a concrete tilt-up screen wall would be constructed along the site's frontage with Indian Street. The screen wall would act as a noise barrier for operational noise emitted from the site, thus nearby sensitive receptors would not experience operational noise levels above the City of Moreno Valley's noise standard. Both the proposed Project and this Alternative would be subject to the same regulatory requirements and mitigation measures that would reduce impacts to less-than-significant levels.

K. Transportation/Traffic

The Reduced Project Alternative is estimated to generate approximately 3,726 actual vehicle trips on a daily basis (utilizing the ITE trips generation rates for high-cube and light industrial land uses, not adjusted for PCE). For comparison purposes, the proposed Project would generate approximately 4,960 actual vehicle trips on a daily basis (not adjusted for PCE).

Despite the reduction in daily traffic trips that would occur with selection of this Alternative, this Alternative is not expected to avoid any of the Project's direct or cumulatively considerable and unavoidable impacts to study area intersections or roadway segments under short-term construction, Existing plus Project, Opening Year (2020) and General Plan Buildout (Post-2035) traffic conditions. The severity of impacts to study area intersections and roadway segments would be reduced under the Reduced Project Alternative, as compared to the Project, but would not be avoided.

This Alternative is anticipated to result in cumulatively considerable impacts to the same congested CMP facilities (freeway mainline segments, freeway ramp interchanges, freeway ramp merge/diverge areas) as the proposed Project. The Reduced Project Alternative would reduce the severity of identified impacts to CMP facilities, as compared to the Project, because this Alternative



would generate approximately 1,234 fewer actual daily traffic trips, but all impacts are expected to remain significant and unavoidable.

L. Conclusion

The Reduced Project Alternative would reduce the severity of, but not avoid, the Project's significant and unavoidable impacts to air quality, greenhouse gas, land use/planning, and transportation/traffic. The Reduced Project Alternative would have the same physical footprint as the Project, so all ground-disturbing impacts would be identical to the proposed Project. All other operational-related impacts of the Project would be reduced under this Alternative due to the reduction of building area on the subject property and/or the reduction in vehicle trips. The Reduced Project Alternative would meet most – but not all – of the Project's objectives, although many objectives would be met to a lesser degree than the Project as indicated in Table 6-3 (see the end of this EIR Section).

6.3.4 One Building Alternative

The One Building Alternative was selected by the Lead Agency to evaluate limited development on the Project site that would reduce all of the Project's significant and unavoidable environmental effects (air quality, greenhouse gas emissions, land use/planning, and traffic/transportation) to levels of less than significant. Under this Alternative, one (1) 400,000 s.f. high cube warehouse building would be constructed on the Project site northeast of the Perris Valley Storm Drain Channel. The remainder of the site would remain vacant. Under this Alternative, the Project's building area would be reduced by 1,336,180 s.f., which is an approximately 77 percent reduction in building area compared to the proposed Project.

A. Aesthetics

The One Building Alternative would develop a high cube warehouse building on the eastern portion of the subject property. Therefore, as viewed from existing residential land uses east of Indian Street, the One Building Alternative would look similar to the proposed Project. The remaining portions of the Project site (i.e., areas located west of the Perris Valley Storm Drain Channel and abutting Cosmos Street) would be left undeveloped and maintained in its existing condition. Buildout of the site with the proposed Project would create a visually cohesive development that would utilize the entire site and improve the quality of the street scene along frontage roadways via the introduction of sidewalks and landscaping. In these regards, the proposed Project would have a higher aesthetic value than this Alternative. Selection of this Alternative would result in a greater long-term aesthetic impact than the proposed Project because small pockets of undeveloped land interspersed between larger, on- and off-site warehouse/industrial buildings would be less compatible with the surrounding character of the MVIAP area than would a logistics warehouse and light industrial center with multiple buildings.

B. Agricultural Resources

The One Building Alternative would impact a smaller area than the Project; however, the subject property contains soils that have severe limitations for agricultural use and the site does not contain

EXHIBIT “4”

EXHIBIT “4”

UCR: Study calls warehouse jobs low-paying

BY IMRAN GHORI / STAFF WRITER

Published: July 30, 2015 Updated: July 31, 2015 5:22 p.m.

While Inland cities are increasingly looking to the logistics industry for economic growth, two recent studies by University of California, Riverside researchers say the mainly blue-collar employees who work at warehouses are paid poorly and lack proper access to health care.

But the study was heavily criticized by at least one prominent Inland economist.

The researchers, who surveyed 350 current and former warehouse workers in 2012 and 2013 about their work conditions, found that many of the jobs are filled through temporary staffing agencies, allowing employers not to provide health care and pay them less than the living wage. They recommended that Ontario, which has one of the largest concentrations of warehouses, increase its minimum wage as the city of Los Angeles did recently.

The two policy briefs compared their findings to other studies and statistics from the federal Bureau of Labor Statistics and found on average non-supervisory blue collar warehouse workers make \$10.05 an hour. The estimated living wage – the amount needed to provide for basic necessities such as food and shelter -- for a single person in the Inland area is \$11.59 an hour.

Those survey results “suggest that while warehouses do provide jobs for the region’s workforce, these jobs are not necessarily good jobs,” the researchers stated.

Ellen Reese, a professor of sociology and chair of UC Riverside’s Labor Studies program who co-authored the studies, said cities can do more to improve wages for warehouse workers through agreements that require developers to provide permanent jobs and encouraging union contracts.

“If we’re going to have more and warehouses in our region, I think we need to start making demands on those employers to provide decent wages to its workers -- all of its workers,” she said.

Inland economist John Husing called the findings “utter nonsense” and “totally biased.”

“There was a specific intent to prove that people were poorly paid,” he said. “This was not going to be a fair and balanced study.”

Among their findings in the study were that 63 percent of the warehouse workers they surveyed were temporary employees hired by a third-party agency; 85 percent were Latino; 28 percent were immigrants; and 65 percent had a high school or lower level of education.

For the wage study, researchers surveyed 136 workers at warehouses in Rancho Cucamonga, Ontario and Fontana and attempted to get a representative sample of different size warehouses and different ownership types, Reese said.

The health care survey interviewed a separate group of 224 current and former warehouse workers and found that only 35 percent had health care and only 15 percent through their employer.

Access to health care is especially important due to the high workplace injury statistics for warehouse workers, Reese said. Her study cites federal Bureau of Labor numbers that found that warehouse jobs had an injury and fatality rate three times the average of all workers.

The team's findings counter those advanced by developers and cities that have approved millions of square feet of warehouse space from Ontario to Redlands in the past couple of years. Industry supporters say warehouse projects put thousands of people to work and provide a pathway to a middle-class living.

Husing, who has worked as a consultant on warehouse projects for cities and other agencies, said the median wage for the logistics industry based on state employment data he's collected is \$44,000 a year. His number includes all the different sectors that are part of the logistics industry -- including trucking and wholesale manufacturing -- while he said the UC Riverside study only looks at the bottom of the system.

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The authors of the UC Riverside study say they focused specifically on non-supervisory blue-collar workers in five areas: forklift drivers; laborers and material movers; packers and packagers; shipping clerks; and stock clerks and order fillers.

"Certainly, for managers and highly-skilled technical workers, it may be a good field to go into," Reese said, "but there are tens of thousands of blue collar workers who are making poverty level wages."

Their research built upon a 2013 study by Juan De Lara, an assistant professor of American studies and ethnicity at the University of Southern California. His analysis also found that the warehouse industry relies heavily on temporary workers and that most full-time, blue-collar warehouse workers earn about \$23,000 a year, and that women earn even less, about \$19,000.

De Lara said it's important to look at that segment of logistics employees because they make up the largest category of people working inside warehouses.

"What's particular puzzling is why there's such a hesitancy to admit those jobs exist and why those people are making those wages," he said.

Sheheryar Kaoosji, co-director of the Warehouse Worker Resource Center advocacy group in Ontario, said he believes the study reflects what his group has seen with warehouse employees it works with. Many are temporary employees, get only part-time hours or are employed seasonally, and cannot afford basic health care, he said.

"A lot of the workers we talk to are working two or three jobs," Kaoosji said.

He said although warehouses also provide good-paying managerial and technical job, the system is bifurcated leaving little advancement opportunity for blue-collar workers.

Husing disputes that view, saying many warehouse managers started in blue-collar jobs.

"This is the sector that is providing jobs, providing potential for upward mobility to the middle class," he said.

And while he disagrees with the studies' findings, Husing agreed that increasing pay and access to health care for blue collar employees are worthy goals.

Contact the writer: 951-368-9558 or ighori@pc.com

WAREHOUSE STUDY FINDINGS

- Average hourly pay for blue-collar warehouse employee: \$10.05
- Employed through temporary staffing agency: 63 percent.
- Average length of employment: 28 months.

Exhibit “E”

to the December 11, 2018, Regular Meeting Minutes

Arrowhead Estates Modification of TTM 33540 Design Review 18-7003

City Council Meeting

December 11, 2018
5:00 P.M.

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

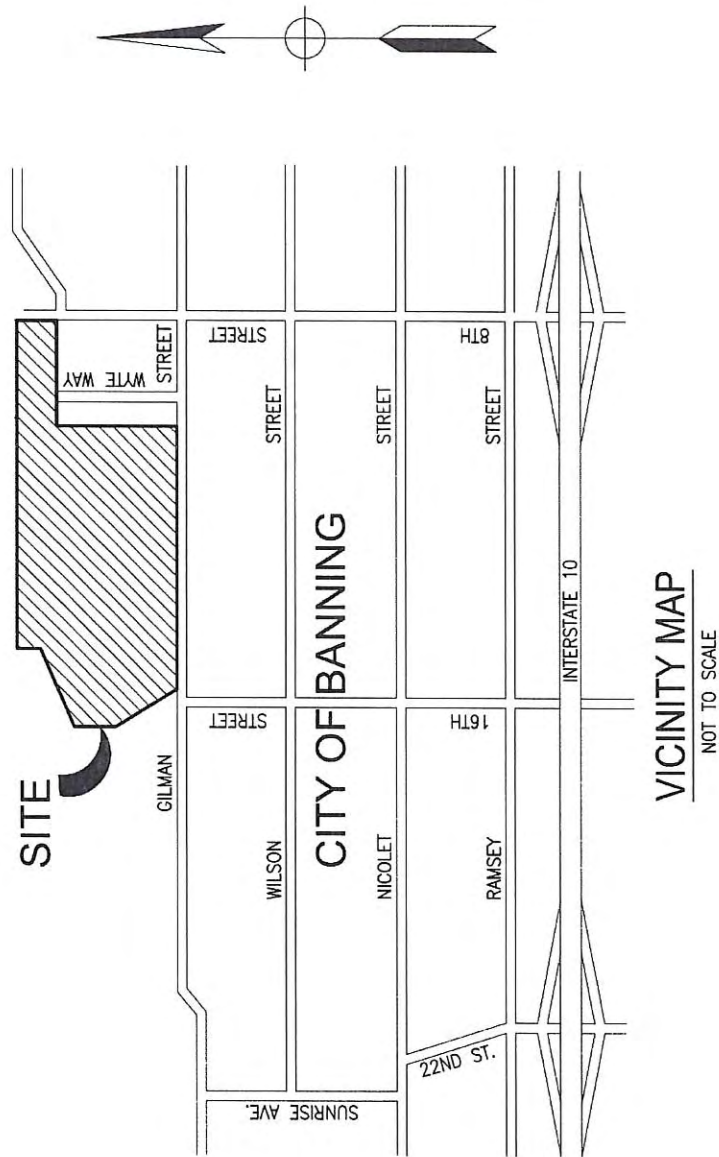


Overview TTM 33540

- Original approval September 26, 2006
- TTM expiration September 28, 2021
- Proposed project encountered issues with preservation of historical land
- Resulting in Reduction in area and number of units
- Phasing for flexibility in response to changing market conditions

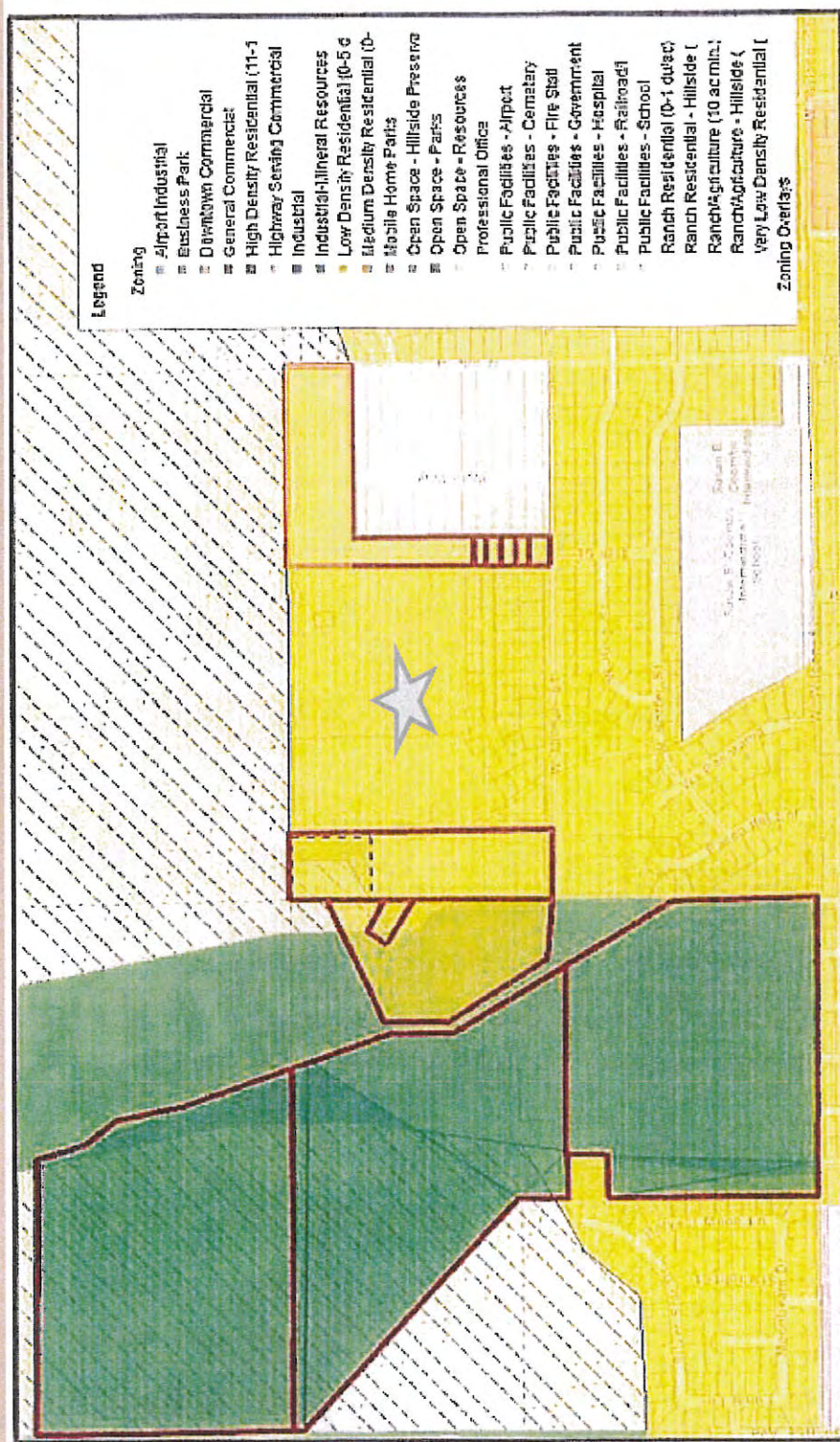


Project Location



TTM 33540 Zoning

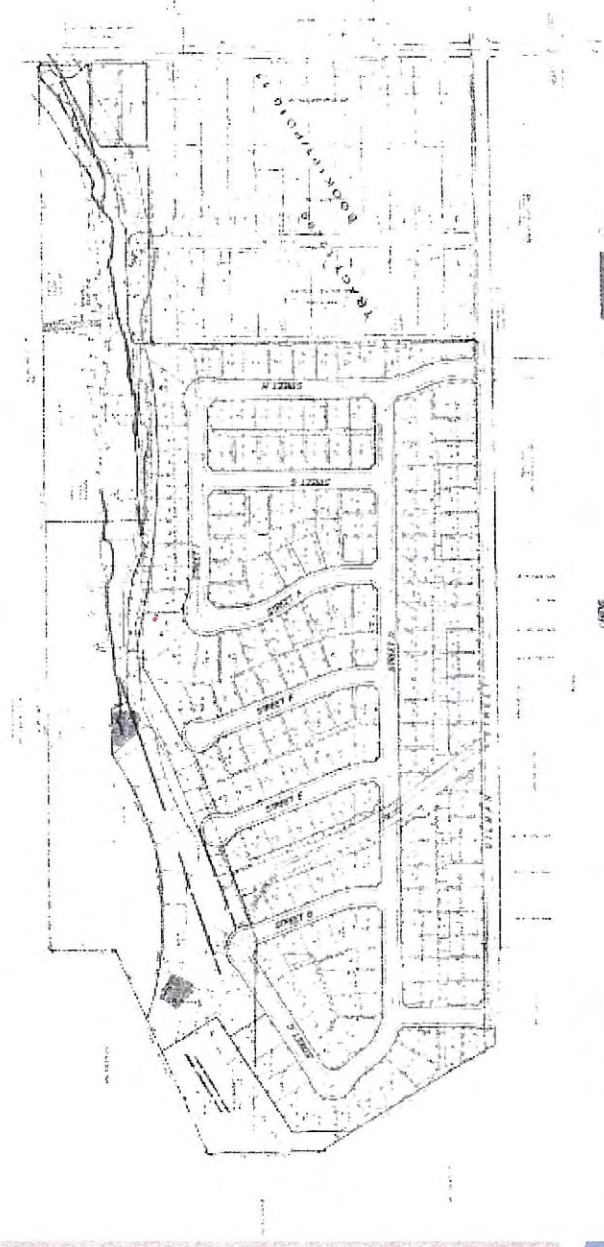
Low Density Residential



Modification of TTM 33540

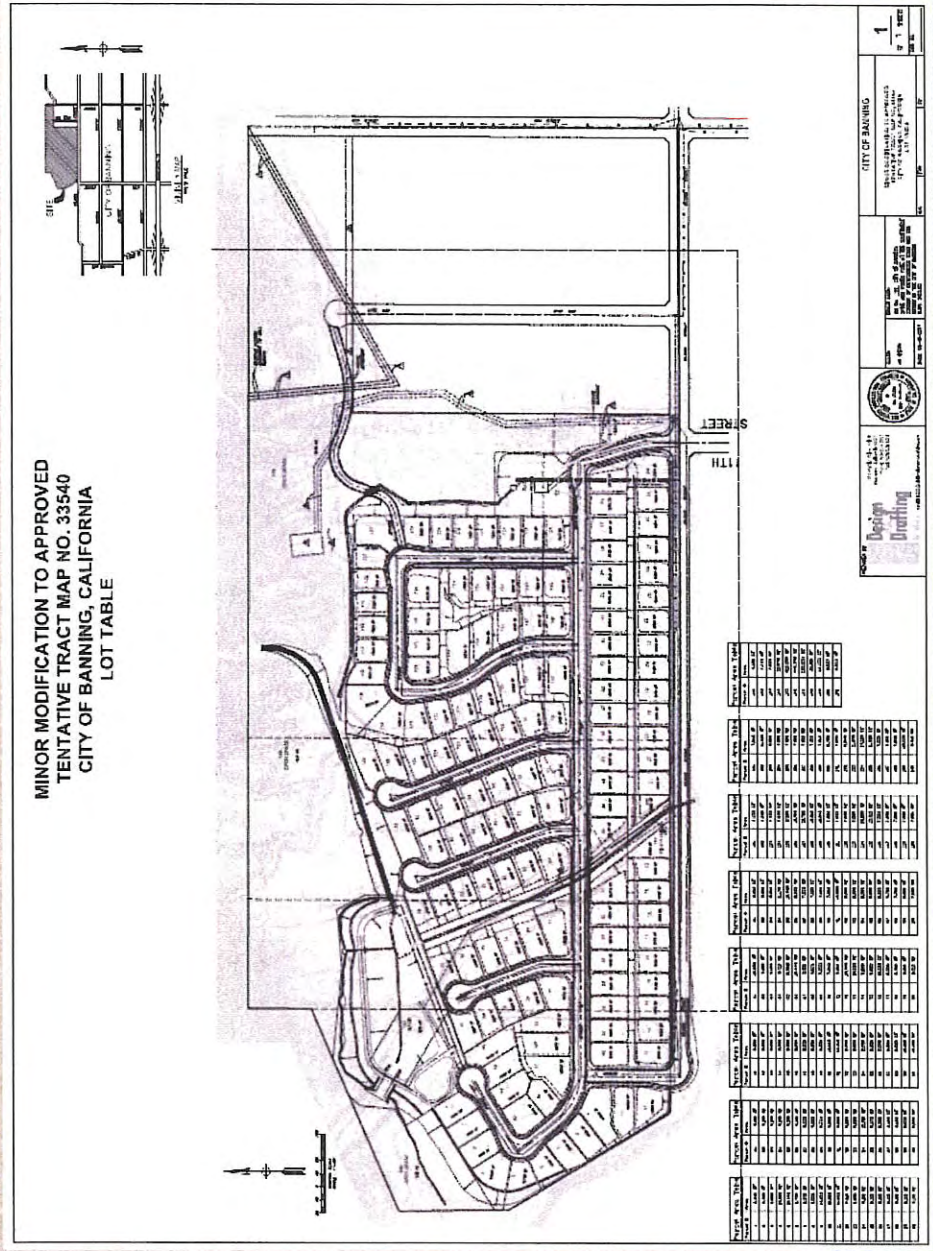
- Original Approval September 26, 2006
 - 65 acres
 - 172 sf lots
 - Open space
 - Flood control

TENTATIVE TRACT MAP NO. 33540
IN THE CITY OF BANNING, CALIFORNIA



Modified Tract Map 143 SFR

- Proposed
 - 65 acres
 - 143 sf lots
 - 3 Parks
 - Open space
 - Flood control



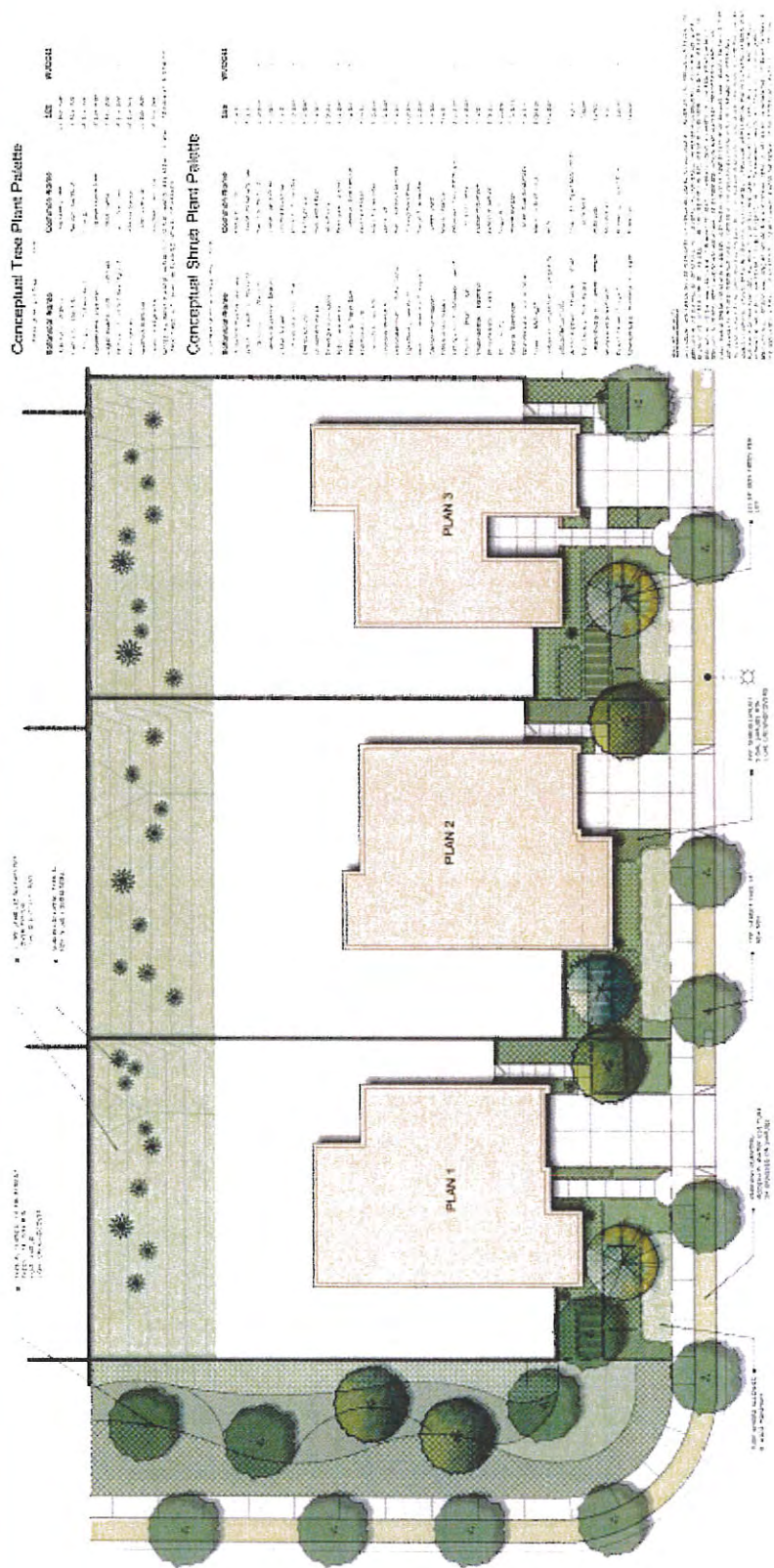
Design Review 18-7003



Elevations 3 Plans



Typical Front Yard

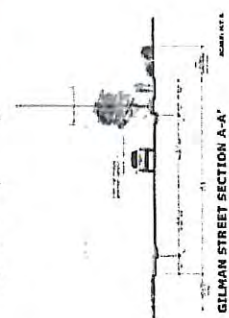


Vintage Communities

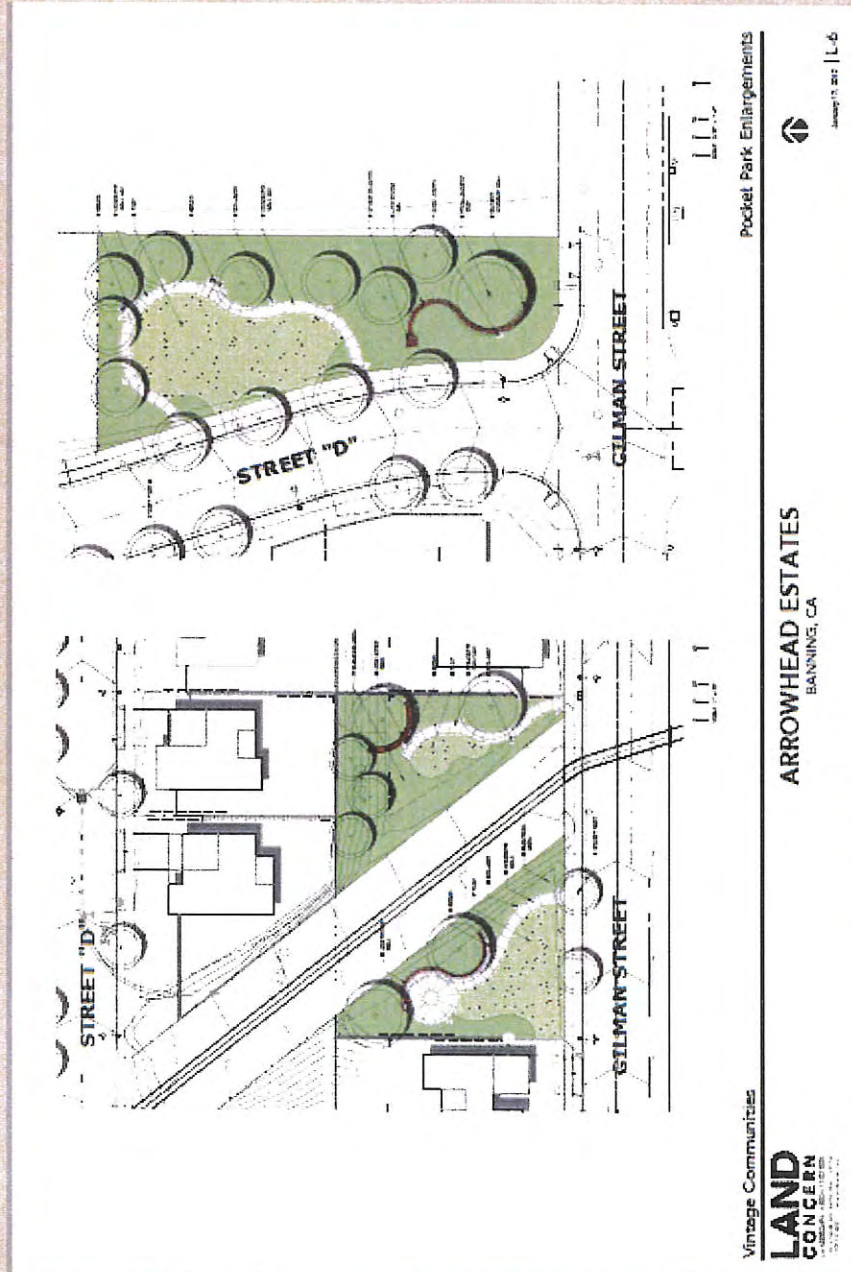
Typical Front Yard Landscaping



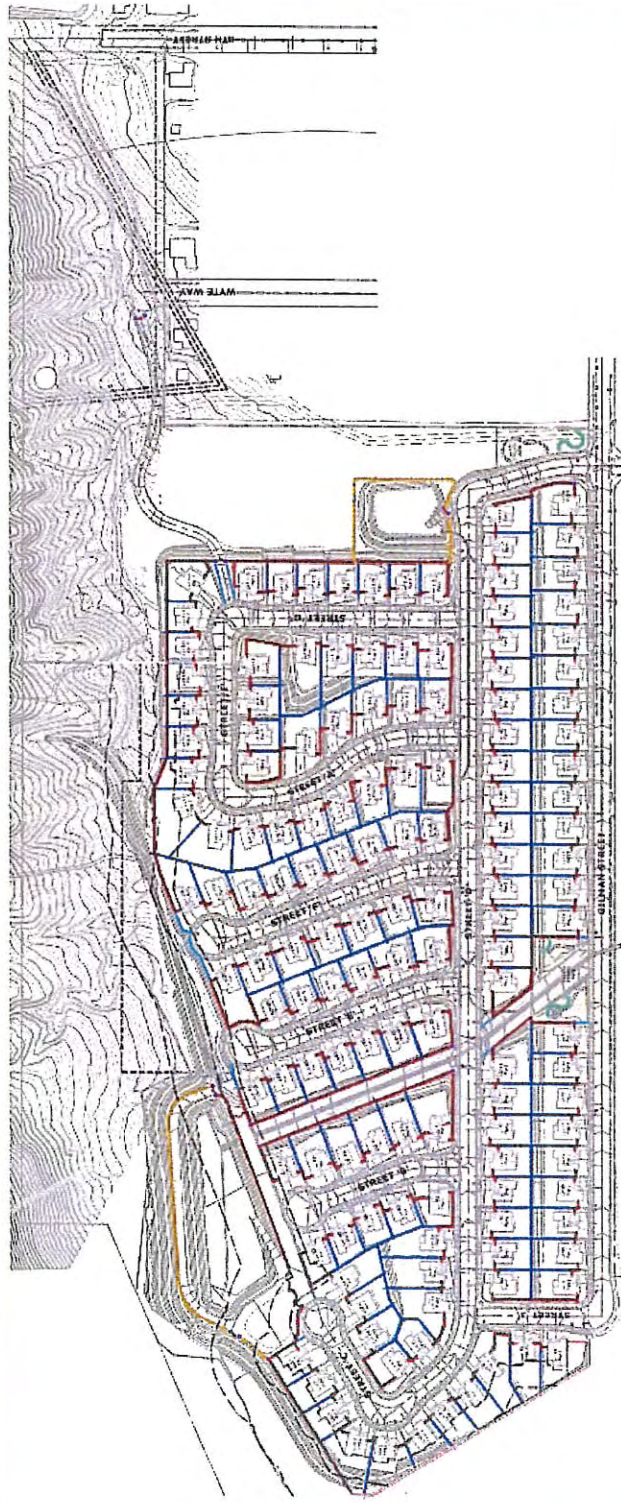
89

[illegible][illegible]

Pocket Parks



Lot 145 Wall / Fence Plan



ARROWHEAD ESTATES FENCE & WALL SCHEDULE

SYMBOL	DESCRIPTION/MATERIAL
	5'-6" Tubular steel fence. Color to be selected by Owner.
	6'-0" High slump block wall with slump block cap. Color to be tan.
	5'-6" High vinyl fence. Color to be tan.
	6" Concrete Mow Curb
	6'-6" High slump block wall with slump block cap. Color to be tan.
	Tubular steel vehicular access gates. Color to be black.
	Represents Fuel Mod. Zones A & B
	Low Stone Wall



Questions?



PLAN 1
EARLY CALIFORNIA
FARMHOUSE



PLAN 3
FARMHOUSE



PLAN 1
SPANISH COLONIAL



PLAN 1
FARMHOUSE



PLAN 3
SPANISH COLONIAL



PLAN 2
EARLY CALIFORNIA

Bessenian Lagooni
1401 TOWN OF ARROWHEAD BLVD
ARROWHEAD, CA 93526
38° 14' 22" N 118° 14' 22" W

STREET SCENES
ARROWHEAD ESTATES
ARROWHEAD, CA
38° 14' 22" N 118° 14' 22" W

© 2012
Village Communities, Inc.

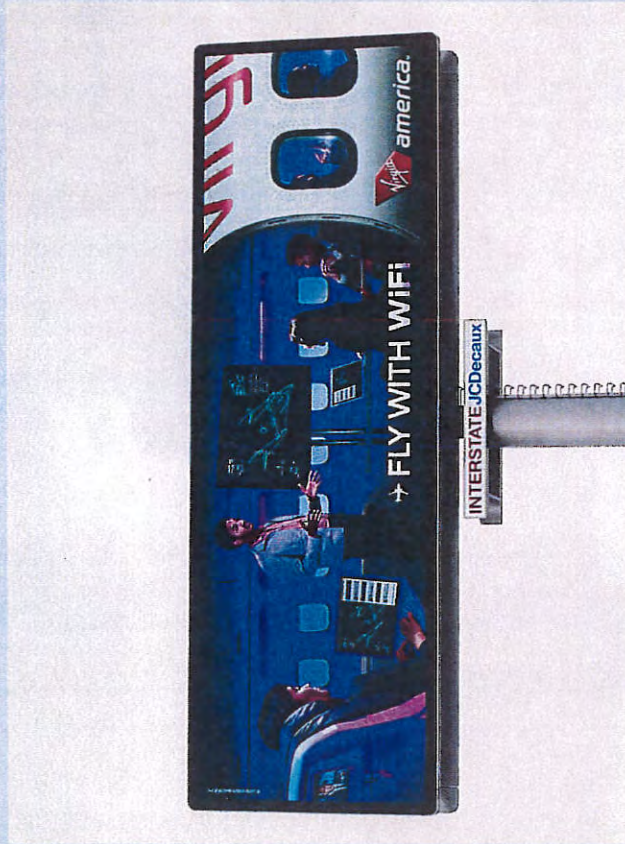


Exhibit “F”
to the December 11, 2018, Regular Meeting Minutes



CITY MANAGER'S REPORT

OUTDOOR ADVERTISING SIGN



98 E. RAMSEY STREET



CHAMBER OF COMMERCE INSTALLATION DINNER

Banning Chamber of Commerce



Installation Dinner - 1/12/2019

Honoring Supervisor Marion Ashley



"THANK YOU SPONSORS"

January 12, 2019
Saturday - 5:00 - 8:30 pm
Morongo Resort Ballroom
Cabazon, CA

HIGHLANDFAIRVIEW



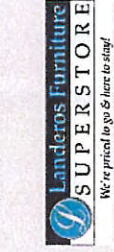
MSJC
MT SAN JACINTO COLLEGE



SAN MANUEL
BAND OF MISSION INDIANS



BEAVER
MEDICAL GROUP



City Manager's Report

News you can use about the
City of Banning!

Text

92220

to **22828** to get started.

Message and data rates may apply.



NIXLE NOTIFICATIONS



EMERGENCY & COMMUNITY NOTIFICATIONS

TO SUBSCRIBE SEND TEXT MESSAGE **92220 TO 888777**

Exhibit “G”
to the December 11, 2018, Regular Meeting Minutes

Laurie Sampson

From: emiller1@dc.rr.com
Sent: Monday, December 10, 2018 11:40 AM
To: Laurie Sampson
Subject: [BULK] CORRESPONDENCE TO CITY COUNCIL

Importance: Low



I am Ed Miller, a former Banning City Council member. I was outraged to see in this meeting's agenda that the new city manager, who has just arrived here and has no knowledge of our city's history, or the reasons for actions taken by past City Councils, wants to remove the authority of the Council to approve the contracts of newly hired department managers.

The Council has the responsibility of overseeing the conduct of all parts of our city's management, and is required to approve every contract of over \$25,000 given to outside vendors. The contracts of department manager's far exceeds that amount, and such oversight is absolutely mandatory.

I find it stunning that a brand new city manager, who signed a contract which implied an understanding of the operation's of our city, would immediately attempt such a power grab, which would leave him with the ability to offer any salary and benefits to anyone he chooses to hire, with no oversight from the Council whatever.

As a laughable excuse for this power grab, the city manager claims that oversight by the Council could lead to personal considerations being involved in the final choice of the candidate for department head. It was precisely to assure that hiring of department manager's would follow correct protocol's and that only the best candidates would be selected that this requirement of Council oversight for such hiring was implemented.

What is even more stunning is that the newly hired city manager is guilty of exactly the actions he pretends to want to eliminate. It is my understanding that he has invited a friend of his to come from Washington to apply for the position of Chief of Police, has violated the normal procedure for choosing such a candidate, and now wants the Council to give up its power to examine the salary and benefits that he will be offering his friend. What the cost to the city for an unsupervised contract can only be imagined.

This responsibility of the Council to oversee hiring has no effect on the city manger's control of those under his jurisdiction, and the ordnance giving the Council that responsibility clearly indicates that fact. The claim by the city manager that it would do so is completely without merit.

You, the Council, have the responsibility to oversee all aspects of the budget of this city, and I hope and pray that you will not so easily abandon you specified authority and responsibility to be able to examine such an important part of the city's functioning as the hiring of new department managers, and that you will not agree to do so.

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Laurie Sampson, Acting Deputy City Clerk

MEETING DATE: January 8, 2019

SUBJECT: Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of December 2018.

RECOMMENDATION:

Receive and file Contracts approved under the City Manager's signature authority for the Month of December 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

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

List of Contracts

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Rochelle Clayton, Deputy City Manager

MEETING DATE: January 8, 2019

SUBJECT: Resolution 2019-01 Approving Revised and New Job Descriptions, Reclassifications, and the Compensation and Classification Plan.

RECOMMENDATION:

City Council adopt Resolution 2019-01:

1. Approving revised and new job descriptions, reclassifications, and the Compensation and Classification Plan.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers.

JUSTIFICATION:

Proposed changes to the Classification and Compensation Plan include reclassifications due to department needs, new job descriptions, updates due to revised requirements and outdated job descriptions, and corrections.

The reclassification is necessary due to workload. As presented to Council during the Fiscal Year 2017-2018 proposed budget adjustment workshop, there has been a deficiency in staffing of the department of Purchasing. At that time, Council approved a Buyer position, however the proposed Purchasing Assistant was not approved. Due to the critical need in Purchasing for an additional position, staff has reclassified the Utility Services Assistant to Purchasing Assistant, at the same salary grade.

The slight salary grade increase proposals are also based on the workload. The Work Release Crew Lead is a salary grade 47 and duties consist of supervising up to eight work-release workers, while the Senior Maintenance Worker is a salary grade 50 and

duties consist of supervising up to three Maintenance Workers. The requested salary increase to grade 50 is approximately \$3,000 annually.

The Building Maintenance Specialist is a salary grade 49, and the requested salary increase is approximately \$5,000 annually. This is a hard-to-fill position and would assist with retention of the existing position and recruitment in the future.

Finally, corrections include positions that were deleted from the Classification and Compensation Plan inadvertently or because they were removed from the budget. The positions of Lead Fleet Maintenance Worker, Building Inspector and Public Information Officer are positions with Council approved job descriptions and though they are not all budgeted, remain in the Classification and Compensation Plan.

BACKGROUND:

It is necessary to amend the City's Classification and Compensation Plan from time to time to maintain a current plan which reflects the budget amendments, organizational structure, and department needs. The adoption of Resolution 2019-01 would replace Resolution 2018-92.

OPTIONS:

1. Approve Resolution 2019-01 authorizing the new and revised job descriptions, reclassifications and Classification and Compensation Plan.
2. Do not approve the resolution and provide direction to staff.

FISCAL IMPACT:

1. Work Release Crew Lead – \$3,000 to the general fund annually (\$1,500 current FY)
2. The Building Maintenance Specialist – \$5,000 split to ALL funds (\$2,500 current FY)

ATTACHMENTS:

1. Resolution 2019-01

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-01

RESOLUTION 2019-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY OF BANNING

WHEREAS, it is necessary to amend the City's Classification Plan from time to time to maintain a current plan which reflects the nature of work, organizational structure, or otherwise;

WHEREAS, the classification and compensation plan has been updated to reflect changes in job descriptions and a new position;

WHEREAS, additions or changes to job descriptions, job titles and/or pay ranges require Council approval.

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

SECTION 1: That the City Council approve the following position updates:

Reclass:	Utility Services Assistant	(1)
	Purchasing Assistant	1

SECTION 2: That the City Council approve the new or revised job descriptions, classification and compensation for the following positions as **Exhibit "A"**:

Assistant Electric Service Planner (Job Code 5053, Grade U57)
Electric Service Planner (Job Code 5030, Grade U77)
Senior Electric Service Planner (Job Code 5029, Grade U79)
Work Release Crew Leader (Job Code 4230, Grade G47 to G50)
Building Maintenance Specialist (Job Code 4430, Grade G49 to G53)

SECTION 3: That the City Council approve the classification and compensation plan – Schedule "A" as **Exhibit "B"**.

PASSED, APPROVED, AND ADOPTED this 8th day of January, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk

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

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-01 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

EXHIBIT “A”

CITY OF BANNING, CALIFORNIA

Purchasing Assistant

Job Code: 1170

Grade: 48

FLSA [] Exempt [X] Non-Exempt

JOB DEFINITION: Under the general supervision of the Purchasing Manager, performs routine to moderately complex technical and specialized duties in the preparation, processing and maintenance of City-wide purchasing functions and related records; organizes and coordinates the processing of requisitions and purchase orders, the preparation of bid forms, and the pricing and ordering of supplies, materials, equipment and services for all City departments as assigned.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by this classification. Duties shown are intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Depending on the area of the assignment, duties may include, but are not limited to the following:

- Records, processes and facilitates initial purchase requisition system entries.
- Reviews departmental purchasing requisitions for order accuracy, procurement compliance and prepares purchase orders.
- Researches and develops sources for supplies and services.
- Receives and inspects merchandise, comparing against packing slips.
- Follows up on overdue shipments and discrepancies in items delivered.
- .
- Sets up, maintains, purges, and updates files and records.
- Assists with tasks involving City bids, proposals, quotes and contracts to include logging, filing, advertising, evaluating, posting and tabulating.
- Monitors annual vendor commodity contracts, to include logging, filing, adherence of terms and pricing, scope of work and expiration compared to renewal options.
- Organizes, routes and tracks contracts for signature approval as appropriate.
- Compiles, maintains and organizes documents pertaining to city purchase orders, contracts, bid files and monthly reports.
- Records and maintains vendor insurance documentation to ensure compliance with contract terms.
- Orders department office, mailing and copier supplies.
- Schedules and/or makes City department travel reservations.
- Researches and responds to problems, complaints, inquiries and customer service issues for internal and external customers.
- Prepares routine letters, forms, and documents and verifies accuracy of matching information.
- Filters phone calls and mail, manages calendar appointments and meetings, and performs a variety of clerical functions.
- Performs related duties and responsibilities as necessary.

KNOWLEDGE/ABILITIES/SKILLS:

Knowledge of:

- Basic knowledge of purchasing methods, procedures, and automated financial management, online bidding, and internet based systems.
- Basic knowledge of a variety of office, technical, and maintenance supplies and materials, of the best sources, and of appropriate prices for the procurement of such goods.
- Basic knowledge of Federal, State and local laws including the City's purchasing policies.
- General office practices and procedures.
- Considerable knowledge of modern office equipment and technology, to include the use of personal computers and software programs such as Microsoft Office.
- Basic billing, record keeping and inventory principles.
- Modern office equipment including a computer and applicable software.
- Basic elements of English usage, spelling, punctuation, and grammar.

Ability to:

- To communicate professionally, clearly and concisely, orally and in writing.
- Learn, understand and apply purchasing practices, rules, and City ordinances.
- Organize, Prepare, track, and file a variety of Purchasing documents.
- Research and compile information regarding pricing and materials availability. Rapidly recognize inaccuracies and discrepancies between documents. Understand and follow oral and written directions.
- To perform basic mathematical computations with speed and accuracy.
- Establish and maintain effective working relationships.

Skill to:

- Operate computer and applicable software. Proficient in Utilizing Adobe Acrobat Pro and Microsoft Office systems is desirable.
- Communicate effectively with internal and external customers.

LICENSE AND/OR CERTIFICATE: Possession of a valid class "C" California Driver's License is required.

WORKING CONDITIONS: Position requires prolonged sitting, standing, walking, reaching, twisting, and turning, kneeling, bending, squatting, and stooping in the performance of daily activities. The position also requires grasping, repetitive hand movement, and fine coordination in preparing documents and reports and data using a computer key board. Additionally, the position requires near vision in reading correspondence, statistical data and using a computer, and acute hearing is required when providing phone service and communicating in person.

MINIMUM QUALIFICATIONS: Any combination of education and experience that provides the knowledge, skills, and ability necessary for the position. Typically qualifications should include college coursework in business, finance, or a closely related field and three (3) years of progressively responsible experience in office administration, purchasing, and customer service. Experience in municipal purchasing is desirable. An Associate's degree or higher is preferred.

ADDITIONAL REQUIREMENTS: May be required to work outside the traditional work schedule.



CITY OF BANNING, CALIFORNIA

Assistant Electric Service Planner

Job Code: 5053

Grade: U57

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with providing customer service relating to the delivery of engineering, utility, and electric service planning assistance.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Similar to an apprentice or planner-in-training, assists the Electric Service Planner and/or Senior Electric Service Planner in the planning of overhead and underground maintenance and/or expansion of the City's electrical distribution system. Assists the Electric Service Planner and/or Senior Electric Service Planner with inspections of electrical construction, designing efficient and cost effective electrical utility systems.

Receives and processes a variety of documents, including work orders, photovoltaic installation applications and plans, easement documents, and development applications. Conducts photovoltaic plan checks and inspections to ensure compliance with appropriate standards and regulations. Conducts residential main service panel review, including identifying appropriate location and inspections to ensure compliance with appropriate standards and regulations. Tracks and monitors status of work orders and plans and coordinates the flow of plans and applications with engineers and outside consultants and developers. Issues approved utility service contracts for a variety of activities. Updates and maintains official maps, drawings and master plans. Ensures compliance with General Order 95 and 128.

Researches and references material for the public and staff use. Provides responsible staff assistance to Electric Operations and Utility Planning staff on special projects as assigned. Prepares graphic displays for meetings and presentations. Attend meetings with other City departments to coordinate development activities.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of Electrical Theory.
- Knowledge of file and records management principles.
- Knowledge of customer service techniques and concepts.
- Knowledge of basic mathematical computations.
- Skill in operating a personal computer utilizing a variety of electrical design and office software applications.
- Skill in reading, understanding, interpreting and applying relevant City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

CITY OF BANNING, CALIFORNIA

Assistant Electric Service Planner

Job Code: 5053

Grade: U57

MINIMUM QUALIFICATIONS: A high school diploma or GED **AND** three (3) years of work experience in one or more of the following areas: design, drafting, maintenance and/or installation of an electric distribution system or related work.

PREFERRED QUALIFICATIONS: Professional certification in AutoCAD, SCADA, GIS or Microsoft is preferred.

ADDITIONAL REQUIREMENTS: Must possess at the time of application and maintain a valid California Driver License.

PHYSICAL REQUIREMENTS: Work is performed both in an office and outside environment requiring prolonged sitting or standing; walking, kneeling, crouching, squatting, stooping, and bending; inputting data into a computer terminal; exposure to computer glare, vibrations, and pitch; lifting, carrying, and regularly lift and/or move up to twenty five (25) pounds, frequently lift and/or move up to fifty (50) pounds in weight; use hands to finger, handle or feel; reach with hands and arms and have mobility, vision, hearing, and dexterity levels appropriate to the duties to be performed. Ability to travel to different sites and locations

CAREER ADVANCEMENT OPPORTUNITIES:

From: Assistant Electric Service Planner

To: Electric Service Planner



CITY OF BANNING, CALIFORNIA

Assistant Electric Service Planner

Job Code: 5053

Grade: 57

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with providing customer service relating to the delivery of engineering, utility, and electric service planning assistance.

ESSENTIAL FUNCTIONS: *The following duties ARE NOT intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Similar to an apprentice or planner-in-training, assists the Electric Service Planner and/or Senior Electric Service Planner in the planning of overhead and underground maintenance and/or expansion of the City's electrical distribution system. Assists the Electric Service Planner and/or Senior Electric Service Planner with inspections of electrical construction, designing efficient and cost effective electrical utility systems.

Receives and processes a variety of documents, including work orders, photovoltaic installation applications and plans, easement documents, and development applications. Conducts photovoltaic plan checks and inspections to ensure compliance with appropriate standards and regulations. Conducts residential main service panel review, including identifying appropriate location and inspections to ensure compliance with appropriate standards and regulations. Tracks and monitors status of work orders and plans and coordinates the flow of plans and applications with engineers and outside consultants and developers. Issues approved utility service contracts for a variety of activities. Updates and maintains official maps, drawings and master plans. Ensures compliance with General Order 95 and 128.

Researches and references material for the public and staff use. Provides responsible staff assistance to Electric Operations and Utility Planning staff on special projects as assigned. Prepares graphic displays for meetings and presentations. Attend meetings with other City departments to coordinate development activities.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of Electrical Theory
- Knowledge of file and records management principles.
- Knowledge of customer service techniques and concepts.
- Knowledge of basic mathematical computations.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.

CITY OF BANNING, CALIFORNIA

Assistant Electric Service Planner

Job Code: 5053

Grade: 57

MINIMUM QUALIFICATIONS: A high school diploma or GED **AND** three (3) years of electrical, utility or plans review experience.

ADDITIONAL REQUIREMENTS: Must possess and maintain a valid California Driver License.

PHYSICAL REQUIREMENTS: Work is performed both in an office and outside environment requiring prolonged sitting or standing; walking, kneeling, crouching, squatting, stooping, and bending; inputting data into a computer terminal; exposure to computer glare, vibrations, and pitch; lifting, carrying, and regularly lift and/or move up to twenty five (25) pounds, frequently lift and/or move up to fifty (50) pounds in weight; use hands to finger, handle or feel; reach with hands and arms and have mobility, vision, hearing, and dexterity levels appropriate to the duties to be performed. Ability to travel to different sites and locations;

CAREER ADVANCEMENT OPPORTUNITIES:

From: Assistant Electric Service Planner

To: Electric Service Planner



CITY OF BANNING, CALIFORNIA

Electric Service Planner

Job Code: 5030

Grade: U77

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with planning and coordinating overhead line and underground electrical expansion of the City's electrical utility service.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Plans and coordinates overhead line and underground electrical expansion of the City's electrical utility service. Provides subordinate staff with electrical expertise involving the utility system. Designs efficient and cost effective electrical utility systems. Provides direction in building and maintaining a reliable electrical service to City customers.

Provides electrical job cost estimates, including material, labor, equipment overhead and administrative costs for projects. Creates drawings and maps to assist electrical crews. Completes electrical plan checks on new building projects. Inspects electrical construction performed by contractors. Meets with other utilities for joint trench and pole installations. Attends meetings with the other departments of the City to coordinate development activities.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of high and low voltage precautions and guidelines.
- Knowledge of electrical engineering, transmission and distribution theory and practice.
- Knowledge of strategic planning principles.
- Knowledge of providing electrical inspection for various projects.
- Skill in operating a personal computer utilizing a variety of electrical design and office software applications.
- Skill in reading, understanding, interpreting and applying relevant City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in developing cost estimates for electrical projects.

CITY OF BANNING, CALIFORNIA

Electric Service Planner

Job Code: 5030

Grade: U77

MINIMUM QUALIFICATIONS: A high school diploma or GED AND five (5) years of utility work experience that includes two (2) years electric utility design, drafting or planning. Professional certification in AutoCAD, Line staking or SCADA .

PREFERRED QUALIFICATIONS: An Associate's degree in engineering, electric power technology, computer science, construction management or a related field is preferred.

ADDITIONAL REQUIREMENTS: Must possess at the time of application and maintain a valid California Driver License.

PHYSICAL REQUIREMENTS: Work is performed both in an office and outside environment requiring prolonged sitting or standing; walking, kneeling, crouching, squatting, stooping, and bending; inputting data into a computer terminal; exposure to computer glare, vibrations, and pitch; lifting, carrying, and regularly lift and/or move up to twenty five (25) pounds, frequently lift and/or move up to fifty (50) pounds in weight; use hands to finger, handle or feel; reach with hands and arms and have mobility, vision, hearing, and dexterity levels appropriate to the duties to be performed. Ability to travel to different sites and locations

CAREER ADVANCEMENT OPPORTUNITIES:

From: Electric Service Planner

To: Senior Electric Service Planner



CITY OF BANNING, CALIFORNIA

Electric Service Planner

Job Code: 5030

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs a variety of duties associated with planning and coordinating overhead line and underground electrical expansion of the City's electrical utility service.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Plans and coordinates overhead line and underground electrical expansion of the City's electrical utility service. Provides subordinate staff with electrical expertise involving the utility system. Designs efficient and cost effective electrical utility systems. Provides direction in building and maintaining a reliable electrical service to City customers.

Provides job cost estimates including material, labor, equipment overhead and administrative costs for projects. Creates drawings and maps to assist electrical crews. Completes electrical plan checks on new building projects. Inspects electrical construction performed by contractors. Meets with other utilities for joint trench and pole installations. Attends meetings with the other departments of the City to coordinate development activities.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of high and low voltage precautions and guidelines.
- Knowledge of electrical engineering, transmission and distribution theory and practice.
- Knowledge of strategic planning principles.
- Knowledge of providing electrical inspection for various projects.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.
- Skill in developing cost estimates for electrical projects.

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CITY OF BANNING, CALIFORNIA

Electric Service Planner

Job Code: 5030

MINIMUM QUALIFICATIONS: An Associate's degree in Electrical Engineering or related field **AND** five (5) years of experience in electric utility operation.

ADDITIONAL REQUIREMENTS: Must have at the time of application and maintain a California driver license. Depending on the needs of the City, incumbents in this classification may be required to obtain and maintain licenses or certifications for overhead, underground planning and electric utility construction.



CITY OF BANNING, CALIFORNIA

Senior Electric Service Planner

Job Code: 5029

Grade: U79

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs an assortment of complex and technical duties associated with planning and coordinating overhead line and underground electrical expansion of the City's electrical utility service.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Performs a variety of complex and technical functions in the planning and coordination of overhead line and underground electrical expansion of the City's electrical distribution system. Provides direction and training to subordinate staff and operations personnel regarding work to be completed on the Utility's distribution system. Designs efficient and cost effective upgrades and expansions to the electrical utility systems. Provides direction in building and maintaining a reliable electrical service to City customers.

Provides electrical job cost estimates including material, labor, equipment overhead and administrative costs for projects. Creates complex drawings and maps to assist electrical crews. Completes electrical plan checks on new building projects. Inspects electrical construction performed by contractors. Represents the department at meetings with other utilities for joint trench and pole installations. Represents the department at a variety of meetings with other departments of the City to coordinate development activities, including other utilities for joint trench and pole installations.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of high and low voltage precautions and guidelines.
- Knowledge of electrical engineering, transmission and distribution theory and practice.
- Knowledge of strategic planning principles.
- Knowledge of providing electrical inspection for various projects.
- Skill in operating a personal computer, utilizing a variety of software applications.
- Skill in reading, understanding, interpreting and applying relevant City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in developing cost estimates for electrical projects.

CITY OF BANNING, CALIFORNIA

Senior Electric Service Planner

Job Code: 5029

Grade: U79

MINIMUM QUALIFICATIONS: An Associate's degree or 60 semester units from an accredited college or university in engineering, electric power technology, computer science, construction management or a related field **AND** three (3) years of work experience in electrical utility design, drafting or planning. Professional certification in AutoCAD, SCADA or line-staking.

OR

Seven (7) years electrical utility work experience, including four (4) years of work experience in electrical utility design, drafting or planning. Professional certification in AutoCAD, SCADA or line-staking.

PREFERRED QUALIFICATIONS: A Bachelor's degree in electrical engineering, business, public administration, computer science or other related field is preferred.

ADDITIONAL REQUIREMENTS: Must possess at the time of application and maintain a valid California Driver License.

PHYSICAL REQUIREMENTS: Work is performed both in an office and outside environment requiring prolonged sitting or standing; walking, kneeling, crouching, squatting, stooping, and bending; inputting data into a computer terminal; exposure to computer glare, vibrations, and pitch; lifting, carrying, and regularly lift and/or move up to twenty five (25) pounds, frequently lift and/or move up to fifty (50) pounds in weight; use hands to finger, handle or feel; reach with hands and arms and have mobility, vision, hearing, and dexterity levels appropriate to the duties to be performed. Ability to travel to different sites and locations

CAREER ADVANCEMENT OPPORTUNITIES:

From: Senior Electric Service Planner

To: Associate Engineer



CITY OF BANNING, CALIFORNIA

Senior Electric Service Planner

Job Code: **5029**

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs an assortment of complex and technical duties associated with planning and coordinating overhead line and underground electrical expansion of the City's electrical utility service.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Performs a variety of complex and technical functions in the planning and coordination of overhead line and underground electrical expansion of the City's electrical distribution system. Provides direction to subordinate staff and Operations' personnel regarding work to be completed on the Utility's distribution system. Designs efficient and cost effective upgrades and expansions to the electrical utility systems. Provides direction in building and maintaining a reliable electrical service to City customers.

Provides job cost estimates including material, labor, equipment overhead and administrative costs for projects. Creates complex drawings and maps to assist electrical crews. Completes electrical plan checks on new building projects. Inspects electrical construction performed by contractors. Represents the department at meetings with other utilities for joint trench and pole installations. Is the department's representative at a variety of meetings with the other departments of the City to coordinate development activities.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of high and low voltage precautions and guidelines.
- Knowledge of electrical engineering, transmission and distribution theory and practice.
- Knowledge of strategic planning principles.
- Knowledge of providing electrical inspection for various projects.

- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in assessing, analyzing, identifying and implementing solutions to complex problems.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.
- Skill in operating a personal computer utilizing a variety of software applications.
- Skill in developing cost estimates for electrical projects.

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CITY OF BANNING, CALIFORNIA

Senior Electric Service Planner

Job Code: 5029

MINIMUM QUALIFICATIONS: An Associate's degree in Electrical Engineering or related field **AND** seven (7) years of experience in electric utility operation.

ADDITIONAL REQUIREMENTS: Must have at the time of application and maintain a California driver license. Depending on the needs of the City, incumbents in this classification may be required to obtain and maintain licenses or certifications for overhead, underground planning and electric utility construction.



CITY OF BANNING, CALIFORNIA

Work Release Crew Leader

Job Code: 4231

Grade: G50

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision of the Public Works Superintendent, performs a variety of duties associated with leading a work release crew engaged in community maintenance and beautification activities.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Leads a work release crew engaged in community maintenance and beautification activities. Leads and may participate in weed control, bush trimming and maintaining storm channels and drains. Responds to emergency calls to assist the Street Division. Assists in arranging and removing street cones and barricades for street work. Inspects and reviews work performed by work release crew. Documents completed work assignments.

Delegates and leads in work activities associated with maintaining City areas and infrastructure. Assists in the implementation of safety procedures and guidelines for the work release crew. Assists in training the work release crew. Prioritizes work activities of assigned staff. Monitors and assists in the evaluation of work activities for assigned staff.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable City, County, State and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of supervision principles.
- Knowledge of occupational hazards and safety guidelines.
- Knowledge of City or street maintenance concepts, techniques and materials.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

CITY OF BANNING, CALIFORNIA

Work Release Crew Leader

Job Code: 4231

MINIMUM QUALIFICATIONS: A high school diploma or GED **AND** two (2) years of construction maintenance or street maintenance experience that includes one (1) year of supervision.

ADDITIONAL REQUIREMENTS: May be required to work outside the traditional work schedule. Must have at the time of application and must maintain a valid California Driver License.

PHYSICAL AND ENVIRONMENTAL WORKING CONDITIONS: Ability to sit, stand, walk, kneel, crouch, stoop, squat, crawl, twist, climb, and lift up to 100 lbs.; endure exposure to heat, cold, wet, noise, outdoors, vibration, confining work space, chemicals, explosive materials, mechanical, domestic, electrical and traffic hazards; ability to distinguish color and wear protective apparel; ability to travel to different sites and locations.



CITY OF BANNING, CALIFORNIA

Building Maintenance Specialist

Job Code: 4430

Grade: G53

FLSA ☐ Exempt ☒ Non-Exempt

JOB DEFINITION: Under general supervision, performs work related to the repair, service and maintenance of City buildings and telephone systems.

ESSENTIAL FUNCTIONS: *The following duties **ARE NOT** intended to serve as a comprehensive list of all duties performed by all employees in this classification. Shown are duties intended to provide a representative summary of the major duties and responsibilities. Incumbent(s) may not be required to perform all duties listed and may be required to perform additional, position-specific duties.*

REPRESENTATIVE DUTIES: Supervises contractors on various new construction projects, remodels and major repairs. Obtains quotes and holds pre-construction meetings. Performs daily inspections, authorizes project changes and conducts final inspections. Administers contracts for janitorial services, alarm services, exterminating services and telephone maintenance.

Maintains City telephone system. Oversees installation and maintenance of new systems. Performs troubleshooting to repair telephone and voicemail issues. Performs programming changes to system. Arranges for major repairs needed by vendors. Performs training to end users on telephone and voicemail usage.

Performs general repairs on City buildings relating to electrical, plumbing and other general maintenance. Replaces switches, outlets, light bulbs and fuses. Repairs and replaces faucets, hoses and flush kits. Performs miscellaneous repairs on doors, locks, windows, gates and flooring. Repairs office equipment such as file cabinets, office desks, and other miscellaneous office equipment.

Performs other duties as assigned or required.

KNOWLEDGE and SKILLS:

- Knowledge of applicable city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders and other operational guidelines and directives.
- Knowledge of the City's and the Department's policies and procedures.
- Knowledge of project management principles.
- Knowledge of telephone and voicemail systems.
- Knowledge of building system maintenance and repair techniques.
- Knowledge of file and records management principles.
- Knowledge of inventory control methods and techniques.
- Skill in reading, understanding, interpreting and applying relevant city, county, state and Federal statutes, rules, regulations, ordinances, codes, administrative orders, policies and procedures and other operational guidelines and directives.
- Skill in diagnosing and repairing telephone systems.
- Skill in assessing and prioritizing multiple tasks, projects and/or demands.
- Skill in working within deadlines to complete projects and assignments.
- Skill in establishing and maintaining effective working relations with co-workers, staff, vendors, contractors, visitors, the general public and others having business with the City of Banning.

CITY OF BANNING, CALIFORNIA

Building Maintenance Specialist

Job Code: 4430

Grade: 53

MINIMUM QUALIFICATIONS: A high school diploma or GED **AND** two (2) years of building maintenance experience.

ADDITIONAL REQUIREMENTS: Must have at the time of application and must maintain a California driver license. May be required to lift and/or carry heavy, bulky supplies and materials weighing up to 50 pounds. May be subject to call out and/or call-back.

EXHIBIT “B”

CITY OF BANNING
CLASSIFICATION & COMPENSATION PLAN
REVISED JANUARY 8, 2019
RESOLUTION 2019-01 (AMENDING RESOLUTION 2018-92)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 – CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	D13	Council Contract
	1013	City Attorney	D11	Contract
	1015	Public Information Officer	G68	Gen/Confidential
	1606	Deputy City Clerk	G62	Gen/Confidential
Financial Services Group	1105	Administrative Services Director/Deputy City Manager	D01	Contract
	1115	Deputy Finance Director	T87	Mgmt/Confidential
	1160	Purchasing Manager	T77	TEAMSTERS
	1165	Buyer	G54	IBEW-G
	1170	Purchasing Assistant	G48	IBEW-G
	5028	Utility Financial Analyst	T76	TEAMSTERS
	1125	Accountant II	G59	IBEW-G
	1140	Accountant	G56	IBEW-G
	1136	Accounting Specialist	G53	IBEW-G
	1130	Financial Services Specialist	G47	IBEW-G
Human Resources Group	1215	Deputy Human Resources Director	T83	Mgmt/Confidential
	1230	Human Resources Technician	G54	Gen/Confidential
	1235	Senior Human Resources Technician	G58	Gen/Confidential
Utility Billing Group	1310	Customer Service & Billing Manager	T71	TEAMSTERS
	1335	Lead Customer Service Representative	G46	IBEW-G
	1340	Senior Utility Billing Rep	G48	IBEW-G
	1350	Utility Billing Representative	G43	IBEW-G
	1340	Lead Field Service Representative	U55	IBEW-U
	1325	Field Service Representative	U51	IBEW-U

Information/Cable Systems Group	1405	Information Technology Manager	T78	Mgmt/Confidential
	1410	Information Technology Analyst	G62	Gen/Confidential
	1420	Information Technology Analyst II	G70	Gen/Confidential
	1415	Multimedia Specialist	G60	IBEW-G
	1510	Cable Services Specialist	G44	IBEW-G
Office Support Group	1610	Executive Assistant	G57	IBEW-G
	1601	Management Analyst	T68	TEAMSTERS
	1620	Office Specialist	G44	IBEW-G
	1630	Receptionist	G31	IBEW-G

2000 – POLICE SERIES

Police Group	2010	Police Chief	D00	Contract
	2016	Police Captain	P92	Police Mgmt
	2025	Police Lieutenant	P87	Police Mgmt
	2030A	Police Staff/Master Sergeant	P78	POA
	2040	Police Corporal	P71	POA
	2050	Police Officer	P67	POA
	2060	Police Recruit/Trainee	N/A	At-Will
Police Support Group	2143	Lead Public Safety Dispatcher	G56	IBEW-G
	2110	Public Safety Dispatcher	G52	IBEW-G
	2130	Community Services Officer	P48	POA
	2151	Police Assistant II	G48	IBEW-G
	2152	Police Assistant I	G44	IBEW-G

3000-COMMUNITY DEVELOPMENT SERIES

Community Development Group	3010	Community Development Director	D92	Contract
	3026	Development Project Coordinator	G58	IBEW-G
	3050	Senior Planner	T79	TEAMSTERS
	3020	Associate Planner	T68	TEAMSTERS
	3015	Assistant Planner	T63	TEAMSTERS
	3115	Economic Development Manager	T85	Mgmt/Confidential
Development Services Group	3210	Development Services Manager (Building Official)	T84	TEAMSTERS
	3215	Senior Building Inspector	G67	IBEW-G
	3220	Building Inspector	G62	IBEW-G
	3230	Code Compliance Officer	G58	IBEW-G
	3235	Senior Code Compliance Officer	G64	IBEW-G
	3240	Building Permit Specialist	G55	IBEW-G

3300-COMMUNITY SERVICES GROUP

Community Services Group	3310	Community Services Director	D92	Contract
	3315	Community Services Manager	T68	TEAMSTERS
	3360	Transit Field Supervisor	G59	IBEW-G
	3325	Recreation Coordinator	G51	IBEW-G
	3328	Program Coordinator	G49	IBEW-G
	3350	Lead Bus Driver/Trainer	G55	IBEW-G
	3340	Bus Driver	G47	IBEW-G

4000-PUBLIC WORKS SERIES

Public Works Management Group	4400	Public Works Director/City Engineer	D00	Contract
Streets/Parks Group	4210	Public Works Superintendent	7T8	TEAMSTERS
	4230	Work Release Crew Leader	G50	IBEW-G
	4240	Senior Maintenance Worker	G50	IBEW-G
	4250	Maintenance Worker	G45	IBEW-G
	4260	Motor Sweeper Operator	G50	IBEW-G
Engineering Group	4300	City Engineer	T85	TEAMSTERS
	4350	Senior Civil Engineer	T82	TEAMSTERS
	4320	Associate Civil Engineer	T76	TEAMSTERS
	4325	Assistant Civil Engineer	T68	TEAMSTERS
	4330	Public Works Inspector	G62	IBEW-G
	4340	Engineering Services Assistant	G48	IBEW-G
General Maintenance and Support Group	4410	Fleet Manager	T75	TEAMSTERS
	4420	Fleet Maintenance Mechanic	G53	IBEW-G
	4425	Lead Fleet Maintenance Mechanic	G56	IBEW-G
	4430	Building Maintenance Specialist	G53	IBEW-G
	4441	Community Center Caretaker	G36	IBEW-G
	4450	Warehouse Services Specialist	U52	IBEW-U
Water/Wastewater Group	4115	Water/Wastewater Superintendent	T78	TEAMSTERS
	4130	Water Crew Supervisor	U60	IBEW-U
	4135	Water Production Operator I/II	U52/57	IBEW-U
	4140	Water Services Worker	U52	IBEW-U
	4155	Wastewater Collection System Supervisor	U60	IBEW-U
	4145	Wastewater Collection System Technician	U52	IBEW-U

Schedule "A"

	4132	Water Valve Flushing Crew Lead	U56	IBEW-U
	4133	Water Construction Crew Lead	U56	IBEW-U
	4131	Water Meter Crew Lead	U56	IBEW-U

5000 ELECTRIC UTILITIES SERIES

Electric Services & Operations Group	5001	Electric Utility Director	D00	Contract
	5021	Power Resource & Revenue Administrator	T85	TEAMSTERS
	5022	Electric Engineering Manager	T85	TEAMSTERS
	5025	Associate Electrical Engineer	T76	TEAMSTERS
	5028	Utility Financial Analyst	T76	TEAMSTERS
	5029	Senior Electric Service Planner	U79	IBEW-U
	5030	Electric Service Planner	U77	IBEW-U
	5050	Public Benefits Coordinator	U55	IBEW-U
	5055	Utility Services Assistant	U48	IBEW-U
	5053	Assistant Electric Service Planner	U57	IBEW-U
	5110	Electric Operations & Maintenance Manager	T85	TEAMSTERS
	5120	Powerline Crew Supervisor	U79	IBEW-U
	5130	Powerline Technician	U75	IBEW-U
	5140	Powerline Apprentice	U67/ 73	IBEW-U
	5150	Electric Services Worker	U52	IBEW-U
	5161	Substation Test Technician	U75	IBEW-U
	5160	Electric Meter Test Technician	U75	IBEW-U
	5170	Apprentice Electric Meter Test Technician	U67 / 73	IBEW-U



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works/City Engineer
Tammi Phillips, Management Analyst

MEETING DATE: January 8, 2019

SUBJECT: Resolution 2019-07, Establishing a Pre-Approved Architect Services Vendor List for the Remainder of Fiscal Year 2019 through Fiscal Year 2021

RECOMMENDED ACTION:

City Council adopt Resolution 2019-07 establishing a pre-approved architect services vendor list for the remainder of the current fiscal year (FY) through FY 2021.

BACKGROUND:

The Public Works Department responsible for the management of capital improvement projects related to water, wastewater, streets and buildings is looking to establish a pre-approved vendor list to expedite the process of obtaining architect services. Having a list will reduce the time spent by city staff preparing and evaluating formal request for proposals (RFPs) and submitted proposals.

On September 28, 2018 and October 5, 2018 a publication was advertised in the Press Enterprise and PlanetBids.com notifying qualified firms of the opportunity to submit a proposal to provide the City with Architect Services. Two hundred and six (206) firms were directly solicited. Proposals were due on October 24, 2018, with six (6) consultants responding to the RFP.

A three-person evaluation committee consisting of two City staff members and one non-city staff member evaluated the proposals based on qualifications, experience, the ability to provide the requested services and rates.

Listed below are the top three scoring consultants.

CONSULTANT	SCORE
Black O'dowd and Associates, Inc.	371.67
Holt Architects, Inc.	345.83
TR Design Group, Architecture	342.5

JUSTIFICATION:

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:

There is no fiscal impact related to this resolution. The funding to provide architect services will be determined at the time of contract award within the allocated operational or project approved budget.

ALTERNATIVE:

Reject Resolution 2019-07. If rejected, staff will prepare project specific RFP's for architect services which will require additional staff hours to prepare RFPs and evaluate submitted proposals as well as additional expenditures related to advertising the RFPs.

ATTACHMENTS:

1. Resolution 2019-07
2. Request for Proposals
3. Publication Notice
4. Firms Directly Solicited

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-07

RESOLUTION 2019-07

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ESTABLISHING A PRE-APPROVED ARCHITECT SERVICES VENDOR LIST FOR THE REMAINDER OF THE CURRENT FISCAL YEAR THROUGH FISCAL YEAR 2021

WHEREAS, the Public Works Department, responsible for the management of capital improvement projects related to water, wastewater, streets and buildings, is looking to establish a pre-approved vendor list to expedite the process of obtaining architect services; and

WHEREAS, on September 28, 2018 and October 5, 2018 a publication was advertised in the Press Enterprise notifying qualified grant writing firms of the opportunity to submit a proposal and provide the City with On-Call General Architect Services; and

WHEREAS, the request was also published on PlanetBids.com and two hundred and six (206) firms were directly solicited with six (6) firms responding and submitting proposals; and

WHEREAS, an evaluation committee consisting of two City staff members and one consultant 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 three 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:

Black O'dowd and Associates, Inc.
Holt Architects, Inc.
TR Design Group, Architecture

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

The City Council adopts Resolution 2019-07 establishing a pre-approved professional architect services vendor list established through a formal request for proposals for various public works projects for the remainder of the current fiscal year through fiscal year 2021.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning on this 8th day of January, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-07, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Request for Proposal



REQUEST FOR PROPOSAL
FOR
19-009
ON-CALL GENERAL ARCHITECT SERVICES

CITY OF BANNING
Public Works Department
99 East Ramsey Street
Banning, California 92220

Released on September 28, 2018

REQUEST FOR PROPOSAL (RFP) NO. 19-009

ON-CALL GENERAL ARCHITECT SERVICES

Dear Proposers:

The city of Banning is seeking Request for Proposals (RFP) from qualified firms or individuals (Architect) in order to create a pool of candidates to provide a range of professional architectural services to support various divisions within the Public Works Department. Qualified firms shall be licensed to practice architecture in the State of California and be able to effectively provide the required professional services, including experience in schematic design and design documents for bidding.

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 #19-009 On-Call General Architect Services, on or before the hour of 10:00 a.m. on October 24, 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 PlanetBids, 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 Geronio 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	September 28, 2018
Deadline for Written Questions	October 9, 2018 by 3:00 p.m.
Responses to Questions Posted on Web	October 12, 2018 by 5:00 p.m.
Proposals are Due	October 24, 2018 by 10:00 a.m.
Interview (if held)	The Week of November 5, 2018
Approval of Contract	December 11, 2018 (Tentative)

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The scope of work is an outline only and is not a complete, detailed or exhaustive description of service as it may vary from project to project.

Architect services may include, but are not limited to the following:

3.1 Project Analysis and Review

- Analyze the project, perform field review and investigations, evaluate existing conditions, research existing plans and records and meet with City staff to define the detailed project scope and objectives.

3.2 Concept Plans

- Prepare conceptual plans based on the latest development and offer recommendations to the City based on design feasibility
- Provide energy efficiency and sustainability consultation and advice
- Ensure plans are in compliance with Americans with Disabilities Act requirements and similar requirements

3.3 Color Renderings and Presentation Documents

- Prepare color renderings (number to be determined based on project) of concept plans

3.4 Project Document Submittal and Review

- Prepare plan specification and estimates to be used in the building for construction of the project
- Participation in the review of bids and selection of construction company

EXAMPLE PROJECTS:

1. ADA Improvements
2. Roof Rehabilitation
3. Façade Improvements
4. Floor plan changes
5. Building additions

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. Sample project schedule, identifying all tasks and deliverables that would 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 City projects 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 entities 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.

Provide an hourly Fee Schedule and Classification of personnel for the firm, along with the type of work they and any sub consultants will perform (Exhibit A).

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 Damien Gallegos 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, California, 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). A list of responsible bidders will be established 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-----15%

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 Project Price submitted in Appendix D.

4. Innovative and/or creative approaches to providing the services that provide additional efficiencies or increased performance capabilities. ----15%

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 November 5, 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.

PRICING PROPOSAL FORM

Provide hourly rates, along with pricing in accordance with the City's current requirements, as set forth in the Scope of Work. Proposers should use a separate form to state pricing for any added value.

Pricing shall remain for a minimum of one (1) year. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustment shall not exceed the Bureau of Labor Statistics Consumer Price Index (CPI) date for Riverside/SAN Bernardino/Ontario Area, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.) The City is considering awarding a contract for a one-year term with the option to renew an additional four (4) single years upon satisfactory review of the provided services.

Consultant shall provide a rate schedule identifying staff members' hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, etc.

Employee	Job Title	Hourly Rate
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$
		\$

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. 19-009 On-Call General Architect Services RFP at any time after September 28, 2018.

OR

I certify that Proposer or Proposer's representatives have communicated after September 28, 2018 with a City Councilmember concerning the RFP No. 19-009 On-Call General Architect Services RFP. A copy of all such communications is attached to this form for public distribution.

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 _____

If the answer is yes, explain the circumstances in the following space.

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."

PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

VENDOR

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
VENDOR NAME**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this 22nd day of May, 2018 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **VENDOR NAME, 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 for the Insert Type of Work to be Completed 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 Insert Type of Work to be Completed 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 WRITTEN AMOUNT IN DOLLARS (\$0.00) (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 three (3) years 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:

<hr/>	<hr/>
(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 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.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement the day and year first hereinabove written.

CITY OF BANNING

CONSULTANT

Rochelle Clayton, Interim City Manager

By: _____
NAME:
TITLE:

By: _____
NAME:
TITLE:

ATTEST:

Sonja De La Fuente, Deputy City Clerk

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 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: _____

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

DESCRIPTION OF ATTACHED DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	<input type="checkbox"/> LIMITED
		<input type="checkbox"/> GENERAL
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER	

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

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 Insert Type of Work to be Completed prepared in connection therewith:**
- A. Meetings and Presentation
 - B. Plans, Specifications, and Estimates (PS&E)
 - C. Cost Estimate
 - D. Final Plans and Specifications
 - E. Bidding Phase Assistance
 - F. Construction Phase Assistance
 - G. Federal/State Documentation Assistance
 - H. Traffic Circle Plans
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
- A. Critical Path Project Schedule
 - B. Preliminary Project Notice (1st Notice)
 - C. Prepare to Relocate Notice with Response Form (2nd Notice)
 - D. Notice to Relocate (3rd Notice)
 - E. Sidewalk, ADA Ramps, Driveway, and Curb & Gutter Improvement Plans
 - F. Bike Lane and Crosswalk Plans (Signing & Striping Plans)
 - G. Right of Entry and Exhibits Documents
 - H. Bid Sheet, Special Provisions, and Cost Estimates
 - I. One Set of Final Plans in Mylar
 - J. Five (5) Sets of Bond Copies of the Final Plans and Specifications After Engineer's Signatures
 - K. Electronic Copy (PDF) of Approved Plans for Bidding Purposes

- L. AutoCAD Files of the Final Plans (2014 Version)
- 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 apprised 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. Dilesh Sheth, Program Manager
 - B. Lin McCaffrey, Senior Engineer
 - C. Nick Lowe, Associate Engineer
 - D. Michael Johnson, Director
 - E. Nick Keller, Senior Designer

EXHIBIT "B"
SPECIAL REQUIREMENTS

None

EXHIBIT "C"
SCHEDULE OF COMPENSATION

I. Consultant shall perform the following tasks ("Tasks") at the following rates

TASK	DESCRIPTION	SUB-BUDGET
1.	Meetings and Presentations	
2.	Plans, Specifications and Estimates (PS&E)	
3.	Final Plans and Specifications	
4.	Bidding Phase Assistance	
5.	Construction Phase Assistance	
6.	Federal/State Documentation Assistance	
7.	Traffic Circle Plans	
	TOTAL	

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 AMOUNT IN DOLLARS (\$0.00) 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

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

ATTACHMENT 3

Publication Notice

City of Banning

Request for Proposals for RFP #19-009 ON-CALL GENERAL ARCHITECT 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 #19-009 ON-CALL GENERAL ARCHITECT SERVICES, on or before the hour of 10:00 a.m. on October 24, 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.

QUESTIONS REGARDING PROPOSAL: Any questions pertaining to this Request for Proposal shall be submitted through PlanetBids. Deadline for submittal of bid Request for Information (RFIs) is October 9, 2018 by 3:00 p.m. local time.

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.

SEALED BIDS DUE: October 24, 2018 and opened online only at 10:00 a.m.

If you have additional questions, please contact Jorge Uribe, via online bid system.

City of Banning
99 E. Ramsey St.
P.O. Box 998
City Clerk's Office
Banning, CA 92220-0998
Phone: 951-922-3129
Fax: 951-922-3165

CITY OF BANNING, CALIFORNIA
Dated: 9/28/18 and 10/5/18

/s/ Jorge Uribe
Buyer

ATTACHMENT 4

Firms Directly Solicited

ARCHITECT SERVICES VENDORS NOTIFIED

"The "G" Crew (TGC)"	Carollo Engineers, Inc.	Engineering Solutions Services, Inc.
4LEAF, Inc.	Cavanaugh & Associates, P.A.	Entech Northwest, Inc.
AAMCOM	Chabin Concepts, Inc.	Entram Corp
Advanced Avant Garde Corporation	Chambers Group, Inc	Environmental Klean-Up
ADVANTEC Consulting Engineers, Inc.	Charles Abbott Associates, inc.	Environmental Science Associates
AirX Utility Surveyors, Inc.	Chen Ryan Associates, Inc.	Evan Brooks Associates, Inc.
Albert A. Webb Associates	Churchwell White LLP	EXP US Services Inc
Albert Grover & Associates	Citygate Associates, LLC	Fernando S. Portillo
Aleshire & Wynder, LLP	CivilSource, Inc.	FirstCarbon Solutions
All Weather, Inc.	Clark Hill LLP	Fugro
Alta Environmental	Clark Land Resources, Inc.	G&G Environmental Compliance
Alta Planning + Design	Construction Bid Source	G3SoilWorks
Andre Landscape Service Inc	Converse Consultants	Ganddini Group, Inc.
Annealta Group	CoreLogic Solutions, LLC	Gladstein, Neandross & Associates
Applied EarthWorks, Inc.	COWI North America, Inc.	Good Karma Multimedia Design
AQUALity Engineering, Inc.	CSG Consultants, Inc.	Grant Circle
Architerra Inc.	CSW Funding LLC	Griffin Structures, Inc.
Aspen Environmental Group	CValdo Corporation	Ground Service Technology, Inc.
ASSET Laboratories	Deodate Corporation	Health Science Associates
Atkinson, Andelson, Loya, Ruud & Romo	Development One Inc.	Herbert P. Sears Co., INC.
Automated Merchant Systems, Inc.	DeWalt Corporation	HF&H Consultants, LLC
AWIS CORPORATION	Dirtonu, Inc.	Holiday Lights & Magic, Inc
Barnes and Thornburg, LLP	D-Max Engineering, Inc.	Holt Architects, Inc.
Belfor USA Group	Dokken Engineering	HR Green Pacific, Inc.
Black O'dowd and Associates, Inc.	Dudek	IMS
Blais & Associates, Inc.	D'Vega Builders, Inc.	Innovative Federal Strategies
Bloom Biological, Inc.	DW Landscape Inc	Intellibind Technologies
Boretti, Inc	Eadie and Payne, LLP	J. Powers Recruiting, Inc.
Brandow & Johnston	EC & AM Associates	Jericho Systems, Inc
BRC-Equals3, Inc.	ECORP Consulting, Inc.	JLL
Brierley Associates Corporation	Edgerock Technology Partners	John Robinson Consulting, Inc.
C S Creations	EEC Environmental	Judith Carey-Fisher
California Consulting Inc.	ENGEIO Incorporated	Kemcorp Construction, Inc.
Carlson & Associates, LLC	Engineering Resources of Southern California	KOA Corporation

ARCHITECT SERVICES VENDORS NOTIFIED

Koning Eizenberg Architecture, Inc.	Petralogix Engineering Inc.	Tetra Tech, Inc.
Kosmont & Associates, Inc.	Pinnacle1	The Altum Group
KTGY Architecture + Planning	PlaceWorks, Inc.	The Glen Price Group
Kyle Groundwater, Inc.	PRAVA Construction Services Inc	The Maher Corporation
Landscape Dynamics	PrimeSource PM, LLC	The Ramsay Group
Larry Walker Associates	RADgov, Inc.	The Seville Group, Inc.
Law and Consulting Office of Gustavo Rios	Rahban CPA & Consulting Inc	The Thomsen Company, Inc.
Lechowicz & Tseng Municipal Consultants	Raymundo Engineering Co., Inc.	Thermal Energy Solutions, inc.
Lexipol LLC	Resource Development Associates	Thomas Harder & Co. Groundwater Consulting
LSA Associates, Inc.	Resource Systems Group, Inc.	Three Peaks Corp
McAlister GeoScience	Rivertech Inc.	TMG Utility Advisory Services, Inc.
McParlane & Associates, Inc.	RMA Group	Tory Walker Engineering
MHW Constructors / Stantec Construction Group	Robert Half	Total Package Professional Services
Michael Baker International	Robert L. Scott	TR Design Group, Architecture
MIG, Inc.	RSG, Inc.	Transportation Management and Design (TMD)
Moss Adams LLP	RWDI USA LLC	Troy & Banks, Inc.
MS Transit Solutions	SA Associates	TSG Enterprises, Inc.
MSW Consultants	SCST, Inc.	Twining, Inc.
Municipal Code Corporation	Senitica Construction, Inc.	United-Heider Inspection Group
Nancy K Bohl Inc	Sequoia Ecological Consulting, Inc.	Upland Software, Inc.
National Elevator Inspection Services, Inc.	Servexo Protective Services	US Tech Solutions, Inc.
Nationwide Environmental Services	SHP Project Development, Inc.	UTILITY COST MANAGEMENT LLC
Natures Image	Sjoberg Evashenk Consulting	Utility Sales Management
Next Generation Technology Inc	SOAR Technologies, Inc.	V2C Group, Inc.
Northwest Hydraulic Consultants Inc.	SoCal Stormwater Runoff Solution Services Inc.	Virginkar & Associates, Inc.
OJI CALIFCO CONSORTIUM, INC.	Soholt & Company Landscape, Inc	Watearth, Inc.
Owen Group, Inc.	SUPLOG LLC	Ways2GO
Pacifica Services, Inc.	Syrusa Engineering, Inc.	West Consultants, Inc.
Paleo Solutions, Inc.	TEAM INDUSTRIAL SERVICES	Whitson Contracting & Management, Inc.
Panache Engineering Inc.	Tech/knowledge, Inc.	Willdan Financial Services
Park West Lnadscpe Maintenance, Inc.	TELACU Construction Management	Wood Environment & Infrastructure Solutions, Inc.
Parsons	Templeton Planning Group	Wood Rodgers, Inc.
Peterson and Price, APC	Terra Nova Planning & Research, Inc.	Woodard & Curran
Petra Geosciences, Inc	Tetra Tech	Zolon Tech, Inc.



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works
Kevin Sin, Senior Civil Engineer

MEETING DATE: January 8, 2019

SUBJECT: Accept the Right-of-Way Dedications from APN 541-220-017,
541-220-018 and 541-220-019 for Road and Utilities Purposes

RECOMMENDATION:

Accept the right-of-way dedications from APN 541-220-017, 541-220-018 and 541-220-019 for road and utilities purposes and direct the City Clerk to sign the certificates of acceptance and record said dedications.

JUSTIFICATION:

It is essential to obtain the right-of-way dedications so that the public can access the street and the City can maintain the street and utilities.

BACKGROUND:

On December 30, 1981, the City Council approved Parcel Map No. 17851 and accepted the right-of-way dedication of Lot "A" for San Gorgonio Avenue but did not accept the right-of-way dedications of Lots "B", "C" and "D" for Galleher Way for unknown reasons. Galleher Way, which includes a short cul-de-sac, was constructed within the said Lots "B", "C" and "D" and in accordance with the City of Banning standards.

Recently, Downing Construction, Inc. of Redlands purchased the property on the northeast corner of Galleher Way that included said Lot "D" and is proposing to develop the site in order to relocate their corporate office and operations yard. The Downing Construction, Inc. site includes Parcel 4 of Parcel Map No. 17851 and an additional parcel to the east. A parcel merger is currently being processed by the City to merge both parcels.

Upon realizing that the right-of-way dedications for Galleher Way were never accepted by the City Council, Public Works staff required Downing Construction, as a condition of approval, to dedicate the right-of-way (Lot "D") for Galleher Way and also to contact the adjacent property owners for the right-of-way dedications of Lots "B" and "C".

The affected property owners, Henry M. Lefler (APN 541-220-017 including Lot "B"), Anthony A. Saffo, Successor Trustee Under Revocable Trust Agreement for George Paziuk (APN 541-220-018 including Lot "C"), and Downing Construction, Inc. (APN 541-220-019 including Lot "D") are all voluntarily providing the right-of-way dedications for Galleher Way.

With the acceptance of these right-of-way dedications, the public including the adjacent property owners will be able to legal access their properties via the existing Galleher Way street alignment.

FISCAL IMPACT:

Not applicable.


ALTERNATIVE

Reject the right-of-way dedications. If rejected the proposed development may not be constructed and the street will continue to overly multiple private parcels.

ATTACHMENTS:

1. Vicinity Map, Parcel Merger and Parcel Map No. 17851
2. Right-of-Way Dedications
3. Certificates of Acceptance

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Vicinity Map, Parcel Merger
and Parcel Map No. 17851

24-5

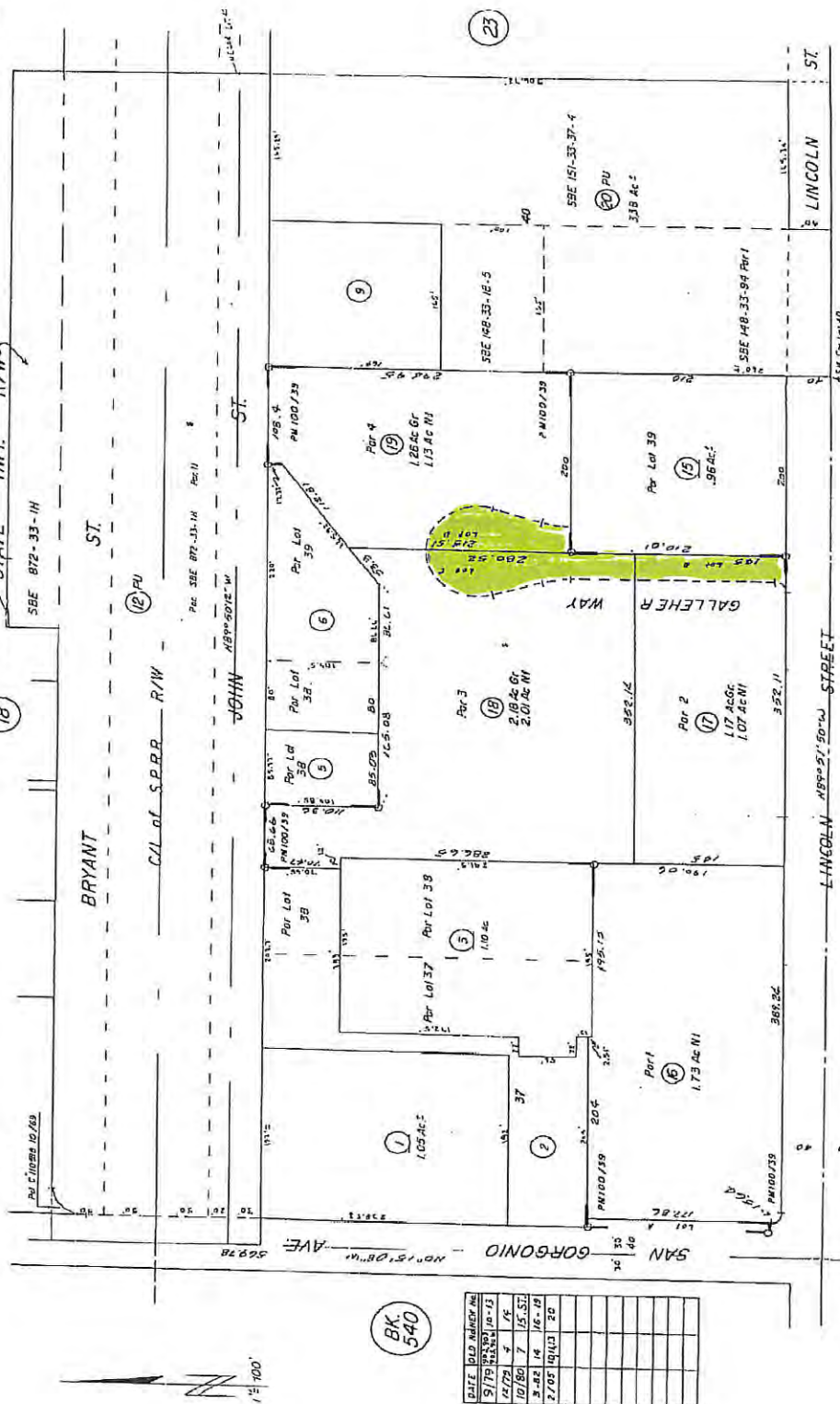
541-22

TRA 001-020

POR. N1/2 SW1/4 SEC. 10, T. 3S, R. 1E.

THIS MAP WAS PREPARED FOR ASSESSMENT PURPOSES ONLY. NO LIABILITY IS ASSUMED FOR INACCURACY OF THE SHOWN ASSSESSED VALUES. MAP NOT TO BE USED FOR BOUNDARY OR BOUNDARY SURVEILLANCE.

MAR 03 2005



M.B. 9/44 SB, AMENDED MAP OF THE BANNING LAND COMPANY

RS 40/81, 21/62, 33/50

PM 100/39, 40 Parcel Map 17651

NOT TO SCALE

DATA: RS 67/87

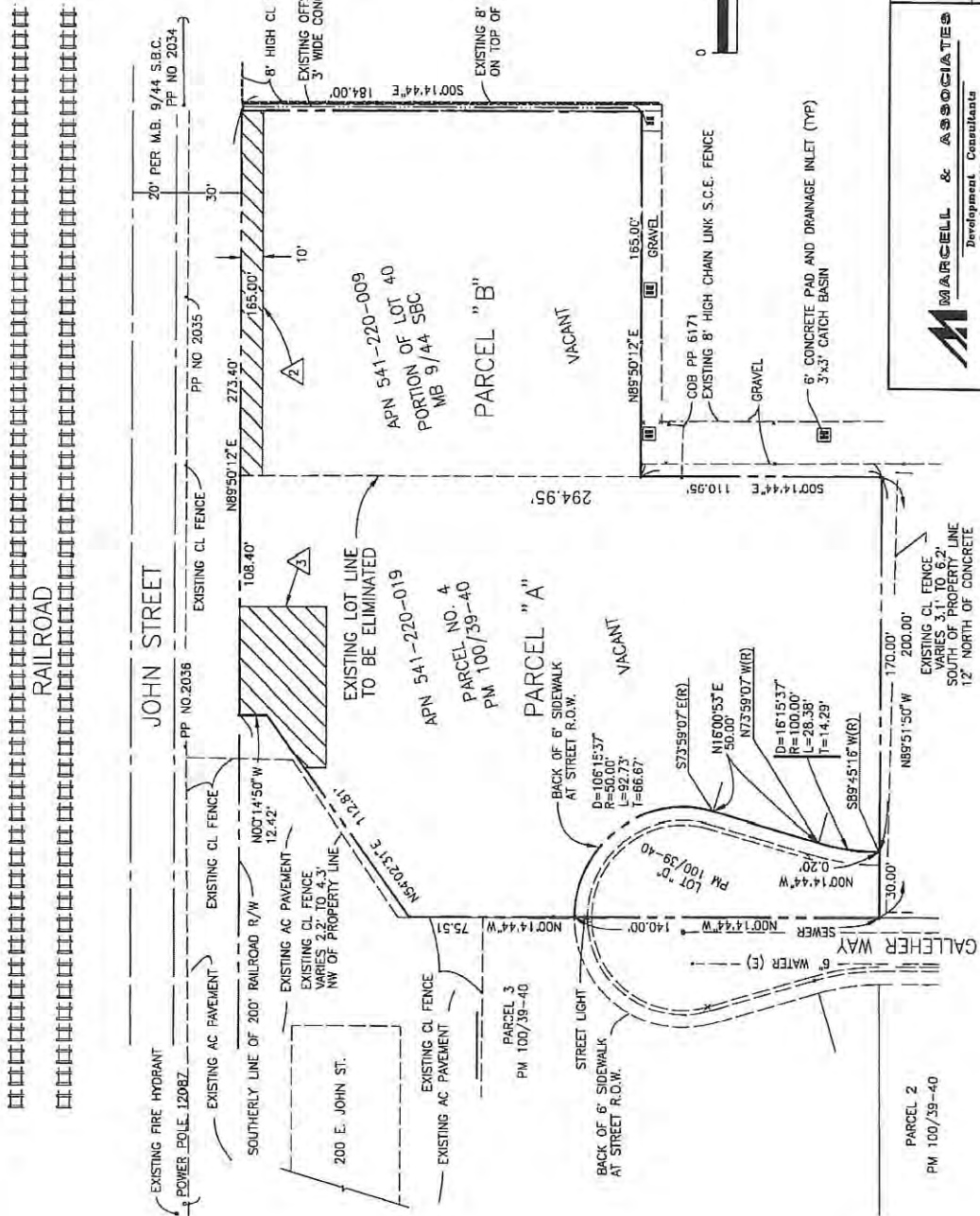
ASSESSORS MAP BK 541 PG. 22
RIVERSIDE COUNTY, CALIF.

EASEMENT NOTES

1 AN EASEMENT FOR DITCHES, FLUMES AND PIPE LINES IN FAVOR OF BANNING LAND CO., RECORDED MARCH 19, 1985 AS INST NO. 1. SAID EASEMENT CANNOT BE PLOTTED. IT IS BLANKET IN NATURE.

2 AN EASEMENT FOR PIPELINES IN FAVOR OF SO CAL GAS CO RECORDED NOVEMBER 6, 1947 IN BOOK 770, PAGE 592 OF OFFICIAL RECORDS.

3 AN EASEMENT FOR INGRESS, EGRESS FOR SPUR LINE IN FAVOR OF GLEN L. SHOCKLEY RECORDED JUNE 1, 1959 IN BOOK 2483, PAGE 33 OF OFFICIAL RECORDS.



MAFCELL & ASSOCIATES
Development Consultants
P. O. BOX 371
BANNING, CA. 92220

DOWNING CONSTRUCTION, INC.
GALLEHER WAY & JOHN STREET
BANNING, CA

PARCEL MERGER NO. 18-5102
SITE PLAN

JULY 23, 2018

100/39

COPY

Sheet 1 of 2 Sheets

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA

PARCEL MAP NO. 17,851

SHOWING THE DIVISION OF A PORTION OF BLOCKS 37, 38, AND 39 AS SHOWN BY AMENDED MAP OF BANNING LAND COMPANY RECORDED IN BOOK 9, PAGE 44, SAN BERNARDINO RECORDS.

OWNER'S CERTIFICATE

We hereby certify that we are the owners of the land included within the subdivision shown hereon, that we are the only persons who have executed the same, and that the same is a true and correct copy of the original map as shown within the colored border line, and hereby declare to public use Lots "A" through "D" inclusive.

SAN GORGONIO LAND CO., a limited partnership General Partner

[Signature]

DESERT ESCROW CO., a California corporation, as Trustee, Map No. 12394, recorded July 3, 1980.

[Signature]

NOTARY ACKNOWLEDGEMENT

State of California }
County of Riverside }

On this 28th day of December, 1981, before me Angela Sanders, a notary public in and for said County and State, personally appeared Desert Escrow Co., known to me to be the General Partner of San Gorgonio Land Company, a California Limited Partnership, and acknowledged to me that such partnership executed the same.

My commission expires July 12, 1982



Witness my hand and official seal

[Signature]
Notary Public in and for said County and State



NOTARY ACKNOWLEDGEMENT

State of California }
County of Riverside }

On this 12th day of January, 1982, before me Harry E. Wright, a Notary Public in and for said County and State, personally appeared ALLAN H. FISHER, known to me to be the President and Desert Escrow Co., a California corporation, the corporation that executed the within instrument, and known to me to be the person who executed the within instrument, and acknowledged to me that such corporation executed the same.

My commission expires 6-21-1982

Witness my hand and official seal
[Signature]
Notary Public in and for said County and State

RECORDER'S CERTIFICATE

I filed this map on Jan. 21, 1982 at 2:10 P.M. in Book 178 of Parcel Maps, at page 174 of the recorder's office. I hereby certify that this map is a true and correct copy of the original map as shown within the colored border line, and hereby declare to public use Lots "A" through "D" inclusive.

By David H. Burnett, County Recorder

Subdivision Guarantee True Guarantee & Rent Co.

SURVEYOR'S CERTIFICATE

This map was prepared by me or under my direction and is based upon a field survey in accordance with the requirements of the Subdivision Map Act and local ordinance of the County of Riverside. I hereby certify that this map is a true and correct copy of the original map as shown within the colored border line, and hereby declare to public use Lots "A" through "D" inclusive.

[Signature]
Gabriel O. Yonke

LS 4343

CITY ENGINEER'S CERTIFICATE

This map conforms with the requirements of the Subdivision Map Act and local ordinances. I hereby certify that I have examined this map and found it to be a true and correct copy of the original map as shown within the colored border line, and hereby declare to public use Lots "A" through "D" inclusive.

Dated Dec 30, 1981

[Signature]
David H. Burnett — City Engineer

CITY COUNCIL CERTIFICATE

I hereby certify that on Dec 30, 1981, the City of Banning, County of Riverside, State of California hereby approved said parcel map and accepts the offer of dedication made hereon of Lot "A" through "D" inclusive.

Attest: *[Signature]*
City Clerk

Dated Dec 30, 1981

WO No. BI-74

PM 100/39

100/40

Sheet 2 of 2 Sheets

IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, CALIFORNIA
PARCEL MAP NO. 17,851

SHOWING THE DIVISION OF A PORTION OF BLOCKS 37, 39, AND 39 AS SHOWN BY
AMENDED MAP OF BANNING LAND COMPANY RECORDED IN BOOK 9, PAGE 44,
SAN BERNARDINO RECORDS

S.P.R.R. TRACTS

ACTION SURVEYS SCALE 1"=60'

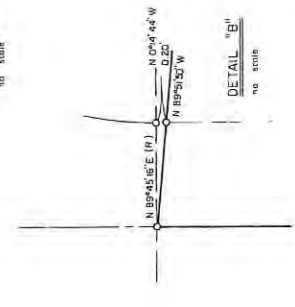
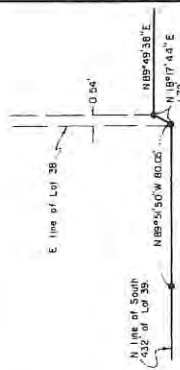
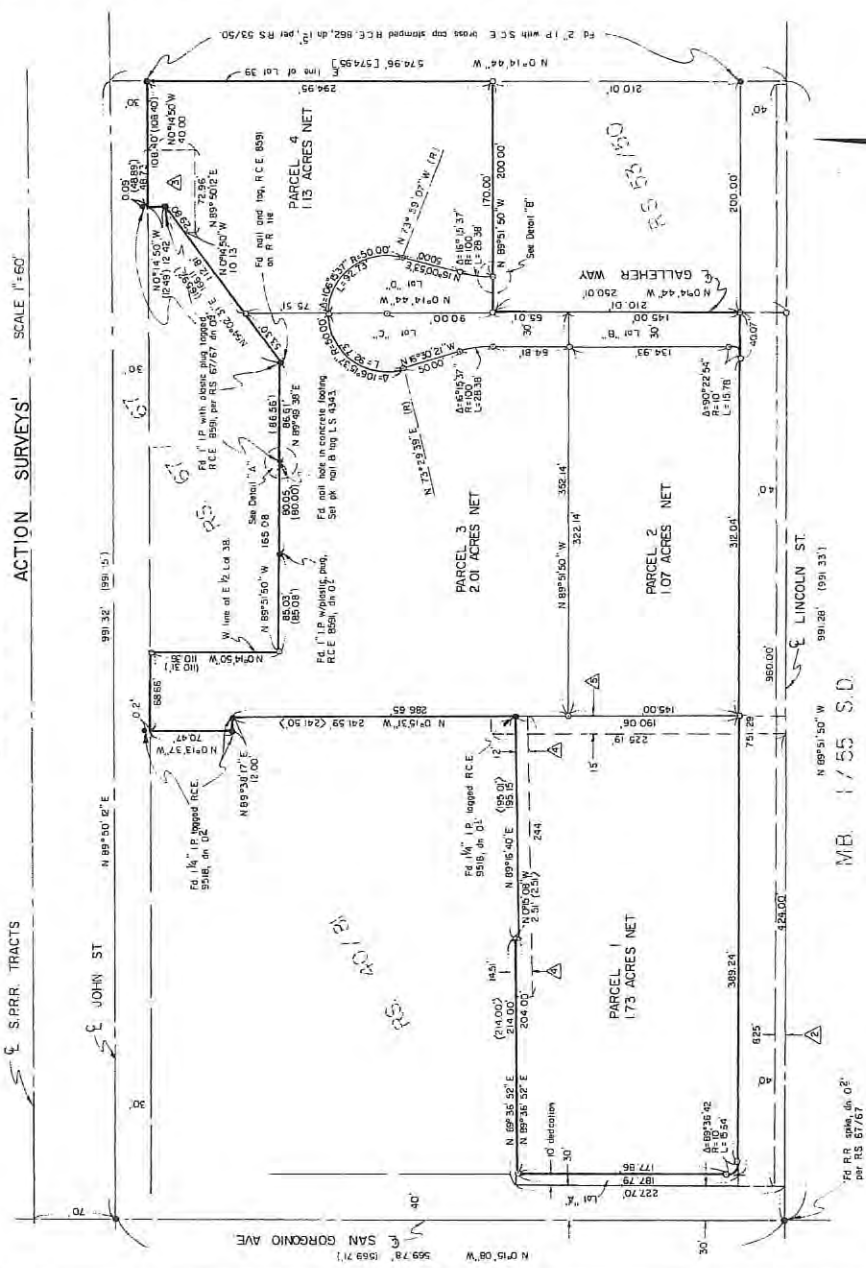
SURVEYORS' NOTES

- Dashed lines show boundaries as noted.
- Curves are 1/4" P topped L.S. 4343, 4344, unless otherwise noted.
- Details record data per RS 53/50.
- Details record data per RS 67/67.
- Details record data per RS 40/81.

Basis of bearing for this map is the centerline of Lincoln Street, being
N 89°55'50" W, as shown on Record of Survey recorded in Book 53 of
Page 50 in the office of the recorder of the County of Riverside.

EASEMENT NOTES

- △ An easement for electric, fuel and pipe lines in favor of Banning Land Co., recorded March 19, 1895 as last No. 1. Said easement covered the plotted area it is located in nature.
- △ An easement for pipelines in favor of So. Cal. Gas & So. Counties Gas Company of California recorded May 15, 1946 in Book 909, Page 334 of Official Records.
- △ An easement for ingress, egress for Star line in favor of Glenn L. Shively recorded June 1, 1959 in Book 2483, Page 33 of Official Records.
- △ An easement for ingress, egress in favor of Michael Mann and Ida Mann recorded January 25, 1966 as last No. 8589.
- △ An easement for electric and telephone lines in favor of City of Banning recorded November 8, 1972 as last No. 10221.



W.D. No. 8174

PM 100/40

35, 46, 47, 48

LA 80-259 Parcel 3

ATTACHMENT 2

Right-of-Way Dedications

LOT "B"

<p>EXEMPT RECORDING REQUESTED BY City of Banning PER GOV'T CODE 6103 AND WHEN RECORDED MAIL TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p> <p>MAIL TAX STATEMENTS TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p>	
--	--

OFFER OF DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 9 day of October, 2018.

Henry M. Lefler (a single man)

Henry M. Lefler, a single man

State of Nevada County of Clark
This instrument was acknowledged
before me on 10/9/18
by Henry M. Lefler, a single man
[Signature]

See acknowledgements attached to this document.



ACCEPTANCE CERTIFICATE

The City of Banning hereby accepts the Offer of Dedication hereby attached and consents to the recordation of this document as set forth above by _____, on behalf of the Grantee pursuant to the authority delegated to him by City Council Resolution No. _____, adopted on _____. Nothing herein is intended nor shall anything herein be construed as acceptance of the property until such dedication has been accepted by appropriate action of the City Council, as of the local governing bodies or its successors or assigns.

CITY OF BANNING

George Moyer
Mayor

ATTEST:

Sonia De La Fuente
Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT "A" - LEGAL DESCRIPTION
OFFER OF DEDICATION**

APN 541-220-017

SECTION 10, T.3 S., R. 1 E., S.B.M.

THAT REAL PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE,
CITY OF BANNING, DESCRIBED AS FOLLOWS:

LOT "B" OF PARCEL MAP NO. 17,851 AS SHOWN BY MAP ON FILE
IN BOOK 100, PAGES 39 AND 40 OF PARCEL MAPS,
RECORDS OF RIVERSIDE COUNTY.

THIS LOT CONTAINS 4,372 SQUARE FEET, MORE OR LESS

EXHIBIT "B" - MAP ATTACHED HERETO AND BY THIS REFERENCE
IS MADE A PART HEREOF.



PREPARED UNDER MY SUPERVISION

Harvey D. Marcell

HARVEY D. MARCELL P.E.

OCTOBER 5, 2018
SHEET 1 OF 1

EXHIBIT "B" - MAP OFFER OF DEDICATION

APN 541-220-018
PARCEL NO. 3
PM 100/39-40
S73°29'39"W(R)
D=106°15'37"
R=50.00'
L=92.73'
N16°30'21"W
50.00'
N73°29'39"E(R)
N89°45'16"E(R)
D=16°15'37"
R=100.00'
L=28.38'
N00°14'44"W
64.81'
S89°51'50"E
30.00'
D=90°22'54"
R=10.00'
L=15.77'
S89°51'50"E
40.07'
N00°14'44"W
134.93'
LOT "B"
PM 100/39-40
145.00'
N00°14'44"W
40'LINCOLN STREET

APN 541-220-019
PARCEL NO. 4
PM 100/39-40
D=106°15'37"
R=50.00'
L=92.73'
S73°59'07"E(R)
N16°00'53"E
50.00'
N73°59'07"W(R)
D=16°15'37"
R=100.00'
L=28.38'
S89°45'16"W(R)
N89°51'50"W
30.00'
N00°14'44"W
0.20'
N00°14'44"W(R)
65.01'
GALLEHER WAY

INDICATES OFFER OF DEDICATION AREA
THIS LOT CONTAINS 4,372 S.F. MORE OR LESS.

REGISTERED PROFESSIONAL ENGINEER
HARVEY D. MARCELL
NO. 23099
CIVIL
STATE OF CALIFORNIA

PREPARED UNDER MY SUPERVISION
Harvey D. Marcell
HARVEY D. MARCELL P.E.

OCTOBER 5, 2018
SHEET 1 OF 1

ESC. #1179-1 T.O. #29731

RECORDING REQUESTED BY

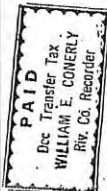
QUALITY TITLE CO.

AND WHEN RECORDED MAIL TO

255074

NAME HENRY M. LEFLER
STREET ADDRESS 43235 Hacienda St.
Apt. T
CITY & STATE Hemet, CA 92344

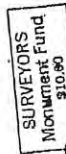
255074



RECEIVED FOR RECORD
AT 3:00 O'CLOCK P.M.

SEP 1 1987

Recorded in Official Records
of Riverside County, California
W. E. Conerly
RECORDER
Fees \$



SPACE ABOVE THIS LINE FOR RECORDER'S USE
GRANT DEED (Individual)

THE UNDERSIGNED GRANTOR(S) DECLARE(S)

TRANSFER TAX is \$47.30

☒ computed on full value of property conveyed, or

☐ computed on full value less value of liens or encumbrances remaining at time of sale, and

FOR VALUE RECEIVED

SAN GORGONIO LAND CO., a limited partnership

GRANT(S) to

HENRY M. LEFLER, a single man

the below described real property in the state of California, county of RIVERSIDE, city of BANNING

Parcel No. 2 and "B" of Parcel Map No. 17,851 as per plat recorded in Book 100, pages 39 and 40, records of said County.

RESERVING THEREFROM UNTO THE GRANTOR AN EASEMENT FOR INGRESS AND EGRESS AND PUBLIC UTILITY PURPOSES OVER THE WEST FIFTEEN (15) FEET OF PARCEL NO. 2 OF PARCEL MAP NO. 17,851 AS PER PLAT RECORDED IN BOOK 100, pages 39 and 40, RECORDS OF SAID COUNTY.

SUBJECT TO:

1. All of the general and special taxes for the fiscal year 1986/87, a lien not yet due or payable and the lien of supplemental taxes, if any, assessed pursuant to the provisions of Chapter 498, of the State of California Statutes of 1983;
2. Covenants, conditions, restrictions, reservations, rights and rights of way of record.

Tax Parcel No. _____

Dated: JUNE 29, 1987

STATE OF CALIFORNIA
COUNTY OF _____ } is

On _____, before me,
the undersigned, a Notary Public in and for said State, personally
appeared _____

personally known to me (or 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.

WITNESS my hand and official seal.

Signature _____

SAN GORGONIO LAND CO.,
a limited partnership

BY: _____

BY: _____

(This area for official notarial seal)

MAIL TAX STATEMENTS TO ABOVE ADDRESS.

C-20 5AM 11-88 CP00707

3003 (6/82) (Partnership) First American Title Company

255074

STATE OF CALIFORNIA
COUNTY OF San Diego
On Aug 20 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared Michael L. Geller
and Mary L. Geller

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed the within

Instrument as General part
on behalf of San Diego, the parties

therein named and acknowledged to me that the parties executed it.

WITNESS my hand and official seal.

Signature Marilyn Ann Alloway

(This area for official notarial seal)



COURTESY

- Beaumont
- Crestline
- Desert Hot Springs
- Fontana
- Idyllwild
- Indio
- Mira Mesa
- Moreno Valley
- Palm Desert
- Rancho California
- Riverside
- San Bernardino
- Upland
- Victorville

COURTESY

Courtesy Escrow Service

GRANT DEED
(INDIVIDUAL)

END RECORDED DOCUMENT

LOT "C"

<p>EXEMPT RECORDING REQUESTED BY City of Banning PER GOV'T CODE 6103 AND WHEN RECORDED MAIL TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p> <p>MAIL TAX STATEMENTS TO:</p> <p>City of Banning – City Clerk P.O. Box 998 Banning, CA 92220</p>	
--	--

OFFER OF DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 23rd day of October, 2018.


 Anthony A. Saffo, Successor Trustee Under Revocable Trust Agreement for George Paziuk
 dated March 26, 1998.

See acknowledgements attached to this document.

We did not receive a notary attachment.

Please review and we will have Mr. Saffo update

ACCEPTANCE CERTIFICATE

The City of Banning hereby accepts the Offer of Dedication hereby attached and consents to the recordation of this document as set forth above by _____, on behalf of the Grantee pursuant to the authority delegated to him by City Council Resolution No. _____, adopted on _____. Nothing herein is intended nor shall anything herein be construed as acceptance of the property until such dedication has been accepted by appropriate action of the City Council, as of the local governing bodies or its successors or assigns.

CITY OF BANNING

George Moyer
Mayor

ATTEST:

Sonia De La Fuente
Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT "A" - LEGAL DESCRIPTION
OFFER OF DEDICATION**

APN 541-220-018

SECTION 10, T.3 S., R. 1 E., S.B.M.

THAT REAL PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE,
CITY OF BANNING, DESCRIBED AS FOLLOWS:

LOT "C" OF PARCEL MAP NO. 17,851 AS SHOWN BY MAP ON FILE
IN BOOK 100, PAGES 39 AND 40 OF PARCEL MAPS,
RECORDS OF RIVERSIDE COUNTY.

THIS LOT CONTAINS 7,447 SQUARE FEET, MORE OR LESS

EXHIBIT "B" - MAP ATTACHED HERETO AND BY THIS REFERENCE
IS MADE A PART HEREOF.



PREPARED UNDER MY SUPERVISION

Harvey D. Marcell
HARVEY D. MARCELL P.E.

OCTOBER 5, 2018
SHEET 1 OF 1

[illegible]

215

DOC # 2013-0166438

04/09/2013 09:18A Fee:34.00

Page 1 of 4

Recorded in Official Records
County of Riverside

Larry W. Ward

Assessor, County Clerk & Recorder



Recording requested by
and when Recorded, mail to:
Anthony A. Saffo
c/o Saffo Law Firm
5900-B Oleander Drive
Wilmington, NC 28403

Mail Tax Statements to:
Anthony A. Saffo
5900-B Oleander Drive
Wilmington, NC 28403

Assessor's Parcel Number:
540-220-018

S	R	U	PAGE	SIZE	DA	MISC	LONG	RFD	COPY
1			4						3-1
M	A	L	465	426	PCOR	NCOR	SMF	NCHG	EXAM
					T:		CTY	UNI	808

DEED IN LIEU OF FORECLOSURE

The Grantee named herein is/was the foreclosing Beneficiary / X /
The amount of the unpaid debt together with cost is \$808,642.24
The amount paid by the Grantee is \$ -0-
Document Transfer Tax is \$ -0-

Signature of Declarant

Anthony A. Saffo, Trustee

The property is located in / / an unincorporated area / X / the city of Banning, California, Riverside County.

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,

Yaghjian LP, a California limited partnership, as to a 65% undivided interest, and Thomas Martin Cordova and Candice Melaine Cordova, husband and wife as community property, as to an undivided 35% interest

hereby grant(s) to Anthony A. Saffo, Successor Trustee Under Revocable Trust Agreement for George Paziuk dated March 26, 1998, all interest in

the following real property in the City of Banning, County of Riverside, California:
313 South Gallagher Way,
Banning, CA 92220-4977

Legal Description:
See attached as Exhibit A

SEE ATTACHED PAGE 3 FOR RECITAL FOR DEED OF FORECLOSURE

DATED: 4/2/, 2013

Yaghjian L.P., a California Limited Partnership

X

By:

Its:

Viken D. Yaghjian YAGHJIAN L.P.DATED: 4-3, 2013

X

Thomas Martin Cordova

DATED: 4/3, 2013

X

Candice Melaine Cordova

STATE OF CALIFORNIA,
COUNTY OF ORANGE) SS.
) grt

On October 2, 2013 before me, TERRY R. FINN, Notary Public, personally appeared VIKEN DAVE YAGHJIAN, who 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, and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of CALIFORNIA that the foregoing paragraph is true and correct.



WITNESS my hand and official seal this APRIL 2, 2013.

Terry R. Finn
Notary Public

STATE OF California,
COUNTY OF Los Angeles) SS.
) grt

On April 3rd, 2013 before me, Sharon Butler, Notary Public, personally appeared Thomas Martin Cordova, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal this 3rd April, 2013.

Sharon Butler
Notary Public

STATE OF California,
COUNTY OF Los Angeles) SS.
) grt

On April 3rd, 2013 before me, Sharon Butler, Notary Public, personally appeared Candice Melaine Cordova, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.



WITNESS my hand and official seal this 3rd April, 2013.

Sharon Butler
Notary Public



2013-0166438
04/09/2013 03:16N
2 of 4

This page must be recorded with Deed in Lieu of Foreclosure

RECITAL FOR DEED IN LIEU OF FORECLOSURE

"This Deed is an absolute conveyance, the Grantor having sold said land to the Grantee for a fair and adequate consideration, such consideration, in addition to any above recited, being full satisfaction of all obligations secured by Deed of Trust executed by Yaghjian L.P., a California limited partnership, as to an undivided 65% interest, and Thomas Martin Cordova and Candice Melaine Cordova, husband and wife as community property, as to an undivided 35% interest, as Trustors, and George Paziuk, as Original Trustee Under Revocable Trust Agreement dated March 26, 1998, as Trustee, recorded on March 3, 2009, as Instrument # 2009-0102410, Official Records of Riverside County, State of California.

Grantor declares that this conveyance is freely and fairly made, and that there are no agreements, oral or written, other than this Deed between Grantor and Grantee with respect to said land."



2013-0166438
04/09/2013 09:16H
3 of 4

Exhibit A

All that certain real property situated in the County of Riverside, State of California,
described as follows:

Parcel 3 of Parcel Map 17851 as shown by map on file in Book 100, Pages 39 and 40 of
Parcel Maps, Records of Riverside County.



2013-0166438
04/09/2013 09:16A
4 of 4

331595

105250

RECORDING REQUESTED BY
FIDELITY NATIONAL TITLE INS. CO.

AND WHEN RECORDED MAIL THIS DEED AND, UNLESS OTHERWISE SHOWN BELOW, MAIL TAX STATEMENTS TO:

NAME Mr. and Mrs. George Pazuk
Address c/o DBC Inc
CITY & STATE ZIP 710 Sunnyvale Dr.,
Wilmington, NC 20403

Title Order No. 105258 Escrow No. 4097

PAID
Doc. Transfer Tax
WILLIAM E. CONERLY
Riv. Co. Recorder

RECEIVED FOR RECORD
AT 9:30 O'CLOCK A.M.
At Request of
FIDELITY NAT'L TITLE COMPANY

SEP - 6 1990
Recorded in Office of Recorder
of Riverside County, California
Wm. E. Conerly Recorder
Fees \$ 7

SURVEYORS
Monument Fund
\$10.00

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

The undersigned declares that the documentary transfer tax is \$.....243.10..... and is
☐ computed on the full value of the interest or property conveyed, or is
☒ computed on the full value less the value of liens or encumbrances remaining thereon at the time of sale. The land, tenements or realty is located in
☐ unincorporated area ☒ city of Banning..... and

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
 SAN GORGONIO LAND CO., a limited partnership

hereby GRANT(S) to GEORGE PAZUIK and ALEXANDRA PAZUIK, husband and wife as joint tenants

the following described real property in the City of Banning
 county of Riverside, state of California:

Parcel 3 of Parcel Map 17851 as shown by Map on file in Book 100, page 39 and 40 of Parcel Maps, Records of Riverside County, California.

Reserving unto the Grantor an easement for ingress, egress and to tie into an 8" fire sprinkler line and detector check valve over the Westerly 15 feet of the Southerly 175 feet of Parcel 3 of Parcel Map 17851 as shown by Map on file in Book 100, pages 39 and 40 of Parcel Maps, Records of Riverside County, California.

Dated AUGUST 22, 1990

SAN GORGONIO LAND CO., a limited partnership
 BY: Michael L. Calleher, general partner

STATE OF CALIFORNIA }
 COUNTY OF _____ } SS.
 On this _____ day of _____, 19____, before me the undersigned, a Notary Public in and for said County and State, personally appeared _____

_____, personally known to me or proved to me on the basis of satisfactory evidence to be the person _____ whose name _____ subscribed to the within instrument and acknowledged that _____ executed the same.

Signature of Notary

FOR NOTARY SEAL OR STAMP

Assessor's Parcel No. 541-220-018-1

MAIL TAX STATEMENTS TO PARTY SHOWN ON FOLLOWING LINE; IF NO PARTY SO SHOWN, MAIL AS DIRECTED ABOVE
 Mr. and Mrs. George Pazuk c/o DBC Inc, 710 Sunnyvale Dr., Wilmington, NC 20403
 Name Street Address City & State

331595

331595

CHICAGO TITLE
Partnership
Sample

STATE OF CALIFORNIA Riverside SS.
COUNTY OF Riverside
On August 28, 1990 before me,

(here insert the name & quality of the officer)
personally appeared Michael L. Lohrke

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person that executed this instrument, on behalf of the partnership and acknowledged to me that the partnership executed it.

Signature Terry Jo Burns



Notary Public in and for said County and State

FOR NOTARY SEAL OR STAMP

331595

Date:

Riverside County Recorder
Riverside, California

Gentlemen:

The attached instrument is an All-Inclusive Deed of Trust in the amount of \$ 265,000.00.

The total consideration of this transaction is \$ 415,000.00

The total unpaid balance of all Deeds of Trust remaining at the time of sale is \$ 194,338.00

The net amount of the sale on which documentary transfer tax is based is \$ 220,662.00

The total Documentary Transfer Tax which is due \$ 243.10

San Geronio Land Co., a limited
partnership

George Pazyik
George Pazyik

Michael L. Galleher
BY: Michael L. Galleher, general
partner

Alexandra Pazyik
Alexandra Pazyik

Recorded on _____
(date)

As Document No. _____ to _____

END RECORDED DOCUMENT

LOT "D"

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

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

MAIL TAX STATEMENTS
TO:

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

OFFER OF DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street, highway, and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 9th day of October, 2018.

Downing Construction, Inc.



Randy Downing, President

See acknowledgements attached to this document.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California

County of San Bernardino

On 10/09/18 before me, Elva Nelson, Notary Public

Date _____

Here Insert Name and Title of the Officer

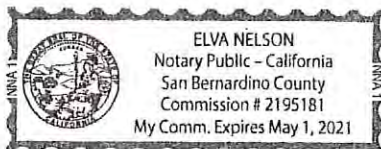
personally appeared _____ Randy Downing

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 Eva Nelson
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Partner — ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

ACCEPTANCE CERTIFICATE

The City of Banning hereby accepts the Offer of Dedication hereby attached and consents to the recordation of this document as set forth above by _____, on behalf of the Grantee pursuant to the authority delegated to him by City Council Resolution No. _____, adopted on _____. Nothing herein is intended nor shall anything herein be construed as acceptance of the property until such dedication has been accepted by appropriate action of the City Council, as of the local governing bodies or its successors or assigns.

CITY OF BANNING

George Moyer
Mayor

ATTEST:

Sonia De La Fuente
Deputy City Clerk

APPROVED AS TO FORM:

City Attorney

**EXHIBIT "A" - LEGAL DESCRIPTION
OFFER OF DEDICATION**

APN 541-220-019

SECTION 10, T.3 S., R. 1 E., S.B.M.

THAT REAL PROPERTY IN THE STATE OF CALIFORNIA, COUNTY OF RIVERSIDE,
CITY OF BANNING, DESCRIBED AS FOLLOWS:

LOT "D" OF PARCEL MAP NO. 17,851 AS SHOWN BY MAP ON FILE
IN BOOK 100, PAGES 39 AND 40 OF PARCEL MAPS,
RECORDS OF RIVERSIDE COUNTY.

THIS LOT CONTAINS 5,502 SQUARE FEET, MORE OR LESS

EXHIBIT "B" - MAP ATTACHED HERETO AND BY THIS REFERENCE
IS MADE A PART HEREOF.



PREPARED UNDER MY SUPERVISION

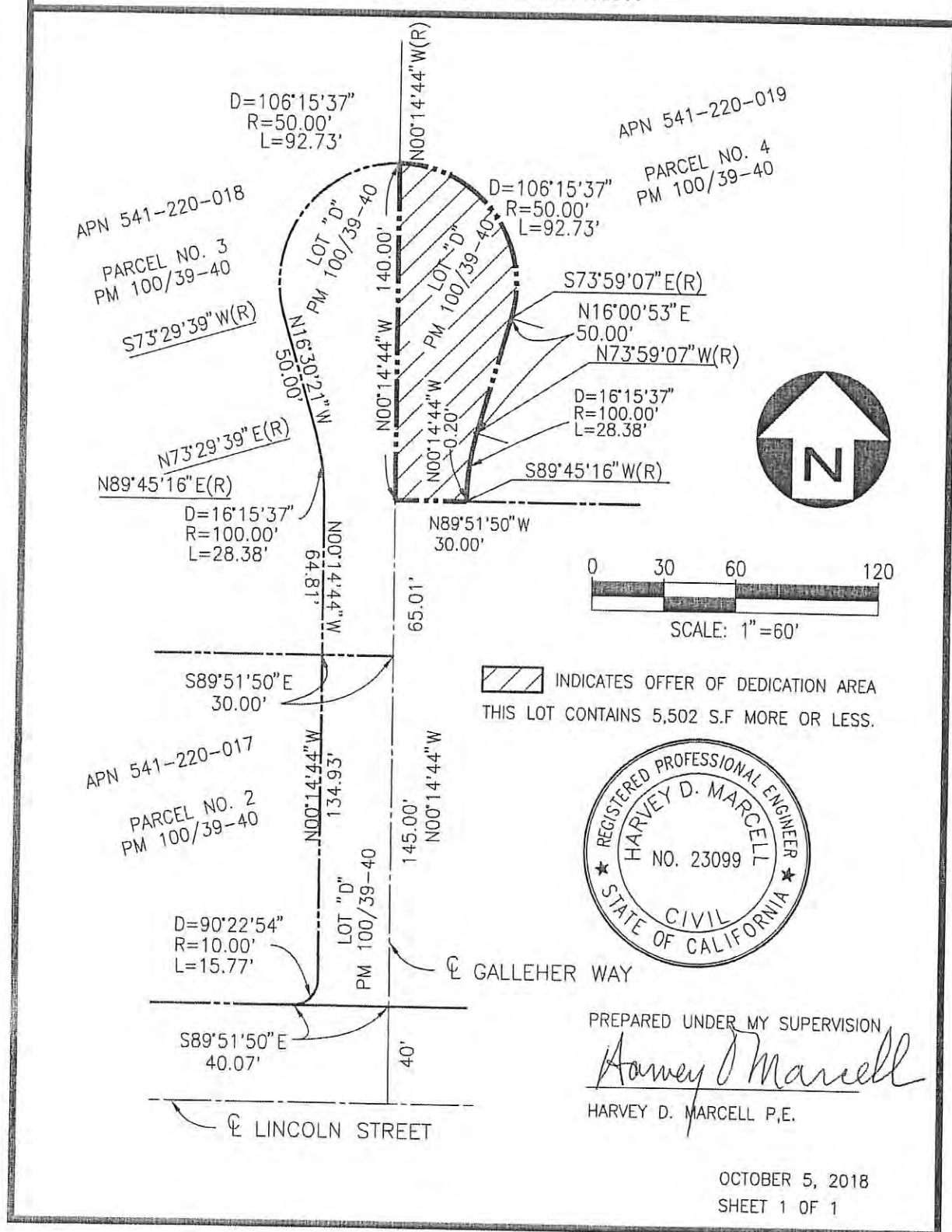
Harvey D. Marcell

HARVEY D. MARCELL P.E.

OCTOBER 5, 2018

SHEET 1 OF 1

EXHIBIT "B" - MAP OFFER OF DEDICATION

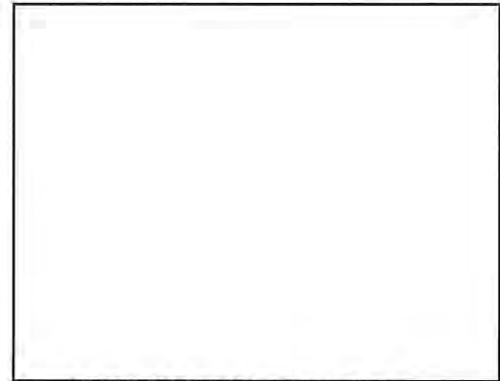


ATTACHMENT 3

Certificates of Acceptance

When Recorded Mail To:

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



SPACE FOR RECORDER'S USE

NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.

CERTIFICATE OF ACCEPTANCE

This is to certify that the Street Right-of-Way Dedications from **Henry M. Lefler** dated October 9, 2018, is hereby accepted by THE CITY OF BANNING pursuant to authority conferred by the City Council this January 8, 2019, and the grantees consent to recordation thereof by its duly authorized agent.

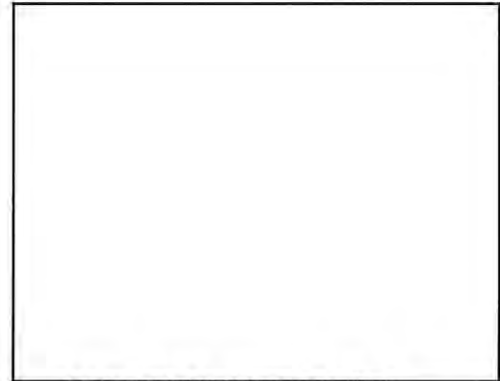
Dated: _____

CITY OF BANNING

By _____
Laurie Sampson, Acting Deputy City Clerk

When Recorded Mail To:

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



SPACE FOR RECORDER'S USE

NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.

CERTIFICATE OF ACCEPTANCE

This is to certify that the Street Right-of-Way Dedications from **Anthony A. Saffo, Successor Trustee Under Revocable Trust Agreement for George Paziuk** dated October 23, 2018, is hereby accepted by THE CITY OF BANNING pursuant to authority conferred by the City Council this January 8, 2019, and the grantees consent to recordation thereof by its duly authorized agent.

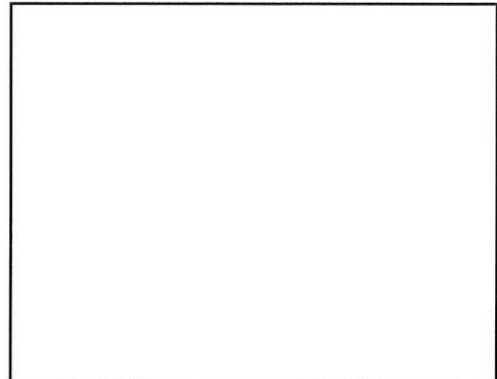
Dated: _____

CITY OF BANNING

By _____
Laurie Sampson, Acting Deputy City Clerk

When Recorded Mail To:

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



SPACE FOR RECORDER'S USE

NO RECORDING FEE PER SECTION
6103 OF THE GOVERNMENT CODE.

CERTIFICATE OF ACCEPTANCE

This is to certify that the Street Right-of-Way Dedications from **Downing Construction, Inc.** dated October 9, 2018, is hereby accepted by THE CITY OF BANNING pursuant to authority conferred by the City Council this January 8, 2019, and the grantees consent to recordation thereof by its duly authorized agent.

Dated: _____

CITY OF BANNING

By _____
Laurie Sampson, Acting Deputy City Clerk



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

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

MEETING DATE: January 8, 2019

SUBJECT: Authorize the City Manager to sign the Notice of Completion for Project No. 2017-01, "Community Center and Senior Center Tenant Improvements" as complete and direct the City Clerk to record the Notice of Completion

RECOMMENDED ACTION:

That the City Council accept Project No. 2017-01, "Community Center and Senior Center Tenant Improvements" as complete, authorize the City Manager or her designee to sign the Notice of Completion and direct the City Clerk to record the Notice of Completion.

BACKGROUND:

On March 27, 2018, City Council adopted Resolution 2018-23 awarding a Construction Agreement to Epsilon Engineering for Project No. 2017-01, "Community Center and Senior Center Tenant Improvements". The project was approved in the amount of \$393,554 with a 10% contingency for a total project budget of \$432,910.

The scope of work for improvements to the Community Center included asbestos and mold abatement; roof replacement; security improvements; gym flooring and skylight tinting; restrooms improvements; paint throughout a portion of the facility; conference room counter, sink and cabinets. Improvements to the Senior Center consisted of new roofing including framing, insulation, downspouts, fascia trim; new lighting; new duct work and asbestos and mold abatement.

Project change orders were processed in the amount of \$18,473.07 increasing the contract amount by approximately 5% for a total contract amount of \$412,027.07. Change orders addressed items such as additional mold remediation; gym lighting; replacement of restroom partitions and water station in gym.

JUSTIFICATION:

The lowest qualified bidder, Epsilon Engineering, was awarded the contract and work was completed on August 28, 2018. Public Works staff verified through inspections that the workmanship, materials, and procedures were satisfactory and that the contractor had met the required contract obligations.

FISCAL IMPACT:

The original contract was awarded in the amount of \$393,554 and the final contract amount for this project is \$412,027.07, under the allocated project budget approved under Resolution 2018-23. The project was funded by Fiscal Years 2016, 2017 and 2018 Community Development Block Grant funding in the amount of \$351,992, as well as, a Transit Security Grant in the amount of \$32,088 and the Capital Replacement fund in the amount of \$27,947.07.

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 Pictures

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Notice of Completion

1 WHEN RECORDED MAIL TO:

2
3 Office of the City Clerk
4 City of Banning
5 P.O. Box 998
6 Banning, California 92220
7

8 FREE RECORDING:
9 Exempt Pursuant to
10 Government Code §6103
11

12
13 NOTICE OF COMPLETION

14 PROJECT NO. 2017-01,
15 "COMMUNITY CENTER AND SENIOR CENTER TENANT IMPROVEMENTS"

16
17 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City
18 of Banning, a municipal corporation, pursuant to the provisions of Section 9204 of the Civil
19 Code of the State of California, that Project No. 2017-01 is hereby accepted by the City of
20 Banning, pursuant to authority conferred by the City Council this January 8, 2019, and the
21 grantees consent to recordation thereof by its duly authorized agent.
22

23 That the OWNER, the City of Banning, and Epsilon Engineering of Moreno Valley,
24 California, the vendee, entered into an agreement dated March 28, 2018, for Project No.
25 2017-01, "Community Center and Senior Center Tenant Improvements".
26

27 The principal items of work consisted of improvement to the Community Center including
28 asbestos and mold abatement; roof replacement; security improvements; gym flooring and
29 skylight tinting; restrooms; paint throughout a portion of the facility; conference room
30 counter, sink, cabinets, doors, lighting improvements; and kitchen flooring. Improvements
31 to the Senior Center consisted of new roofing including framing, insulation, downspouts,
32 fascia trim; new lighting; new duct work; asbestos and mold abatement; signage; paint
33 throughout a portion of the facility; new doors and hardware; handrails and ramps; and
34 mechanical systems. The work was performed at Repplier Park, 789 North San Geronio
35 Avenue, Banning, CA 92220.
36

1 That the work was substantially completed on August 28, 2018, for Project No. 2017-01
2 "Community Center and Senior Center Tenant Improvements":

3 (1) The Nature of Interest was Community Center and Senior Center tenant
4 improvements completed on August 28, 2018 for Project No. 2017-01.

5 (2) That the City of Banning, a municipal corporation, whose address is
6 Banning City Hall, 99 E. Ramsey Street, Banning, California 92220, is completing tenant
7 improvements.

8 (3) That said improvements were performed at 789 North San Geronimo
9 Avenue, Banning, CA 92220.

10 (4) That the original contractor for said improvement was Epsilon Engineering,
11 State Contractor's License No. 831536.

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

13 (6) The nature of interest is in fee.
14

15 Dated: January 8, 2019

16 CITY OF BANNING
17 A Municipal Corporation
18
19
20

21 By _____
22 Douglas Schulze
23 City Manager
24
25

26 APPROVED AS TO FORM:
27
28
29
30

31 _____
32 Kevin G. Ennis, Esq., City Attorney
33 Richards, Watson & Gershon
34
35

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State of California
County of Riverside

(S e a l)

STATE OF CALIFORNIA)
COUNTY OF RIVERSIDE) ss

Laurie Sampson, being duly sworn, deposes and says:

That I am the Acting 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 _____, 2019 at Banning, California.

Acting Deputy City Clerk of the City
of Banning

ATTACHMENT 2

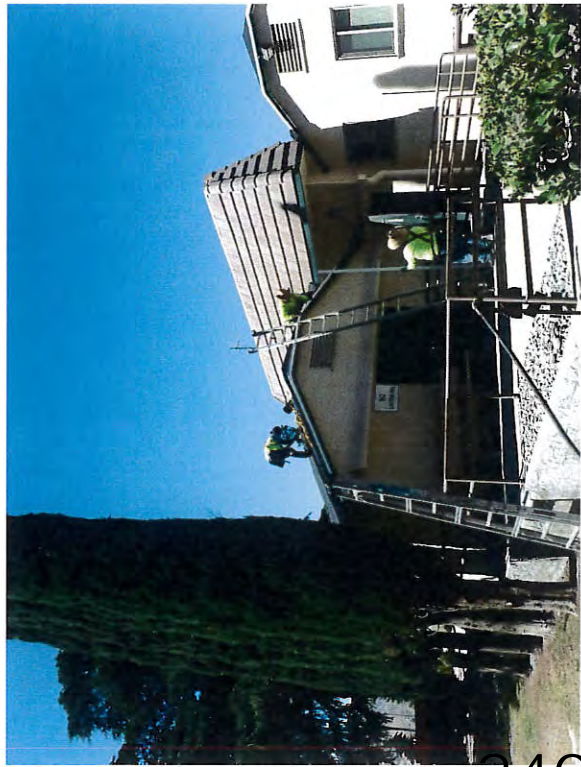
Project Pictures



Installation of new roof at the Community Center



Water damage repair at the Community Center



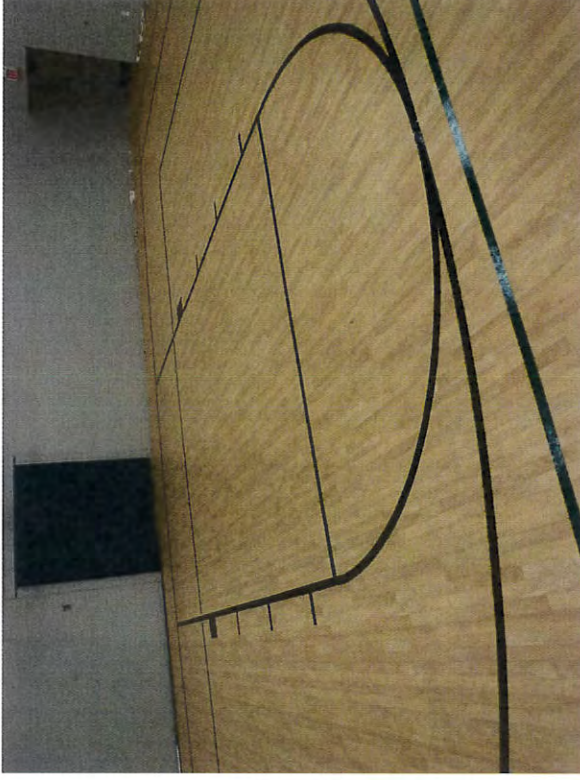
Roof improvements at the Senior Center



New downspouts at the Community Center



Preparing gym flooring



New gym flooring



Preparing gym flooring



Installation of sky light tinting

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ORDINANCE NO. 1537

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE NO. 17-3501 TO AMEND THE ZONING CLASSIFICATION FOR REAL PROPERTY LOCATED NORTH OF THE BANNING MUNICIPAL AIRPORT AND SOUTH OF INTERSTATE 10 AND THE UNION PACIFIC RAILROAD LINES (APNS: 532-130-001 AND 532-130-002) FROM PUBLIC FACILITIES - AIRPORT (PF-A) TO AIRPORT INDUSTRIAL (AI), AND MAKING FINDING PURSUANT TO CEQA

WHEREAS, an application for General Plan Amendment 17-2501, Zone Change No. 17-3501, Design Review 16-7002, and Environmental Assessment 16-1503 to permit the development of a proposed 1 million square foot distribution center (collectively, the "Project"), has been duly filed by:

Project Applicant/Owner:	Banning Industrial, LP
Authorized Agent:	Albert A. Webb Associates
Project Location:	In the southeastern portion of the City north of the Banning Municipal Airport, and south of Interstate 10 (I-10) freeway and the Union Pacific Railroad line the City of Banning, California
APNs:	532-130-001, 532-130-002
Lot Area:	40.63 acres;

WHEREAS, Zone Change No. 17-3501 is the subject of this Ordinance;

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.050, 17.116.030, and 17.56.040, on November 7, 2018, the Planning Commission held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the Planning Commission adopted Resolution No. 2018-19 by a 5-0-0 vote, recommending that the City Council approve General Plan Amendment No. 17-2501, Zone Change No. 17-3501, and Design Review No. 2016-7002;

WHEREAS, in accordance with Government Code Sections 65355, 65856, and 65090 and Banning Municipal Code Section 17.68.020.B., on November 30, 2018, the City gave public notice, by advertisement in the Record Gazette Newspaper, and by mailing to the owner of the subject real property, the owner's duly authorized agent, the Applicant, and the property owners within 300 feet of the Project site, of a public hearing concerning the Project;

WHEREAS, pursuant to Banning Municipal Code Section 17.116.040 and Government Code Sections 65853 and 65857, the City Council is authorized to approve, modify, or disapprove the Planning Commission's recommendation on Zone Change No. 17-3501; and

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.040, 17.116.040, and 17.56.040, and Government Code Sections 65355 and 65856, on December 11, 2018, the City Council held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the City Council considered the Project.

NOW THEREFORE, the City Council of the City of Banning does ordain as follows:

SECTION 1. California Environmental Quality Act Findings. The City Council of the City of Banning does hereby make the following environmental findings and determinations in connection with the approval of the Project:

A. Pursuant to the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000 *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. § 15000 *et seq.*) and City's local CEQA Guidelines (collectively, the "Guidelines"), City staff prepared an Initial Study of the potential environmental effects of the approval of the Project. Based upon the findings contained in that Study, a Notice of Preparation ("NOP") was distributed by the City of Banning to responsible, trustee and local agencies for review and comment on January 22, 2018. The NOP was issued to the Riverside County Clerk, the State Clearinghouse, the California Office of Planning and Research, and organizations and persons considered likely to be interested in the Project and its potential impacts. The NOP public review period ran for 30 days; a total of eight comment letters were received.

B. On February 6, 2018, the City conducted a scoping meeting, pursuant to Guidelines Section 15082(c)(1). A Draft Environmental Impact Report (the "DEIR") was prepared for the Project between March 9, 2018, and June 25, 2018. In accordance with CEQA and the Guidelines promulgated with respect thereto, the City analyzed the Project's potential impacts on the environment.

C. On June 26, 2018, the City circulated a Notice of Availability ("NOA") and the DEIR for public review and filed a Notice of Completion ("NOC") with the State Clearinghouse (State Clearinghouse No. 2018011032) to start the 45-day review period. Consistent with Guidelines Section 15105, the City circulated the DEIR (including appendices) for the Project to the public and other interested parties for a 45-day comment period, from June 26, 2018, to August 9, 2018. Copies of the DEIR were also made available at Banning City Hall and Banning Public Library. The City received a total of 11 comment letters.

D. The City prepared written responses to all comments received on the DEIR during the comment period and those responses to comments are incorporated into the Final Environmental Impact Report ("Final EIR"), which Final EIR was prepared in

accordance with CEQA, is on file with the City Planning Division, and is incorporated herein by this reference. The responses to public agency comments were delivered to each public agency commenter on or about November 27, 2018, which is at least ten (10) days prior to any certification of the Final EIR.

E. On December 11, 2018, the City Council conducted a duly noticed public hearing to consider the Project and the Final EIR, reviewed the staff report, accepted and considered public testimony. Based upon the evidence presented at the hearing, including the staff report and oral testimony, the City Council, by separate City Council Resolution No. 2018-144, certified the Final EIR, adopted findings and a Statement of Overriding Considerations pursuant to CEQA for the Project as set forth in Exhibit "A" to City Council Resolution No. 2018-144, and adopted a Mitigation Monitoring and Reporting Program ("MMRP") for the Project as set forth in Exhibit "B" City Council Resolution No. 2018-144.

F. All actions taken by City have been duly taken in accordance with all applicable legal requirements, including CEQA, and all other requirements for notice, public hearings, findings, votes and other procedural matters.

G. The custodian of records for the Final EIR, MMRP, and all other materials that constitute the record of proceedings upon which the City Council's decision was based, including, without limitation, staff reports, all of the materials that comprise and support the Final EIR and the staff reports, is the Planning Division of the City of Banning. Those documents are available for public examination during normal business hours at the City of Banning, Community Development Department, Planning Division, 99 E. Ramsey Drive, Banning, California 92220.

SECTION 2. Findings for Approval of Zone Change No. 17-3501. The City Council of the City of Banning hereby finds and determines that Zone Change No. 17-3501 should be approved because:

Finding No. 1: The proposed Zone Change No. 17-3501 is consistent with the goals and policies of the General Plan.

Finding of Fact: The current General Plan Land Use and Zoning Overlay Map depicts portions of the 63.9 - acre site is located in the City of Banning and zoned Public Facilities–Airport (PF-A) and a portion is zoned Airport Industrial (AI). The proposed Zone Change land use designation from Public Facilities–Airport (PF-A) to Airport Industrial (AI) for the southern portion of the Project site (APNs 532-130-001 and 530-130-002) is consistent with the Banning General Plan because the City's Industrial Goal is to provide a balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents. For a warehouse this size based on industry research conducted by the National Association for Industrial and Office Parks (NAIOP), it is estimated that there would be approximately one worker employed for every 2,000 square feet of space. For this Project, that would be

approximately 500 workers employed at the site, depending on the type of use the building will ultimately operate. (Initial Study, January 15, 2018, Section XIII. Population and Housing).

Finding No. 2: The proposed Zone Change No. 17-3501 is internally consistent with the Zoning Ordinance.

Finding of Fact: The proposed Zone Change of land use designation from Public Facilities–Airport (PF-A) to Airport Industrial (AI) for the southern portion of the Project site (APNs 532-130-001 and 530-130-002) is consistent with the Zoning Ordinance because the proposed use of a distribution center is a permitted use in the zone and it could be airport related if the end user also makes use of the airport delivery system. Similar airport related uses are allowed in both zones and the distribution center is consistent with Industrial development standards identified in Table 17.12.030 of the Banning Municipal Code.

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

Finding of Fact: See findings of fact in Section 1 of this Ordinance.

SECTION 3: CITY COUNCIL ACTION - Approval of Zone Change No. 17-3501. Based on the foregoing, the City Council of the City of Banning hereby approves Zone Change No. 17-3501, amending the Zoning Classification for real property located north of the Banning Municipal Airport and south of Interstate 10 and the Union Pacific Railroad Lines (APNs: 532-130-001 and 532-130-002) from Public Facilities – Airport (PF-A) to Airport Industrial (AI). This approval of Zone Change No. 17-3501 is conditioned upon the City Council's adoption of a resolution approving General Plan Amendment No. 17-2501 and Design Review No. 16-7002.

PASSED, APPROVED AND ADOPTED by the City Council of the City of Banning on this 8th day of January, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1537 was duly introduced at a regular meeting of the City Council of the City of Banning held on the 11th day of December, 2018, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2019 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

ORDINANCE NO. 1538

AN ORDINANCE OF THE CITY OF BANNING AMENDING CHAPTER 5.33 OF TITLE 5 OF THE BANNING MUNICIPAL CODE RELATED TO THE PROCESS FOR ISSUING CANNABIS RETAILER REGULATORY PERMITS, AND RELATED APPEALS, AND MAKING A DETERMINATION PURSUANT TO CEQA

WHEREAS, on November 13, 2018, the City Council adopted Ordinance 1527 (later renumbered as Ordinance 1532), which added Chapter 5.33 to the Municipal Code to establish procedures for the issuance of regulatory permits to cannabis retailers. At the same meeting, the City Council also adopted Ordinance 1531 which added Chapter 17.54 to the Zoning Code to allow for the issuance of conditional use permits to cannabis retailers; and

WHEREAS, Ordinance 1531 provides that only one cannabis retailer for every 10,000 residents may lawfully operate in the City, with any fraction of that ratio being rounded down to the nearest whole number. Based on Banning's current population, three cannabis retailers will be permitted to operate in the City. Staff was therefore tasked with creating a fair process to select the three retailers that will be permitted to operate in the City; and

WHEREAS, staff has drafted procedures to process cannabis retailer regulatory permits and has determined that the fairest approach would be for the eligible applicants to be selected through a lottery process; and

WHEREAS, Chapter 5.33 does not include provisions allowing for the selection of the cannabis retailers through a lottery, nor appeal procedures for those applicants who are not eligible to participate in the lottery; and

WHEREAS, additional revisions are needed to Chapter 5.33 to conform with the procedures that staff has drafted for processing the cannabis regulatory permit applications; and

WHEREAS, this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA. This Ordinance is also exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that

requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, the City is providing that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

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

SECTION 1. Code Amendment. The City Council hereby amends Section 5.33.010 (Definitions.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) to revise the definition of “Applicant” and add a new definition for “Eligible property”, in alphabetical order, to read as follows:

““Applicant” means the business entity that is the owner and operator of the cannabis business that is applying for a cannabis regulatory permit pursuant to this Chapter.”

““Eligible property” or “Eligible properties” means any property located within the Highway Serving Commercial zone that meets the location requirements set forth in Chapter 17.54.”

SECTION 2. Code Amendment. The City Council hereby amends Section 5.33.020 (Cannabis Regulatory Permit Required.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) in its entirety to read as follows:

“A. No person shall establish, or operate a cannabis business within the City unless the person has:

1. A valid business license;
2. A valid permit issued by the City pursuant to this Chapter;
3. A valid conditional use permit issued pursuant to Chapter 17.54;

and

4. A valid license issued by the Bureau to conduct the specific commercial cannabis activity that is being conducted on the premises.

B. Each cannabis business shall obtain a separate permit. Permits are nontransferable and will only be issued to the entity that will own and operate the cannabis business.

C. Any permit that is issued shall not go into effect unless a conditional use permit is also issued by the City Council pursuant to Chapter 17.54 of the Banning Municipal Code.

D. A permit issued pursuant to this Chapter is valid for a term of one (1) year from the date of issuance. Renewal terms shall not exceed one (1) year.”

SECTION 3. Code Amendment. The City Council hereby renumbers Section 5.33.040 (Cannabis Regulatory Permit Application Requirements.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) as Section 5.33.030, and amends the new Section 5.33.030 in its entirety to read as follows:

“A. An owner of a cannabis business may apply for a permit, on behalf of a cannabis business, by filing an application with the City Manager.

B. A cannabis business may only submit one application. If a cannabis business has multiple owners, only one owner may submit an application on behalf of the cannabis business. Multiple cannabis businesses may submit an application to operate at the same eligible property in the City. However, consistent with Section 17.54.030(B), a cannabis business shall not be permitted to operate at multiple locations in the City, nor shall a cannabis business be issued a permit if any owner or person with a financial interest in the cannabis business is also an owner or has a financial interest in any other cannabis business that is operating in the City or that has obtained a permit to operate in the City.

C. No person shall knowingly make a false statement of fact or knowingly omit any information that is required in the permit application.

D. Applications shall not be accepted or processed unless the applicant pays the nonrefundable application fee in the amount to be established by resolution of the City Council.

E. Applications will be accepted by appointment only and the applicant must adhere to the application procedures adopted by resolution of the City Council.

F. The application shall be on a form approved by the City Manager and shall include, but not be limited to, the following:

1. The type of cannabis business the applicant seeks to operate in the City, a description of the commercial cannabis activity that will be conducted on the premises, and a general description of the products that will be sold on or from the premises.

2. A description of the statutory entity or business form that will serve as the legal structure for the cannabis business; a copy of its formation and organizing documents, including, but not limited to, articles of incorporation, certificate of amendment, statement of information, articles of association, bylaws, partnership agreement, operating agreement, and fictitious business name statement; and the name and address of its agent for purposes of service of process.

3. A list of every fictitious business name the cannabis business is operating under.
4. The legal name of the applicant.
5. The current name and primary and secondary telephone numbers and email addresses of at least one twenty-four (24) hour on-call manager to address and resolve complaints and to respond to operating problems or concerns associated with the cannabis business.
6. If applicable, the business trade name ("DBA") of the cannabis business.
7. A list of the license types and the license numbers issued by any licensing authority to the applicant, or any other owner of the cannabis business, including the date the license was issued, the date the license will terminate and the licensing authority that issued the license.
8. Whether the applicant, or any owners of the cannabis business, have been denied a license or have had a license suspended or revoked by any licensing authority. The applicant shall identify the type of license applied for, the name of the licensing authority that denied the application, and the date of denial.
9. The assessor's parcel number and the physical address of the premises where the cannabis business will be conducted, the telephone number for the premises, and the website address and email address of the cannabis business. If the cannabis business will be conducted on a lot that is vacant at the time that the application is submitted, then the applicant shall amend the application at such time that a physical address and telephone number is issued for the cannabis business.
10. The cannabis business' federal employer identification number.
11. The physical address of any other premises owned or operated by the applicant, or any other owner of the cannabis business, and a brief summary of the business operations at each premises.
12. A complete list of every owner of, or person with a financial interest in, the cannabis business. Each individual named on this list shall submit the following information:
 - a) Their full name.
 - b) Their title within the applicant entity, if applicable.
 - c) Their date of birth and place of birth.
 - d) Their social security number or individual taxpayer identification number.

- e) Their mailing address.
 - f) Their home, business, or mobile telephone number and email address.
 - g) Their current employer.
 - h) Their percentage of ownership interest held in the applicant entity, or other financial interest held in the applicant entity.
 - i) Whether the individual has an ownership or a financial interest in any other cannabis business licensed by a licensing authority.
 - j) A copy of the individual's government-issued identification that includes the name, date of birth, physical description and picture of the owner or person with a financial interest in the cannabis business.
 - k) A copy of the DOJ and NCIC fingerprint background check for each owner and person with a financial interest in the cannabis business procured through the Banning Police Department.
 - l) If applicable, a copy of any certificate of rehabilitation issued under Penal Code section 4852.01 or dismissal issued pursuant to Penal Code section 1203.4 or 1203.41.
 - m) If applicable, a detailed description of any suspension or revocation of a cannabis related license or sanctions for unlicensed or unlawful cannabis activity by a state or local governmental agency against the applicant, or any of its owners or persons with a financial interest in the cannabis business, or any business entity in which the applicant or any of its owners or person with a financial interest in the cannabis business was an owner or officer within the five (5) years immediately preceding the date of the application.
 - n) If applicable, a detailed description of any civil and/or criminal suit and/or judgment relating to unlawful cannabis activity against the applicant or any of its owners or person with a financial interest in the cannabis business, or a business entity in which the applicant or any of its owners or persons with a financial interest in the cannabis business was an owner or officer within the five (5) years immediately preceding the date of the application.
13. A copy of the applicant's application with the Bureau to operate a cannabis retailer in the City.
14. A list of all owners, managers, and employees that are authorized to carry concealed weapons.
15. A written, notarized statement from the owner of the property where the cannabis business will operate evidencing unqualified consent to the applicant

operating a cannabis business on the property. The statement must specify the street address (unless the property is a vacant lot) and assessor's parcel number for the premises. The statement shall also contain the name, business address, email address and telephone number of the property owner(s) (whether business entity or individual). If applicable, a copy of the rental agreement shall also be provided.

16. If the applicant is the landowner upon which the premises is located, a copy of the title or deed to the property.

17. Evidence that the cannabis business will be compliant with the location restrictions set forth in Business and Professions Code section 26054(b) and the zoning restrictions set forth in Title 17 of the Banning Municipal Code.

18. A premises diagram which meets the requirements set forth in Section 5006 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

19. The proposed hours of operation.

20. Authorization and consent for City staff and the Police Department to seek verification of the information contained within the application.

21. An agreement whereby the applicant and the cannabis business:

a) Release the City of Banning, its agents, officers, elected officials, employees and attorneys, from any and all claims, injuries, damages or liabilities of any kind arising from any repeal or amendment of this Chapter or any other provision of the Banning Municipal Code, and any arrest or prosecution of the owners, managers, agents, employees, members or volunteers of the cannabis business for violation of state or federal laws; and

b) Defend, indemnify and hold harmless the City of Banning, and its agents, officers, elected officials, employees, and attorneys from and against any and all claims or actions brought by adjacent or nearby property owners or any other parties for any damages, injuries or other liability of any kind arising from the operation of the cannabis business.

22. Attestation to the following statement: Under penalty of perjury, I hereby declare that the information contained within and submitted with the application is complete, true and accurate. I understand that a misrepresentation of fact, whether intentional or not, is cause for rejection of this application, denial of the permit, or revocation of a permit issued.

G. Nothing in this section is intended to limit the City Manager's ability to request additional information the City Manager deems necessary or relevant to determining a cannabis business' suitability for a permit. An applicant shall provide any additional information requested by the City Manager no later than seven (7) days after the request, unless otherwise specified by the City Manager."

SECTION 4. Code Amendment. The City Council hereby adds a new Section 5.33.040 (Lottery.) to Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) to read as follows:

“A. City staff shall establish and conduct a lottery for determining which cannabis businesses will (1) be issued a cannabis regulatory permit, and (2) be eligible to apply for a cannabis conditional use permit pursuant to the provisions of Chapter 17.54.

B. The City Council shall adopt a resolution setting forth the procedures that will be followed in conducting the lottery, and the steps to be included in a schedule that will be prepared for the receipt and review of applications for cannabis retail regulatory permits. The City Manager is hereby authorized to make any necessary changes to the lottery procedures and steps to be included in the schedule as he or she deems appropriate.”

SECTION 5. Code Amendment. The City Council hereby rennumbers Section 5.33.060 (Decision on Cannabis Regulatory Permit.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) as Section 5.33.050, and amends the new Section 5.33.050 in its entirety to read as follows:

A. The City Manager, in consultation with Chief of Police, shall evaluate all completed applications that are submitted by the application deadline and determine whether the applicant can participate in the lottery. The applicant shall be ineligible to participate in the lottery, if the City Manager determines that one or more of the following conditions exist:

1. The applicant has not paid all fees required for consideration of the application.
2. The application is incomplete, filed late, or is otherwise not responsive to the requirements of this Chapter.
3. The application contains a false or misleading statement or omission of a material fact.
4. The applicant, or any owner or person with a financial interest in the cannabis business, is not at least twenty-one (21) years old.
5. The applicant, or any owner or person with a financial interest in the cannabis business, has unpaid and overdue administrative penalties imposed for violations of the Banning Municipal Code.
6. The applicant, or any owner or person with a financial interest in the cannabis business, has an unpaid civil judgment imposed for violation(s) of the Banning Municipal Code.

7. The applicant, or any owner or person with a financial interest in the cannabis business is delinquent on any fee, charge for service or tax levied by the State of California or the City.

8. The applicant, or any owner or person with a financial interest in the cannabis business, has, within the five (5) years preceding the date the application is filed with the Community Development Director, been (1) convicted of engaging in unlawful commercial cannabis activity, (2) issued an uncontested administrative citation by a city, county, or city and county for engaging in unlawful cannabis-related activity, or (3) been the subject of a lawsuit for engaging in unlawful cannabis-related activity in which the applicant or owner was not the prevailing party.

9. The applicant, or any owner or person with a financial interest in the cannabis business, has been denied a license or permit or other authorization to engage in commercial cannabis activity by a state or local licensing or permitting authority, for any reason other than the fact that the applicant was not selected for a limited number of licenses or permits, but would have otherwise qualified to obtain the license or permit.

10. The applicant, or any owner or person with a financial interest in the cannabis business is employed by the City's police department or the City's Community Development Department.

11. The applicant, or any of owner or persons with a financial interest in the cannabis business, has been convicted of any crime set forth in Business and Professions Code section 26057(b)(4), Fish and Game Code sections 12025 or 12025.1, Penal Code section 186.22 or any other offense which is substantially related to the qualifications, functions, or duties of the cannabis business for which the application is made. In determining whether such offense is "substantially related," the City Manager shall consult with the City Attorney and thereafter apply the analysis set forth in section 5017 of Title 16 of the California Code of Regulations, as the same may be amended from time to time.

12. The premises or the operation of the applicant's cannabis business, as described in its application, would fail to comply with any provision of the Banning Municipal Code, or any state law or regulation.

13. Operation of the cannabis business in the manner proposed poses a threat to the public health, safety or welfare, or violates any provision of this Chapter.

B. If none of the above-referenced conditions exist, the City Manager, or his or her designee, shall notify the applicant that the cannabis business is eligible to participate in the lottery. If any of the above-referenced conditions exist, the City Manager shall notify the applicant that the cannabis business has been denied the opportunity to participate in the lottery and has been denied a cannabis regulatory permit. Any notice of denial shall set forth the reasons of denial and advise the applicant of the right to contest the denial pursuant to the procedures set forth in

Section 5.33.060.

C. Within seven (7) business days of the lottery being conducted, the City Manager, or his or her designee, shall issue a cannabis regulatory permit to the first three (3) retailers that were selected in the lottery and shall notify the applicants that they are eligible to apply for a cannabis conditional use permit. The applicants that were not the first three (3) retailers selected in the lottery will be placed on a waiting list in the order that they were selected in the lottery. These applicants will not be issued or denied a permit, but rather will remain on the waiting list in the event that an additional spot opens up to obtain a cannabis regulatory permit.

D. If a cannabis regulatory permit is issued to an applicant, but a cannabis retailer conditional use permit pursuant to Chapter 17.54 is not approved within one year from the issuance of a permit under this chapter, the permit issued under this Chapter shall be void.”

SECTION 6. Code Amendment. The City Council hereby adds a new Section 5.33.060 (Lottery Appeals.) to Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) to read as follows:

A. If an applicant is denied the opportunity to participate in the lottery due to the applicant's failure to submit a complete application by the required deadline, failure to satisfy the criteria for issuance of a permit, or for any other reason, the applicant may appeal this decision in writing. The written appeal shall be filed with the Community Development Department, by the deadline set forth in a resolution adopted by the City Council, and shall be accompanied by an appeal fee. After the deadline to appeal has passed, the decision to deny the cannabis regulatory permit shall be deemed final, and may no longer be appealed.

B. In the event an appeal is timely filed, the lottery shall not be conducted until the appeal is heard. Upon receipt of a timely appeal, the Community Development Director shall make arrangements for the selection of a hearing officer to conduct the appeal hearing. Not less than seven (7) days prior to the appeal hearing, the Community Development Director shall notify the City Manager, Chief of Police, and the appellant of either: (1) the name of the administrative law judgment who will serve as the hearing office, (2) the names of three qualified attorneys or retired Superior Court or Appellate Court judges submitted to the Community Development Department by a reputable firm providing mediators and arbitrators to serve as a panel from which the hearing officer will be selected, or (3) any other option determined by the City to serve as a fair and impartial process to hear the appeal. The City shall decide which of the three options specified above will be used for the appeal, and the Community Development Director shall notify the City Manager, Chief of Police, and appellant of the option that will be used. If the second option is selected by the City, then within three (3) days of the date of mailing the notice of the available panel, the City Manager, Chief of Police, or the appellant may notify the Community Development Director in writing that he or she elects to remove one of the three potential hearing officers. The Community Development Director shall then request the mediation and arbitration firm

to select one of the remaining names on the list as the designated hearing officer for the appeal hearing. The hearing officer shall be fair and impartial and shall have no bias for or against the City Manager, Chief of Police, or the appellant.

C. At the appeal hearing, the hearing officer shall receive oral and written evidence from the City Manager and the appellant. The hearing officer shall have authority to administer oaths to those persons who will provide oral testimony. The evidence presented need not comply with the strict rules of evidence set forth in the California Evidence Code but shall be the type of evidence upon which reasonable and prudent people rely upon in the conduct of serious affairs. The hearing officer shall have broad authority to control the proceedings and to provide for cross examination of witness in a fair and impartial manner. The City Manager shall have the burden of proof to establish by clear and convincing evidence the facts upon which his or her decision is based. The appeal hearing shall be recorded by audio recording. Any party may, at its sole cost and expense, utilize the services of a certified court reporter to prepare the verbatim record of the hearing. If a court reporter is used, the transcript prepared shall be made available for purchase to both parties. The hearing officer may continue the appeal hearing from time to time, but only upon written motion of a party showing good cause for the continuance.

D. The hearing officer may uphold or reverse the decision of the City Manager. Within seven (7) days of the conclusion of the appeal hearing, the hearing officer shall render his or her decision and make written findings supporting the decision. He or she shall send the decision to the Community Development Director. Upon receipt of the hearing officer's decision, the Community Development Director shall send a copy of it to the City Manager and the appellant, along with a proof of mailing. The hearing officer's decision shall be final."

SECTION 7. Code Amendment. The City Council hereby renames Section 5.33.070 (Approval of Cannabis Regulatory Permit with Conditions.) as "City Manager Authority." and amends Section 5.33.070 in its entirety to read as follows:

"A. The City Manager is authorized to adopt policies, rules, and procedures to implement and interpret this Chapter, and is further authorized to waive any requirements set forth in this Chapter so long as the requirement being waived is applied equally to all applicants.

B. Upon approval of a permit or renewal of a permit, the City Manager may impose conditions in excess of the requirements set forth in this Chapter including, but not limited to, conditions relating to the operation of any cannabis business and restrictions relating to the deployment or use of the types of equipment used on the premises.

C. During the term of any permit, the City Manager may impose additional conditions on a permit when reasonably necessary to abate a violation of the Banning Municipal Code or to protect the public health, safety or welfare.

D. Review of any decision by the City Manager to impose additional conditions on a permit pursuant to this section shall be pursuant to Section 5.33.130.”

SECTION 8. Code Amendment. The City Council hereby amends Subsection E of Section 5.33.080 (Cannabis Regulatory Permit Renewal.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) to read as follows:

“E. The City Manager, in consultation with the Chief of Police, shall evaluate the renewal application and determine whether to renew the permit based on the criteria set forth in Section 5.33.050. In addition, the City Manager, in consultation with the Chief of Police, shall evaluate whether the premises is substantially different from the diagram submitted by the applicant, in that the size, layout, location of common entryways, doorways or passage ways, means of public entry or exit, or limited access areas within the premises is not the same. If the premises is substantially different, the City Manager may deny the renewal application. Review of any decision by the City Manager to deny a request to renew a permit shall be pursuant to Section 5.33.130.”

SECTION 9. Code Amendment. The City Council hereby amends Subsection B of Section 5.33.130 (Initiation of Discipline and Appeals.) of Chapter 5.33 (Cannabis Retailer Regulatory Permits) of Title 5 (Business Licenses and Regulations) to read as follows:

“B. If an application for a permit renewal was denied by the City Manager, or the City Manager revokes or suspends a cannabis regulatory permit, the applicant shall have ten (10) calendar days from the date the notice of the disposition was deposited in the mail within which to appeal the City Manager’s decision to the City Council. If the tenth calendar day falls on a day the City is closed, the time shall be extended to the next business day.”

SECTION 10. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 11. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Banning Municipal Code, committed prior to the effective date hereto, nor be construed as a waiver of any license or penalty or the penal provision applicable to any violation thereof.

SECTION 12. Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

PASSED, APPROVED and ADOPTED by the City Council of the City of Banning on this 8th day of January, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

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

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1539 was duly introduced at a regular meeting of the City Council of the City of Banning held on the 11th day of December, 2018, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2019 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

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ORDINANCE NO. 1539

AN ORDINANCE OF THE CITY OF BANNING APPROVING ZONE TEXT AMENDMENT NO. 18-97505, AMENDING CHAPTER 17.54 OF TITLE 17 OF THE BANNING MUNICIPAL CODE TO ELIMINATE THE SEPARATION REQUIREMENT BETWEEN CANNABIS RETAILERS, AND CLARIFYING THE ELIGIBILITY TO OBTAIN A CANNABIS RETAILER CONDITIONAL USE PERMIT, AND MAKING A DETERMINATION PURSUANT TO CEQA

WHEREAS, on October 3, 2018, the Planning Commission of the City of Banning held a duly noticed public hearing regarding Ordinance 1531 which would add Chapter 17.54 to the Zoning Code pertaining to cannabis retailer conditional use permits. At the conclusion of the Planning Commission hearing, and after due consideration of the testimony, the Planning Commission adopted Resolution No. 2018-18 recommending that the City Council adopt Ordinance 1531 to allow cannabis retailers as a conditionally permitted use in the Highway Serving Commercial zone. The Planning Commission further recommended that Ordinance 1531 be revised to delete the 600-foot separation requirement between cannabis retailers; and

WHEREAS, on October 23, 2018, the City Council of the City of Banning held a duly noticed public hearing on Ordinance 1531, at which time all persons interested in this Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony, the City Council closed the public hearing and conducted a first reading of Ordinance 1531. The City Council revised Ordinance 1531 to re-insert the 600-foot separation requirement between cannabis retailers that had been deleted by the Planning Commission; and

WHEREAS, on November 13, 2018, the City Council adopted Ordinance 1531; and

WHEREAS, staff has been drafting procedures to process cannabis retailer regulatory permits. Through this process, staff has determined that since cannabis retailers are only permitted to operate in a specific segment of the Highway Servicing Commercial zone, the 600-foot separation requirement between cannabis retailers will unduly restrict the properties on which these type of businesses are allowed to operate. Furthermore, staff has determined that conducting a lottery is the preferred method for selecting the cannabis retailers that will be eligible to obtain a cannabis conditional use permit, and having a 600-foot separation requirement between cannabis retailers will unduly complicate the lottery process; and

WHEREAS, the Community Development Director and City Manager are requesting that the City Council reconsider the 600-foot separation requirement between cannabis retailers and to now amend Chapter 17.54 to delete the 600-foot separation requirement between cannabis retailers; and

WHEREAS, the Planning Commission has already considered this issue and provided its recommendation on the subject of a 600-foot separation requirement between cannabis retailers in connection with its review of Ordinance 1531 such that the City is not required to resubmit the matter back to the Planning Commission prior to having the City Council consider this issue again; and

WHEREAS, the Ordinance also makes some general revisions that clarify the eligibility to obtain a cannabis conditional use permits. These revisions do not change any property from one zone to another or impose any regulation listed in Government Code Section 65850 not theretofore imposed or remove or modify any such regulation theretofore imposed. As such, consistent with Government Code Section 65853 these clarifying revisions do not to be first considered by the Planning Commission for a recommendation to the City Council nor do these revisions need to be noticed to the public.

WHEREAS, on December 11, 2018, the City Council held a duly noticed public hearing to consider Zone Text Amendment No. 18-97505, and following the receipt of all evidence, the City Council closed the public hearing; and

WHEREAS, Zoning Text Amendment No. 18-97505 is considered a “project” pursuant to the California Environmental Quality Act (CEQA). The project is considered exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project by itself does not result in any physical changes in the environment.

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

SECTION 1. ENVIRONMENTAL FINDINGS

A. California Environmental Quality Act.

The City Council finds and determines the Zoning Code Amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project by itself does not result in any physical changes in the environment. The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

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. ADDITIONAL REQUIRED FINDINGS

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 18-97505.

Finding No. 1: Proposed Zone Text Amendment No. 18-97505 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zone Text Amendment No. 18-97505 is consistent with the goals and policies of the General Plan. The Banning voters approved a tax measure on cannabis retailers. It is in the public interest to regulate cannabis, to allow for responsible and lawful retail cannabis sales in the City. With adequate regulation and oversight limited cannabis retail sales in the City are consistent with the following General Plan goals and policies:

Economic Development Element:

Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

Finding No. 2: Proposed Zone Text Amendment No. 18-97505 is internally consistent with the Zoning Ordinance.

Findings of Fact: Proposed Zone Text Amendment No. 18-97505 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating retail cannabis sales so as to avoid the risks of criminal activity, malodorous smells, and degradation of the natural environment.

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 finds and determines that the Zoning Code Amendment is exempt from CEQA pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed amendment may have a significant effect on the environment. Eliminating the separation requirement between cannabis retailers will not increase the number of cannabis retailers that will be permitted to operate in the City. Any future project will be required to undergo an environmental assessment for any potential impacts. Therefore, the project of and by itself does not result in any physical changes in the environment.

SECTION 3. The City Council hereby amends Subsection B of Section 17.54.030 (Cannabis Retailer Conditional Use Permit - Application Fees and Terms) of Chapter 17.54 (Cannabis Retailer Conditional Use Permits) of Title 17 (Zoning) as follows (with deletions appearing in strikethrough text and additions appearing in underlined text), with all other provisions of Section 17.54.030 remaining unchanged:

"B. Each cannabis retailer premises shall require a separate cannabis retailer conditional use permit. Two cannabis retailer premises in the City may not operate under one cannabis retailer conditional use permit. No holder of a cannabis retailer conditional use permit for one premises shall have an ownership interest in any other cannabis retailer lawfully or unlawfully operating in the City. Accordingly, no cannabis retailer conditional use permit shall be issued for an applicant, business entity, or person that has an ownership interest in any other cannabis retailer in the City and no cannabis retailer conditional use permit shall be issued if the applicant, owner or person with a direct financial interest in the cannabis business also has an ownership or other direct financial interest in any other commercial cannabis business retailer that is operating in the City or that has obtained a conditional use permit."

SECTION 4. The City Council hereby amends Subsection B of Section 17.54.080 (Separation Requirements and Other Limitations.) of Chapter 17.54 (Cannabis Retailer Conditional Use Permits) of Title 17 (Zoning) as follows (with deletions appearing in strikethrough text and additions appearing in underlined text), with all other provisions of Section 17.54.080 remaining unchanged:

"B. No cannabis business shall be located within a 200-foot radius of any residential zoning district. No cannabis business shall be located within a 600-foot radius of any day care center, youth center, public or private school providing instruction in kindergarten or any of grades 1-12, ~~or park, or any other retail cannabis business that is lawfully operating in the City and that is in existence at the time the cannabis conditional use permit is issued.~~ The 600-foot distance requirement does not include any private school in which education is primarily conducted in a private home or a family day care home. The distances specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection."

SECTION 5. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

SECTION 6. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Banning Municipal Code, committed prior to the effective date hereto, nor be construed as a waiver of any license or penalty or the penal provision applicable to any violation thereof.

SECTION 7. Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

PASSED, APPROVED and ADOPTED by the City Council of the City of Banning on this 8th day of January, 2018.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1539 was duly introduced at a regular meeting of the City Council of the City of Banning held on the 11th day of December, 2018, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2019 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

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ORDINANCE 1540

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, MODIFYING THE CITY MANAGER'S POWERS AND DUTIES WITH RESPECT TO THE APPOINTMENT, PROMOTION, DEMOTION, AND REMOVAL OF OFFICERS AND EMPLOYEES

WHEREAS, the City of Banning, California ("City") is a general law city and has a city manager form of government, by which all officers and employees, with the exception of the City Clerk, City Treasurer, and City Attorney, are to be appointed, promoted, demoted and removed by the authority of the City Manager; and

WHEREAS, by Ordinance 1478 (adopted March 25, 2014), the City Council modified the City Manager's appointment authority to require that any appointment of a department head be subject to concurrence by a formal vote of the City Council; and

WHEREAS, upon the assumption of duties of a new City Manager, the City Council finds it appropriate to return to the position of City Manager the full authority to appoint, promote, demote, and remove any officers and employees of the City except the City Clerk, City Treasurer, and City Attorney, without the concurrence of the City Council; and

WHEREAS, all legal prerequisites to the adoption of this Ordinance have occurred.

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

SECTION 1. CODE AMENDMENT

Paragraph C of Section 2.08.080 (Powers and Duties) of Chapter 2.08 (City Manager) of Title 2 (Administration and Personnel) of the Banning Municipal Code is hereby amended to read as follows (language to be omitted appears in strikethrough format):

"C. To appoint, promote, demote and remove any officers and employees of the city except the city clerk, city treasurer and city attorney; ~~provided, however, that any appointment of a department head, including chief of police or other public safety director, shall be subject to concurrence by a formal vote of the city council.~~"

SECTION 2. SEVERABILITY

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

SECTION 3. PUBLICATION, EFFECTIVE DATE

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a record of the passage and adoption thereof in the records and proceedings of the City Council at which time the Ordinance is passed and adopted. Within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2019.

Arthur L. Welch , Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of December, 2018, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: January 8, 2019

SUBJECT: Resolution 2019-08, Approving the Police Chief Employment Agreement

RECOMMENDED ACTION:

Adopt Resolution No. 2019-08, Approving an Employment Agreement for the Police Chief.

BACKGROUND:

Following a nationwide recruitment, Matthew Hamner has been selected to serve as the Police Chief for the City of Banning.

Pursuant to Municipal Code section 2.08.090, "[t]he city manager is authorized to execute an employment contract in contemplation of employment by the city subject to the following requirements:

- The contract is for the position of department head.
- The contract is for a classification of employment that is not included within any recognized employee organization.
- The maximum compensation and benefits expressly or impliedly included in the contract are subject to the approval of the city council prior to the contract taking effect. Such approval shall be granted by ordinance or resolution. Approval may be granted as a part of the adoption of the department of city budget if such adoption is by ordinance or resolution.
- The contract shall be subject to the limitations set forth in California Government Code Section 53260 et seq. or any successor sections.

The proposed agreement between the City and Matthew Hamner for Police Chief services is attached hereto as **Attachment No. 2**. Mr. Hamner has signed the agreement with the understanding that its terms must be agreed to by City Council.

The material terms of the Police Chief Employment Agreement are as follows:

- Employee will receive an annual salary of \$190,857.99 during his term as Police Chief. This represents a yearly increase of approximately \$14,000 over the previous top step for the position.
- The term of the agreement is initially three calendar years commencing on February 11, 2019, subject to termination at any time by the City Manager or Mr. Hamner 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. Hamner 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 Police Chiefs, Mr. Hamner is entitled to an advance of 80 hours of vacation and sick 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 \$190,857.99 during his term as Police Chief.
- If the City terminates the agreement without cause, Mr. Hamner 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 Mr. Hamner is entitled to an advance of 80 hours of vacation and sick leave upon reporting for work.

FISCAL IMPACT:

The City will incur an increase in annual salary expense of approximately \$14,000 and one-time reimbursement for moving and relocation expenses up to \$18,000.

STAFF RECOMMENDATION

1. Prior to a motion to adopt the attached Resolution approving the Police Employment Agreement between the City of Banning and Matthew Hamner, 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 an Employment Agreement between the City and Matthew Hamner for the position of Police Chief. 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 Employment Agreement that are unique to this Agreement:
 - Employee will receive an annual salary of \$190,857.99 during his term as Police Chief.
 - If the City terminates the agreement without cause, Mr. Hamner 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 Mr. Hamner is entitled to an advance of 80 hours of vacation and sick leave upon reporting for work.
2. Adopt Resolution No. 2019-xxx Approving an Employment Agreement with Matthew Hamner for Police Chief services with a tentative effective date of February 11, 2019.

ATTACHMENTS:

1. Resolution 2019-08 , Approving an Employment Agreement with Matthew Hamner for Police Chief Services
2. Police Chief Employment Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

City Council Resolution

2019-08

RESOLUTION 2019-08

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING A POLICE CHIEF EMPLOYMENT
AGREEMENT**

WHEREAS, following a nationwide recruitment, the City Manager selected Matthew Hamner for the permanent position of Police Chief; 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 January 8, 2019, the Council considered a Police Chief Employment Agreement between the City of Banning and Matthew Hamner.

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

SECTION 1. The City Council approves the Police Chief Employment Agreement between the City of Banning and Matthew Hamner, attached hereto as Exhibit A, effective February 11, 2019.

SECTION 2. 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 8th day of January, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-08, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Police Chief Employment Agreement between the City of Banning and Matthew Hamner

CITY OF BANNING

POLICE CHIEF EMPLOYMENT AGREEMENT

This POLICE CHIEF EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into and made effective the ____ day of January, 2019, by and between the CITY OF BANNING, a general law city and municipal corporation (hereinafter referred to as the "CITY") and MATTHEW HAMNER, an individual (hereinafter referred to as "EMPLOYEE"), who is qualified to serve as Police Chief in the State of California. For purposes of this AGREEMENT, CITY and EMPLOYEE may be collectively referred to as the "Parties" or individually as a "Party."

R E C I T A L S

WHEREAS, California Government Code section 34851 authorizes a city manager form of government, which position is prescribed by state law and the CITY's Municipal Code; and

WHEREAS, California Government Code section 34856 provides that the City Manager, in cities operating under the City Manager form of government, may appoint and dismiss the chief of police and other subordinate appointive offices and employees; and

WHEREAS, the duties of the Police Chief are set forth in Exhibit "A" to this AGREEMENT; and

WHEREAS, the CITY requires the services of a Police Chief; and

WHEREAS, based on EMPLOYEE's executive and administrative qualifications and ability, the City Manager desires to appoint EMPLOYEE to serve as the Police Chief for the CITY; and

WHEREAS, the Parties agree that EMPLOYEE has the necessary qualifications and experience to perform as the Police Chief for the CITY with the exception of the CITY Job Description requirement that EMPLOYEE must have at the time of application and must maintain a State of California Police Officer Standards and Training (POST) management certification and that with his appointment and formal approval by the City Council of same CITY is waiving the requirement of possessing a management certification at time of application or appointment, but the Parties agree that EMPLOYEE shall promptly apply for same; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of Police Chief services to the CITY and the Banning Police Department; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE's provision of Police Chief professional services to the CITY and the Banning Police Department 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 Manager hereby appoints EMPLOYEE as Police Chief for the CITY to perform the functions and duties of that position, as described in Exhibit "A" to this AGREEMENT, the California Government Code, and such other legally permissible and proper duties and functions as the City Manager shall, from time to time, direct or assign to EMPLOYEE. CITY reserves the right to amend Banning Municipal Code, 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.

1.2 Work Schedule. It is recognized that the Police Chief 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 Police Chief 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 Police Chief 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 Police Chief 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 Manager, 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 Police Chief.

1.5 Employment Status. Upon appointment to the Police Chief position, EMPLOYEE shall serve at the will and pleasure of the City Manager and understands that by accepting the Police Chief appointment, he shall be an "at-will" employee and shall be subject to summary dismissal without any right of notice or hearing, except as required by law, including any pre-disciplinary "Skelly" hearing. The CITY may terminate EMPLOYEE at any time in accordance with Section 3.4 below, and as permitted by all applicable laws, including, but not limited to, the Public Safety Officers Procedural Bill of Rights Act (Government Code sections 3300-3313).

1.6 Exemption from Personnel System. BMC §2.68.020(E) expressly exempts the Police Chief 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

Manager, 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 Salary. For the services rendered pursuant to this AGREEMENT, EMPLOYEE shall be placed at Range D103, Step 13 which at the time of executing this agreement is annually One Hundred Ninety Thousand Eight Hundred-Fifty-Seven Dollars and Ninety-nine Cents (\$190,857.99) 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 on the day EMPLOYEE commences work for the CITY. Such Salary shall be subject to all permissible and required withholdings as determined by state and federal law and as determined appropriate by the City Council.

2.2 Salary Review. The EMPLOYEE salary is set at the top step of the range. It is understood that the only salary adjustments will be those based upon the Consumer Price Index (CPI), unless a future Compensation Study is approved by the City Council.

2.3 Salary Adjustment. EMPLOYEE's base salary and benefits package have been established by the AGREEMENT. Annual adjustments in the base salary will be equal to 100% of the June-June CPI-W for the term of this agreement and will be effective on August 1 of each year.

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 Monday, February 11_____, 2019, In the event EMPLOYEE commences services on a date other than February 11_____, 2019 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 February 10_____, 2022, subject to termination by the City Manager 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 Manager 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 Manager 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 Manager 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 Manager may terminate this AGREEMENT at any time with or without cause, by providing written notice of the reason(s). The City Manager'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 Police Chief 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, except as to rights that by law cannot be waived, including, but not limited to, EMPLOYEE's rights under the Public Safety Officers Procedural Bill of Rights Act (Government Code sections 3300-3313). Nothing herein shall be construed to create a property interest, where one does not exist by rule of law in the position of Police Chief. Notwithstanding this Section 3.4, upon appointment to the Police Chief position, EMPLOYEE remains an at-will employee serving at the pleasure of the City Manager.

(a) Termination by CITY for Cause. The City Manager 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 Manager, and 12) gross misfeasance or gross malfeasance. If the City Manager 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 Manager Without Cause. By providing EMPLOYEE at least thirty (30) days' prior written notice thereof, the City Manager 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:

4.1.1 CITY shall pay to EMPLOYEE severance in an amount equal to EMPLOYEE's monthly base salary then in effect multiplied by six (6).

4.1.2 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.

4.1.3 In the event that this AGREEMENT expires by its own terms and not by resignation of EMPLOYEE or early termination by City Manager, then EMPLOYEE shall not be entitled to any severance.

4.1.4 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 Manager, 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 at-will employment status of EMPLOYEE as Police Chief (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 Manager shall conduct a formal or informal review and evaluate the performance of EMPLOYEE on an annual basis. Such review shall be conducted on or within four (4) weeks of the anniversary date of EMPLOYEE's appointment to the position of Police Chief, using an evaluation form to be approved by City Manager.

6.0 BENEFITS AND OTHER COMPENSATION

6.1 Professional Development. The CITY recognizes its obligation to the professional development of its Police Chief, 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 Manager. As budget permits, the CITY 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 Association of Chiefs of Police, the California Police Chiefs 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 Manager and taken in an accredited educational institution provided that: i) the subject matter of the course relates directly to and contributes toward the Police Chief 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.

As permitted by the budget, and in an amount to be determined at the sole discretion of the City, the CITY 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. As provided for in the budget, the CITY agrees to pay for professional dues and subscriptions of EMPLOYEE reasonably related to the professional growth, development, education and training of EMPLOYEE.

All reimbursable expenses under this Section must be approved in advance by the City Manager.

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. A sick leave bank of Eighty (80) hours will be established as of the employment date.

(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. 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. A vacation leave bank of Eighty (80) hours will be established as of the employment date.

(c) Executive Leave. EMPLOYEE shall be entitled to ninety-eight (98) hours annual accrual with a maximum accrual cap of two-hundred (200) hours. Leave will be earned at a rate of 3.77 hours per pay period. A maximum of ninety-eight (98) hours of Executive Leave may be cashed out annually.

(d) 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, Christmas Eve, Christmas and New Year's Eve. 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 Manager 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.

(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 2.7% at 57 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's duties require that the Chief of Police shall have the exclusive and unrestricted use at all times during employment of a CITY vehicle for municipal purposes. CITY shall provide all attendant operating and maintenance expenses and insurance. EMPLOYEE shall be governed by any and all CITY policies regarding the use of CITY vehicles. In the event the CITY vehicle provided to EMPLOYEE is unavailable or its use restricted from take-home use, EMPLOYEE shall receive a Two Hundred Fifty Dollar (\$250.000) per month as and for a 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 for a Master's Degree. Education pay will increase to a sum of Four Hundred and Fifty Dollars (\$450.00) per month as and for an education incentive for possessing a P.O.S.T. Management Certification.

6.11 Uniform Allowance. EMPLOYEE shall receive a One Hundred Ten Dollar (\$110.00) per month uniform allowance for purchase of uniforms. CITY shall provide EMPLOYEE with standard uniform items (5 shirts, 3 pants, tie, belt, jacket, shoes, duty belt & accessories) and an initial dress uniform, including pants, shirt, jacket, tie, hat, etc.

6.12 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 Three Hundred Dollars (\$300.00) every two years commencing on the date of this AGREEMENT. Thereafter, reimbursement will occur two years from the date of the previous reimbursement.

6.13 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.

6.14 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.

6.15 Housing/Relocation Expenses Reimbursement. CITY will reimburse EMPLOYEE for the actual and reasonable cost, not to exceed \$15,000, 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 25 miles from 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. In addition, the CITY will reimburse EMPLOYEE in an amount up to three-thousand Dollars (\$3,000) for two visits to Banning for the purpose of finding housing prior to the first date of employment. Reimbursement will be for expenses of EMPLOYEE and EMPLOYEE'S SPOUSE.

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

8.1 The City Manager, 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 City Manager.

8.2 EMPLOYEE shall complete the California Police Officer Standards and Training (POST) management certification within eighteen (18) months after the first date of employment.

8.3 EMPLOYEE shall obtain a California Driver's License within ten (10) days after establishing residency in California.

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:

City Manager
City of Banning
P.O. Box 998
Banning, California 92220

To EMPLOYEE:

Matthew Hamner
[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 non-contractual 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

Douglas Schulze, City Manager

APPROVED AS TO FORM:

Kevin G. Ennis, City Attorney

POLICE CHIEF

A handwritten signature in black ink, appearing to read 'Matthew Hamner', written over the printed name.

Matthew Hamner

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

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

MEETING DATE: January 8, 2019

SUBJECT: Adopt Resolution 2019-05, Awarding a Professional Services Agreement to Engineering Resources of Southern California in the Amount of \$250,000 for Plan Check, Inspection and related Administrative Services through Fiscal Year 2020 with the Option to Renew for Three Additional Single Years

RECOMMENDED ACTION:

City Council adopt Resolution 2019-05:

1. Approving the award of a Professional Services Agreement to Engineering Resources of Southern California (ERSC) in the amount of \$250,000 for services as needed including Plan Check, Inspection and related Administrative Services through June 30, 2020 with the option to renew for three (3) additional single years.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement with ERSC.
3. Authorizing the City Manager or his designee to execute the Professional Services Agreement with ERSC valid through June 30, 2020 with the option to renew for three (3) additional signal years.

BACKGROUND:

The Public Works Department, currently staffed with two full-time engineers and one inspector, administers an array of services including management of capital improvement and infrastructure projects related to the design and construction of water,

wastewater, streets, storm drain and building infrastructure. In addition to managing public works projects, staff is also responsible for processing private land development projects related to Public Works responsibilities (e.g. infrastructure, grading, storm water, etc.). Due to current and anticipated increase in upcoming workloads related to private development (e.g. Atwell) the need to establish an agreement with a firm to provide plan check, inspection and related administrative services is necessary in order to maintain an acceptable level service.

Subsequently, on September 21, 2018 and September 28, 2018 publications were advertised in the Press Enterprise requesting proposals from qualified firms for these services. Additionally, a Request for Proposals (RFP) was released through the PlanetBids program notifying qualified firms of the opportunity. One hundred forty-nine (149) firms were sent direct solicitations through the PlanetBids program. The deadline to submit proposals was October 18, 2018 and ten (10) firms responded with submittals.

The scope of services requested for plan checking includes, but is not limited to street, sewer, water, grading and storm drain projects for residential and non-residential projects; responses to staff and applicants regarding permits; and preparation of conditions of approval. The inspection services scope requires inspectors to work under the direction of the Public Works Director and/or assigned staff to provide construction inspections services before, during and after construction insuring conformance with Federal, State and City statutes while maintaining appropriate records.

A three-person proposal evaluation committee consisting of two (2) City staff members and one (1) outside agency member, evaluated the ten (10) proposals that were received based on qualifications, experience of key personnel, approaches in providing services, and rates.

Listed below are the ten (10) firms that submitted proposals in order of average score:

CONSULTANT	AVERAGE SCORE
Engineering Resources of Southern California (ERSC)	442.5
Bureau Veritas North America, Inc.	410
Interwest Consulting Group	409.17
Transtech Engineers, Inc.	405.83
TKE Engineering, Inc.	396.67
Owen Group, Inc.	390.83
NV5, Inc.	375.84
Michael Baker International	366.09
CSG Consultants, Inc.	340.83
EC & AM Associates	308.33

As a follow-up to the proposal evaluation, staff interviewed the top four (4) firms that averaged a score of 400 or higher. Interviews were conducted by three (3) City staff members on December 18, 2018 increasing the average scores as shown below:

CONSULTANT	AVERAGE SCORE
Engineering Resources of Southern California (ERSC)	535.17
Interwest Consulting Group	498.84
Transtech Engineers, Inc.	491.50
Bureau Veritas North America, Inc.	484.00

As a result, staff recommends the award of a professional service agreement to the highest ranked firm, ERSC, with a recommended award amount of \$250,000. If awarded, the Professional Services Agreement will be for plan check, inspection and related administrative services on an as needed basis valid through June 30, 2020 with the option to renew for three (3) additional single years.

JUSTIFICATION:

Due to current and an anticipated increase in workload related to private land development activities, the Public Works Department has recognized a need for additional resources to provide plan check and inspection services in a timely manner and to maintain an acceptable level service .

ERSC was rated the highest firm that submitted a proposal as a response to the Public Works Department RFP.

FISCAL IMPACT:

An appropriation from the General Fund in the amount of \$250,000 to the Engineering Fund, Account No. 001-3000-442.33-53 is necessary and will be directly offset by revenues collected from plan check and inspection fees collected by the Public Works Department.

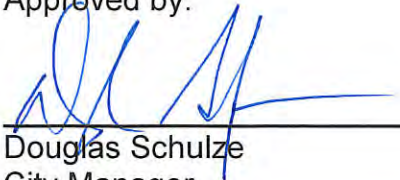
ALTERNATIVE:

Do not approve Resolution 2019-05. This alternative would cause a reduction in the level of service to private development applicants in the processing of their projects. Additionally, staff would have less time to work on the City's capital improvement projects.

ATTACHMENTS:

1. Resolution 2019-05
2. Request for Proposals
3. Publication Notice
4. Notification List
5. Draft Professional Services Agreement with ERSC

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019 -05

RESOLUTION 2019-05

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT TO ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA IN THE AMOUNT OF \$250,000 FOR PLAN CHECKS, INSPECTIONS AND RELATED ADMINISTRATIVE SERVICES THROUGH FISCAL YEAR 2020 WITH THE OPTION TO RENEW FOR THREE ADDITIONAL SINGLE YEARS

WHEREAS, the Public Works Department administers an array of services including management of capital improvement and infrastructure projects related to the design and construction of water, wastewater, streets, storm drain and building infrastructure; and

WHEREAS, as part of these responsibilities, staff manages public works projects related to private development and has determined a need for additional resources in consideration of the current and an anticipated increase in workload related to future private land development activities in order to maintain an acceptable level of service; and

WHEREAS, on September 21, 2018 and September 28, 2018 publications were advertised in the Press Enterprise, requesting proposals from qualified firms for plan check and inspection services; and

WHEREAS, the request was also released on PlanetBids.com where one hundred forty-nine (149) firms were directly solicited with ten (10) firms responding with the submission of proposals; and

WHEREAS, the scope of services requested for plan checking includes, but is not limited to street, sewer, water, grading and storm drain projects for residential and non-residential projects; responses to staff and applicants regarding permits; and preparation of conditions of approval; and

WHEREAS, the inspection services scope requires an inspector to work under the direction of the Public Works Director and/or assigned staff to provide construction inspections services before, during and after construction while insuring conformance with Federal, State and City statutes while maintaining appropriate records; and

WHEREAS, an evaluation committee consisting of a three person evaluation committee comprised of two (2) City staff members and one (1) outside agency member evaluated the proposals based on qualifications, experience, approach and rates; and

WHEREAS, as a follow-up to the proposal evaluation, staff interviewed the top four (4) firms that averaged a score of 400 or higher with Interviews being conducted by three (3) City staff members on December 18, 2018; and

WHEREAS, as a result, staff recommends the award of an agreement to the highest ranked firm, Engineering Resources of Southern California (ERSC), in the amount of \$250,000; and

WHEREAS, agreements will be for plan check, inspection and related administrative services on an as needed basis valid through June 30, 2020 with the option to renew for three (3) additional single years; and

WHEREAS, an appropriation from the General Fund in the amount of \$250,000 to the Engineering Fund, Account No. 001-3000-442.33-53 is approved and will be directly offset by revenues collected from plan check and inspection fees collected by the Public Works Department.

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

SECTION 1. The Banning City Council adopts Resolution 2019-05, awarding Professional Services Agreements for Plan Checks, Inspections and related Administrative Services through Fiscal Year 2020 with the option to Renew for three (3) additional single years.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the project.

SECTION 3. The City Manager or his designee is authorized to execute a Professional Services Agreement with Engineering Resources of Southern California (ESRC) in the amount of \$250,000 for services as needed including Plan Checks, Inspections and Administrative Services through June 30, 2020 with the option to renew for three (3) additional single years.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2018.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Laurie Sampson, Acting Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Laurie Sampson, Acting Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-05, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January, 2018, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Laurie Sampson, Acting Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Request for Proposals



REQUEST FOR PROPOSAL
FOR
19-007
PLAN CHECK AND INSPECTION SERVICES

CITY OF BANNING
Public Works Engineering Department
99 East Ramsey Street
Banning, California 92220

Released on September 21, 2018

REQUEST FOR PROPOSAL (RFP) NO. 19-007

PLAN CHECK AND INSPECTION 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 Plan Check 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#19-007 Plan check and Inspection Services, on or before the hour of 10:00 a.m. on October 19, 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.

The City of Banning (“City”) is requesting proposals from qualified firms to provide Public Works plan check and inspection services. Services shall be performed in a prompt, professional and workmanlike manner and in accordance with the standards of the profession.

All work, unless otherwise specified, shall be provided on an hourly basis, and completed within time periods allocated, as mutually agreed to at the beginning of an assignment, by the City and Consultant. Certain projects, if assigned, shall be performed pursuant to a “not-to-exceed” budget. These projects will require the Consultant to prepare a detailed scope of work including payment schedule and deliverables.

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following schedule:

Release of RFP	September 21, 2018
Deadline for Written Questions	October 5, 2018 by 3:00 p.m.
Responses to Questions Posted on Web	October 10, 2018 by 5:00 p.m.
Proposals are Due	October 19, 2018 by 10:00 a.m.
Interview (if held)	The Week of October 29, 2018
Approval of Contract	November 13, 2018 (Tentative)

All dates are subject to change at the discretion of the City.

3. SCOPE OF WORK

The City desires to obtain the services of an outside qualified firm to provide Public Works plan check and inspection services. Consultant shall provide a scope and separate rate proposal for each of the following:

A. Public Works Plan Check Services:

The Consultant shall provide plan check services of residential or non-residential projects. These services shall include the review of construction drawings to assure compliance with City, State and Federal regulations. Consultant shall be responsive to City staff and applicants concerning permit applications. Plan check services may

include, but are not limited to, street, sewer, water, grading and storm drain projects. Consultant may also be tasked with providing condition of approvals for projects.

Consultant shall provide comprehensive early plan check comments to avoid unexpected project requirements late in the process, employ streamlined review processes and have a problem solving approach with all interactions. The Consultant shall review plans, calculations, reports and specifications for compliance with the most recent adopted Federal, State and City regulations and standards. Once verified that the plans comply with applicable regulations, the Consultant shall approve plans and forward approved plans to the City for permit issuance. Plan check review comments shall be specific, detailed, complete and reference plan sheet numbers and code sections when applicable.

All plan check review services shall be performed by or under the responsible charge of a California licensed professional engineer to prepare and sign such plans. The first plan check turnaround shall not be more than fourteen (14) business days from pickup and the subsequent reviews, if needed, shall not be more than ten (10) days for the second check and seven (7) days for the third check and thereafter if applicable. Consultant to provide details on expedited rates and process, if available (i.e. turnaround time, etc.). Additionally, it is preferred that the selected firm(s) be equipped to electronically receive plans to be reviewed and transmit reviewed plans. Consultant to explain the electronic submittal process of one is available.

B. Inspection Services

The inspector will work under the direction of the Public Works Director or his designee and provide part time/full time construction inspection services in accordance with the City of Banning policies and procedure. The inspector shall be fully qualified to perform required services and able to independently provide inspection services.

The inspector shall be able to inspect public works improvement projects before, during and/or after construction to insure conformance with Federal, State and City statutes, regulations, guidelines, applicable standards, specifications, plans, laws and accepted standard construction practices. This include, but is not limited, inspection diaries, records, reports and documentation, the presentation, both oral and written, of such inspections, observations, reports and documents required by the City.

The keeping of proper inspection records and reports, photographs and videos, including but not limited to, all load tickets, weight tickets, certifications of compliance, submittals, shop drawings, material reports and other related documents received. On a daily basis, the inspector shall deliver documents to the City when generated, prepared or received.

C. Selection Process

1.) Qualifications:

All proposals received by the due date will be evaluated by the City. Only information which is received in response to the RFP, input from references and any subsequent interview will be evaluated. The City will judge the responses of each proposing firm in several critical areas. Selected proposers may be invited to an oral interview.

2.) Selection Criteria:

The City will select the most qualified proposal(s) based on the following factors. Responses to the RFP should address the qualities and indicators that are listed below:

a. Ability of the Firm to carry out and manage the Proposed Project.

An assessment of the past experience of the organization in general. Qualities and indicators that will receive consideration include the number and types of projects the organization or its employees have completed; the variety and creativity of projects completed and a demonstration of the organization's ability to be responsive to the City's need for an on-call consultant, the general level of experience in the areas of supervision, observing and monitoring projects; the organization's ability to realize timetables and quality control objectives; description of the approach that will be utilized for providing requested services and the demonstrated general ability to bring about a successful completion of the projects under the proposer's direction.

b. Capabilities of the Consultant Team Members.

Assessment of the capabilities of the individuals that will be engaged in the project. Qualities and indicators that will receive consideration include what professionals will be doing/working on each task; the various professional, technical, and educational achievements and registrations of each organization and individuals involved; the applicable experience of the proposed assigned staff, and specific experience gained on similar projects.

c. Proximity to the Project Involved for the Proposer and/or Team.

The application of this criteria shall include an assessment of the geographic proximity to the project; the location of the office from which the proposed project will be administered; the perceived response time and general availability of the proposer's management to be on site; the perceived effect that project management location will have on price and the ability of the project to be expedited on a timely basis; and the availability of special travel or communication plans which would effectively mitigate difficulties associated

with location. Firms located in the City of Banning, or who have a team member who lives in Banning, may be given local preference.

d. Willingness to Comply with the Proposed Agreement Terms.

A sample agreement is attached. Proposals will be rated based on the exceptions taken to the proposed contract.

e. Billing Rate.

Cost, while not determinative, may be considered in the selection process. The selected firm will be expected to maintain the proposed billing rates throughout the first fiscal year of the contract, from July 1, 2018 THROUGH June 30, 2019. If the contract is extended to an additional year, the City will consider renegotiation of the billing rates.

D. Licensing

Plan Check Services: Review services shall be performed by a California licensed professional engineer to prepare and sign plans.

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 entities 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 Pricing Proposal Form (Exhibit A) 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 365 days following submission.

For the purpose of evaluating the proposals, Provide a Cost Proposal detailing a Schedule of Billing Rates. (Exhibit A).

- The Schedule of costs and fees shall include the rates for both standard and expedited services, as well as their turnaround times.

- **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-----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-----30%

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-----20%

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 October 29, 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

PRICING PROPOSAL FORM

Provide hourly rates, along with pricing in accordance with the City's current requirements, as set forth in the Scope of Work. Proposers should use a separate form to state pricing for any added value.

Pricing shall remain for a minimum of one (1) year. Any and all requests for pricing adjustments for follow-on contract renewal periods shall be provided no later than sixty (60) days prior to the end of the contract period. Any such proposed price adjustment shall not exceed the Bureau of Labor Statistics Consumer Price Index (CPI) date for Riverside/SAN Bernardino/Ontario Area, CA, All Items, Not Seasonally Adjusted, "annualized change comparing the original proposal month and the same month in the subsequent year. (This information may be found on the U.S. Department of Labor's website at www.bls.gov.) The City is considering awarding a contract for a one-year term with the option to renew an additional four (4) single years upon satisfactory review of the provided services.

Consultant shall provide a rate schedule identifying staff members' hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, etc.

Job Title/ Employee	Hourly Rate	Expedite Hourly Rate
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

ATTACHMENT 3

Public Notice

City of Banning

Request for Proposals for RFP #19-007 PLAN CHECK 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 #19-007 PLAN CHECK AND INSPECTION SERVICES, on or before the hour of 10:00 a.m. on October 19, 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.

QUESTIONS REGARDING PROPOSAL: Any questions pertaining to this Request for Proposal shall be submitted through PlanetBids. Deadline for submittal of bid Request for Information (RFIs) is October 5, 2018 by 3:00 p.m. local time.

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.

SEALED BIDS DUE: October 19, 2018 and opened online only at 10:00 a.m.

If you have additional questions, please contact Jorge Uribe, via online bid system.

City of Banning
99 E. Ramsey St.
P.O. Box 998
City Clerk's Office
Banning, CA 92220-0998
Phone: 951-922-3129
Fax: 951-922-3165

CITY OF BANNING, CALIFORNIA
Dated: 09/21/18 and 09/28/18

/s/ Jorge Uribe
Buyer

ATTACHMENT 4

Notification List

Vendor ID	Company Name	Address	Address 2	City	State	Zip Code	Country	Contact Name	Phone	Fax	Email	Vendor Type
543583	ADVANTEC Consulting Engineers, Inc.	1200 Roosevelt		Irvine	CA	92602	United States	Lee Lee	949-861-8999		marketing@advantecc.com	DGE DBE DBE CADIR
548791	AQUALITY Engineering, Inc.	1455 Borna Street, Unit E		Arcadia	CA	91006	United States	Helene Barbeau	714-488-0366		hbarbeau@aquality.com	DGE DBE DBE
617928	ASSET Laboratories	13110 Artesia Blvd Suite B		Cerritos	CA	90703	United States	Thad Mail	562-219-1835		thad@mailasset.com	DGE DBE DBE
655401	AWIS CORPORATION	16760 Multiview Drive		Lake Matthews	CA	91703	United States	Andrew Witzrom	952-378-1301		andrew@awiscorp.net	DGE DBE DBE
671450	Advanced Avian Garder Corporation	3670 W. Temple Ave.	Suite 278	Pomona	CA	91768	United States	Megan LeBlanc	909-979-1582		mleblanc@all.com.co	DGE DBE DBE
571409	Ark Valley Surveyors, Inc.	5937 Mayberry Ave.		Rancho Cucamonga	CA	91737	United States	Dawn Kanaw	909-489-1554		dkanaw@ark.com	DGE DBE DBE
543662	Albert A. Webb Associates	3788 McCarty Street		Riverside	CA	92506	United States	Business Development	951-686-1070		info@webbassociates.com	DGE DBE DBE
527471	Allent Grover & Associates	211 Imperial Hwy	Ste 203	Fullerton	CA	92835	United States	Dave Roseman	714-992-2883		ag@allentgrover.com	CABE CADIR
678311	Alexster & Wyndler, LLP	3880 Lemon Street, Suite 530		Sacramento	CA	95834	United States	Eric Dum	951-241-7388 ext. 3603		edum@alexster.com	DGE DBE DBE
543817	Alti Weather, Inc.	1165 National Drive		Long Beach	CA	90807	United States	Glenn Tamout	855-980-2078		glenn@altweatherinc.com	DGE DBE DBE
954989	Alta Environmental	5777 Warner Ave. Ste 227		Huntington Beach	CA	92646	United States	Tim D'Zmura	714-425-5840		tim.dzmura@altaenv.com	DGE DBE DBE
93497	Ameltek Group	133 N. San Gabriel Blvd.		Pasadena	CA	91107	United States	Jess DeBusk	626-578-0218 ext. 106		marketing@ameltekgroup.com	DGE DBE DBE
527553	Applied Earthworks, Inc.	10221-A Trademark Street		Rancho Cucamonga	CA	91730	United States	Kelly Sindoval	909-484-3800		ksindoval@earthmadesigngroup.com	DGE
539429	Aspen Environmental Group	5020 Chesbro Road		Aquino Hills	CA	91301	United States	Stephanie Skiffert	916-388-6652		skiffert@aspeninc.com	CABE CADIR
609593	BRC-Equity, Inc.	685 North 1st Street, Suites 205 & 213		Burbank	CA	92311	United States	Kara Duckworth	805-264-1196		kara@brc-equity.com	DGE DBE DBE
550481	Burns and Thornbury, LLP	2029 Century Park East, Ste. 300		Los Angeles	CA	90067	United States	Jeffrey Longworth	310-264-8880		jeffrey.longworth@blaw.com	CABE
659195	Blais & Associates, Inc.	7545 Irvine Center Drive		Irvine	CA	92618	United States	Neil Blais	949-589-3338		nbblais@blaisinc.com	WBE
631901	Bloom Biological, Inc.	13611 Hewes Ave.		Santa Ana	CA	92705	United States	Ashley Macomber	949-272-0905 ext. 109		ashley@bloombiological.com	DGE DBE DBE
61393	Borrelli, Inc.	2411 N. Lolla Street		Vanilla	CA	92091	United States	Randy Ray	952-685-4661		randy@borrelli.com	DGE DBE DBE
618772	Bovary Associate Corporation	6357 Tepeaga Canyon Blvd		Woodland Hills	CA	91367	United States	Kristine Durand	818-835-5554 ext. 104		kdurand@bovaryassociates.com	DGE DBE DBE
628251	CBF Funding LLC	2741 Lemon Grove Ave 202		Lemon Grove	CA	91505	United States	Wanda Rogers	915-303-8890		wrogers@cbffunding.com	DGE DBE DBE
528551	CEC Corporation	15411 Modena Blvd., Ste. 1110		San Diego	CA	92127	United States	Corey Jones	619-448-0128		corey@ceccorp.com	DGE DBE DBE
659857	CEC Consulting, Inc.	5141 E. Ben 2314		El Segundo	CA	90245	United States	Steve Simulian	323-728-2002		steve@cecconsulting.org	CABE
659889	Corbin & Associates, LLC	3150 Bristol Street		Compton	CA	90262	United States	Paul Corbin	562-935-7757		corbin@corbinandassociates.com	CABE
546589	Corbin Engineering & Associates, P.A.	3150 Bristol Street		Wilmington	NC	27101	United States	William Corbin	371-559-7320		william@corbineng.com	DGE
654865	Covaleugh & Associates, P.A.	530 N. Trade St.		Chico	CA	95926	United States	Rebecca Wilson	530-345-7664 ext. 71		rebecca@covaleugh.com	CABE
613802	Chaslin Concepts, Inc.	2515 Connecticut Avenue, Ste 100		Santa Ana	CA	92707	United States	Dawn Noble	949-261-5414		dawn@chaskin.com	DGE
613895	Chambers Group, Inc.	5 Horton center drive		Mission Viejo	CA	92691	United States	Callin Chang	916-468-0950		callin@chambersgroup.com	CABE
543316	Charles Abbott Associates, Inc.	27401 Los Altos, Ste. 220		Sacramento	CA	95820	United States	David DeRosa	916-458-1010 ext. 100		dmr@charlesabbott.com	DGE DBE DBE
617950	Churchwell White LLP	1414 E. Street, 3rd Floor		Folsom	CA	95630	United States	Kathy Von Glahn	902-786-0544		kvon@churchwellwhite.com	DGE
955739	Cingera Associates, LLC	2250 East Bidwell Street		Redlands	CA	92373	United States	Cesar Gonzalez-Ortiz	917-699-1188		gonzalez@cingera.com	DGE
614591	Conversa Consultants	2021 Rancho Drive, Suite 1		Irvine	CA	92618	United States	Art Kewonk	951-332-1865		art@conversaconsultants.com	DGE
593869	Cerologic Solutions, LLC	40 Pacifica, Suite 800		Riverside	CA	92509	United States	Arslan Daghkh	858-586-6600 ext. 10		ar@cerologic.com	DGE
613127	D'Vega Builders, Inc.	10380 Berkshire Dr.		Riverside	CA	92311	United States	Suzanna Kornmehl	951-506-4544		ad@dvbuilders.com	DGE
952127	D-Wait Engineering, Inc.	7220 Trade Street, Suite 119		San Diego	CA	92101	United States	Rodrigo Gonzalez	619-373-9047		rod@dwait.com	DGE
643310	DeWalt Corporation	1890 22 Street		Bakersfield	CA	93301	United States	Susan Kornmehl	805-586-6600 ext. 10		ad@dwait.com	DGE
979490	Decade Corporation	1000 E Walnut St., Ste. 202		Pasadena	CA	91106	United States	Arny Shillander	949-388-4733		ar@decade.com	DGE
830239	Denson, Inc.	1151 Duryea Avenue		Irvine	CA	92618	United States	Chad Merdith	949-388-4733		chad@enson.com	DGE
659767	Dezian Engineering	1110 Blue Ravine Road		Folsom	CA	95630	United States	Ghaith Khan	909-595-1940		ghaith@dezian.com	DGE
631110	EC & AM Associates	3833 S. Brea Canyon Rd		Diamond Bar	CA	91765	United States	Kathy Kondor	909-595-1940		kathy@ecandam.com	DGE
618495	EEPC Consulting, Inc.	1801 Park Court Place	Building B, Suite 103	Santa Ana	CA	92701	United States	Mark Zeko	714-667-3100		mark@eeppc.com	DGE
630491	EFC Environmental	1 City Blvd W, STE 1800		Orange	CA	92668	United States	Eden Casarino	909-793-406 ext. 122		ed@efcenv.com	DGE
617297	Edin & Payne, LLP	1839 W. Redlands Blvd.		Redlands	CA	92373	United States	Ian Lewis	909-793-406 ext. 122		ian@edinpayne.com	DGE
634729	Edwards Technology Partners	4010 W. Boy Scout Blvd		Laguna Hills	CA	92653	United States	Sue Shieh, PE	949-637-405		sue@edwardstech.com	DGE
655495	Engineering Solutions Services, Inc.	23222 Parata Drive		Tampa	FL	33607	United States	Michael A. Jones	951-506-0055 ext. 303		mjones@entsolutions.com	DGE
646121	Enrich Northwest, Inc.	43410 Business Park Drive		Temecula	CA	92590	United States	Samantha Amos	888-888-9000		sam@enrichnw.com	DGE
630562	Environ Corp	24123 Highland Blvd		Port Charlotte	FL	33954	United States	Beverly J. Gann	888-888-9000		beverly@environ.com	DGE
579443	Environmental Source Associates	5509 Von Buren Blvd	Suite 114-385	Riverside	CA	92508	United States	Adrienne Stageron	951-685-5514		astageron@esassoc.com	DGE
572465	Enviro-Metric Associates, Inc.	183 N. Civic Dr., Suite 1100		Los Angeles	CA	90017	United States	William Imperial	213-589-4300		william@enviro-metric.com	DGE
659286	Enviro-Metric Associates, Inc.	3101 E. Piedmont Blvd		Pasadena	CA	91107	United States	Renunda S. Portillo	626-514-4541		portillo@enviro-metric.com	DGE
673288	Enviro-Metric Associates, Inc.	11767 E. Piedmont Blvd		Pasadena	CA	91107	United States	Kim Totter	626-514-4541		kim@enviro-metric.com	DGE
668801	Enviro-Metric Associates, Inc.	6501 Hospital Lane		San Bernardino	CA	92408	United States	Greg Ertel	951-685-5514		ertel@enviro-metric.com	DGE
644969	Fugro	17753 Sky Park Circle Suite 340		Riverside	CA	92507	United States	Carly Ertel	951-685-5514		carly@fugro.com	DGE
530108	G&G Environmental Compliance	5053 La Mart Drive		Costa Mesa	CA	92626	United States	Carly Ertel	951-685-5514		carly@fugro.com	DGE
530396	G&G Environmental Compliance	550 Parkcenter Drive		Santa Ana	CA	92705	United States	Carly Ertel	951-685-5514		carly@fugro.com	DGE
528170	Gandini Group, Inc.	2526 Ocean Park Blvd		Santa Monica	CA	90405	United States	Eric Naedroff	310-314-1934		eric@gandini.com	DGE
662160	Gladden, Neandross & Associates	3145 Spring Creek Drive		Santa Rosa	CA	94005	United States	Julia Gonzalez	707-480-7515		gladden@gladden.com	DGE
657160	Good Karma Multimedia Design	79950 Arcan Circle West		Palm Desert	CA	92260	United States	Shelley Mitchell	949-487-2000 ext. 265		shelley@goodkarma.com	DGE
665433	Grant Circle	79950 Arcan Circle West		Palm Desert	CA	92260	United States	Shelley Mitchell	949-487-2000 ext. 265		shelley@goodkarma.com	DGE
650568	Griffin Structures, Inc.	2 Technology Drive, Suite 130		Irvine	CA	92618	United States	Lynne Rue	767-415-2010		lynne@griffinstructures.com	DGE
679917	H&K Consultants, LLC	201 N. Civic Dr.		San Marcos	CA	92078	United States	Volanda	951-685-5514		volanda@hkconsultants.com	DGE
57743	Ground Service Technology, Inc.	1348 La Mirada Drive		Walnut Creek	CA	94596	United States	Kim Enwin	925-973-9887		kim@groundservice.com	DGE
606093	Green Pacific, Inc.	8710 Earhart Ln SW		Walnut Creek	CA	94596	United States	Steve R. Loriso	925-973-9887		steve@greenpacific.com	DGE
931392	Health Science Associates	10071 Road Street		Cedar Rapids	IA	52404	United States	Jaime Sreedman-Lytle	714-220-2081		jaime@hscassoc.com	DGE
677416	Herbert P. Seant Co., Inc.	2021 18th Street		Los Alamitos	CA	90703	United States	Adrian Morales	661-283-0337		adrian@seant.com	DGE
559906	Innovative Federal Strategies	511 C Street NE		Bakersfield	CA	93301	United States	Kelley Nicoll	202-347-3990		info@infed.com	DGE
677211	Innovative Federal Strategies	14366 Ventura Blvd., Suite 1302		Washington D.C.	DC	20002	United States	Molly Schommer	510-663-2070		molly@infed.com	DGE
545999	Innell Technologies	14520 Wunderlich Drive		Los Angeles	CA	90048	United States	Mo Gordon	714-220-2081		mgordon@innell.com	DGE
672676	JLL	2141 Rosecrans Ave		Houston	TX	77058	United States	Nikola Turner	424-294-3442		nikola.turner@jll.com	DGE
606854	Jenrich Systems, Inc.	47 3rd Street	Suite 1	El Segundo	CA	90245	United States	Nikola Turner	424-294-3442		nikola.turner@jll.com	DGE
606854	John Robinson Consulting, Inc.	1095 E. Colorado Blvd.		Redlands	CA	92373	United States	Shay Lawry	909-915-3900		shay@johnrobinson.com	DGE
681181	Judith Carey-Fisher	2828 Ladoga Ave.		Long Beach	CA	90801	United States	John Robinson	626-375-5389		john@judithcarey.com	DGE
576259	Komont & Associates, Inc.	1601 N. Sepulveda Blvd., #522		Long Beach	CA	90801	United States	Judith Carey-Fisher	562-335-4448		judy@careyandassociates.net	DGE
622942	Kyle Greenwater, Inc.	557 E. Pasadena St., Ste 2		Pomona	CA	90866	United States	Christine Rodgers	424-297-1070		christine@kylegreenwater.com	DGE
527240	USA Associates, Inc.	1500 Iowa Avenue		Riverside	CA	92507	United States	Russell Kyle	626-375-7969		russell.kyle@kylegreenwater.com	DGE
670887	Law and Consulting Office of Gustavo Rios	7676 Hazard Center Drive		San Diego	CA	92108	United States	Gustavo Rios, PE, Esq	951-781-3310 ext. 258		grio@lucosrios.com	DGE

Notified Bidders for Project Plan Check and Inspection Services (19-007)
 Issued on 09/21/2018
 Bid Due on October 19, 2018 10:00 AM (Pacific)
 Expired on 10/17/2018

VendorID	Company Name	Address	Address 2	City	State	ZipCode	Country	Contact Name	Phone	Fax	Email	Vendor Type
572725	Yoshikawa & Tsuyi Municipal Consultants	PO Box 3908		Oakland	CA	94609	United States	Alison Lichowicz	510-545-3182		alison@lmuniconsultants.com	DGS,WBE
572750	Wentworth LLC	10000 Canyon Ave	Suite 250	Irvine	CA	92618	United States	Micrae Lemieux	949-484-4443		mleaux@wentworth.com	
572843	KWV Constructors / ZAVRE Construction Group	3000 N. Lake Ave		Pasadena	CA	91106	United States	Wendy Lorenz	626-788-0806		wendy@kwvconstructors.com	
573003	MKS Transit Solutions	10502 Emeraldspring Drive		Temecula	CA	91791	United States	David J. Barrett	760-721-1666		djbarrett@mkstransit.com	
558669	MSW Consultants	253833 Tees Road		Temecula	CA	91791	United States	David J. Barrett	951-4684-0001		djbarrett@mswconsultants.com	
574803	McMaster Geosciences	5330 E 2nd Street, Suite 200		Long Beach	CA	90801	United States	David McAllister	714-433-1000		davidm@mcmastrings.com	
572750	Michael Baker International	3760 Kirkwood Avenue, Suite 420		Long Beach	CA	90801	United States	Armed Bryant	562-200-1719		armed.bryant@mikesinternational.com	
572755	Michael Baker International	9755 Clairemont Mesa Blvd.		San Diego	CA	92124	United States	Debi Bright	658-614-5005		debi@mbisinternational.com	CABE,CADIR
567993	Moss Adams LLP	999 S. Main, Suite 2800		Seattle	WA	98104	United States	Mark Stenholm	206-302-6322		mark.stenholm@mossadams.com	
573172	Nancy K. Boffi Inc.	1881 Business Center Drive		San Bernardino	CA	92408	United States	Julie Cook	909-884-0133		caemulloy@nki.com	
350367	National Elevator Inspection Services, Inc.	1773 Westline Industrial Drive		St. Louis	MO	63146	United States	Angela Malone	314-862-2611		angela.malone@us.eviservices.com	
964130	Nex Generation Technology Inc	6960 N. Central Expressway		Dallas	TX	75206	United States	Ray Richardson	214-800-2893		richardson@nxtgen.tech.us	
613817	Northwest Hydraulic Consultants Inc.	80 S. Lake Ave., Suite 800		Pasadena	CA	91101	United States	May Nissim	626-400-0080		nissim@nwhcswb.com	CADIR
659295	OJI CALICO CONSORTIUM, INC	645 North First Street, Suite 550		San Jose	CA	95112	United States	Chedodie Aguilera Alvarado	323-635-1675		ajalvarado@ojicalico.com	MBE
572728	Pacific Services, Inc.	705 South Mentor Avenue		Pasadena	CA	91106	United States	Andrew Hernandez	714-365-9236		andrew@pacificservices.com	DGS,DRE,CADIR,WBE
648901	Pelle Solutions, Inc.	911 S. Primrose Ave., Unit N		Monrovia	CA	91016	United States	Mohsen Elattar	626-698-0784		info@pelle.com	
572750	Pinnacle Engineering Inc.	1500 Santa Anita Ave., Suite 300		Pasadena	CA	91124	United States	Brian Lee	626-440-8516		brian.lee@pinc.com	
327763	Parsons	300 W. Walnut St.		Costa Mesa	CA	92626	United States	Samah Jafroudi	957-269-1666		sjafroudi@par-inc.com	
617893	Petra Geosciences, Inc	318E Atlantic Avenue		Galt	CA	95622	United States	Maira	209-834-4050		mccombs@petragis.com	
547220	Petrakaya Engineering Inc.	24675 Brundia Dr.		Bloomington	IL	61704	United States	Carol Corilli	309-807-2800 ext. 300		corilli@petrakaya.com	
649359	PrimeNet	2 MacArthur Place, Suite 1100		Rolling Hills Estates	CA	92274	United States	Pamela Fain	714-965-9222 ext. 2353		pfain@pnetworks.com	
572750	Pro Valley Drive, Suite 395	10000 Canyon Ave		San Diego	CA	92161	United States	Blair Leggett	619-593-2860		blair@pvalleydrive.com	
534943	Proforce PM, LLC	395 W. 4th Street		Portland	OR	97201	United States	Kenzie McIntyre	503-457-1710		kenzie@proforcepm.com	
572766	RSC, LLC	10000 Canyon Ave		Portland	OR	97201	United States	Sharon Rahman Al-Najazeh	503-457-1710		sharon@rsc.com	WBE
562728	RWGI USA LLC	1027 Casiano Road		Los Angeles	CA	90048	United States	Sharon Rahman Al-Najazeh	310-891-1588		sharon@rwgiusa.com	
563277	Rahman CPA & Consulting Inc.	PO Box 30425		Walnut Creek	CA	94598	United States	Patricia Marlene Bennett, PhD	925-888-0172		pbennett@rahmancpa.com	
659594	Resources Development Associates	2333 Harrison Street		Oakland	CA	94612	United States	James Walker	510-449-2361		jwalker@resourcesdevelopment.net	DGS
659290	Riversch Inc.	PO Box 3937		Laguna Hills	CA	92654	United States	A. Tamim Alayash	949-273-2222		alayash@riversch.com	
643131	Robert L. Scott	36318 Imperial Blvd		Ontario	CA	91764	United States	Ruben Santiago	909-945-2247 ext. 25421		ruben.santiago@rls.com	
670937	Robert L. Scott	23679 Galibear Blvd. #507		Chabazas	CA	91302	United States	Robert L. Scott	818-712-9500 ext. 101		robert.scott@bmlhollandindustrial.org	DGS,CADIR
630446	SA Associates	1130 W. Huntington Drive, Unit 12		Arcadia	CA	91007	United States	Shahrazad Ahmad	626-445-1461		shahrazad@saassociates.net	DVBE,CADIR
630297	SEST, Inc.	11300 Palmitra Avenue, Suite 330A		Riverside	CA	92507	United States	Dan Marino	951-284-7605		dmarino@sest.com	WBE
659307	SEF Project Development, Inc.	171 Mission Street, Suite B		Redwood	CA	94060	United States	Kelly Pray	626-403-6082		kpray@sefproject.com	DGS,CABE,DVBE
585295	SUPLOE LLC	8779 W. 190th Street	Suite 400	San Diego	CA	92130	United States	Michael Maloney	619-370-1377		maloney@suploelc.com	
585959	Services Protective Services	455 Cantor Mall, Suite 700		Gardena	CA	90248	United States	Jeffrey Singh Sotgioco	323-571-9994		jpsingh@suploelc.com	
585959	Services Protective Services	1490 Ventura Blvd, Suite #E10		Sacramento	CA	95819	United States	George Siles	916-443-1800		gsiles@suploelc.com	
635750	Stober Exponent Consulting	13311 DART ASHFOR		Sherman Oaks	CA	91403	United States	Mary Nefed	310-343-1313		mary@stoberconsulting.com	
58760	STAN INDUSTRIAL SERVICES	10000 Canyon Ave		SLUIG LAND	TX	77478	United States	MANUEL VASQUEZ	310-557-8270		manuel.vasquez@staninc.com	
581166	TIG City Advisory Services, Inc.	13111 Fairwinds Drive		Buda	TX	78601	United States	Tim Almond	310-557-8270		tim.almond@tigadvisory.com	
649359	Thomson Company, Inc.	10000 Canyon Ave		Pasadena	CA	91106	United States	Theresa Minguez	626-698-0784		theresa.minguez@thomson.com	CABE
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ATTACHMENT 5

Draft Professional Services Agreement with ERSC

PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

Engineering Resources of Southern California

**AGREEMENT FOR PROFESSIONAL SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA**

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this 8th day of January, 2019 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **ENGINEERING RESOURCES OF SOUTHERN CALIFORNIA, 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 (RFP 19-007), the performance of the services for Plan Check and Inspection Services 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 Plan Check and Inspection Services 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 TWO HUNDRED AND FIFTY THOUSAND DOLLARS (\$250,000.00) (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 a maximum term, including any subsequent amendments, of five (5) years.

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 through June 30, 2020 with the option to renew for three (3) additional single years, 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:

<u>JOHN M. BRUDIN, PE</u>	<u>PRESIDENT</u>
(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:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 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 \$1,000,000 per claim/occurrence and \$1,000,000 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

CONSULTANT

Douglas Schulze, City Manager

By:

NAME:
TITLE:

By:

NAME:
TITLE:

ATTEST:

Sonja De La Fuente, Deputy City Clerk

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		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	
<input type="checkbox"/>	CORPORATE OFFICER	
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	
	<input type="checkbox"/> GENERAL	
<input type="checkbox"/>	ATTORNEY-IN-FACT	
<input type="checkbox"/>	TRUSTEE(S)	NUMBER OF PAGES
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	
<input type="checkbox"/>	OTHER _____	
SIGNER IS REPRESENTING:		DATE OF DOCUMENT
(NAME OF PERSON(S) OR ENTITY(IES))		

		SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"
SCOPE OF SERVICES

- I. Consultant will perform the following services as outlined in Request for Proposals (RFP) No. 19-007 and ESRC proposal dated October 19, 2018 in connection with providing PLAN CHECK AND INSPECTION SERVICES:**
 - A. Public Works Plan Check Services
 - B. Inspection Services
- II. As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:**
 - A. Project Records/Documents
 - B. Prepare daily inspection reports
 - C. Monthly status reports
- 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. John M. Brudin, PE, President, Project Manager
 - B. Steven Latino, PE, Principal Engineer, Project engineer
 - C. Moe Ahmadi, PE, Principal Engineer, Project engineer
 - D. Steven Allen, Sr. Construction Inspector

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
1.	Public Works Plan Check Services
2.	Inspection Services

TOTAL NOT TO EXCEED	\$250,000.00
----------------------------	---------------------

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 \$125,000.00 as provided in Section 2.1 of this Agreement.

V. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"
CONSULTANT'S BILLING RATES

Principals / Engineers / Technicians

Principal/President	\$209.00
Principal/Vice President	\$184.00
Senior Principal Engineer	\$180.00
Principal Engineer	\$176.00
Engineer V	\$134.00
Engineer IV	\$120.00
Engineer III	\$106.00
Engineer II	\$92.00
Engineer I	\$78.00
Senior Engineering Technician	\$120.00
Engineering Technician II	\$95.00
Engineering Technician I	\$78.00
Engineering Technician	\$55.00

Surveyors/Administration/Aides

Principal Surveyor	\$135.00
Senior Surveyor	\$115.00
Admin. Services Manager	\$68.00
Admin. Asst. II	\$61.00
Admin Asst. I	\$55.00
Engineering Aide II	\$45.00
Engineering Aide I	\$35.00

Construction Services

Construction Manager	2.3 x Direct Salary
Resident Engineer	2.3 x Direct Salary
Senior Construction Inspector	\$110.00
Construction Inspector	\$95.00

Other Direct Expenses

Mileage	\$0.65 mile
Direct Cost	Cost + 20%

Fast track performance shall be standard rate x1.5

Testimony under oath will be billed at \$350 per hour with a four (4) hour minimum

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 REVIEW SCHEDULE

PLAN CHECK REVIEW SERVICES

The project review schedule will be determined and maintain by the project applicant. Project review shall be as outlined below:

Plan Set/Study Size	First Review	Subsequent Review	Fast Track Schedule*
4 Sheets or Less	8 Business Days	5 Business Days	½ Standard Review Time
5 Sheets or More	10 Business Days	8 Business Days	½ Standard Review Time

*Additional fees apply to Fast Track reviews.

INSPECTION SERVICES

Consultant shall provide a response to inspection assignment requests within 24 hours' notice from the City.



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Public Works Director

MEETING DATE: January 8, 2019

SUBJECT: Active Transportation Program (ATP) Cycle 2 Update

RECOMMENDATION:

Receive and file staff's update on the City of Banning's ATP Cycle 2 project.

JUSTIFICATION:

The purpose of this report is to introduce and update the City Council and the public on the City of Banning's ATP Cycle 2 project.

BACKGROUND:

The ATP was created by Senate Bill 99 and Assembly Bill 101 to encourage increased use of active modes of transportation, such as biking and walking. This program, which is a competitive program, is offered by Caltrans and is administered through the California Transportation Commission (CTC).

In 2015, staff submitted an ATP Cycle 2 grant application in the amount of \$1,082,000 for a bicycle and safe routes to school improvements project ("Project") that would provide new bicycle facilities (i.e. bicycle lanes) and pedestrian improvements (i.e. sidewalk, handicap ramps, signage and crosswalks) along several streets in Banning leading to public schools and facilities that encourage the use of alternative transportation. The project limits are shown in the map attached hereto and included a bicycle corridor along Ramsey Street, Wilson Street and San Geronio Avenue. The main Safe Routes to School Improvements would occur on San Geronio Avenue and Wilson Street.

In 2016, staff was notified that the grant application was approved and that CTC allocated \$1,082,000, the full amount, for the project. In 2017, the City Council approved Resolution 2017-28 approving a Master Agreement and Project related Supplemental Agreements for each phase of the Project (i.e. Project Approval and Environmental Document [PA&ED], Plans, Specifications and Estimates [PS&E] and Construction) with Caltrans for the administration of the ATP grant program and distribution of funds.

At the beginning of 2018, staff solicited proposals from engineering firms through a Request for Proposals (RFP) and on May 22, 2018 City Council awarded a professional service agreement (PSA) to Albert A. Webb Associates in the amount of \$127,696 for the preparation of PS&E. The entire amount of the PSA is funded by the City's ATP Cycle 2 grant.

Staff has completed the PA&ED phase and the PS&E is nearing 100% completion. The construction of the project is estimated at \$900,000. Staff's tentative schedule for the project is as follows:

- Advertise Notice Inviting to Bid: February, 2019
- Award of Contract: April, 2019
- Issuance of Notice to Proceed: May, 2019
- Project Completion: September, 2019

FISCAL IMPACT:

The project will be reimbursed up to \$1,082,000 by the City's ATP Cycle 2 grant. It is anticipated that the total project cost for all phases (i.e. PA&ED, PS&E and Construction) will be completed within the grant amount and therefore 100% funded by the grant.

ATTACHMENTS:

1. Project Map

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Project Map

