

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

February 12, 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, a joint meeting of the City Council, and Banning Utility Authority and a joint meeting of the City Council Sitting in Its Capacity as the Successor Agency Board.

City Council and Commission agenda packets, including all public documents relating to the open meeting and provided to the City Council/Commission, are available for review or copying at City Hall, 99 E. Ramsey Street, Banning. A copy is also located at the entrance to the Council Chambers during the meeting and available for review at the Banning Public Library, at 21 W. Nicolet. Street, Banning, CA.

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.

1. CALL TO ORDER

- Invocation – Elder Jim Price, Church of Jesus Christ of Latter Day Saints.
- Pledge of Allegiance
- Roll Call – Council Members, Happe, Peterson, Wallace, Mayor Pro Tem Andrade, and Mayor Welch

2. AGENDA APPROVAL

3. PRESENTATIONS/PROCLAMATIONS/RECOGNITIONS

None

4. REPORT ON CLOSED SESSION

5. PUBLIC COMMENTS (NON-AGENDA ITEMS)

6. CORRESPONDENCE

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

7. APPOINTMENTS

- 7.1 Parks & Recreation Commission Appointments **(P.1)**
Contact: Mayor Welch

A five-minute time limit 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.

8. 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 11: Items ____, ____, ____, to be pulled for discussion. (Resolutions require a recorded majority vote of the total membership of the City Council)

8.1 Approval of Minutes from the Following City Council Meetings:

January 22, 2019, Planning Commission Interviews **(P.25)**
January 22, 2019, Special City Council Meeting
January 22, 2019 Regular City Council Meeting

Contact: Daryl Betancur, Deputy City Clerk

8.2 Receive and File Contracts Approved under the City Manager’s Signature Authority for the Month of January 2019.

Contact: Laurie Sampson, Executive Assistant to the City Manager **(P.107)**

8.3 Adopt Resolution No. 2019-14, Accepting a Federal Surface Transportation Program (STP) Grant and Approving the Execution of California Department of Transportation (Caltrans) Program Supplemental Agreement No. 005-F to the Existing Administering Agency-State Master Agreement Including Related Documents for Project No. 2014-06, “Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street.”

Contact: Art Avila, Director of Public Works **(P.111)**

8.4 Application for Authorization to Access State and Federal Level Summary Criminal History Information for Employment Including Volunteers and Contractors, and for Licensing or Certification Purposes for Cannabis Regulatory Permits.

Contact: Vincent Avila, Interim Police Chief **(P.157)**

- 8.5 **Adopt Resolution No. 2019-19, Approving and Accepting the Right-of-Way Dedication from APN# 541-181-032 and APN# 541-181-033 along Livingston Street for Road Purposes.**

Contact: Art Vela, Public Works Director (P.163)

- 8.6 **Adopt Resolution No. 2019-23, Approving an Agreement for the Purchase of Right-of-Way Dedication from Fountain of Life Temple of God in Christ, Inc. in an Amount Not-to-Exceed \$20,560.**

Contact: Ted Shove, Economic Development Manager (P. 179)

- 8.7 **Adopt Resolution No. 2019-22, Approving an Agreement for the Purchase of Right-of-Way Dedication from Krystal P. Cruz in an Amount Not-to-Exceed \$17,100.**

Contact: Ted Shove, Economic Development Manager (P. 231)

9. **ANNOUNCEMENTS AND REPORTS**

10. **CITY COUNCIL COMMITTEE REPORTS**

11. **REPORT BY CITY ATTORNEY**

12. **REPORT BY CITY MANAGER**

12.1 Meeting Order and Start Times

13. **REPORT OF OFFICERS**

- 13.1 **Adopt Resolution No. 2019-04, Approving Final Payment to Southern California Edison in the amount of \$96,705.61 for the Relocation of Overhead Transmission Facilities related to the Mid-County Justice center.**

Contact: Art Vela, Director of Public Works (P. 295)

- 13.2 **Adopt Resolution No. 2019-15, Authorizing the City Manager to enter into a Software Services Agreement with OpenGov, Inc. for Cloud-Based Financial and Budgeting Subscription Solutions.**

Contact: Douglas Schulze, City Manager (P. 383)

- 13.3 **Adopt Resolution No. 2019-16, Authorizing the Electric Utility Heavy Duty Trucks and Equipment Replacement Program and the Purchase of two Heavy Duty Trucks.**

Contact: Jason Smith, Electric Operations Manager (P. 417)

- 13.4 **Adopt Resolution No. 2019-17, Approving a Task Order Engaging Black and Veatch Corporation to Complete a Resource Study not to exceed \$50,000.**

Contact: Tom Miller, Electric Utility Director **(P.433)**

- 13.5 **Adopt Resolution No. 2019-21, Authorizing the City Manager to enter into an Employment Agreement with Adam Rush for Community Development Director Services.**

Contact: Douglas Schulze, City Manager **(P. 449)**

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

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

1. CALL TO ORDER

- Roll Call – Board Members, Happe, Peterson, Wallace, Vice Chairman Andrade, and Chairman Welch

2. REPORT OF OFFICERS

- 2.1 **Adopt Resolution No. 2019-02 UA, Approving an Amendment to the Professional Services Contract for the Design of Well C-8 with Hazen and Sawyer of Palm Desert, CA. for \$42,087.**
Contact: Art Vela, Director of Public Works/City Engineer **(P. 487)**

RECESS THE JOINT MEETING OF THE CITY COUNCIL AND BANNING UTILITY AUTHORITY AND RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL

1. CALL TO ORDER

- Roll Call – Board Members, Happe, Peterson, Wallace, Vice Chairman Andrade, and Chairman Welch

2. REPORT OF OFFICERS

None

RECESS THE JOINT MEETING OF THE CITY COUNCIL AND SUCCESSOR AGENCY BOARD AND RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL

14. DISCUSSION ITEM(S)

None

BANNING UTILITY AUTHORITY (BUA) – Next Meeting, February 26, 2019, 5:00 p.m.

BANNING FINANCING AUTHORITY (BFA) – no meeting.

15. ITEMS FOR FUTURE AGENDAS

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
8. Digital Billboards

15. 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 time limit 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.



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Daryl A. Betancur, Deputy City Clerk *DB*

MEETING DATE: February 12, 2019

SUBJECT: Parks & Recreation Commission Appointments

RECOMMENDATION:

Discuss and consider selecting three candidates to fill the vacant positions on the Parks and Recreation Commission.

BACKGROUND:

The Parks and Recreation Commission ("Commission") consists of five (5) members appointed by the City Council. The Parks and Recreation Commission serve four-year terms, which are staggered every two years concurrent with the city elections. Appointments are made by the City Council.

Three (3) Parks and Recreation Commission positions expire in February of 2019. The Acting Deputy City Clerk advertised the Parks and Recreation Commission vacancies and received seven (7) applications.

Government Code 54974 requires that these vacancies be posted for a minimum of ten days. The vacancies were advertised on the City's website starting November 30, 2018, and application forms were made available at the City Hall counter and in the City Council Chamber. Additionally, a press release was sent to the Record Gazette on November 27, 2018. Information was posted on the City's social media platforms as well. The final date to submit applications was Friday, January 11, 2019 at 5:00 P.M.

The Acting Deputy City Clerk received seven (7) applications (Attachment 1) from the following candidates: Arthur Cabral, Frank Diaz, Laura Leindecker, Leroy Miller, Vickie Sellers, Shelby Waldron, and Robert Ybarra.

The Commission's rules and responsibilities are governed by Chapter 2.40 of the Municipal Code (Attachment 2). The Parks and Recreation Commission serve in an advisory capacity to the City Council assisting in the formulation of rules, regulations and policies for all parks and recreation programs, activities, and fees. They also facilitate the integration of the parks and recreation activities for the City.

OPTIONS:

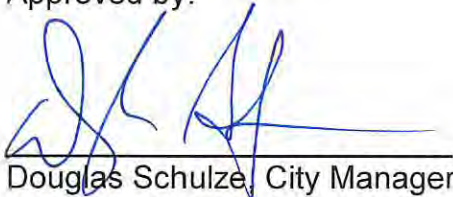
The City received seven (7) applications to fill the vacant Parks and Recreation Commissioner positions. The City Council may:

1. Appoint three (3) of the seven (7) applicants in accordance with section 2.40.030 of the Banning Municipal Code; or,
2. The City Council may reject all seven (7) applications and direct the Deputy City Clerk to re-advertise the vacancies accordingly.

ATTACHMENTS:

1. Parks and Recreation Commission Applications
2. Chapter 2.40 of the Banning Municipal Code
3. Appointing Resolution

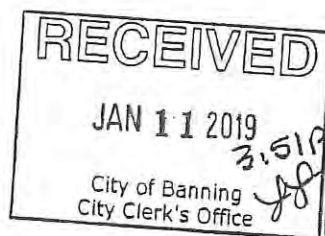
Approved by:



Douglas Schulze, City Manager

ATTACHMENT 1

Parks & Recreation Commission Applications



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Arthur J. Cabral

Email Address: _____

Address: _____

Telephone Numbers: Home _____ Cell _____

If employed, where do you work and what is your position?

TMDCI, Human Resource Analyst, Business Owner.

Length of residence in Banning 25 yrs.

Are you a registered voter in Banning? Yes ☒ No ☐

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

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

Banning Graduate, Some College edu. 15+ years non-profit work, Volunteer with city in sports (Baseball, Football) Board member at Banning Chamber of Commerce.

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

Focus and provide safe environments for our
youth with more after school activities. cleaning
parks & creating new parks or park activities.

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

Processes take to long to approve, I would like
to be involved in the process and figure out
how the city can be more efficient and accountable
to timelines.

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

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


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

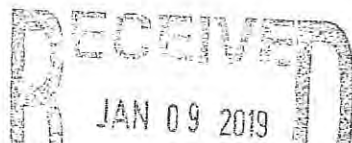
RETURN BY:

**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 1/11/19

Signed: 



BY: City Clerk's Office



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: _____

Email Address: _____

Address: _____

Telephone Numbers: Home _____ Cell _____

If employed, where do you work and what is your position?

Fountain Valley School District - Operation Supervisor

Length of residence in Banning 2y 3months

Are you a registered voter in Banning? Yes X No _____

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

My background relevant to the duties of the post are as follows:

* Education - High School Diploma with 38 units of college.

* Work Experience - 25yrs in Facilities, Maintenance & Operations. 17yrs experience leading school departments of 25 - 280 employees. 17yrs experience developing budgets, working with contractors, and supervising projects of \$1,000 - 6million.

* Civic Involvement - Banning SD (DPAC) District Agent Advisory Committee Officer, community volunteer with Habitat for Humanity.

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

The committee would advise the City Council of community planning events, programs, operational activities and facilities matters that pertain to the Parks & Recreation.

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

The specific problems facing the board and how I feel they might be resolved are as follows:

- * Community Outreach - can be resolved by utilizing networking groups and/or social media.
- * Community Involvement - can be resolved by utilizing networking groups and/or social media. Advertisement based on core values of events with specific goals.

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

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

Please return to: City Clerk's Office
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Banning, CA 92220

RETURN BY:

January 11, 2019
5:00 p.m.

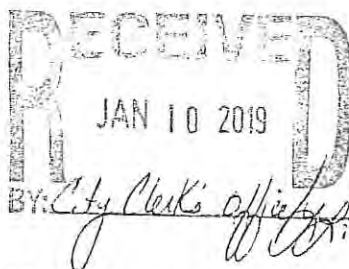
Thank you for your willingness to serve your local government.

Date:

1/8/19

Signed:

Frank Diaz



COMMITTEE/BOARD APPLICATION FORM

Parks / Recreation

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Laura L. Leindecker

Email Address: _____

Address: _____

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

LLLeindecker & Associates, proprietor

Length of residence in Banning 14 years

Are you a registered voter in Banning? Yes X No _____

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

Graduated UC Santa Barbara with a Bachelors Degree in Communications; worked in NYC in commercial real estate/commercial development. Continued career in financial publishing for: CFO's i.e. IMF, World Bank events. My background has continued to be in business, business development. LLLeindecker & Associates is an independent public relations business - I currently am working with a client which I have been retained for more than 4 years whose commercial property went through a development phase; a 2-year process - we are now in a zoning phase of one of his projects. I have worked with the Cities departments of planning, building, zoning, permits, fire. Personal - originally from Goleta/Santa Barbara; never married, no children. Local Rotarian, Chamber of Commerce VP; a Rotarian; have been on the business ad hoc committee; believe in Banning, believe in business!

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

Improving the quality of our Parks, especially during the economic restraints our City may go

through: before I can identify specific issues/items I would need to review the last few Board Agendas. I do know about Roosevelt Park, I am aware individuals/public have their own priorities projects— these might not always be feasible. Work for the good of the entire City.

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

Parks/Recreation - keeping the City balanced, safe - well rounded. We have done a great job.

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


This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, October 10, 2018 from 4:00 p.m. to 4:30 p.m.

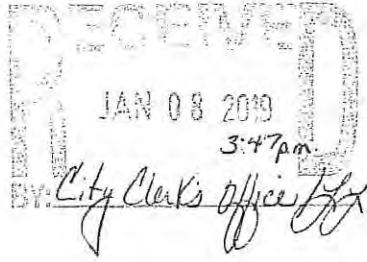
Please return to: City Clerk's Office
City of Banning
99 E. Ramsey Street
P. O. Box 998
Banning, CA 92220

**RETURN BY: October 12, 2018
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 1/10/2019

Signed: 



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Leroy Miller

Email Address: _____

Address: _____

Telephone Numbers: Home -- _____ Cell -- _____

If employed, where do you work and what is your position?

--

Length of residence in Banning 54 years

Are you a registered voter in Banning? Yes Yes No _____

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

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

I went to school in Banning and have completed some college. I have worked for the City of Banning and Cal Fire. I have worked in Parks and Recreation for 10 years, Banning Youth Baseball, Concerts in the Park, One on One Board for the City and schools, and helped with the Senior Citizen and Recreation Department.

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

Funding programs for the Recreation department, updating of the City Master Plan,
funding for playground equipment, and looking at new park plans

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

The homeless problem in the parks and graffiti might be resolved with Park Rangers.
Funding needs might be resolved with increased fees and by generating other revenue.

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

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

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

RETURN BY:

**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 1-8-19

Signed: _____

Larry Miller

4:03 p.m.
JAN 11 2019

COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Vickie A Sellers

Email Address: _____

Address: _____

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

Banning High School - Banning, HS principals secretary

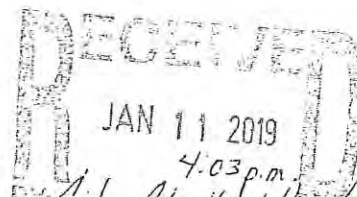
Length of residence in Banning 63 years

Are you a registered voter in Banning? Yes ☒ No _____

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

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

graduated from Banning High School - 1974 - graduated
in San Jacinto College obtained an Associates of Science
am currently the Secretary of Banning Press Little League
I have been on the Board for six years. I am also
a member of Stagecoach Rules Day for the past 6 years
and am the Vendor representative. I also have
attended school @ Cal State University at San Bernardino.
my position at Banning High School will help the city
coordinate activities with the school district and



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

Being available with people to get things done. Hearing these issues and working with the city to resolve problems that may arise. Being ADA compliant in a concern as well as funding.

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

I am a great task master. I love challenges getting resolution. A big issue the committee is facing is not having a complete committee. I am dedicated and would be there 100% plus. If an emergency met regardless the committee, to have a meeting I would attend. I believe in community service and would love an opportunity to serve.

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

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

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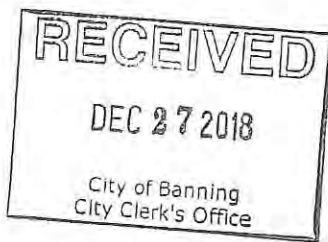
RETURN BY:

**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 1/11/2019

Signed: Vickie A Sellers



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Shelby Waldron

Email Address: _____

Address: _____

Telephone Numbers: Home _____ Cell _____

If employed, where do you work and what is your position?

Graduate Student at California Baptist University; Part-time private child-care provider.

Length of residence in Banning 22 years

Are you a registered voter in Banning? Yes X No _____

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

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

Community Service: Volunteer mentor for anti-bullying club at Ramona High School; Choreographer for youth cheerleading program; Former junior board member of youth football program, Pass Redskins, where I worked snack bar, ran game clocks, field set-up & maintenance and picked up trash after use.
Education: Beaumont High School - (2014); University of Dallas - B.A. in Psychology (2018); Currently a master's student at California Baptist University studying sport and performance psychology.
Leadership Roles/ Committees and Boards: Founder and CEO of non-profit "Shelby's Locker"; Co-Founder of Public Speaking Club "Next Level Speakers"; Student Athlete Advisory Committee (SAAC) (Univ. of Dallas); Basketball representative for Fellowship of Student Athletes (FCA) (Univ. of Dallas); BHS Prom Committee 2013; BHS C/O 2014 Senior I.O.C. Representative;
Scholarships: Kohl's community cares scholarship (community service-based award); Soroptimist International Violet Richardson community service award

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

I am not aware of any current major issues within the city because I have just recently relocated back to Banning; however. I think the parks and recreation board would focus on making sure Banning parks are clean, well lit, and safe. I would think a priority of the board would be working with other organizations to provide as many community activities, sports, and events for the residents of Banning, especially the youth.

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

As noted above, I am not aware of any specific problems. I have always taken advantage of the parks around town and was a participant in any and all youth activities and sports, so I just want to volunteer and give back to my community and I saw this opening and thought it would be a good place for me to start.

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

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

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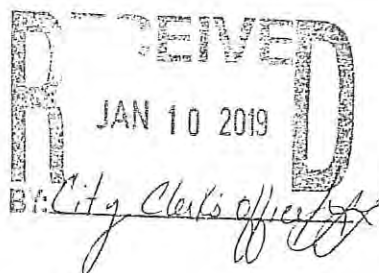
RETURN BY:

**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: December 22, 2018

Signed: Shirley Johnson



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Robert G Ybarra III

Email Address: _____

Address: _____

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

Precision Material Handling INC.

CEO/owner

Length of residence in Banning 5 years

Are you a registered voter in Banning? Yes X No _____

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

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

I grew up in Yucca and graduated from Chaffey school
I am the CEO/owner of Precision Material Handling INC.
and have been successful in my business for 11 years.
I moved my family and business to Banning around 2013
I participate and am involved in community events that
sponsor Corals Kitchen. I am currently the President
of the Banning Chamber of Commerce, and I am working
with the Board of directors on new events for the
Local Business owners and the community to bring
new life to our community, our goal is to make
Banning a destination and bring new business to our
city.

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

Promoting the use of, and advocating the use
of parks and recreational services.
Help create programs to be implemented by the
Park and Recreation.

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

Banning needs a sports park for soccer
and other sports for the youth.
Also Banning need some kind of events that
will bring people to Banning keep around
something that will bring much needed
Revenue to our city.

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

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

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RETURN BY:

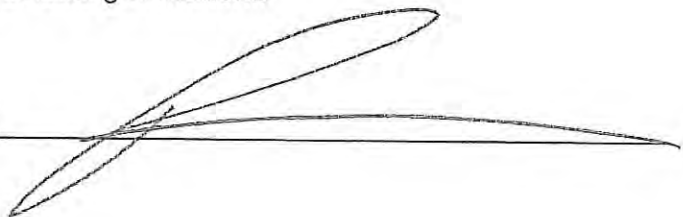
**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date:

1/10/19

Signed:



ATTACHMENT 2

Chapter 2.28 of the
Banning Municipal Code

Chapter 2.40

PARKS AND RECREATION COMMISSION

Sections:

2.40.010 Established—Purpose.

2.40.020 Advisory agency designated— Powers and duties.

2.40.030 Appointment of members.

2.40.040 Conduct of meetings.

2.40.010 Established—Purpose.

There is hereby established a parks and recreation commission of the city for the purpose of facilitating the integration of the parks and recreation activities for the city.

(Code 1965, § 15-1; Ord. No. 1438, § 1.A., 6-14-11)

2.40.020 Advisory agency designated— Powers and duties.

The city parks and recreation commission shall serve as an advisory agency to the city council and the director of community services for the purpose of the formulation of rules, regulations and policies for all parks and recreation programs, activities, and fees. Parks and recreation commission members shall be registered voters of the City of Banning.

(Code 1965, § 15-2; Ord. No. 1438, § 1.A., 6-14-11)

2.40.030 Appointment of members.

A. The parks and recreation commission shall consist of five members.

B. The parks and recreation commission shall serve four-year terms, which shall be staggered every two years concurrent with the city elections. Appointments shall be made by the city council. Applications shall be made available and the closing date announced at least two months prior to the expiration of the commissioner's term to be filled.

C. Members shall serve at the pleasure of the council and may be removed at any time by a majority vote of the entire council.

D. Any member who is unexcused for two consecutive regular meetings of the commission or six meetings within a twelve-month period, whether the six meetings are excused or not, will be deemed to have resigned their office and the city council may appoint a new member to serve in the resigned commissioner's place for the remainder of the term.

E. To be excused from any such meeting, a member shall notify the community services department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence.

(Code 1965, § 15-3; Ord. No. 1438, § 1.A., B., 6-14-11)

2.40.040 Conduct of meetings.

A. The commission shall meet at 6:00 P.M. on the third Wednesday of the following months: January, February, March, April, May, June, September, October and November.

B. Additional meeting may occur if deemed necessary by the city council or commission chairperson.

C. A majority of the voting members of the commission shall constitute a quorum.

(Code 1965, § 15-4; Ord. No. 1438, § 1.A., 6-14-11)

ATTACHMENT 3

Appointing Resolution

RESOLUTION 2019-XX

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, MAKING APPOINTMENTS TO FILL THREE VACANCIES ON THE PARKS AND RECREATION COMMISSION

WHEREAS, the Parks and Recreation Commission is a five-member board that was established under Chapter 2.40 of the Banning Municipal Code and serves in an advisory capacity to the City Council; and

WHEREAS, the Parks and Recreation Commission is a five (5) member board that serves four-year terms, which are staggered every two years concurrent with the City elections, and whose members serve at the pleasure of the City Council; and

WHEREAS, the main purposes of the Parks and Recreation Commission are: (1) assist in the formulation of rules, regulations, and policies for all parks and recreation programs, activities and fees; and (2) facilitate integration of the parks and recreation activities for the City; and

WHEREAS, the City Council conducted a formal recruitment process, received seven (7) applications from members of the community, and interviewed seven (7) candidates on February 5, 2019.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF BANNING AS FOLLOWS:

SECTION 1. _____, _____, and _____ have gone through the application and interview process and have been deemed as successful applicants.

SECTION 2. _____, _____, and _____ are hereby appointed as Parks and Recreation Commissioners for the City of Banning for a term beginning on February 12, 2019 and ending December 2022.

PASSED, APPROVED AND ADOPTED this 12th day of February 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution no. 2019-XX, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/22/19
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on January 22, 2019 at 2:04 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL/BOARD MEMBERS PRESENT: Council Member Andrade
Council Member Happe
Council Member Peterson
Council Member Wallace
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Maryann Marks, Interim Community Development Director
Marie A. Calderon, City Clerk
Laurie Sampson, Acting Deputy City Clerk

COMMISSIONER INTERVIEWS:

1. Scott Brosious
2. Frank Diaz
3. James Price
4. Vickie Sellers
5. Arthur J. Cabral

PUBLIC COMMENT

None

ADJOURNMENT

By common consent the meeting adjourned at 3:39 p.m.

Minutes Prepared by:

Laurie Sampson, Acting Deputy City Clerk

Attachments:

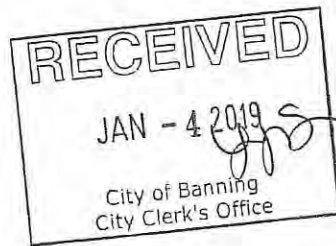
Exhibit A: Planning Commissioner Applications

Exhibit B: Interview Questions

Exhibit C: Council Ranking Results

These Action 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=HWru93tYuMRK> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

Exhibit “A”
to the January 22, 2019
2:00 P.M. Special City Council Meeting
Planning Commission Applications



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Scott Brosious

Email Address: _____

Address: _____

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

City of Riverside, City Manager's Office, Communications Supervisor.

Length of residence in Banning 10 years

Are you a registered voter in Banning? Yes ☒ No _____

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

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

Growing up in the Riverside area I worked most weekends with my father, a general contractor, who taught me how structures are built and why things like building codes exist.

In my 15 years of working at the City of Riverside I have broadcast over 500 City Council meetings, 300+ Planning Commission meetings, and countless other Boards & Commission meetings. From these I learned of the role volunteer commissioners play in local government.

In my work experience I have completed training in CEQA, Brown Act, conflict of interest, and many more. I was appointed to the planning commission in November, only one meeting has been held since then. I asked informed questions which helped improve the projects that were presented. I would like the opportunity to continue for a full term as commissioner.

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

In my view the Planning Commission should mainly deal with land use issues. Reviewing applications for future development. Everything from small scale re-models of existing facilities to large scale development of large housing tracts and retail centers. Decisions should be made without bias, and based solely on facts.

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

One of the challenges facing Banning is the fear some residents have of future development destroying their lifestyle. As a communications professional I feel increased communication on such projects in the future could help alleviate such fears if done well in advance of projects coming forward for approval. In an effort to increase public involvement, I would also propose the Planning Commission and all City agendas are published one week earlier excess of Brown Act requirements. This would allow both the residents and public officials to have added time to review all the documents.

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

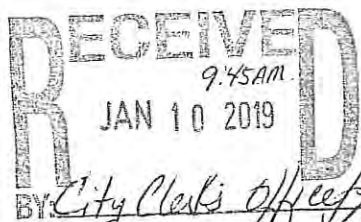
This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, October 10, 2018 from 4:00 p.m. to 4:30 p.m.

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

**RETURN BY: October 12, 2018
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: _____ Signed: _____



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Frank Diaz

Email Address: _____

Address: _____

Telephone Numbers: Home _____ Cell _____

If employed, where do you work and what is your position?

Fountain Valley School District - Operations Supervisor

Length of residence in Banning 2yr 3 months

Are you a registered voter in Banning? Yes X No _____

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

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

My background relevant to the duties of the post are as follows:

Education - High school diploma with 38 units of college general education.

Work Exper - 24 yrs in Facilities, Maintenance & Operations. 17 yrs experience as a Manager/Director of K-12 education departments of 30 - 280 staff. I also have extensive knowledge of D.S.A, D.P.S.C. requirements. I have experience with "Design/Bid/Build" and "lease-lease" projects, and working with contractors and architects, labor negotiations, bond oversight.

Civic Involvement - Volunteer with Habitat for Humanity. Banning School District "District Parent Advisory Committee" (DPAC).

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

The types of major issues the committee should deal with are:

- * Building and economic growth in residential or unincorporated areas.
- * Zoning for residents or business.
- * Modernization or capital improvement projects
- * Community and business input in the growth of the city.

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

The specific problem facing the committee and how I feel it might be resolved is:

Problem - The specific problem is rapid growth of a small town, with a rich history in the state.

Solution - Proper planning with specific care values of balancing history of the city with the changing economic growth of the state.
Proper planning should not only include structural, engineering and environmental laws but also include a plan for long-term sustainability and use.

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

This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, January 9, 2019 from 4:00 p.m. to 4:30 p.m.

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

RETURN BY: January 11, 2019
 5:00 p.m.

Thank you for your willingness to serve your local government.

Date: 1/9/19 Signed: Frank D. [Signature]



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: JAMES L. PRICE

Email Address: _____

Address: SEE ABOVE

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

N/A

Length of residence in Banning 12 YEARS

Are you a registered voter in Banning? Yes ☒ No ☐

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

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

PLANNING COMMISSION MEMBER - City of BANNING

FOUNDER - BANNING PASS LITTLE LEAGUE

RETIRED FROM COSTCO WHOLESALE MANAGER

ARAPAHOE JR. COLLEGE, LITTLETON, CO

I HAVE OVER FIFTY YEARS OF RETAIL MANAGEMENT

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

WE SHOULD CONSIDER ISSUES THAT SUPPORT THE GENERAL
LAND ROUTE PLAN. I AM INTERESTED IN ISSUES THAT MOVES THE
CITY FORWARD. ISSUES THAT AFFECT RESIDENCES AND EMPLOYMENT
WE SHOULD SUPPORT ANY PROJECTS THAT WILL BRING A GREATER
EMPLOYMENT TO THE DOWNTOWN AREA, AIRPORT BUSINESSES.

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

AS WE CONSIDER ISSUES, WE NEED TO PROTECT OUR CURRENT
RESOURCES, WHILE SOME ISSUES WILL BE DECIDED BY THE
COMMISSION, WHILE OTHERS WILL BE DECIDED BY THE
CITY COUNCIL. WE SHOULD CONSIDER THE LONG TERM EFFECTS OUR
DECISIONS HAVE ON OUR TAX BASE AND STRIVE TO MAKE SURE
OUR DECISIONS WILL CONTRIBUTE TO THE ECONOMIC DEVELOPMENT
OF BANNING. WE NEED TO ALWAYS HAVE TRANSPARENCY. WE
NEED TO WORK WITH THE CITY STAFF AND THE COUNCIL SO
THAT WE ARE UNIFIED ON DECISIONS. THANK YOU, JIM PRICE
Your name will be considered by the City Council upon receipt of your application.

This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, January 9, 2019 from 4:00 p.m. to 4:30 p.m.

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

RETURN BY:

**January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date:

12/31/2018

Signed:

James L. Price



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Vickie Sellers

Email Address: _____

Address: _____

Telephone Numbers: Home _____

Cell _____

If employed, where do you work and what is your position?

Banning High School - principals secretary

Length of residence in Banning 63 years

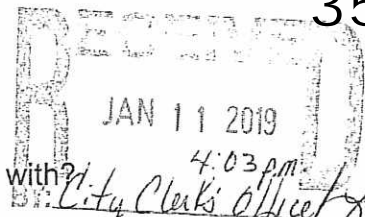
Are you a registered voter in Banning? Yes ☒ No ☐

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

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

I was born and raised in Banning. I graduated from Banning High and Mt San Jacinto College with an Associates of Science and attended Cal State University San Bernardino. I have 14 credits to complete obtain my Bachelors of Liberal Studies. I raised both my children both graduates of Banning High and my son graduated from Mt San Jacinto and graduated. He went on to Humboldt University and has both a Bachelors & Masters degree. My daughter graduated from Mt San Jacinto College.

I am the secretary of Banning PASS Little League and have been on the Board for six years. I am also a member of the Stagecoach & Rodeo Day Committee. In my district I am active w/ my students and have been in committees that have made decisions & the new Buildings at the High School



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

with the Bond for the schools & was active and up to date
 Currently Bidding for contracts for the new Visual arts
 Building. I understand Budgets and do major purchases
 and have done so at our district level with Nutramax service
 Bringing in new development and great contractors
 is a must for economic growth

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

We need to actively seek new business to have growth
 in our city. Attracting new business is a must. It
 would bring more monetary funding for Banning. If
 we need more housing, which would bring more
 families to our community we then could add more
 schools that our so badly needed. Our schools are old
 and putting band-aids is not the best way. If we
 build houses more people come and business would
 want to come in.

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

This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, January 9, 2019 from 4:00 p.m. to 4:30 p.m.

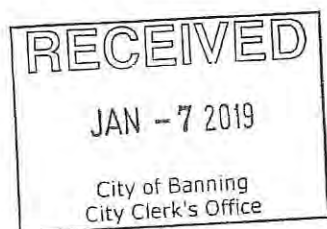
Please return to: City Clerk's Office
 City of Banning
 99 E. Ramsey Street
 P. O. Box 998
 Banning, CA 92220

RETURN BY:

**January 11, 2019
 5:00 p.m.**

Thank you for your willingness to serve your local government.

Date: 1/10/19 Signed: Vickie A Sellers



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Arthur J. Cabral

Email Address: _____

Address: _____

Telephone Numbers: Home N/A Cell _____

If employed, where do you work and what is your position?

Torres Martinez Desert Cahuilla Indians. Human Resources Analyst.

Length of residence in Banning 25 yrs.

Are you a registered voter in Banning? Yes ☒ No _____

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

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

Banning High Grad., Current student at MSSC, - studying Business Admin. 12 years non-profit work. Supplemental teaching in Banning Unified School District. Community Volunteer (LBA, Banning High School). Secretary and Board member of Banning Chamber of Commerce. 10+ years, involved with AD HOC committees varying from "Health events" to "Job days" and "School/Education" objectives.

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

Amending old Zoning laws & ordinances to help grow the city of Banning to allow an more efficient process for new business to town (main stream process and timeline).

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

Growing downtown Banning, Cleaning the appearance of Banning. Getting Banning to be a destination location, with new business ventures in the form of parks, music events, special geared to families, and youth activities. Completing the "Banning Business Center" project.

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

This is a volunteer position. You must be a registered voter and reside in the City of Banning. You will also need to be fingerprinted, pass a background investigation and attend a brief orientation session at City Hall to explain the role of commissioners on Wednesday, January 9, 2019 from 4:00 p.m. to 4:30 p.m.

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

**RETURN BY: January 11, 2019
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date:

1/4/19

Signed:



Exhibit “B”
to the January 22, 2019
2:00 P.M. Special City Council Meeting
Interview Questions

Planning Commission Interview Questions

1. Tell us briefly about yourself and how you can contribute to the City by being on the City's Planning Commission.
2. Tell us what you know about the Planning Commission's roles and responsibilities and how they contribute to creating a quality of life for the residents, businesses and people who visit our community.
3. Tell us about the General Plan and what it is used for.
4. Tell us about the Zoning Code and what it is used for.
5. Tell us about the California Environmental Quality Act (CEQA) and what it is used for.
6. A staff report is provided to the Planning Commission in advance of the Planning Commission meeting. Do you have time to meet with Staff to address your questions and concerns before the meeting?
7. Have you ever been a Planning Commissioner and if so tell us what is your experience while on the commission.
8. Do you know what a Mitigated Negative Declaration, a CEQA, or EIR are, if so, tell us what they are.
9. We have concluded the interview. Do you have any questions for us?

Exhibit “C”

to the January 22, 2019

2:00 P.M. Special City Council Meeting

Council Ranking Results

EXHIBIT 'C'

Council Ranking Results

	BROSIOUS	CABRAL	DIAZ	PRICE	SELLERS
ANDRADE	1	3	4	2	5
HAPPE	1	3	4	2	5
PETERSON	1	3	4	2	5
WALLACE	1	3	4	2	5
WELCH	1	3	4	2	5

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

1/22/2019
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Welch on January 22, 2019, at 4:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade
Council Member Happe
Council Member Peterson
Council Member Wallace
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager
Rochelle Clayton, Deputy City Manager
Kevin Ennis, City Attorney
Marie A. Calderon, City Clerk
Tom Miller, Electric Utility Director
Art Vela, Public Works Director
Ted Shove, Economic Development Manager

CLOSED SESSION

Mayor welch opened the closed session items for public comments.

Public Comment: Paul Perkins, Banning resident, inquired how he could look up the Riverside County Case numbers. City Attorney Kevin Ennis stated he would help Mr. Perkins.

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

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9). Name of Case: City of Banning and People of the State of California v. Supreme Cannabis Club, Tony Macias, and Maria Dolores Macias, Case No. RIC 1821127.
2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9). Name of Case: 420 Vibing Solutions, Inc. v. City of Banning, Case No. RIC 1822867.

3. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Potential initiation of litigation pursuant to Paragraph (4) of subdivision (d) of Government Code Section 54956.9) (One Case)
4. CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9. Name of Case: Southern California Edison Company v. RRM Properties, Ltd. Et al. Case No. RIC 1813789.
5. CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (One Case).
6. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs 419-120-019, -021, 023, 024, -025, located in the general vicinity of Joshua Palmer Way and Highland Springs Avenue. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: BMW Management, Juan Carlos Trejo, and Corners, Inc.; Under Negotiation: Price and Terms.
7. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs 532-120-001, -002, -004, -005, -008, through -012 & -020 located in the general vicinity of Ramsey Street and Hathaway Street. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: Fountain of Life Temple Church of God in Christ, Frank J. Burgess and Lorna Burgess, Burgess Family Trust, Frank J. Burgess, Humberto and Eulogia Ramirez Family Trust, James Burgess Fall and Betty Imai Fall Family Trust, Jen H. Huang, Krystal P. Cruz, Louis S. Lopez Trust, Raymond Ngoc and Lucy Nguyen Huynh Revocable Trust, Teh Shan Liang, Terra Firma Enterprises, LLC.; Under Negotiation: Price and Terms.
8. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs: 537-100-030, and -031, located in the general vicinity of Ramsey Street and C Street. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager. Negotiating Parties: TLC Prop; Under Negotiation: Price and Terms.

9. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs: 534-152-023 and -025, located in the general vicinity of Hargrave Street and Indian School Lane. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: Rifai Mousa; Under Negotiation: Price and Terms.

The Meeting convened to closed session at 4:05 p.m. and reconvened to open session at 5:09 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:50 p.m.

Minutes Prepared by:

Laurie Sampson, Acting Deputy City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

01/22/19
REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Welch on January 22, 2019, at 5:09 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Council Member Andrade
Council Member Happe
Council Member Peterson
Council Member Wallace
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Doug Schulze, City Manager
Kevin Ennis, City Attorney
Rochelle Clayton, Deputy City Manager
Tim Chavez, Fire Battalion Chief
Vincent Avila, 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
Ted Shove, Economic Development Manager
Marie A. Calderon, City Clerk
Laurie Sampson, Acting Deputy City Clerk
Leila Lopez, Office Specialist

Mayor Welch called the regular meeting of the City Council to order at 5:09 pm. The Invocation was given by Reverend Bill Dunn of St. Stephens Episcopal Church. Council Member Happe led the audience in the Pledge of Allegiance.

AGENDA APPROVAL

Motion Andrade/Wallace. Motion carried 5-0.

PROCLAMATION

Mayor Welch presented a proclamation in honor of the 3rd Annual National Day of Healing.

REPORT ON CLOSED SESSION

1) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9). Name of Case: City of Banning and People of the State of California v. Supreme Cannabis Club, Tony Macias, and Maria Dolores Macias, Case No. RIC 1821127. **A status report was provided.** 2) CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9). Name of Case: 420 Vibing Solutions, Inc. v. City of Banning, Case No. RIC 1822867. **A status report was provided.** 3) CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION (Potential initiation of litigation pursuant to Paragraph (4) of subdivision (d) of Government Code Section 54956.9) (One Case). **A status report was provided.** 4) CONFERENCE WITH LEGAL COUNSEL- EXISTING LITIGATION (Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9). Name of Case: Southern California Edison Company v. RRM Properties, Ltd. Et al. Case No. RIC 1813789. **A status report was provided.** 5) CONFERENCE WITH LEGAL COUNSEL- ANTICIPATED LITIGATION Significant Exposure to Litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (One Case). 6) CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs 419-120-019, -021, 023, 024, -025, located in the general vicinity of Joshua Palmer Way and Highland Springs Avenue. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: BMW Management, Juan Carlos Trejo, and Corners, Inc.; Under Negotiation: Price and Terms. **Direction provided to staff.** 7) CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs 532-120-001, -002, -004, -005, -008, through -012 & -020 located in the general vicinity of Ramsey Street and Hathaway Street. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: Fountain of Life Temple Church of God in Christ, Frank J. Burgess and Lorna Burgess, Burgess Family Trust, Frank J. Burgess, Humberto and Eulogia Ramirez Family Trust, James Burgess Fall and Betty Imai Fall Family Trust, Jen H. Huang, Krystal P. Cruz, Louis S. Lopez Trust, Raymond Ngoc and Lucy Nguyen Huynh Revocable Trust, Teh Shan Liang, Terra Firma Enterprises, LLC.; Under Negotiation: Price and Terms. **Direction provided to staff.** 8) CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs: 537-100-030, and -031, located in the general vicinity of Ramsey Street and C Street. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager. Negotiating Parties: TLC Prop; Under Negotiation: Price and Terms. **Direction provided to staff.** 9) CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8: Property description: APNs: 534-152-023 and -025, located in the general vicinity of Hargrave Street and Indian School Lane. City Negotiator: Douglas Schulze, City Manager and Ted Shove, Economic Development Manager- Negotiating Parties: Rifai Mousa; Under Negotiation: Price and Terms. **Direction provided to staff.**

PUBLIC COMMENTS / CORRESPONDENCE / PRESENTATIONS / APPOINTMENTS

PUBLIC COMMENTS

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

Inge Schuler, Banning resident, reminded the City Council they have a fiduciary responsibility and every council member should care about the people's money. There is a five minute rule in place for public comment. "Point of Order" should be used to maintain the five minute rule.

Ellen Carr representing 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. As a Banning resident, she would like to suggest the City increase pay for the Police Department Dispatchers.

Paul Perkins, Banning resident, suggested the closed session be the first item of the day and any workshops be held directly prior to the regular meeting so more people can attend. Any session held in the council chambers should be wired and broadcast. He would also like to see status reports for ongoing projects. He asked the City to look into the ability to withdraw from participating in Social Security. (Attachment A)

Anne Price, Banning resident, would like to remind everyone Banning Little League is starting up.

CORRESPONDENCE

There was no correspondence.

APPOINTMENTS

2019 Planning Commission Appointments

A motion was made to appoint Scott Brosious to the Planning Commission

Motion: Andrade/Happe. Motion carried 5-0.

A motion was made to appoint James Price to the Planning Commission.

Motion: Peterson/Wallace. Motion carried 5-0.

CONSENT ITEMS

Items 5, and 6, were pulled for discussion by Council Member Happe. Items 10 and 11 were pulled for discussion by Council Member Peterson.

1. Approve Regular Council Meeting Minutes for January 8, 2019.
Recommendation: Accept the minutes for January 8, 2019.
2. Approve Special Council Meeting Minutes for January 22, 2019.
Recommendation: Accept the minutes for January 8, 2019.
3. Approval and Ratification of Accounts Payable and Payroll Warrants for November 2018.
Recommendation: Review and ratify the warrants for period ending November 30, 2018.
4. Approval and Ratification of Accounts Payable and Payroll Warrants for December 2018
Recommendation: Review and ratify the warrants for period ending December 31, 2018.
7. Public Works Capital Improvement Project Tracking List.
Recommendation: Receive and file report.
8. Receive and File Police Department Statistics for November 2018.
Recommendation: Receive and File Report.
9. Receive and File Police Department Statistics for December 2018.
Recommendation: Receive and File Report.

Motion: Peterson/Andrade to approve items 1-4 and 7-9. Motion carried 5-0.

5. Receive and File Cash, Investments and Reserve Report for the Month of November 2018
Recommendation: Receive and File Report.
Discussion: Staff Report was presented by Suzanne Cook, Deputy Finance Director. After Council discussion motion was made:

Motion Happe/Wallace. Motion carried 5-0.

6. Receive and File Cash, Investments and Reserve Report for the Month of December 2018
Recommendation: Receive and File Report.
Discussion: Staff Report was presented by Suzanne Cook, Deputy Finance
After Council discussion motion was made:

Motion Happe/Wallace. Motion carried 5-0.

10. Resolution 2019-10, Amending the Established Electric Utility Blanket Purchase Orders for the Purchase of Inventory Supplies and Commodities Not to Exceed \$500,000 for 2019 and \$600,000 for 2020.

Recommendation: Adopt Resolution 2019-10

Discussion: Staff Report was presented by Tom Miller, Electric Utility Director. After Council discussion motion was made:

Motion Peterson/Wallace. Motion Carried 5-0.

11. Electric Rule #18 Public Utility Access to Private Property.

Recommendation: Replace Rule #18- Department Right of Ingress to and Egress from Consumer's Premises, adopted by City Council on June 16, 1975, by Resolution 1975-23, and adopt revised Electric Rule #18- Public Utility Access to Private Property.

Discussion: Staff Report was presented by Tom Miller, Electric Utility Director. After Council discussion motion was made:

Motion Peterson/Andrade. Motion carried 5-0.

ANNOUNCEMENTS & REPORTS

CITY COUNCIL COMMITTEE REPORTS

None

REPORT BY CITY ATTORNEY

None

REPORT BY CITY MANAGER

1. A Cannabis Information Workshop is scheduled for Wednesday, January 23, 2019 at 6:00 p.m. in the council chambers.
2. Staff will be presenting an item, Open.Gov at the February 12, 2019 meeting. This program will help to address the status concerns brought by Mr. Perkins.
3. The Deputy City Clerk position has been filled by Daryl Betancur. His first day will be Monday, February 4, 2019.
4. The Community Development Director position has been filled. The candidate is currently in background check.

Mayor Welch, recessed the regular meeting of the Banning City Council and called to order a joint meeting of the Banning City Council, Banning Utility Authority and Housing

Authority.

REPORTS OF OFFICERS

1. Fiscal Year 2017-2018 Audited Financial Statements for the City of Banning and the Banning Utility Authority.
Recommendation: Approve the Fiscal Year 2017-2018 Comprehensive Financial Reports (CAFRs) and Independent Auditor's Reports for the City, Banning Utility Authority, and the Housing Authority which were audited by Lance, Soll, & Lunghard, LLC.
Discussion: Staff Report was presented by Debbie Harper, of Lance, Soll, & Lunghard, LLC.
Public Comment: Paul Perkins requested information on the pension liability.
 After council discussion motion was made:

Motion Happe/Andrade .Motion carried, 5-0.

Mayor Welch, recessed the joint meeting of the City Council, Banning Utility Authority and Housing Authority, and reconvened the regular meeting of the Banning City Council.

REPORTS OF OFFICERS

1. Resolution 2019-11, Approving a License Agreement for the Use of Real Property between the City of Banning and the Banning, San Gorgonio Pass Area Chamber of Commerce.
Recommendation: Adopt Resolution 2019-11, Approving an Agreement for Use of real Property between the City of Banning and the Banning, San Gorgonio Pass Area Chamber of Commerce.
Discussion: Staff Report was presented by Doug Schulze, City Manager.
Public Comment: Paul Perkins suggested a change to page 42, regarding approval for improvements.
 The agreement was amended to change the boundaries from "southerly" Livingston Street to "northerly" Livingston Street.
 After Council Discussion motion was made:

Motion Andrade/Wallace. Motion carried 3-0 to approve the agreement as amended. Council Members Happe and Peterson abstained.

2. Transit Operations, Its Budget and Impact on the City's Compressed Natural Gas "CNG" Facility.
Recommendation: Provide staff direction.
Discussion: Staff Report was presented by Rochelle Clayton, Deputy City
Public Comment: Mr. Perkins would like to know why, if the CNG station is closed to the public, there is a CNG sign on Lincoln? Does the City have a way to track the actual use of CNG by the Banning Unified School District?
 Rochelle Clayton responded the City does have a way to track the usage.

After council discussion staff was directed to continue with the plan to keep the proposed CNG station for City and possible School use and to work on a proposal with the Banning Unified School District with a more equitable contribution from both entities.

3. Resolution 2019-02, Amending the Fiscal Year 2018-2019 Budget for Year addition of two Code Compliance Officers and to update the Classification and Compensation Plan to Reclassify the Senior Code Compliance Officer to Code Compliance Supervisor.

Recommendation: Adopt Resolution 2019-02, Amending the Fiscal Year 2018-2019 Budget for Year addition of two Code Compliance Officers and to update the Classification and Compensation Plan to Reclassify the Senior Code Compliance Officer to Code Compliance Supervisor.

Discussion: Staff Report was presented by Rochelle Clayton, Deputy City Manager.

After Council Discussion motion was made to defer the discussion to the February 26, 2019 meeting of the City Council.

Motion Andrade/Peterson. Motion carried 5-0.

4. Resolution 2019-12, Banning Utility Long-Term Load Forecast for Power, Resources and System Planning.

Recommendation: Adopt Resolution 2019-12, Approving the Banning Utility Long-Term Load for Power resources and System Planning provided by Itron, Inc. of San Diego, CA.

Discussion: Staff Report and PowerPoint presentation (Attachment B) was presented by David Simons, of Itron, Inc.

After Council Discussion motion was made:

Motion Peterson/Wallace. Motion carried 5-0.

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

CONSENT ITEM

1. Resolution 2019-01 SA, Approval of the Recognized Obligation Payment schedule A & B.

Recommendation: Approve Resolution 2019-01 SA, Approving the Recognized

Discussion: Staff Report was presented by Suzanne Cook, Deputy Finance
After Council Discussion motion was made:

Motion Peterson/Wallace. Motion carried 5-0.

DISCUSSION ITEMS

None

ADJOURNMENT

By common consent the meeting was adjourned at 7:45 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=CnzIB0BOCu2L> , or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

Exhibit “A”
to the January 22, 2019 Regular Meeting Minutes

Paul and Elaine Perkins

54
1/22/18

4808 Crenshaw Circle, Banning Ca 92220

951/769-5415

Subject: Question for the Council and Staff of Banning - Jan 22, 2019

To: City Council of Banning and City Staff

1. Can the Agenda's of the City Council sequence, be re-organized to support the Attendance of more Citizens of the City. This can be accomplished by having the open to the Citizens of the City "Special Meeting's" just before the Regular City Council meeting. This would place the order something like this: Special Meeting that goes to closed session, Special Meeting that is open to Citizens, Regular open Council Meetings
2. Status reports by City Staff on long term solutions being posted monthly in the City Website for all to see and review. This would insure that long term goals are acted upon. Example would be the automated meter readings for Electric and Water Meters. Several units of the City are supposedly working either together or ?
3. What is being accomplished to stop the Social Security Payments being made to City Employee's. I am sure that they want the CALPERS because of the bigger benefit

Regards,



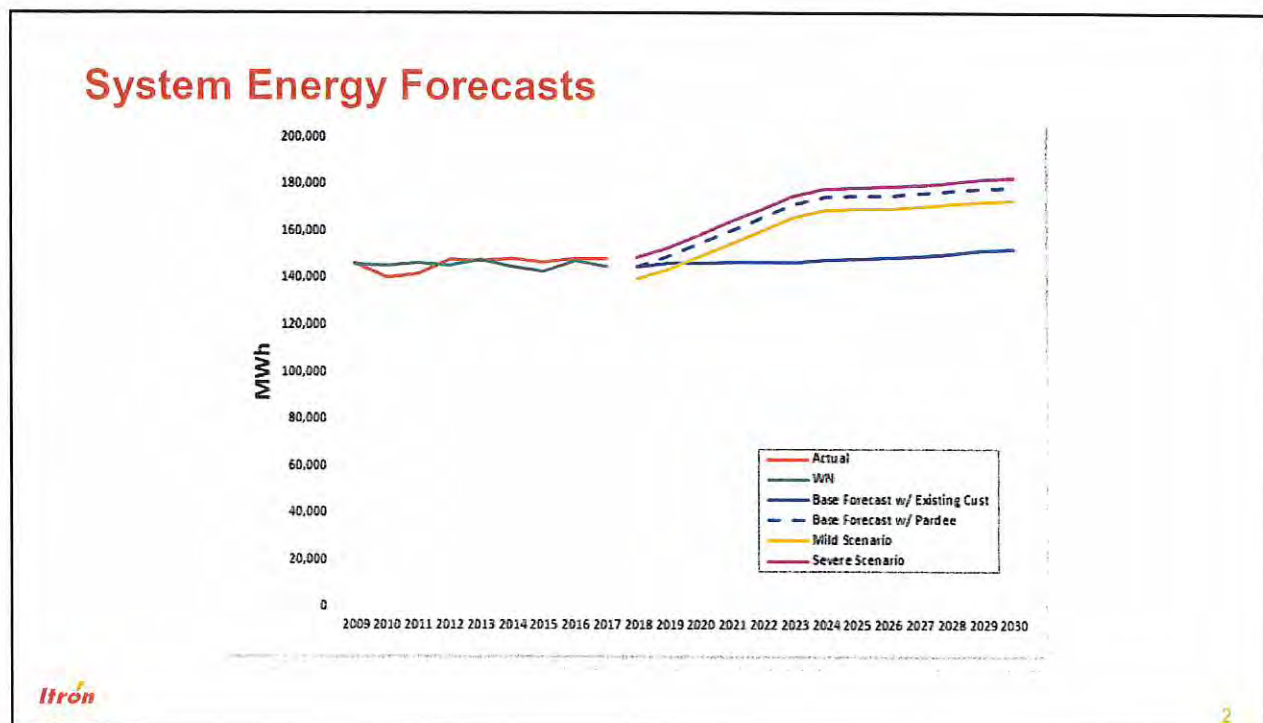
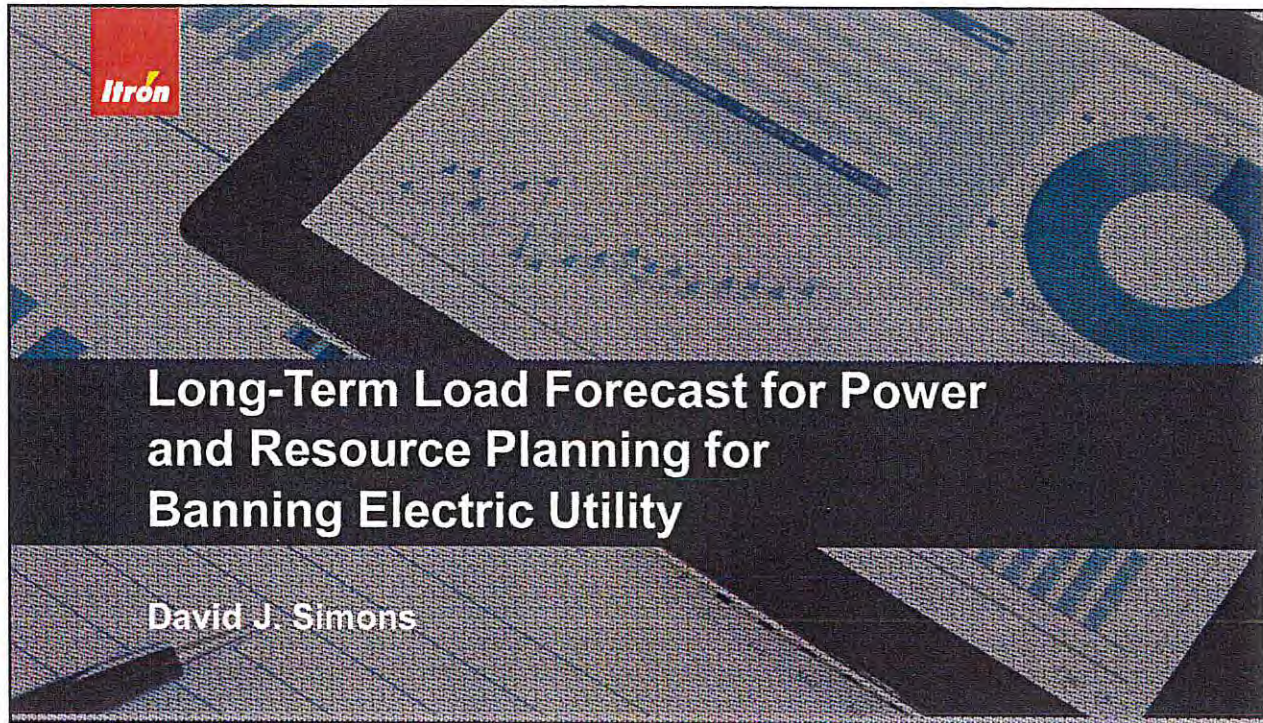
Paul Perkins

951/769-5415

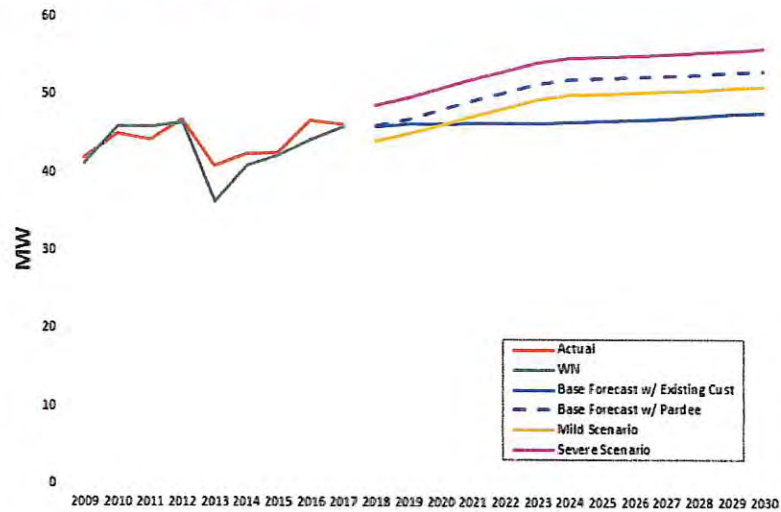
paulperk@aol.com

Exhibit “B”

to the January 22, 2019 Regular Meeting Minutes



System Peak Forecasts



Itron

3

Driving Factors of Energy Use

Calendar

January	February	March
April	May	June
July	August	September
October	November	December

Economics



Structural Changes



Weather



Prices



Short Term
(e.g, Day-ahead)

Medium Term
(e.g, Budget Forecast)

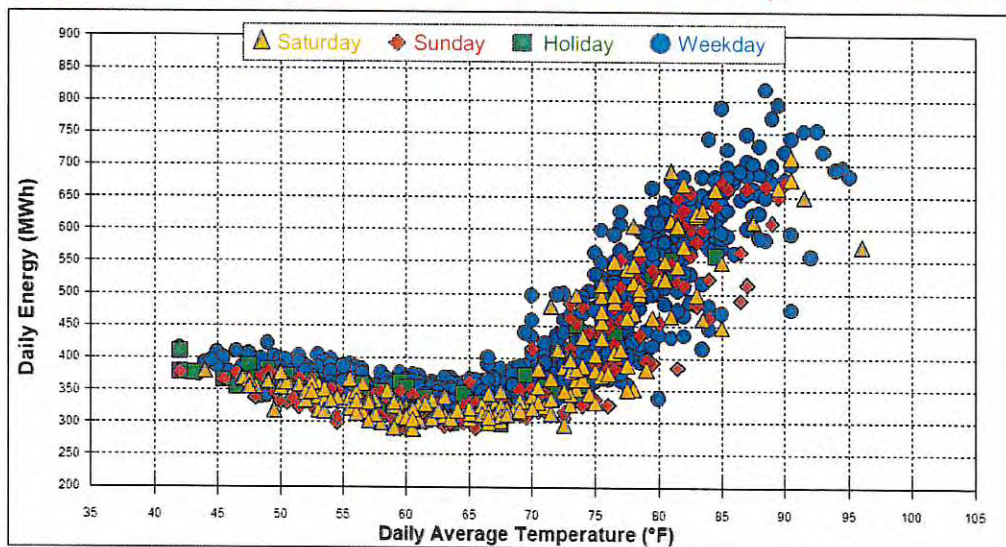
Long Term
(e.g, 5-20 years)

Itron

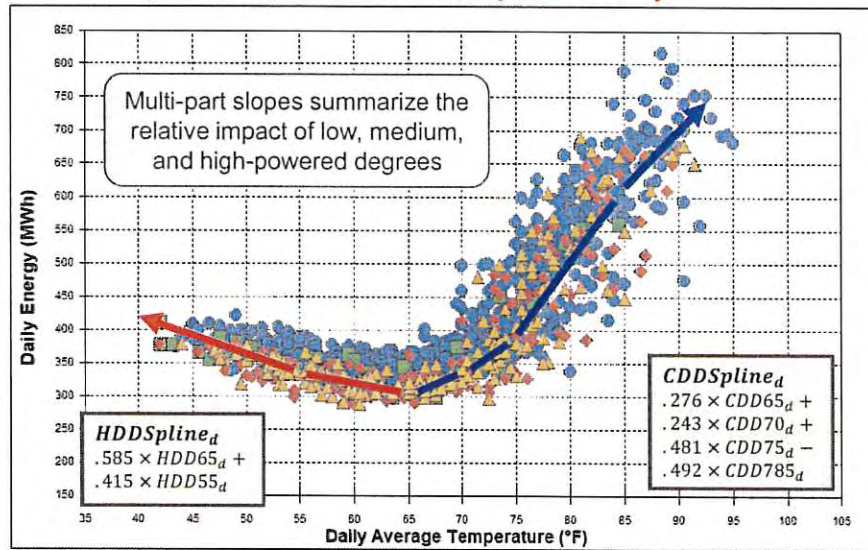
4

Defining the Weather Response

Relationship Between Loads & Weather (2015 – 2018)



Weather Response Functions (Splines)

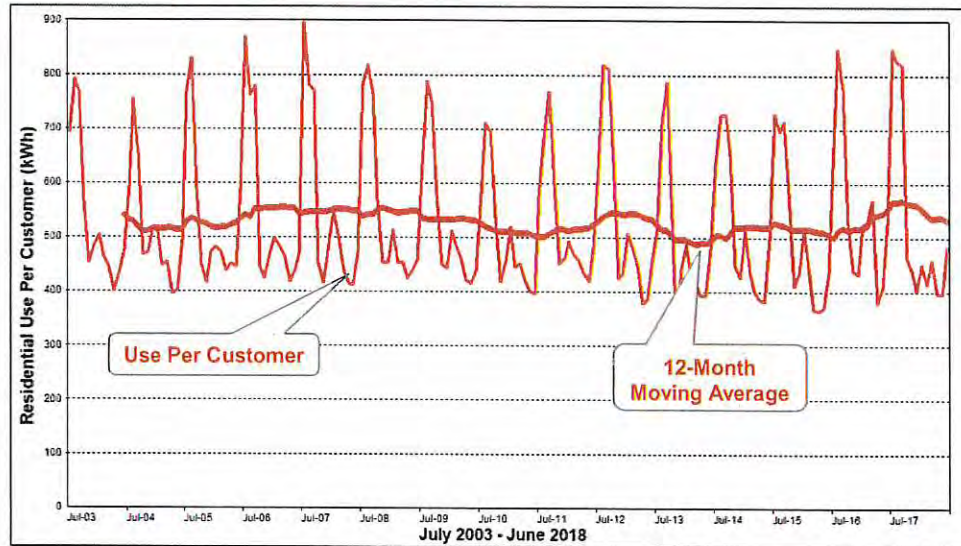


Itron

7

Residential & Non-Residential Use Per Customer (UPC) Models

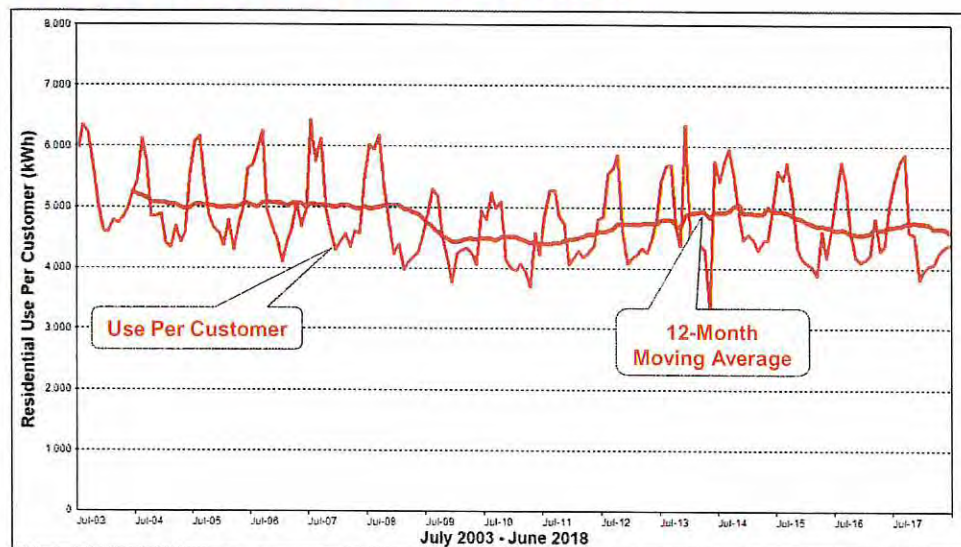
Residential Use Per Customer



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9

Non-Residential Use Per Customer



Itron

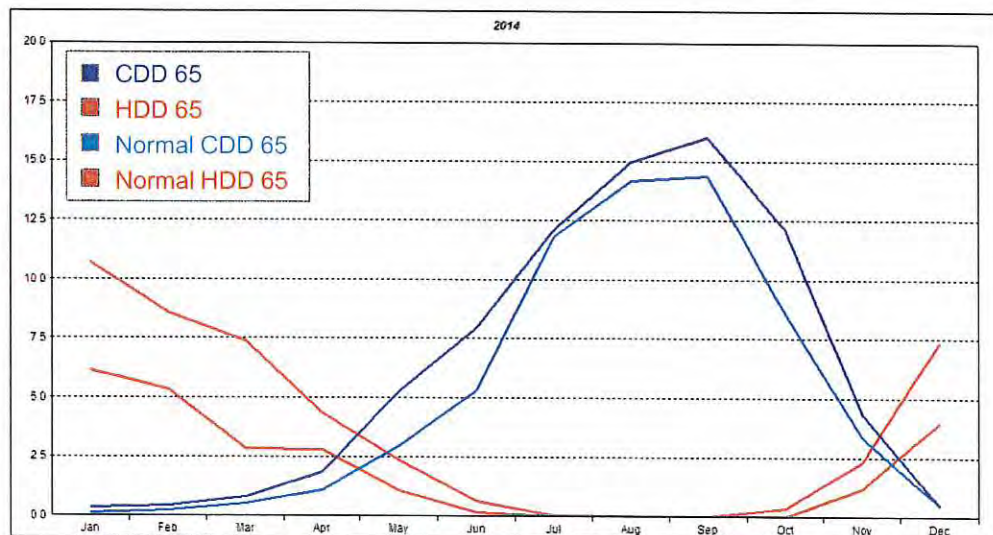
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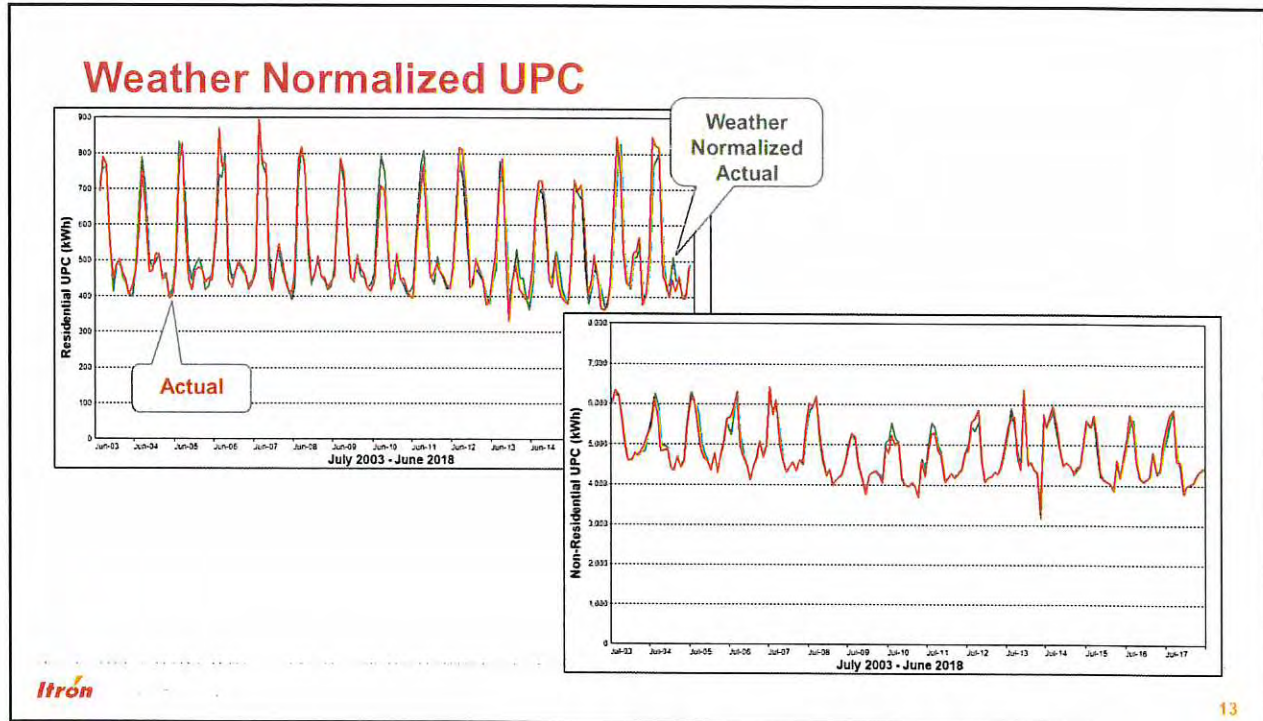
Normal Cycle Month Weather

$$NormValue_m = \frac{\sum_m Value_m}{\# Months}$$

- The normal monthly value is expressed as the **average** value of those cycle months over most recent 15 years (2003 – 2017)
 - For example, the normal January value is calculated as the average across all January values

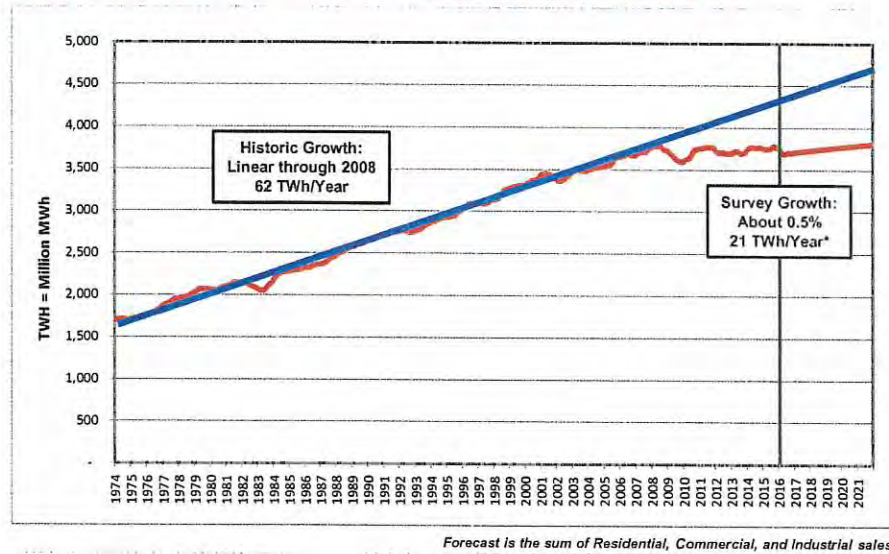
Normal Cycle Month Weather





Statistically Adjusted End-Use (SAE) Framework

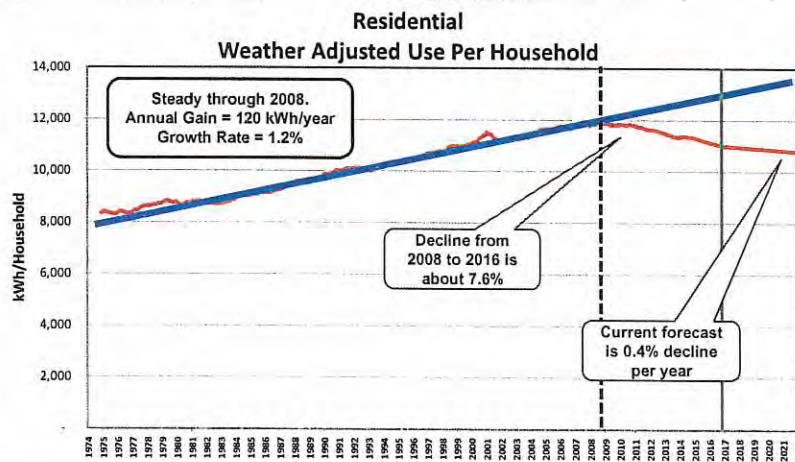
U.S. Electric Sales – Living in a 1% World



Itron

15

U.S. Residential Sales / Household



Historical data is a 12-month running sum of weather normalized sales

Itron

16

Driving Factors of Energy Use

Calendar



Economics



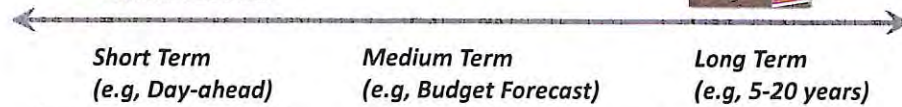
Structural Changes



Weather



Prices



Itron

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What is SAE?

» A modeling framework that creates *structured* explanatory variables, integrating components from pure econometric and end-use models:

- Monthly weather (HDD, CDD variables)
- Economic drivers:
 - Prices
 - Household size, Personal income
 - Square footage, Economic activity
- Aggregate end-use inputs
 - Equipment Saturation
 - Equipment Efficiency
 - Thermal Efficiency
 - Home size
- A statistical step that syncs model coefficients to historical consumption.

Econometric
Component

End Use
Component

Itron

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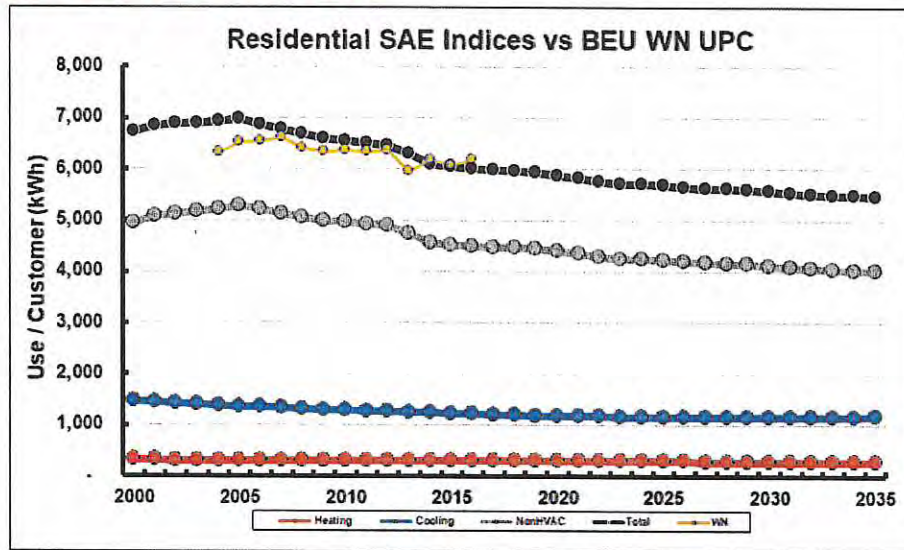
End-Use Data

- Provided by the EIA underlying its 2018 Annual Energy Outlook (AEO) Forecast for the Pacific Region
- Data help to combine the national energy efficiency trends with regional saturation data for variety of end-uses, e.g.,
 - Heating
 - Cooling
 - Water Heating
 - Refrigeration
 - Lighting
- End-Use indices are calibrated to Weather Normalized Use-Per-Customer

Residential End-Uses Included in EIA Analysis

Residential End Uses	
Furnace	● Cooking
Heat Pump	● Refrigerator
GS Heat Pump	● Second Refrigerator
Secondary Heat	● Freezer
Furnace Fan	● Dish Washer
Central Air	● Clothes Washer
Heat Pump Cooling	● Dryer
GS Heat Pump Cooling	● Television
Room Air	● Lighting
Water Heat	Miscellaneous

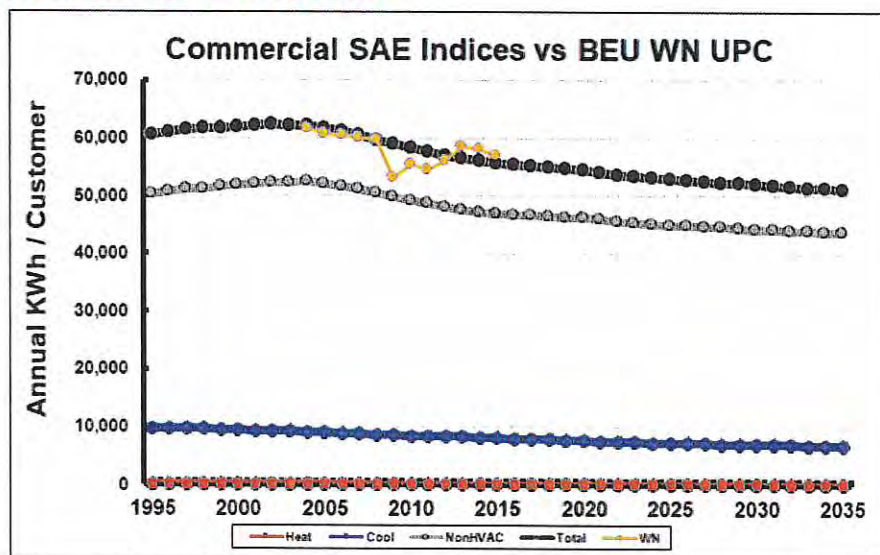
Residential SAE Indices



Iron

21

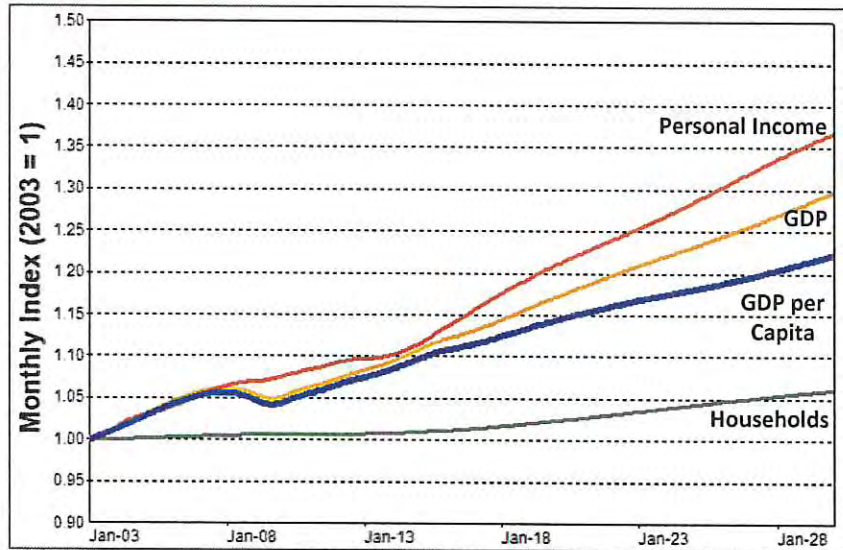
Commercial SAE Indices



Iron

22

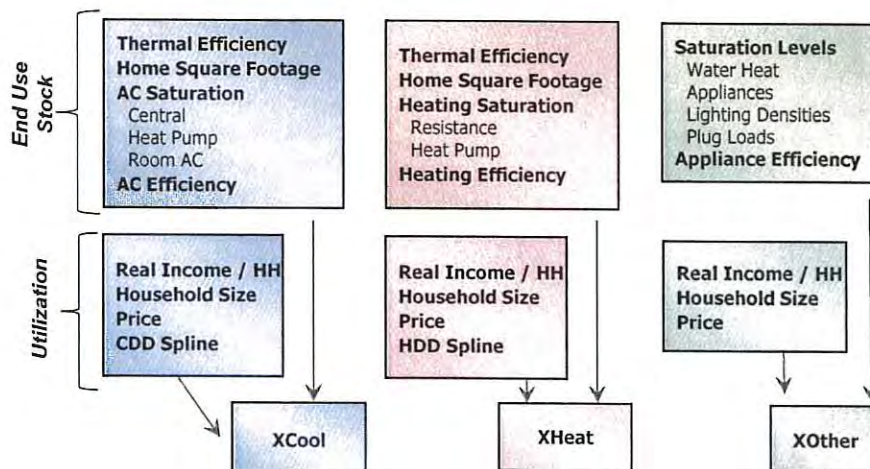
Economic Drivers



Itron

23

Statistically Adjusted End-Use (SAE) Model

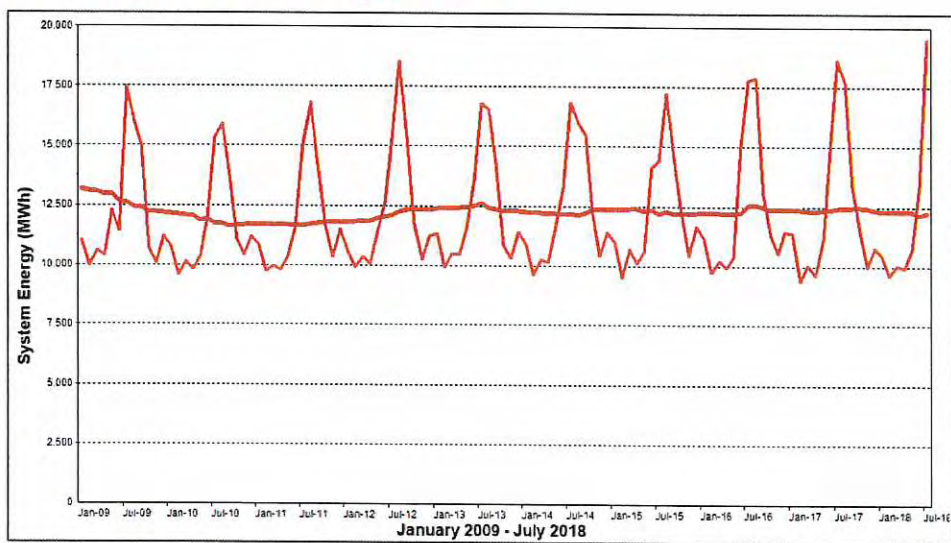


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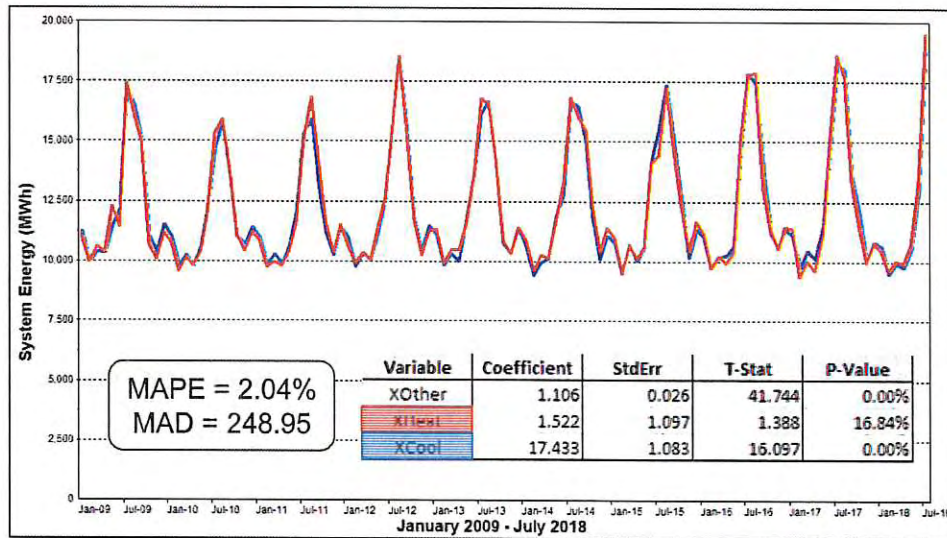
24

System Energy Model

Monthly System Energy Data



System Energy Model

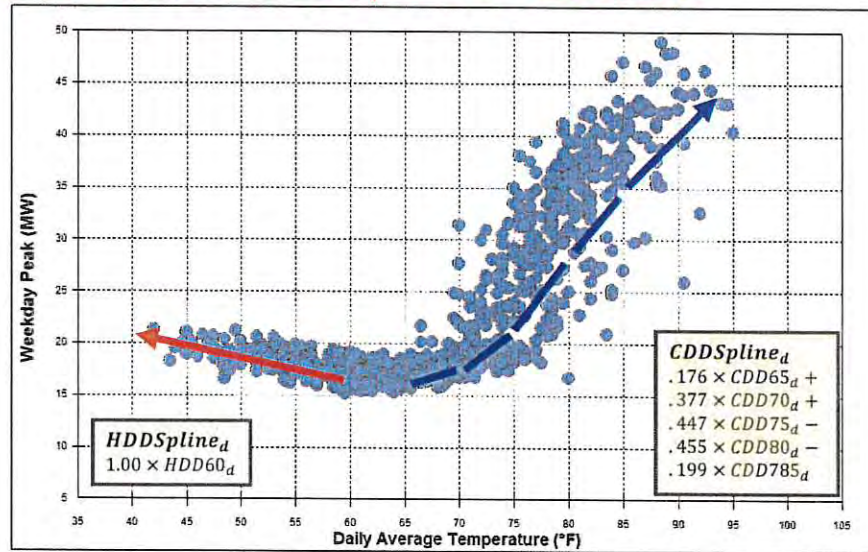


Itron

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System Peak Model

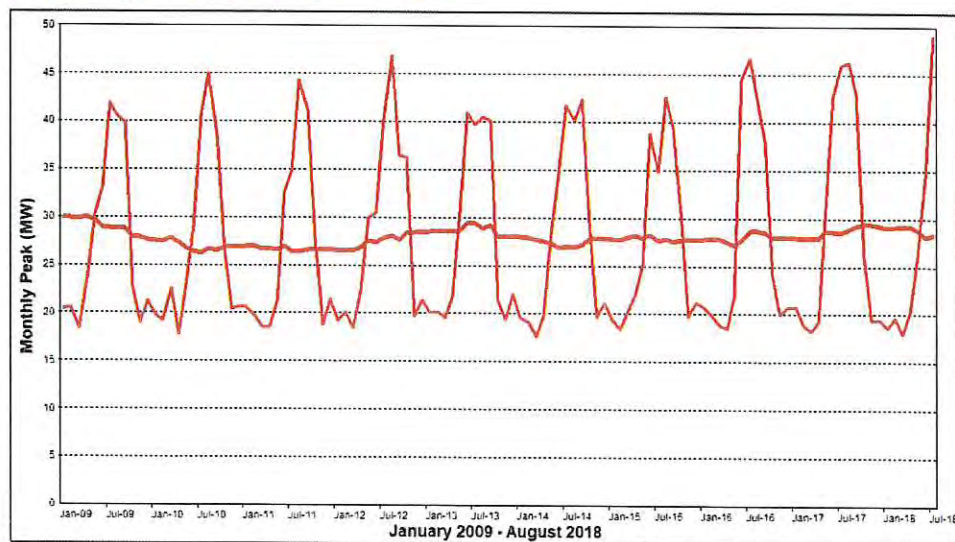
Daily Peak Weather Response Functions



Itron

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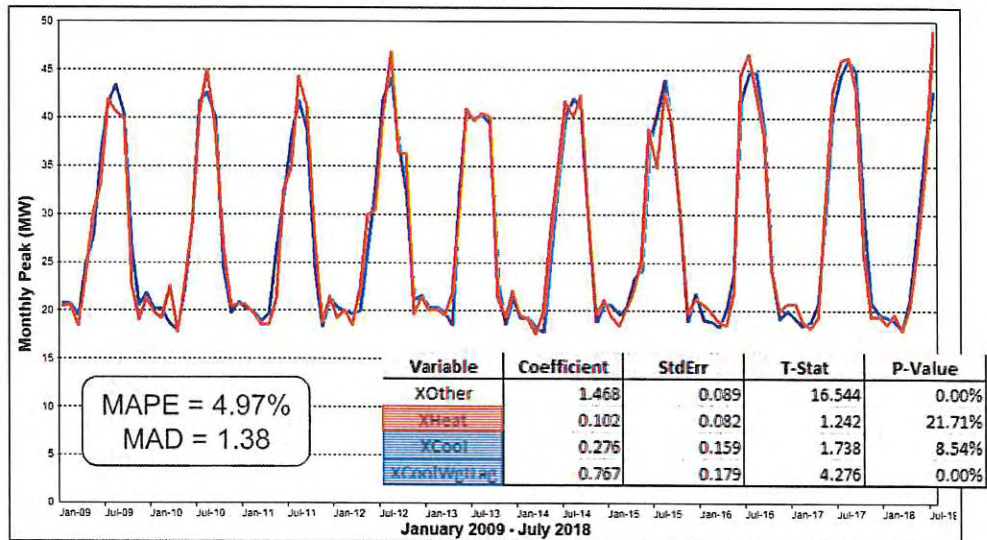
Monthly System Peak Data



Itron

30

System Peak Model (2009 – 2018)



Itron

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Integration of Pardee Homes Development

Pardee Development

- 4,862 new residential dwelling units expected

Assumptions:

- 5-year path to completion starting in 2019
- New units are 10% more efficient than existing
- 8% Loss Factor
- Res & Non-Res use is 2x annual average use at time of peak
- 2.3 kW average solar capacity
- 18.5% Capacity Factor
- Coincident Peak Factor of 10%
- No new non-residential units to be developed
- Not accounting for indoor cannabis farming

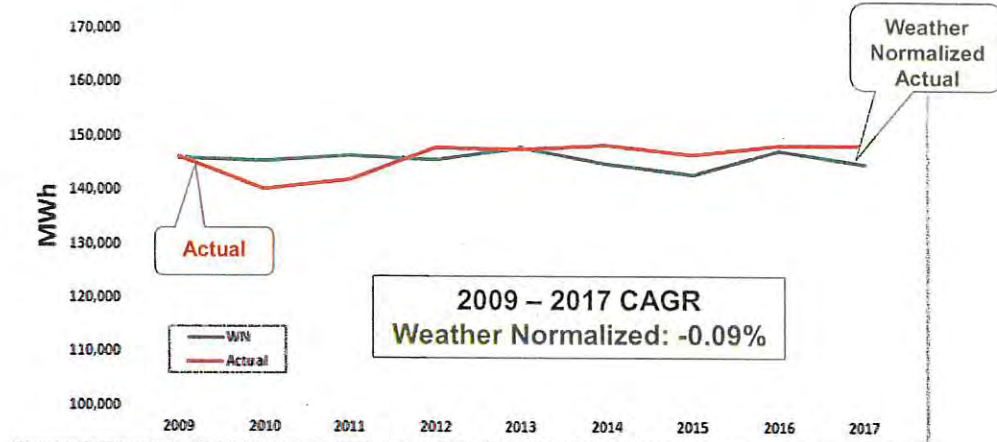
BUTTERFIELD SPECIFIC PLAN Section 1: Introduction

Table 1-1
2017, 2012 and 1993 Specific Plans
Comparative Land Use Summary

Land Use	1993 Approved Specific Plan Gross Acres (% of Total)	Dwelling Units (% of Total)	2012 Approved Butterfield Specific Plan Gross Acres (% of Total)	Dwelling Units (% of Total)	2017 Butterfield Specific Plan Gross Acres (% of Total)	Dwelling Units (% of Total)
Residential						
Low Density 0-5 Du/AC (LDR)	856.0 (42.3%)	1,245	511.3 (35.0%)	2,111	557.2 (34.3%)	2,151
Medium Density 0-10 Du/AC (MDR)	355.0 (25.1%)	1,310	324.4 (21.0%)	1,360	355.8 (21.7%)	1,355
High Density 11-18 Du/AC (HDR)	89.0 (5.7%)	1,134	73.8 (4.8%)	1,105	88.4 (5.4%)	1,105
Very High Density 18 Du/AC+ (VHDR)	16.0 (1.0%)	320	(0)	(0)	23.6 (1.4%)	320
Residential Subtotal	1,316.0 (74.1%)	4,009	910.4 (60.8%)	5,187	1,025.0 (63.8%)	4,862
Non-Residential						

System Energy Forecast

System Energy

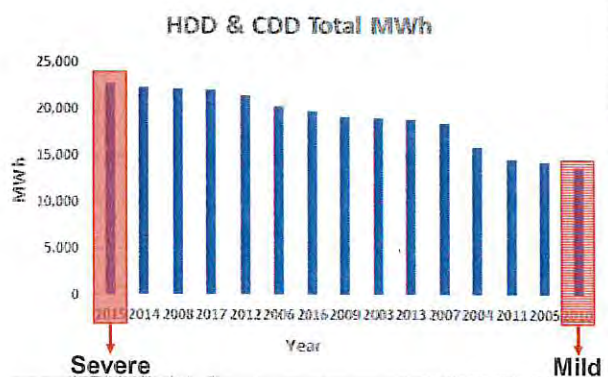


Itron

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Weather Scenario Development

- Base scenario → Average of HDDs and CDDs across all months of the year from 2003 to 2017

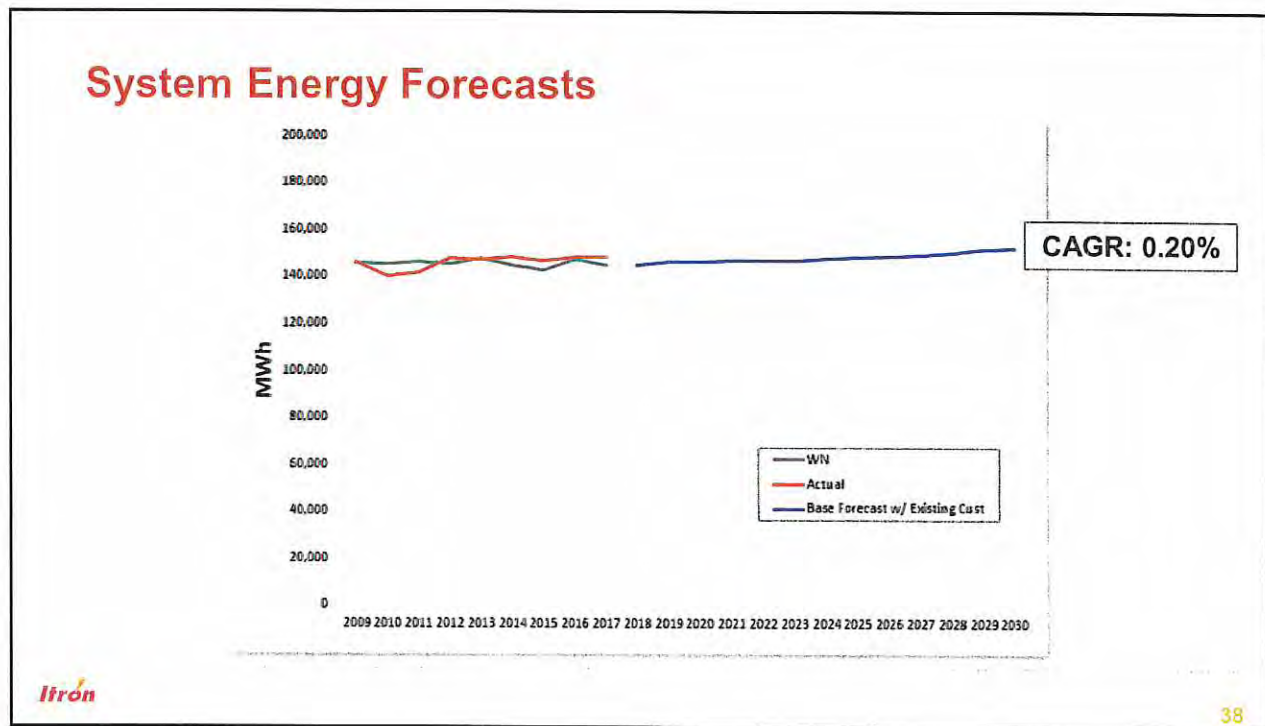
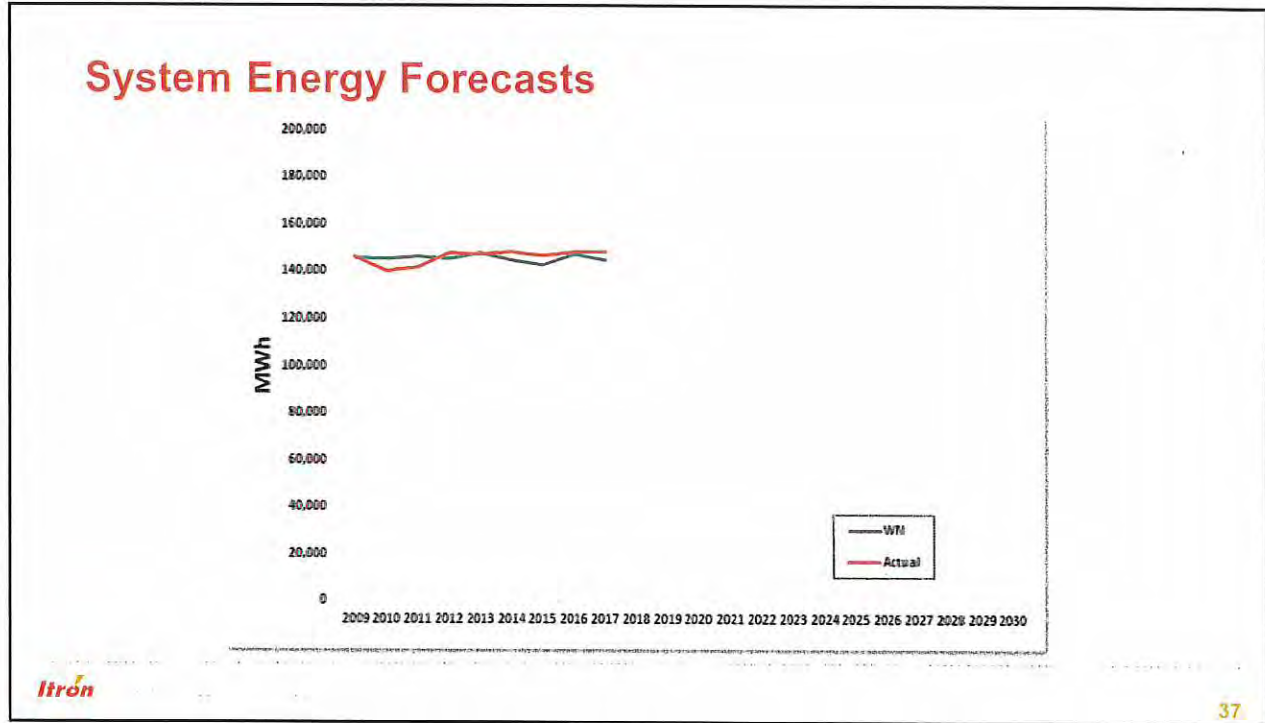


$$\text{Cooling MWh} = 17,433 * 1,250_{2015} = 21,798_{2015}$$

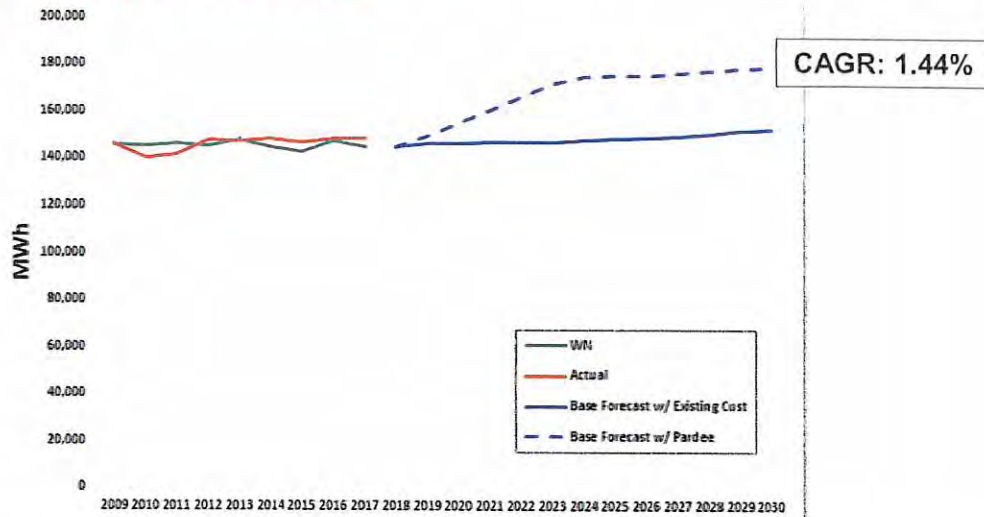
$$\text{Heating MWh} = 1,522 * 697_{2015} = 1,061_{2015}$$

Itron

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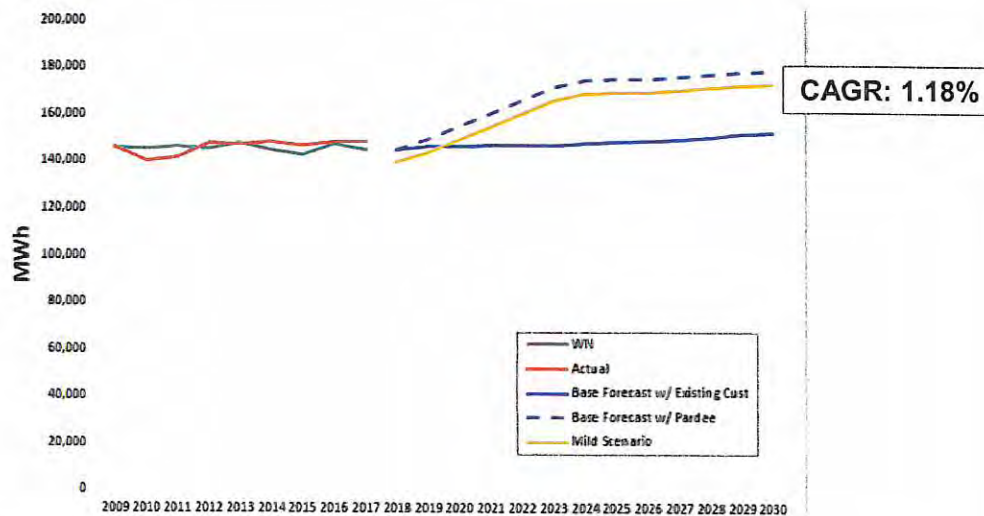
System Energy Forecasts



Itron

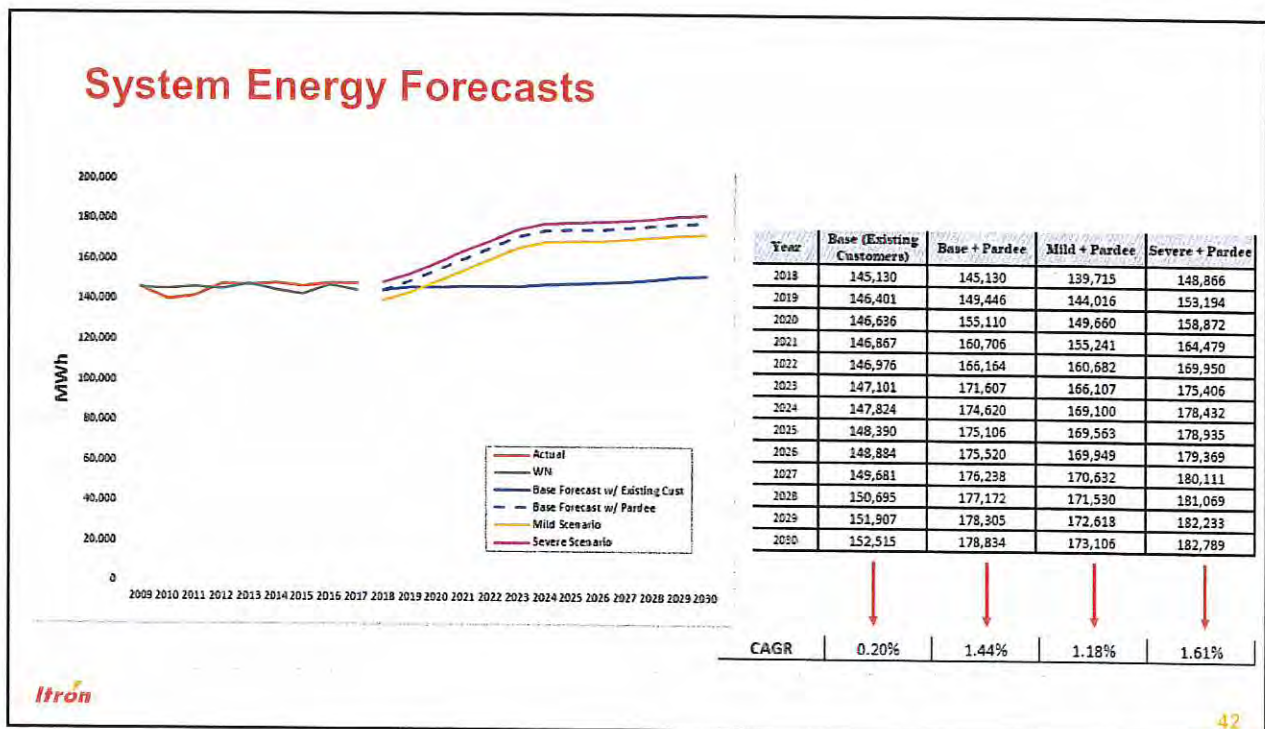
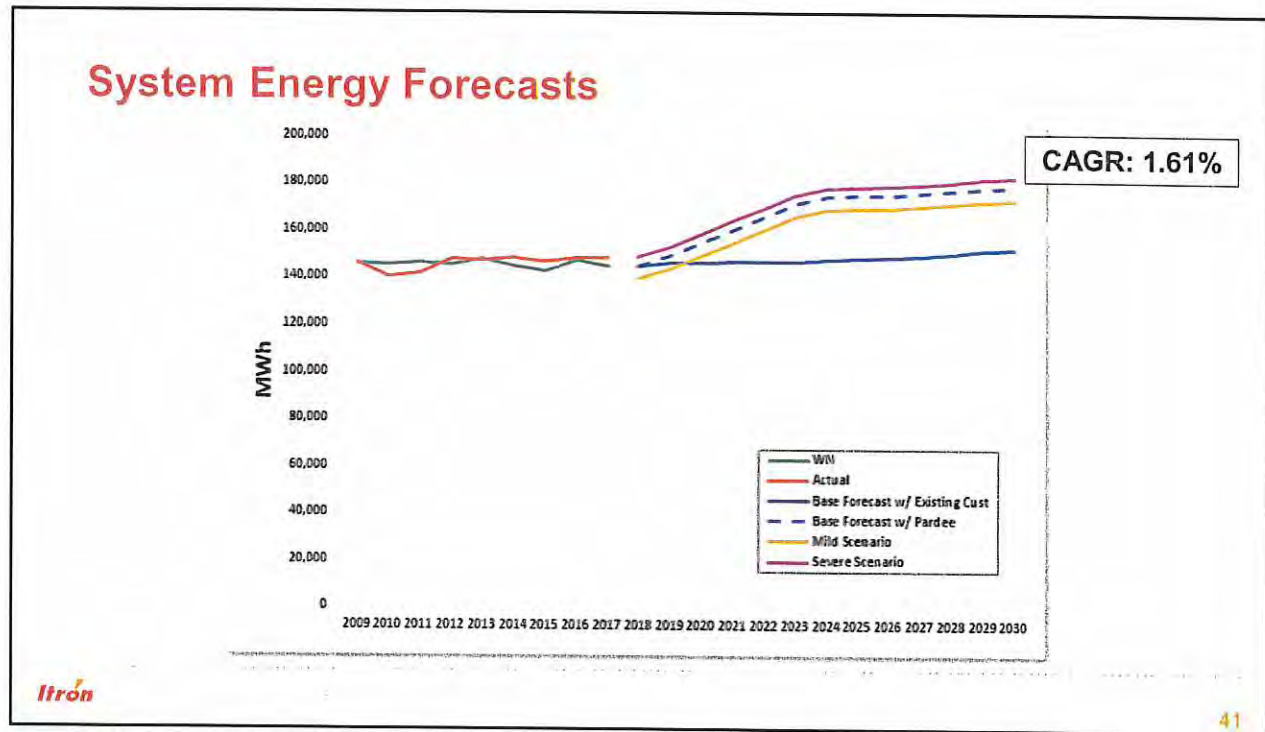
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System Energy Forecasts

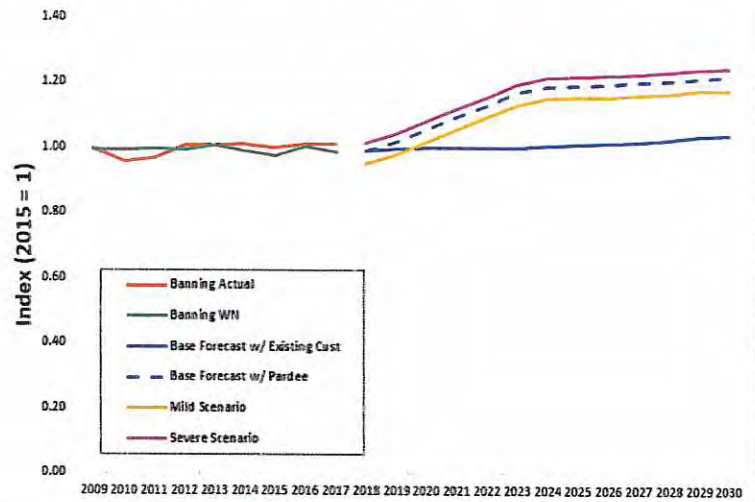


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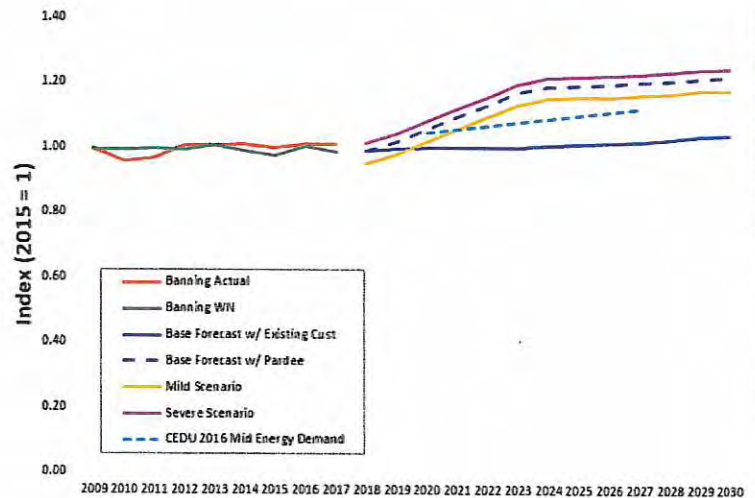
System Energy Forecasts & CEC SCE Forecast



Itron

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System Energy Forecasts & CEC SCE Forecast

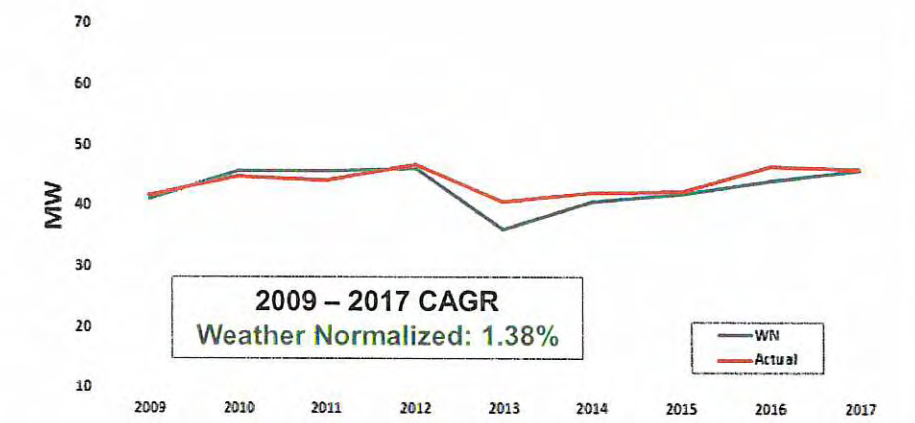


Itron

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System Peak Forecast

System Peak



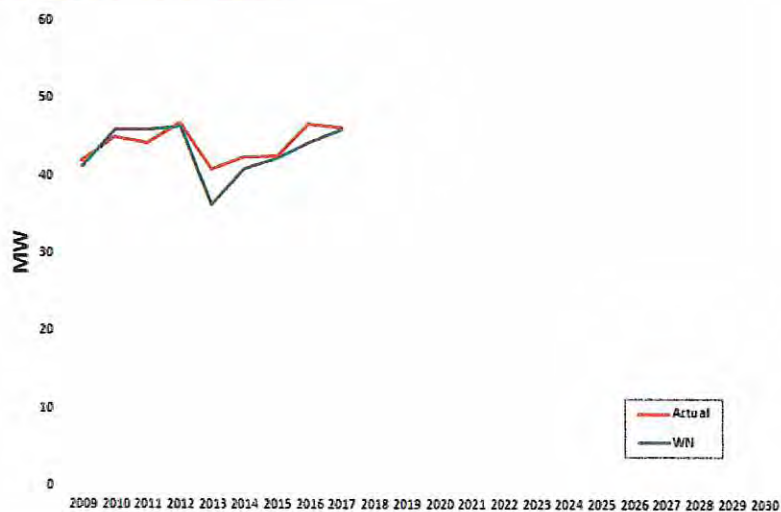
Weather Scenario Development

- Base scenario ➡ Extract weather on peak day and two prior days from 2007 to 2017, average
- Mild scenario ➡ Least amount of HDDs and CDDs for peak months
- Severe scenario ➡ Most amount of HDDs and CDDs for peak months

Itron

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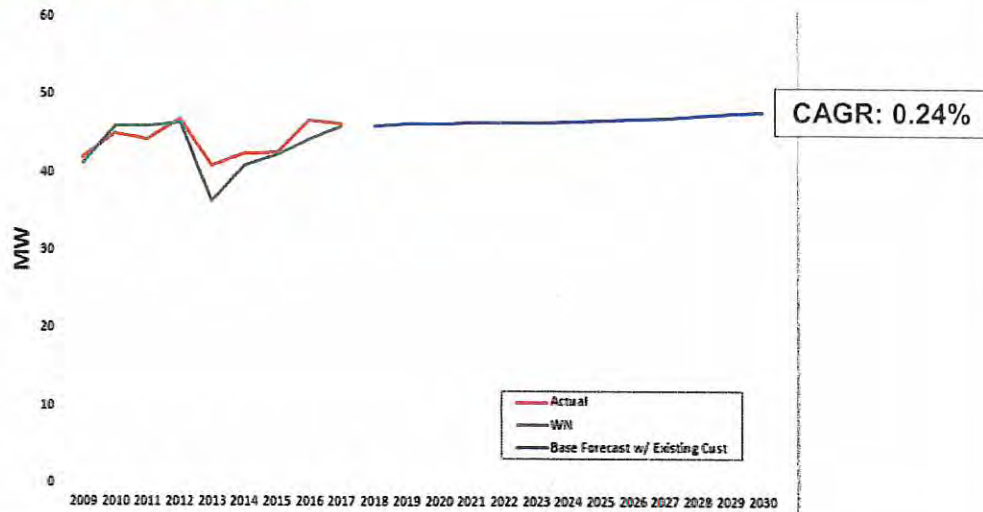
System Peak Forecasts



Itron

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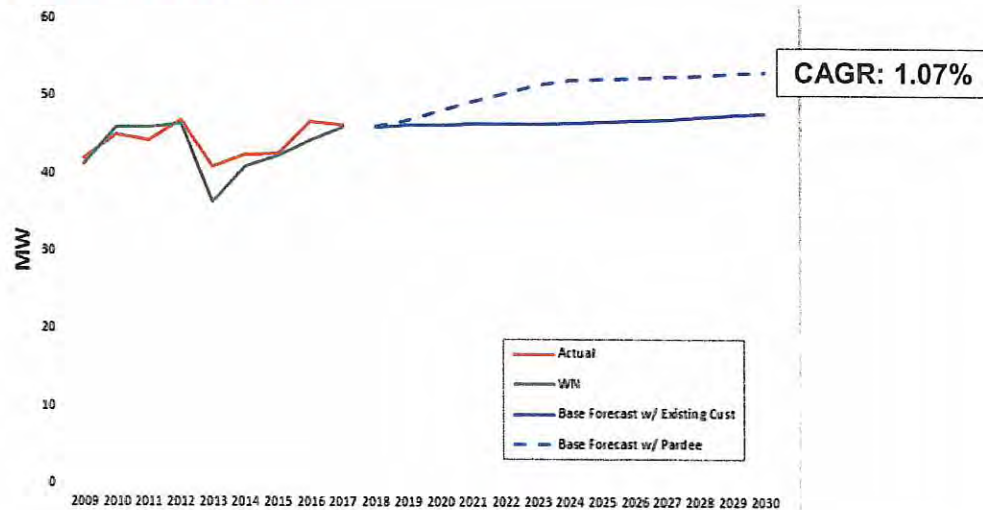
System Peak Forecasts



Itron

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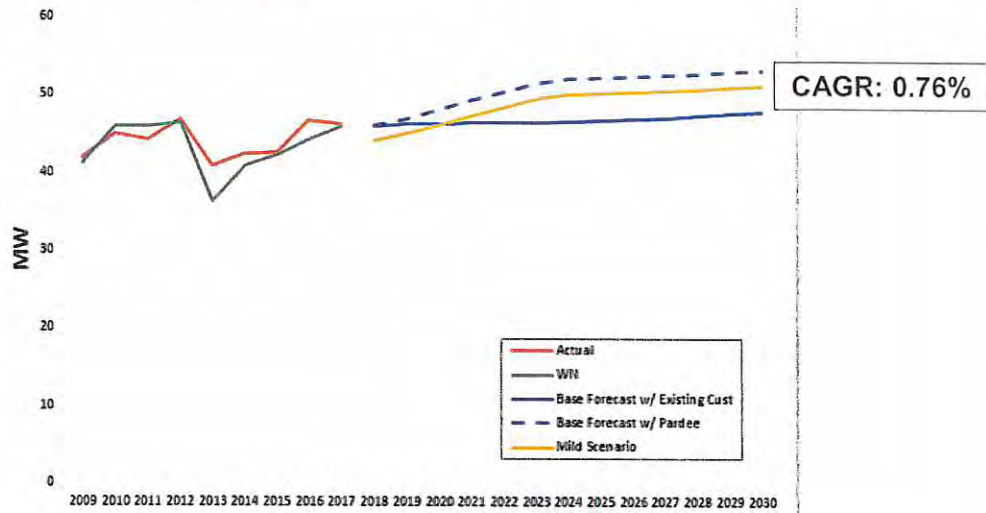
System Peak Forecasts



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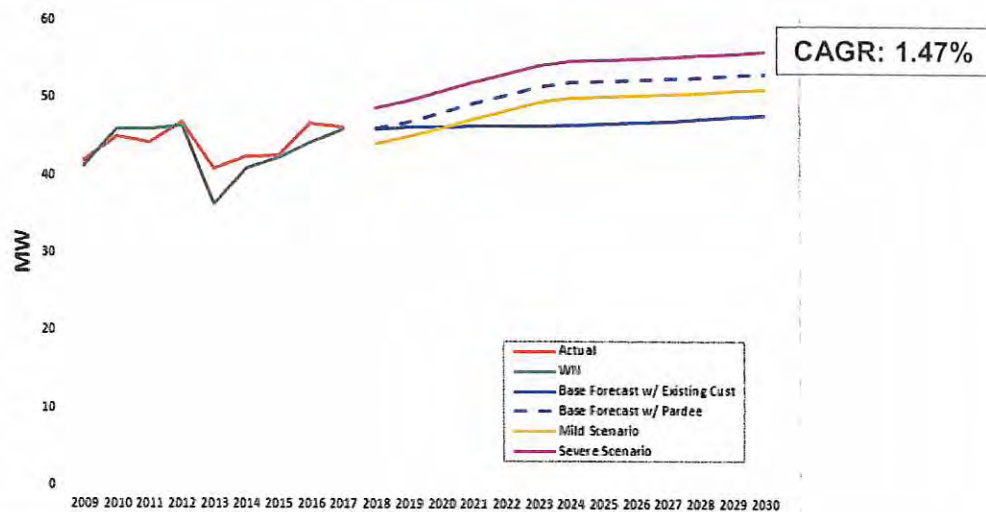
System Peak Forecasts



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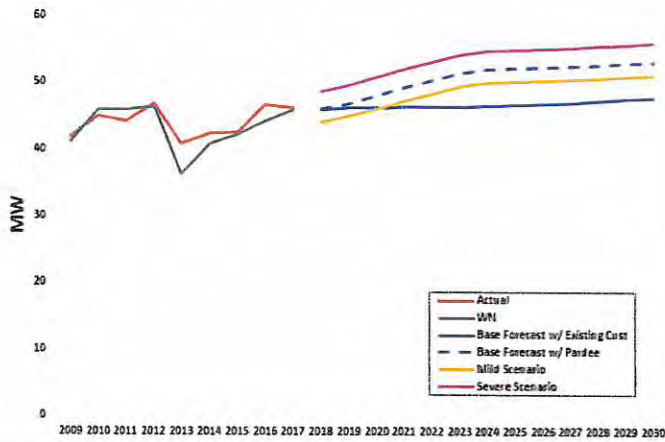
System Peak Forecasts



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System Peak Forecasts



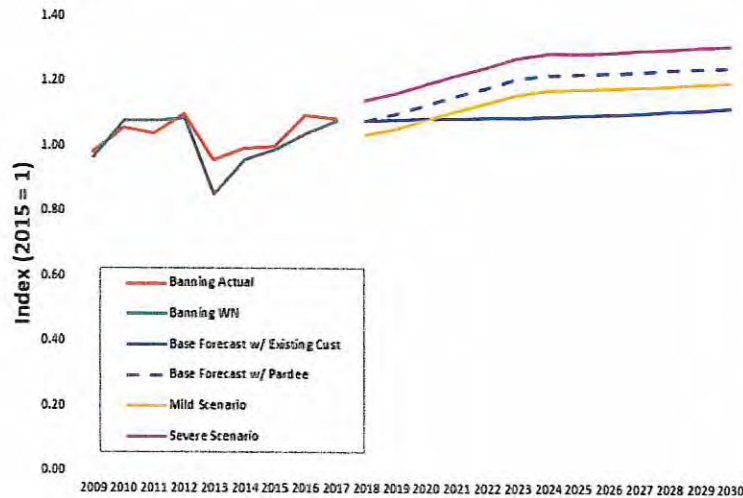
Year	Base (Existing Customers)	Base + Pardee	Mild + Pardee	Severe + Pardee
2018	46.0	46.1	44.1	48.8
2019	46.2	46.9	45.0	49.6
2020	46.3	48.1	46.2	50.8
2021	46.4	49.3	47.3	52.0
2022	46.4	50.4	48.5	53.2
2023	46.5	51.5	49.6	54.3
2024	46.6	52.1	50.1	54.9
2025	46.7	52.2	50.3	55.0
2026	46.9	52.4	50.4	55.1
2027	47.1	52.5	50.5	55.3
2028	47.3	52.7	50.7	55.5
2029	47.6	53.0	51.0	55.8
2030	47.8	53.2	51.1	56.0

CAGR	0.24%	1.07%	0.76%	1.47%
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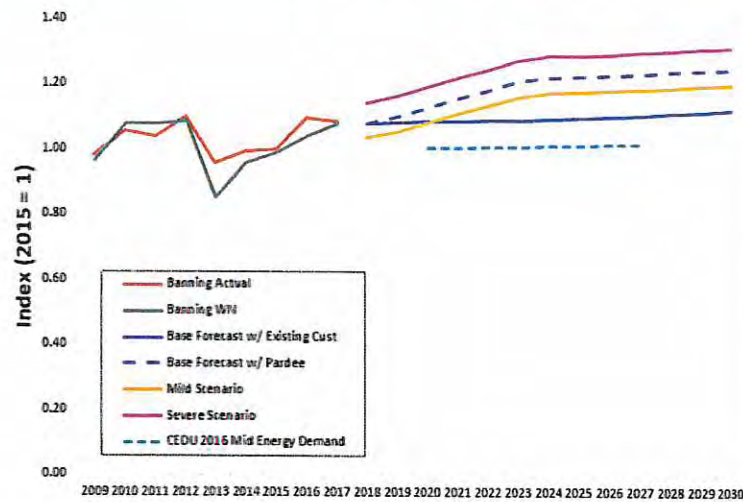
System Peak Forecasts & CEC Forecast



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System Peak Forecasts & CEC Forecast



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THANK YOU

forecasting@itron.com

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SAN DIEGO

David J. Simons

david.simons@itron.com

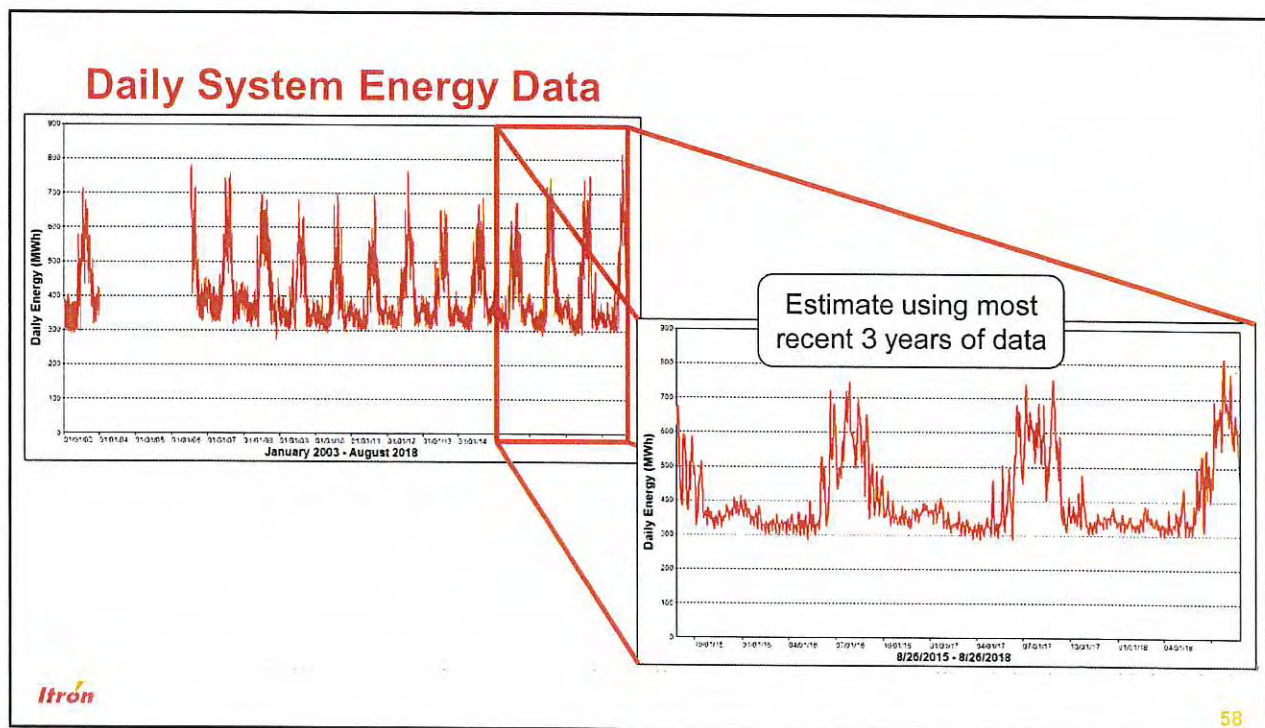
858.724.2685

<https://www.linkedin.com/in/davidsimons1/>

<http://blogs.itron.com/forecasting/>

www.itron.com

Appendix

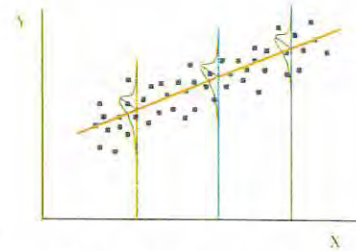


Daily Energy Model

$$\text{DailyEnergy}_d = \beta_0 + \beta_1 \text{DOW}'_d + \beta_2 \text{Month}'_d + \beta_3 \text{Shift}'_d + \beta_4 \text{MonthTrends}'_d + \beta_5 \text{HDD}'_d + \beta_6 \text{CDD}'_d + \varepsilon_d$$

Where,

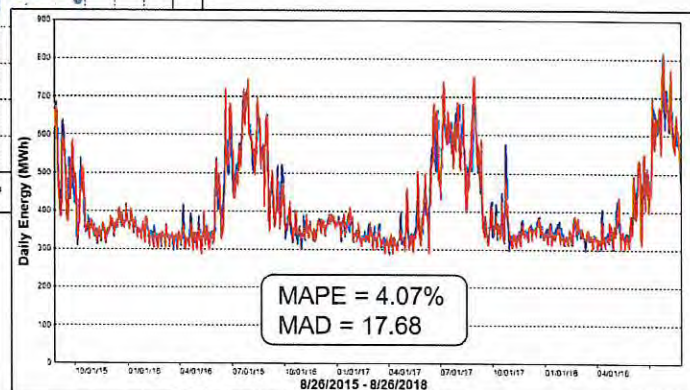
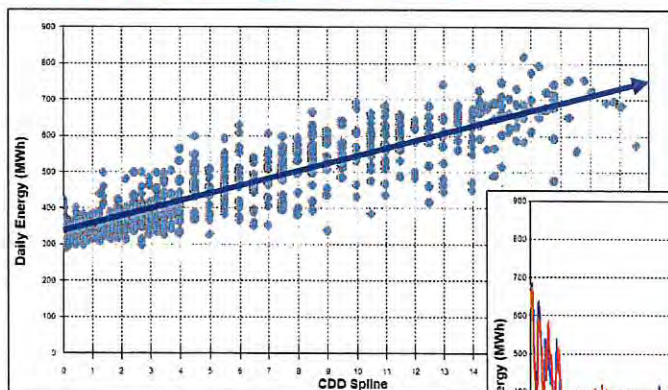
- DOW'_d is a matrix of day of the week binary variables
- Month'_d is a matrix of month binary variables
- Shift'_d is a matrix of annual shift variables
- $\text{MonthTrends}'_d$ is a matrix of monthly time-trend variables
- HDD'_d is a matrix of heating degree-day variables (HDD65, HDD60, HDD55, etc.)
- CDD'_d is a matrix of cooling degree-day variables (CDD65, CDD70, CDD75, etc.)



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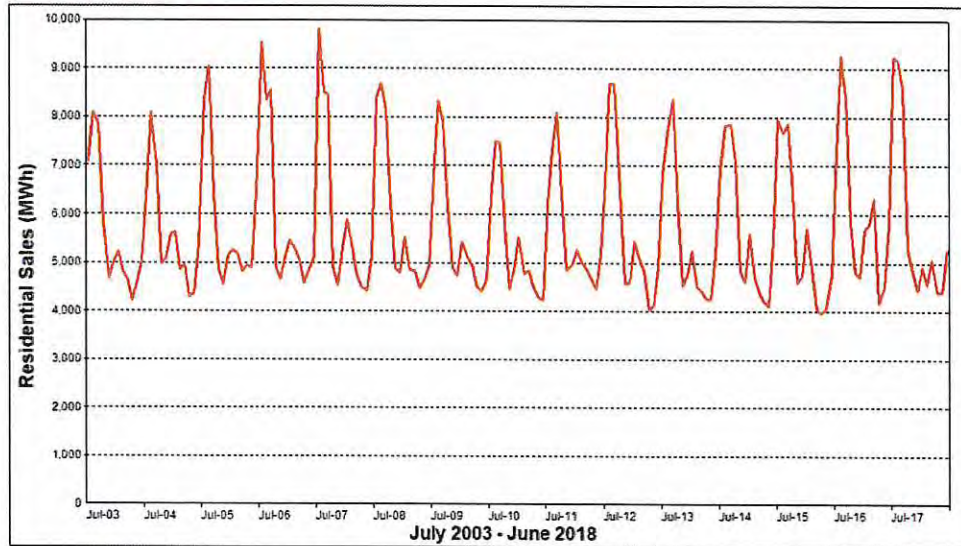
Daily Energy Model



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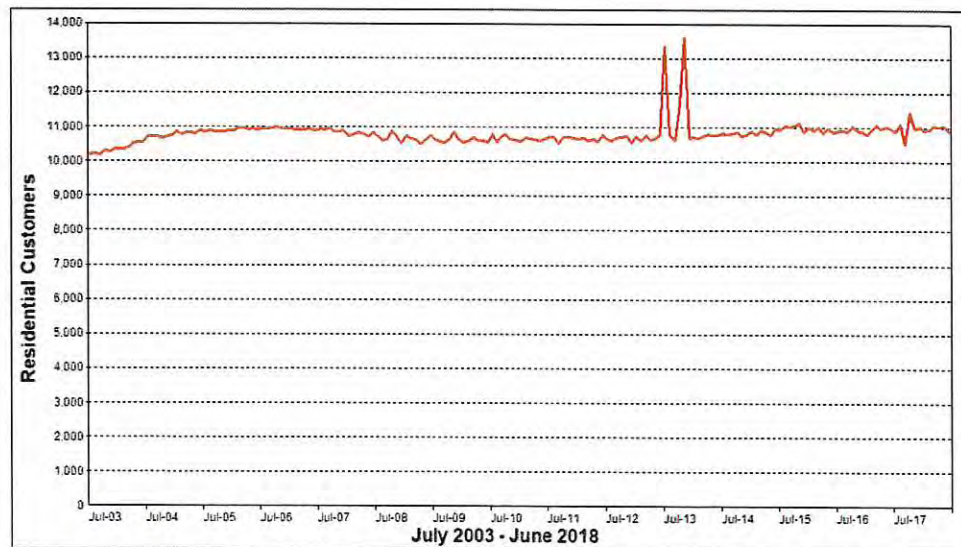
Residential Sales



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61

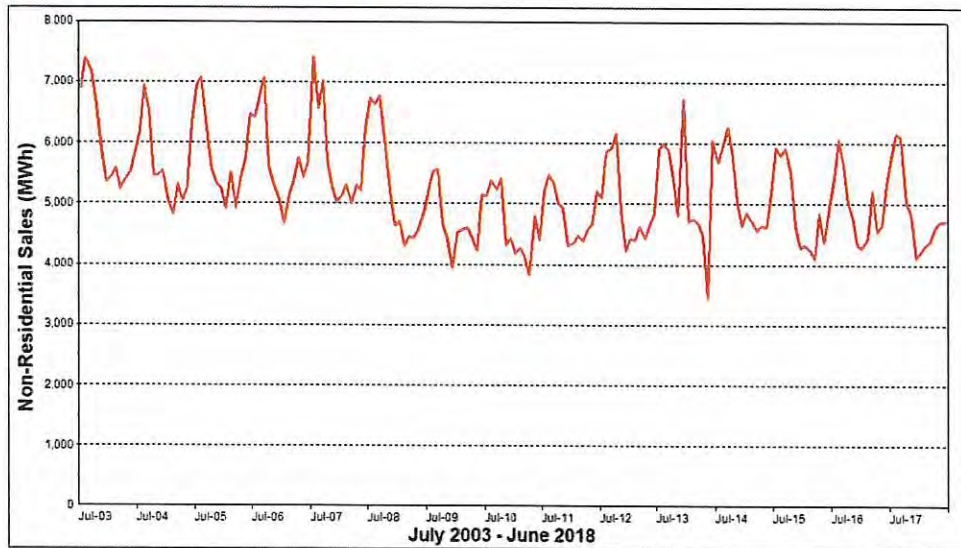
Residential Customers



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62

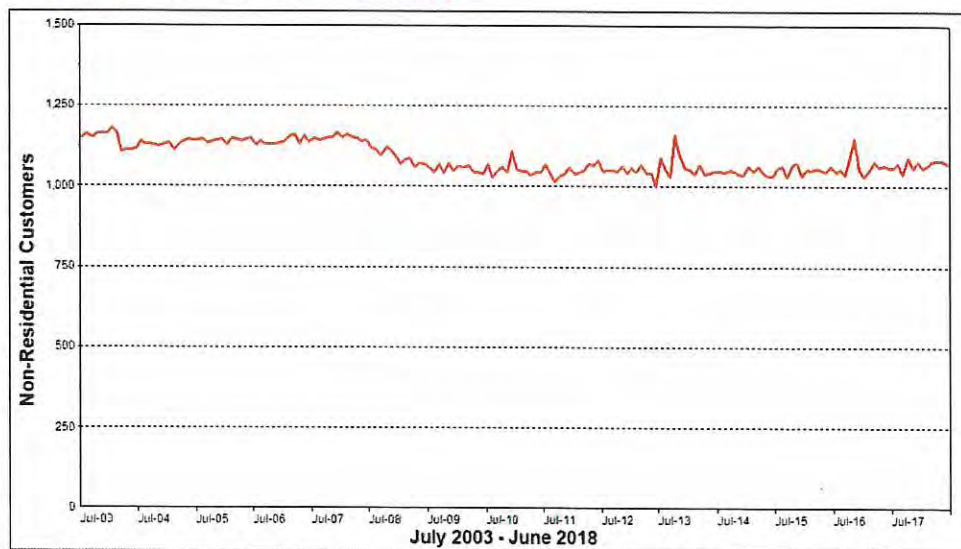
Non-Residential Sales



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63

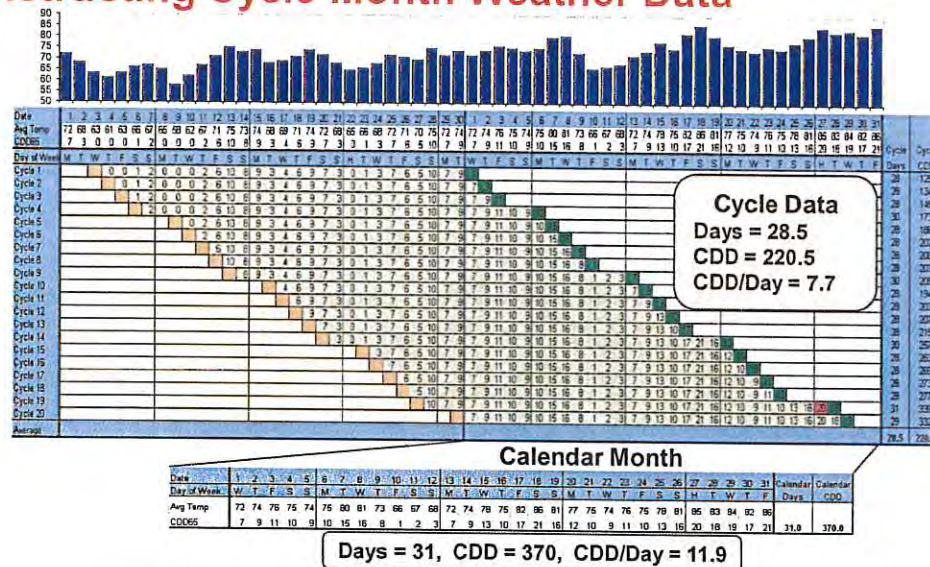
Non-Residential Customers



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Constructing Cycle Month Weather Data



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Customer Models

$$ResCustomers_m = \beta_0 + \beta_1 Households_m + Shift2008_m + Shift2015_m + \varepsilon_m$$

$$NonResCustomers_m = \beta_0 + \beta_1 Shift2018_m + \varepsilon_m$$

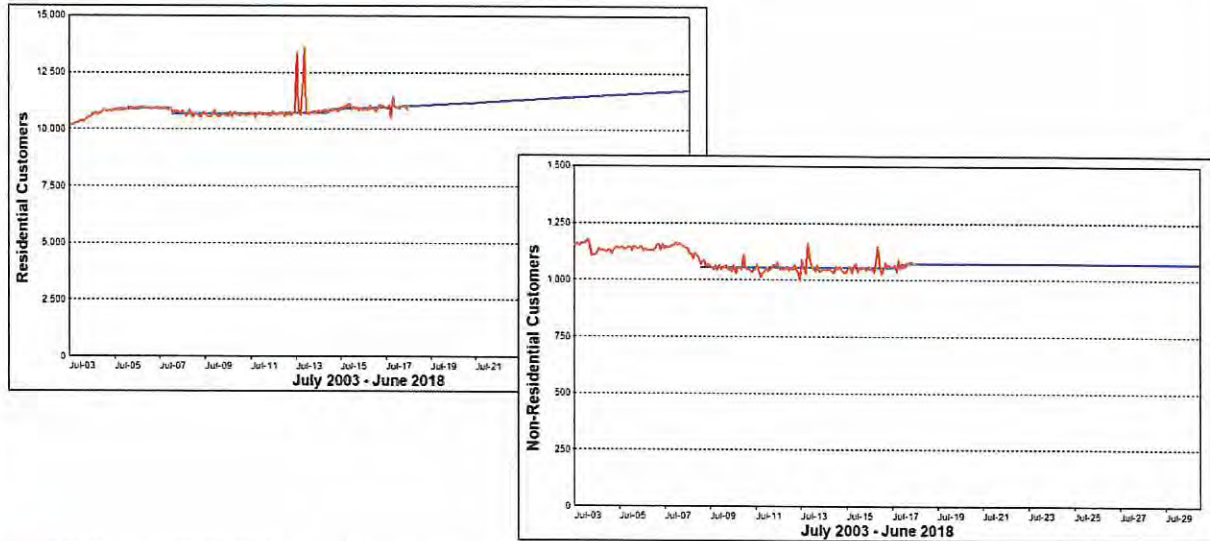
Where,

- $Households_m$ is a 12-month centered moving average of number of households
- $Shift2008_m$ is a shift variable for 2008 forward
- $Shift2015_m$ is a shift variable for 2015 forward
- $Shift2018_m$ is a shift variable for 2018 forward

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Customer Models



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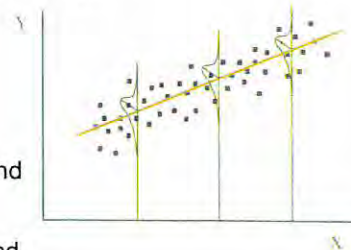
Res & Non-Res UPC Models

$$ResUPC_m = \beta_1 Month'_m + \beta_2 HDDSpline_m + \beta_3 HDDTrend_m + \beta_4 CDDSpline_m + \beta_5 CDDTrend_m + \beta_6 TimeTrend_m + \varepsilon_m$$

$$NonResUPC_m = \beta_0 + \beta_1 Month'_m + \beta_2 HDDSpline_m + \beta_3 CDDSpline_m + \beta_4 BeforeRecession_m + \beta_5 AfterRecession_m + \beta_6 TimeTrend_m + \varepsilon_m$$

Where,

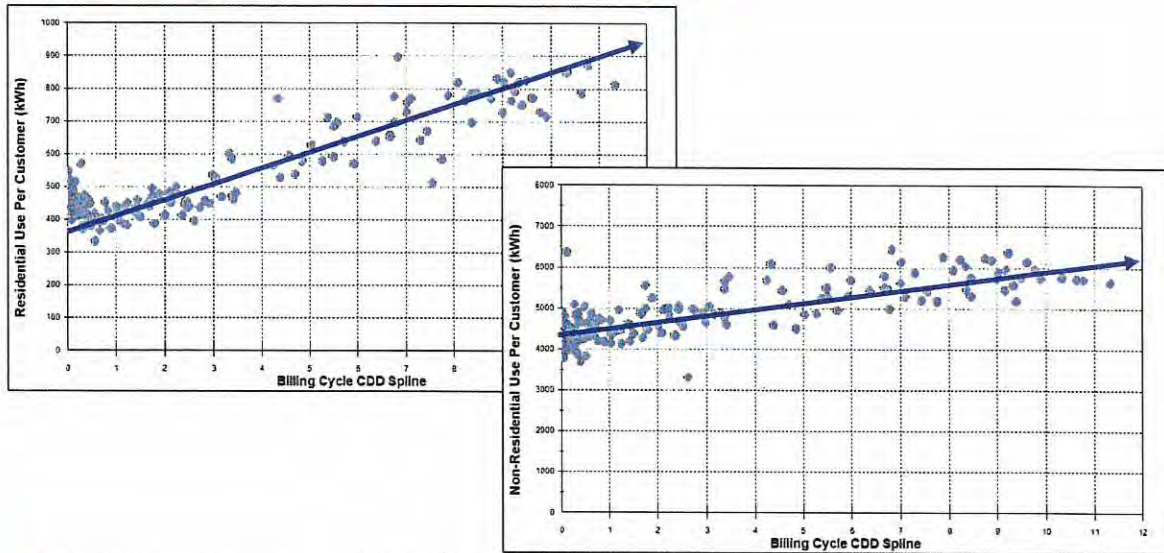
- $Month'_m$ is a matrix of month binary variables
- $HDDSpline_m$ is the cycle-month HDD spline
- $HDDTrend_m$ is the cycle-month HDD spline interacted with a time-trend
- $CDDSpline_m$ is the cycle-month CDD spline
- $CDDTrend_m$ is the cycle-month CDD spline interacted with a time-trend
- $BeforeRecession_m$ is a binary variable (1.0 before Great Recession, 0.0 otherwise)
- $AfterRecession_m$ is a binary variable (1.0 after Great Recession, 0.0 otherwise)



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Res & Non-Res UPC vs CDD Spline



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Utilization Indices

- Encapsulate changes in end-use efficiencies, economic changes, and weather conditions

To derive:

1. SAE indices are interacted with customer data:

$$\text{Equipment Stock}_y = \text{SAE Index}_y \times \text{Customers}_y$$

→ **Heating, Cooling, Other** equipment stock

2. Equipment stock is interacted with economic index:

$$\text{Utilization Index}_y = \text{Equipment Stock}_y \times \text{Economic Index}_y$$

→ **XHeat, XCool, XOther** utilization indices

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Utilization Indices

- Utilization Indices are interacted with calendar month HDDs and CDDs to arrive at final drivers for System Energy and System Peak models:

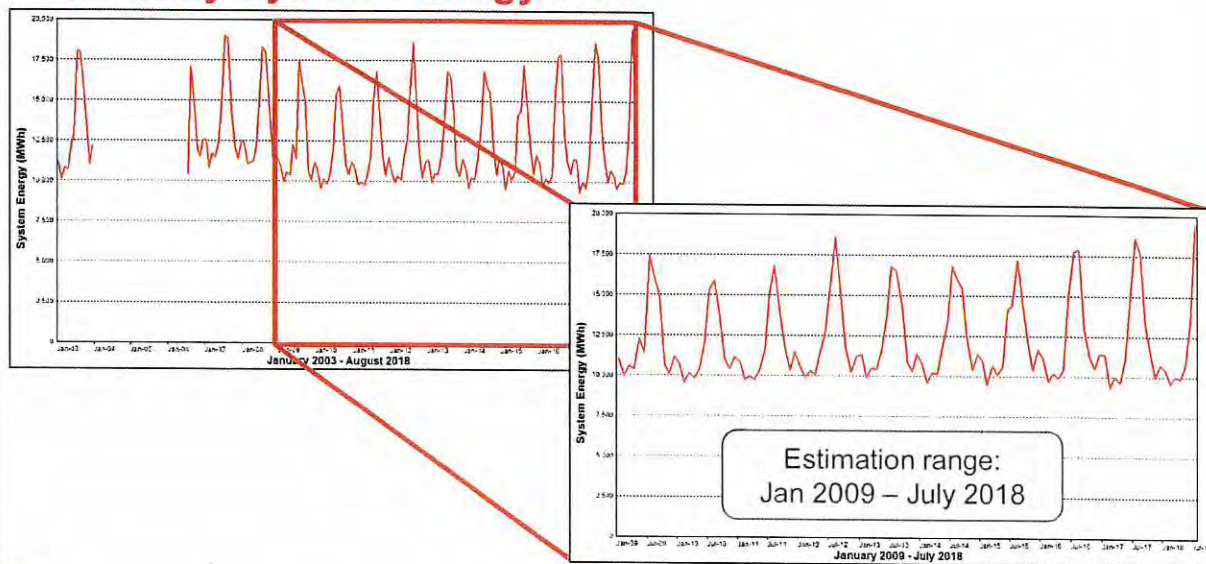
$$\text{CalendarMonth } X\text{Heat}_m = X\text{Heat Index}_m \times \text{HDD Spline}_m$$

$$\text{CalendarMonth } X\text{Cool}_m = X\text{Cool Index}_m \times \text{CDD Spline}_m$$



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Monthly System Energy Data



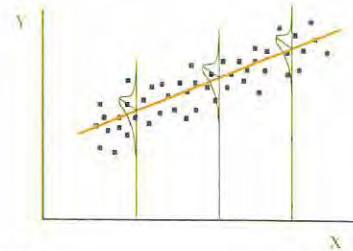
72

System Energy Model

$$\text{SystemEnergy}_m = \beta_1 \text{Month}'_m + \beta_2 X_{\text{Other}_m} + \beta_3 X_{\text{Heat}_m} + \beta_4 X_{\text{Cool}_m} + \beta_5 \text{CDD2016Plus}_m + \beta_6 \text{Shift2014}_m + \beta_7 \text{ShiftAug2017}_m + \varepsilon_m$$

Where,

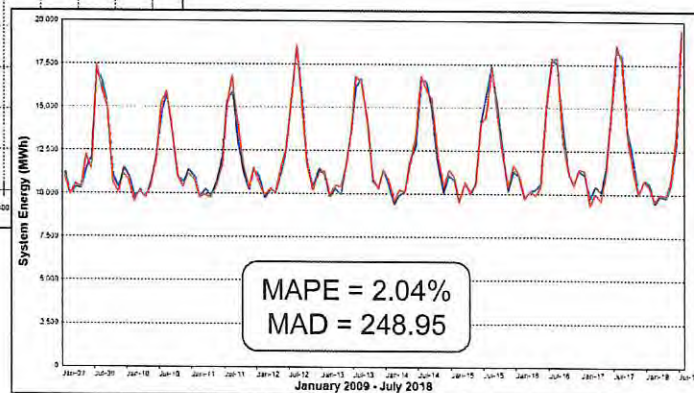
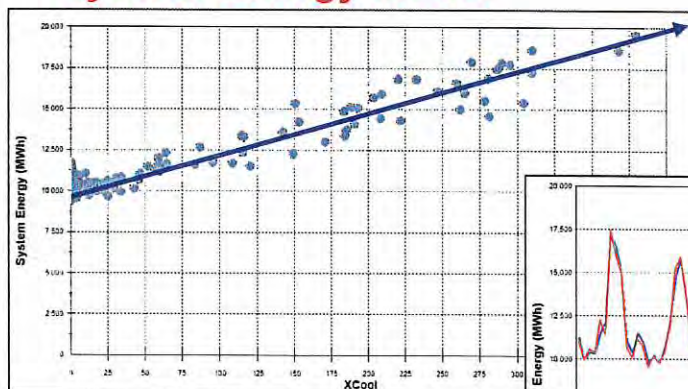
- Month'_m is a matrix of month binary variables
- X_{Other_m} is the other equipment utilization index
- X_{Heat_m} is the heating utilization index
- X_{Cool_m} is the cooling utilization index
- CDD2016Plus_m is the CDD Spline interacted with a 2016 shift variable
- Shift2014_m is a shift variable for 2014 forward
- ShiftAug2017_m is a shift variable for August 2017 forward



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System Energy Model



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Weather Scenario Development

- **Base scenario**
 - Calculated by averaging the number of HDDs and CDDs across all months of the year from 2003 to 2017
- **Mild & Severe scenarios**
 1. Sum HDDs and CDDs for each year
 2. Multiply β_{XHeat} and β_{XCool} by total annual HDDs and CDDs
 - ➔ Year with **lowest** total MWh attributed to heating and cooling = **Mild**
 - ➔ Year with **highest** total MWh attributed to heating and cooling = **Severe**

$$\begin{array}{l}
 \beta_{XCool} * TotalCDD_y = CoolingMWh_y \\
 \beta_{XHeat} * TotalHDD_y = HeatingMWh_y
 \end{array}
 \left. \vphantom{\begin{array}{l} \beta_{XCool} * TotalCDD_y = CoolingMWh_y \\ \beta_{XHeat} * TotalHDD_y = HeatingMWh_y \end{array}} \right\} \rightarrow CoolingMWh_y + HeatingMWh_y = TotalMWh_y$$

Daily Peak Model

- Purpose:
 - Define accurate weather response functions for system peaks
- Constructed in a similar fashion to Daily Energy model
- Derive weighting scheme for splines
- Leverage splines for System Peak model

$$\begin{aligned}
 DailyPeak_d = & \\
 & \beta_0 + \beta_1 DOW'_d + \beta_2 Month'_d + \beta_3 Shift'_d + \beta_4 MonthTrends'_d + \beta_5 HDD'_d + \beta_6 CDD'_d + \varepsilon_d
 \end{aligned}$$

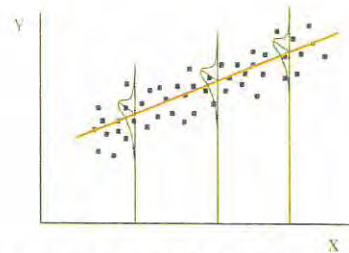
System Peak Model

$SystemPeak_m =$

$$\beta_1 Month'_m + \beta_2 XOther_m + \beta_3 XHeat_m + \beta_4 XCool_m + \beta_5 XCoolWgtLag_m + \beta_6 CDD2016Plus_m + \beta_7 Shift2016_m + \varepsilon_m$$

Where,

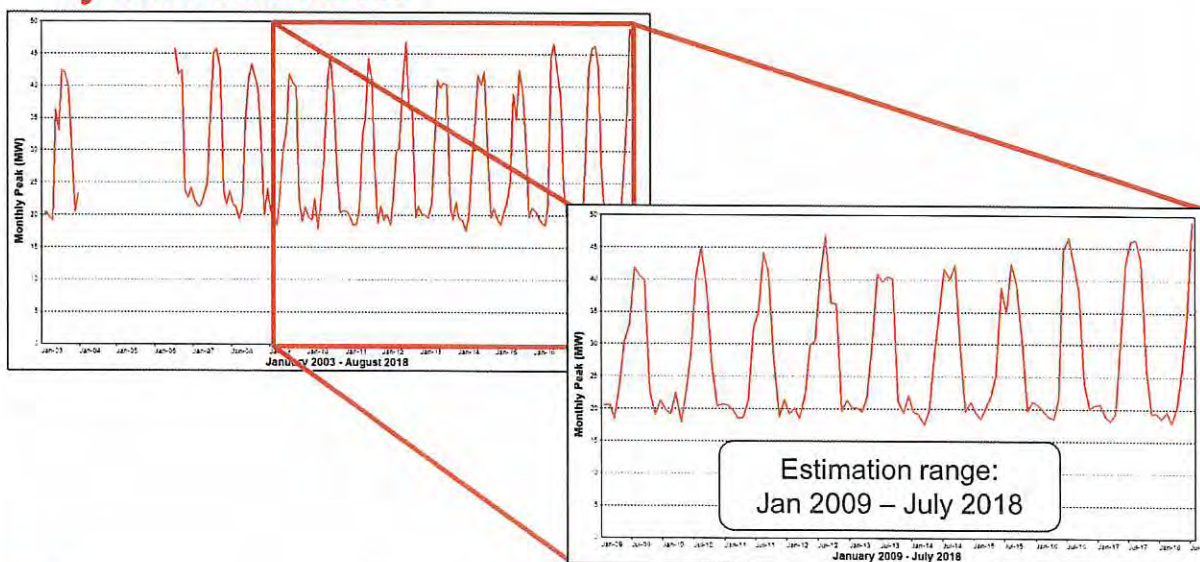
- $Month'_m$ is a matrix of month binary variables
- $XOther_m$ is the other equipment utilization index
- $XHeat_m$ is the heating utilization index
- $XCool_m$ is the cooling utilization index
- $XCoolWgtLag_m$ is the $XCool$ index interacted with a weighted average of cooling degree-days from the prior two days
- $CDD2016Plus_m$ is the CDD Spline interacted with a 2016 shift variable
- $Shift2016_m$ is a shift variable for 2016 forward



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System Peak Data



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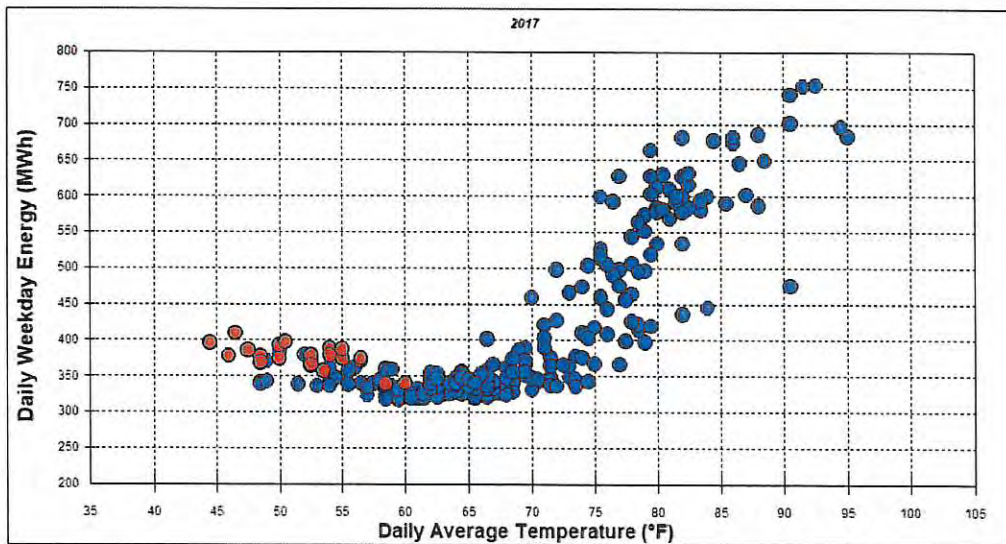
Weather Scenario Development

	Actual Peak Producing Average Temperature											Normal
	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	Month
Jan	49.0	53.0	45.5	49.0	47.0	48.0	49.0	54.5	44.0	47.5	46.5	48.5
Feb	53.0	53.0	44.0	47.0	49.0	50.0	45.5	53.0	52.5	47.0	52.5	49.7
Mar	72.0	55.0	53.5	63.5	56.0	52.5	48.5	59.5	71.0	49.0	71.5	54.7
Apr	68.5	75.0	88.0	51.0	75.0	74.0	71.0	72.3	73.5	76.0	78.0	75.6
May	72.5	83.0	77.0	62.0	76.0	77.0	86.0	77.0	74.0	72.5	78.0	77.3
Jun	77.0	89.0	79.0	70.0	76.5	77.5	83.5	78.0	83.0	93.0	85.0	81.9
Jul	80.3	73.5	86.0	88.5	81.3	84.0	83.0	87.0	84.0	87.0	90.5	84.3
Aug	86.5	85.5	88.5	89.0	88.5	85.0	89.0	88.5	90.0	89.0	91.5	87.7
Sep	86.0	84.0	87.0	91.5	89.5	84.0	88.0	92.5	90.5	76.5	84.3	87.9
Oct	76.0	87.5	80.0	77.5	78.5	87.0	79.5	80.0	81.5	72.0	90.5	80.6
Nov	56.5	71.5	70.0	46.0	59.5	72.5	58.0	72.0	52.0	74.5	74.0	72.4
Dec	51.5	45.5	42.5	52.5	47.0	45.5	47.5	49.0	42.0	47.5	52.0	47.5
Cooling Peak	86.5	89.0	88.5	91.5	89.5	89.0	89.5	92.5	90.5	93.0	94.5	90.4
Heating Peak	49.0	45.5	42.5	46.0	47.0	45.5	45.5	49.0	42.0	47.0	46.5	46.0

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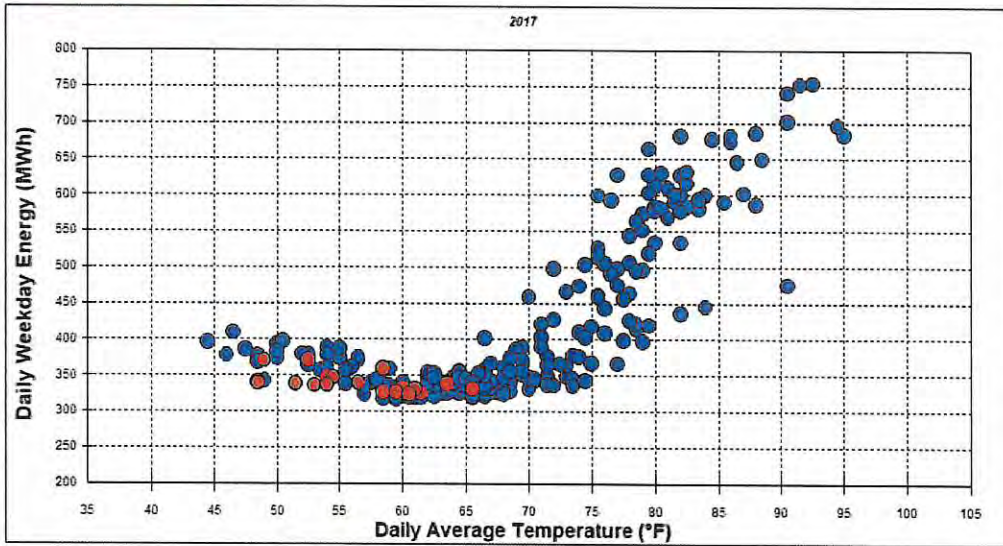
January 2017



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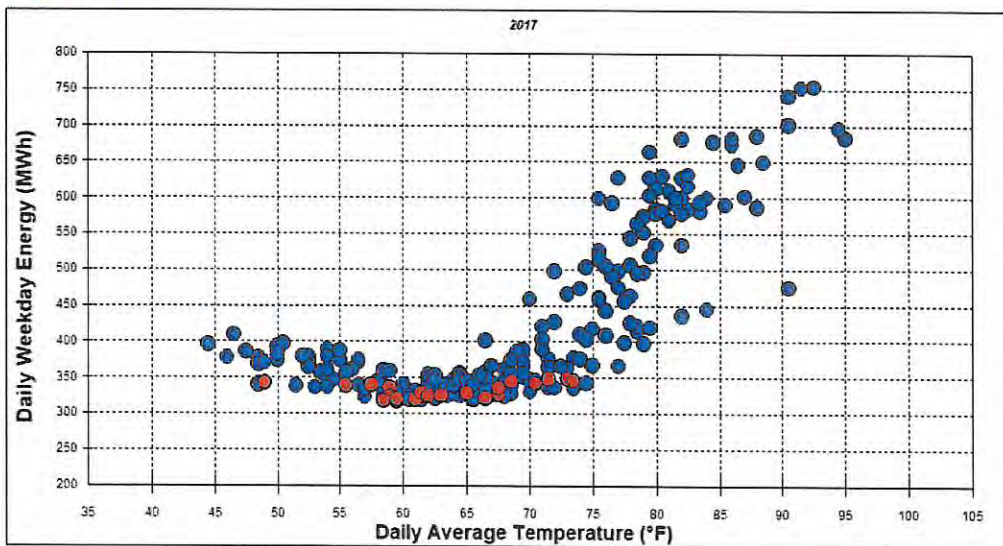
February 2017



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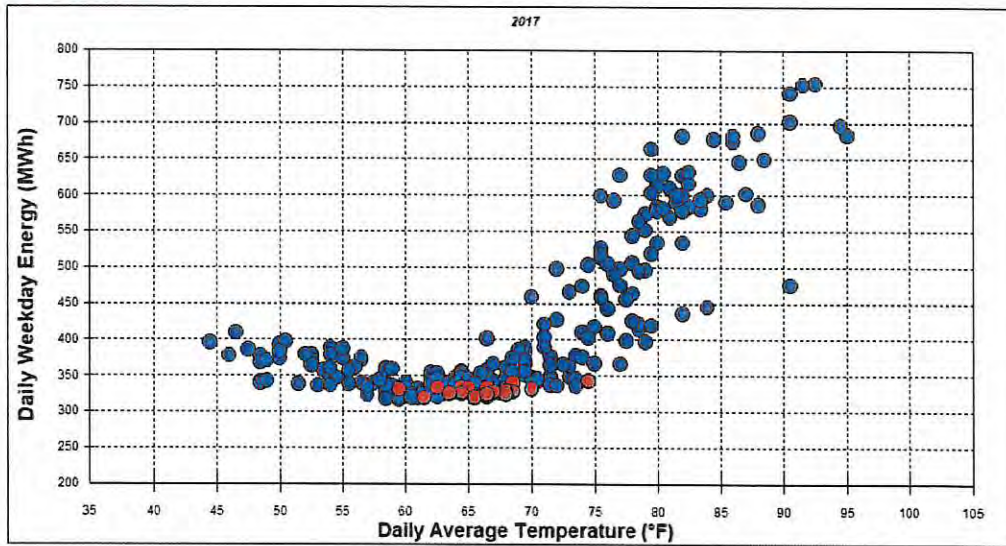
March 2017



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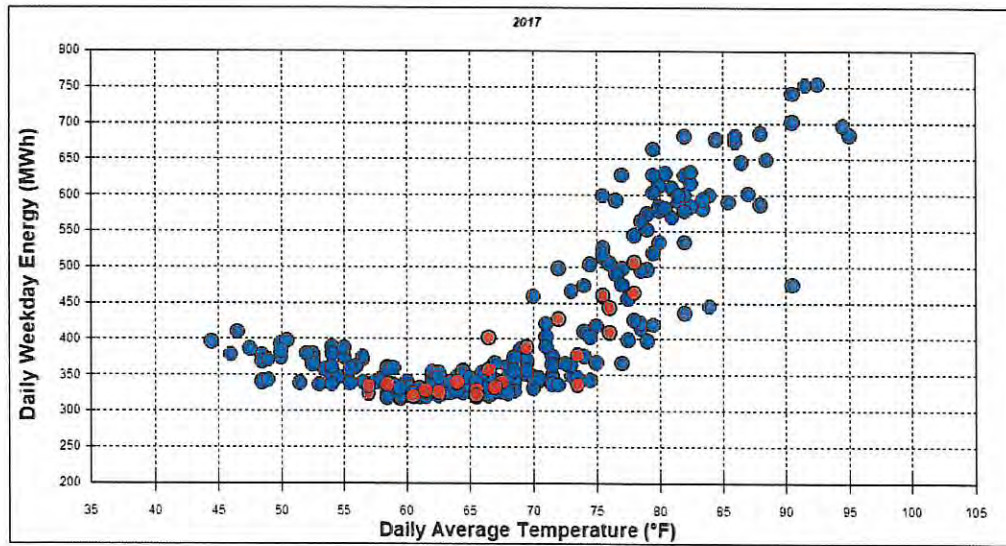
April 2017



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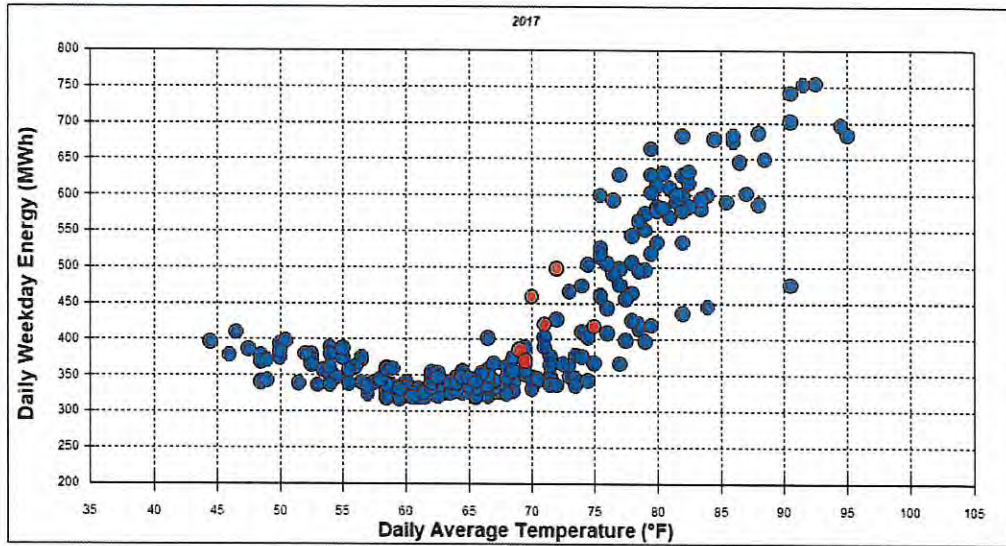
May 2017



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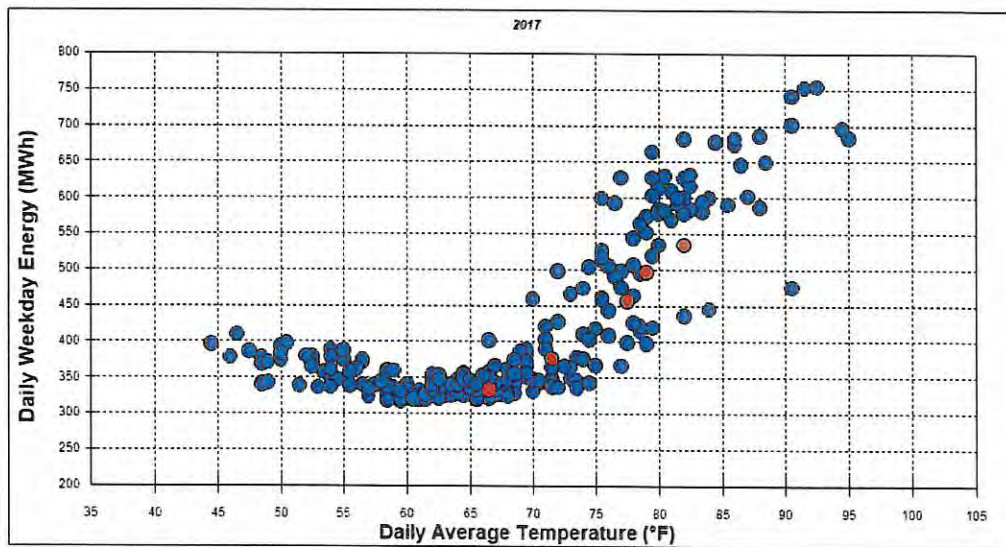
June 1 – 10, 2017



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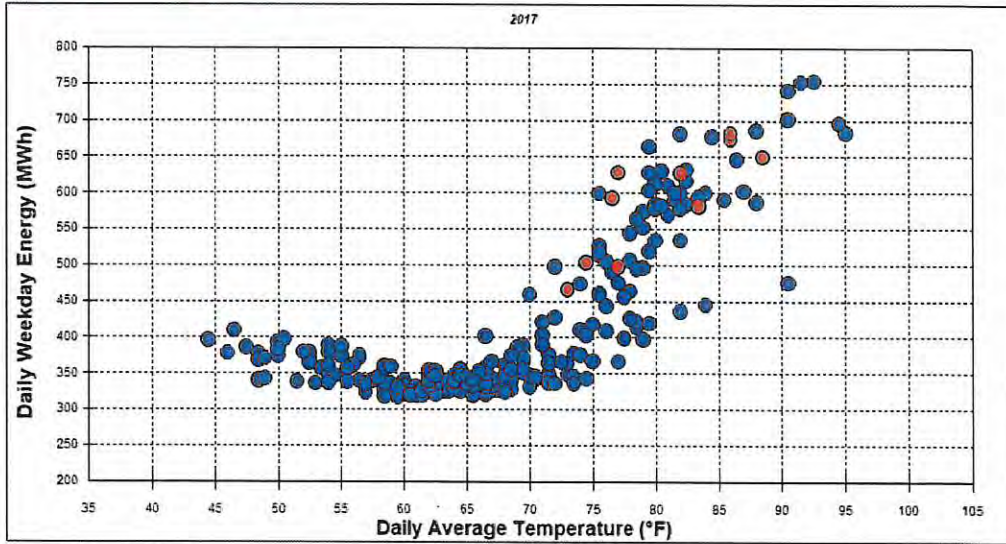
June 11 – 18, 2017



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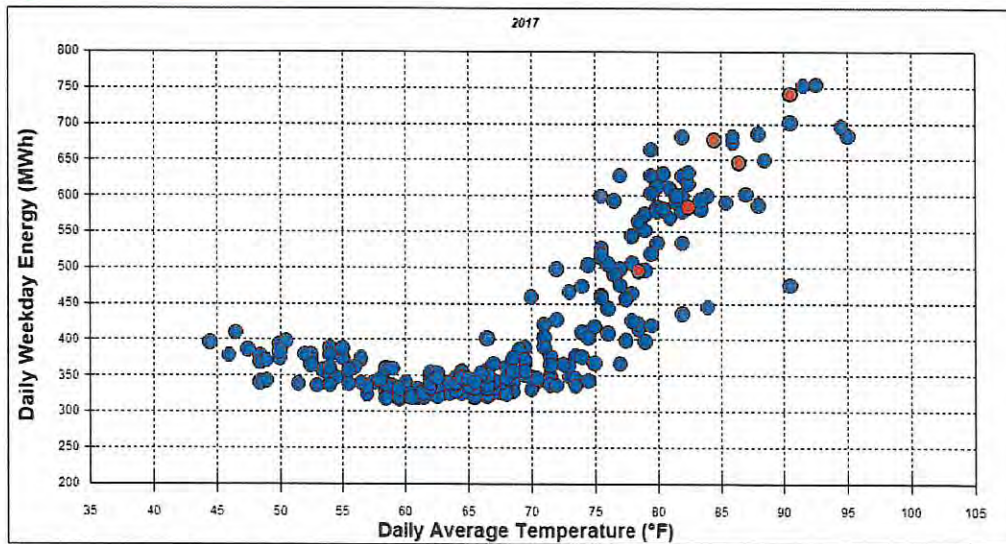
June 19 – 30, 2017



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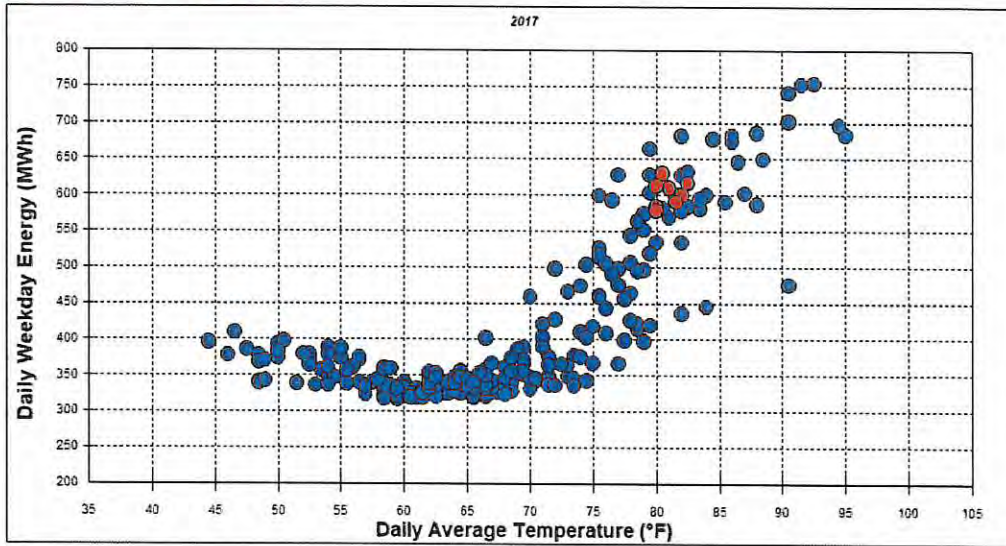
July 1 – 10, 2017



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88

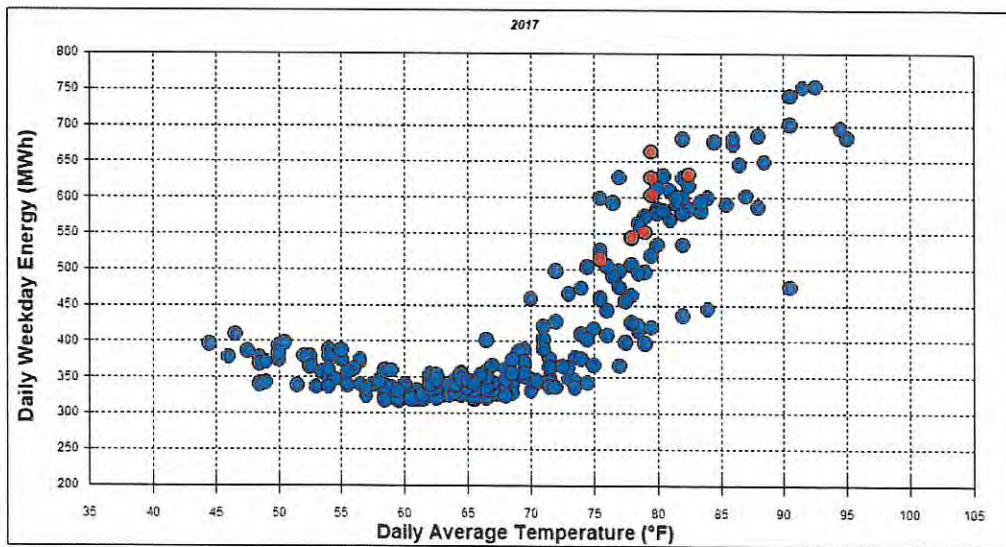
July 11 – 20, 2017



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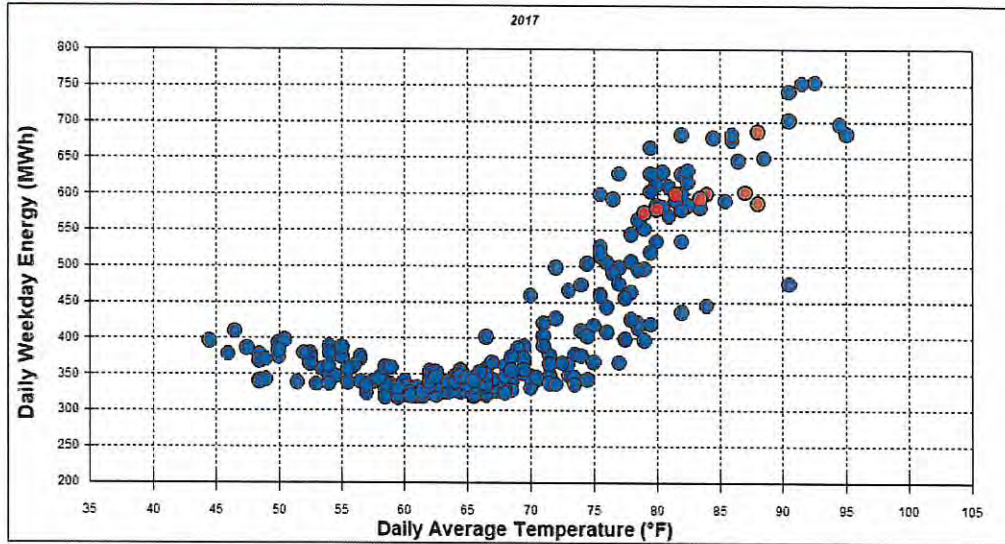
July 21 – 31, 2017



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90

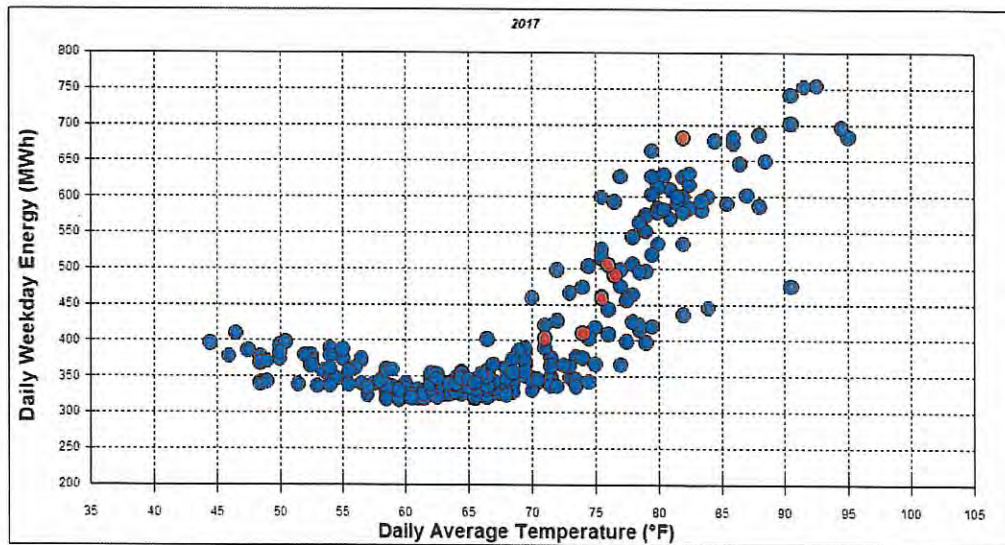
August 1 – 10, 2017



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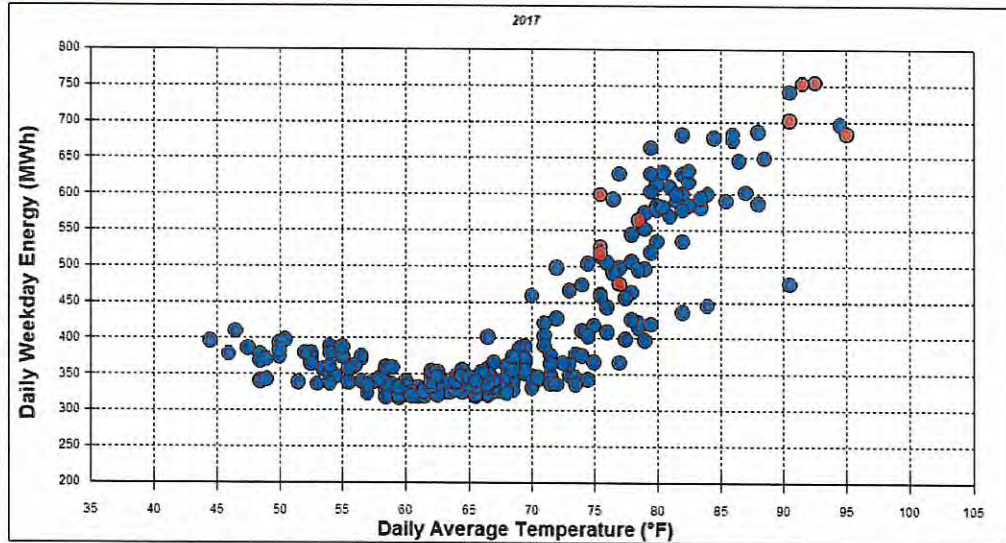
August 11 – 20, 2017



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92

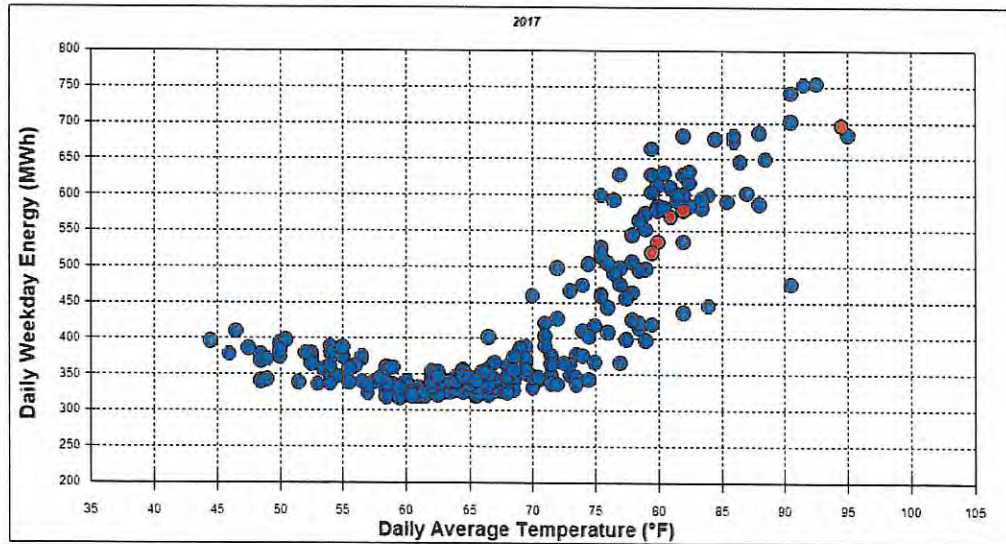
August 21 – 31, 2017



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93

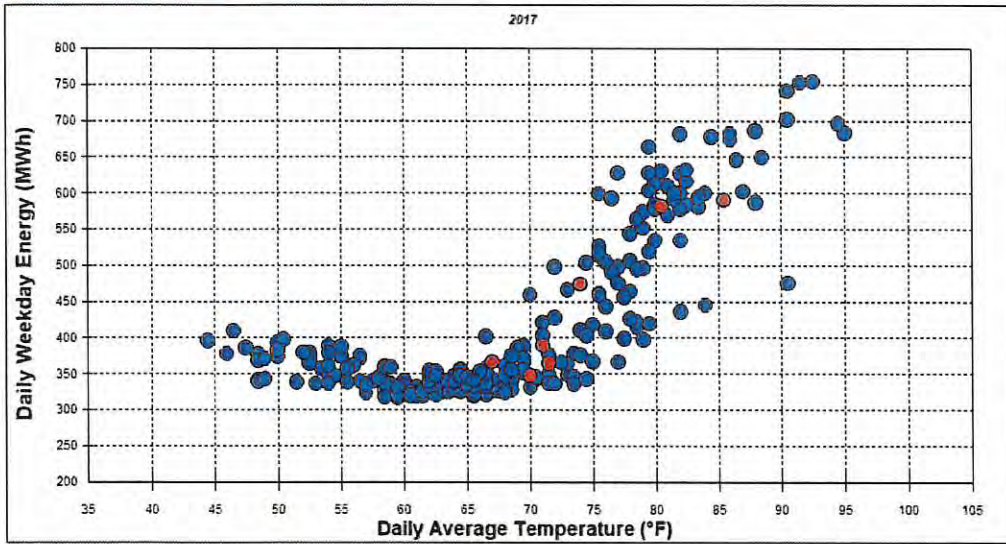
September 1 – 10, 2017



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94

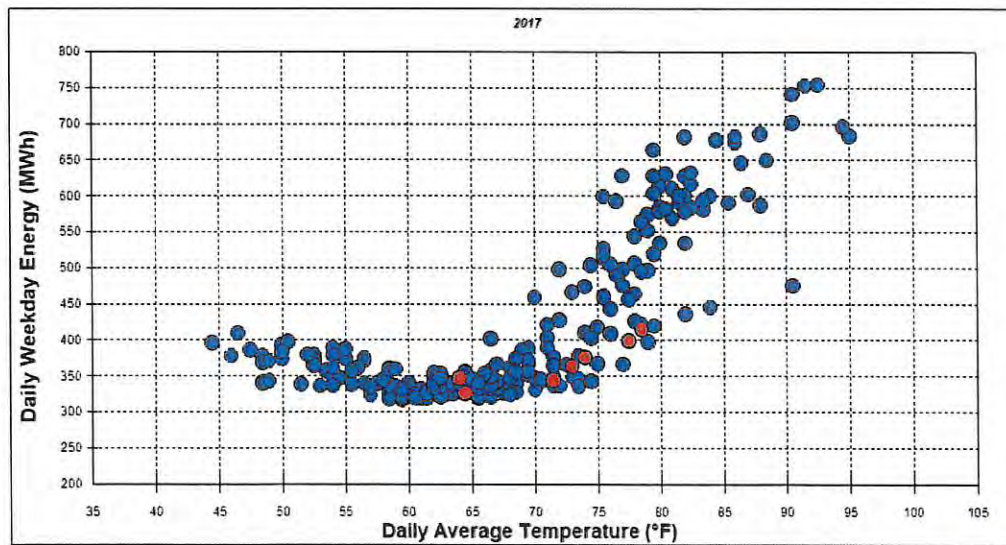
September 11 – 20, 2017



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95

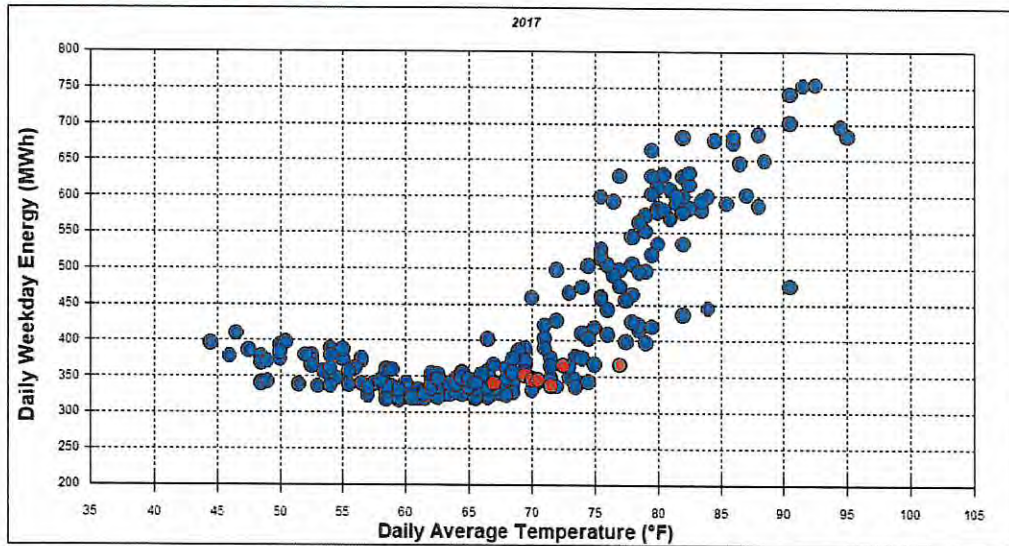
September 21 – 30, 2017



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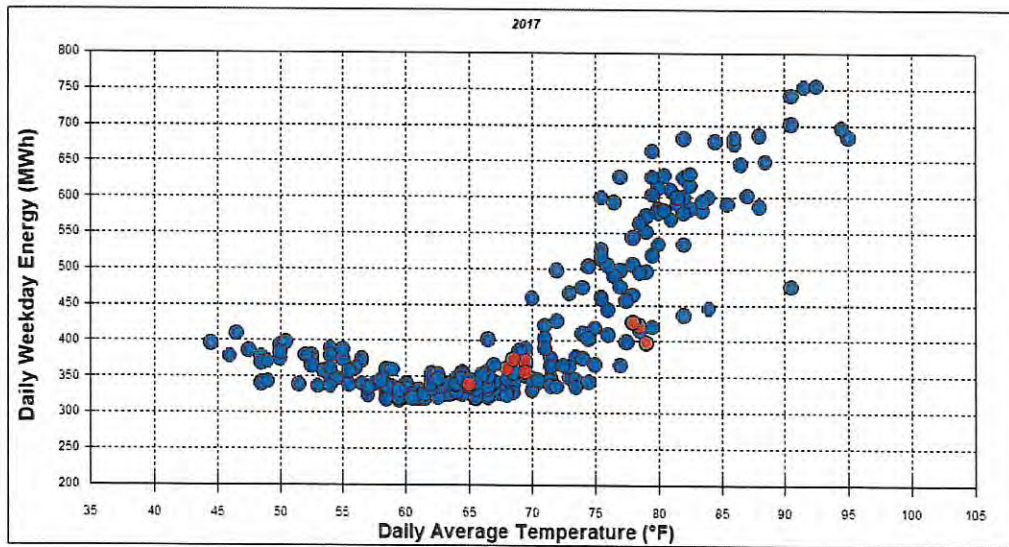
October 1 – 10, 2017



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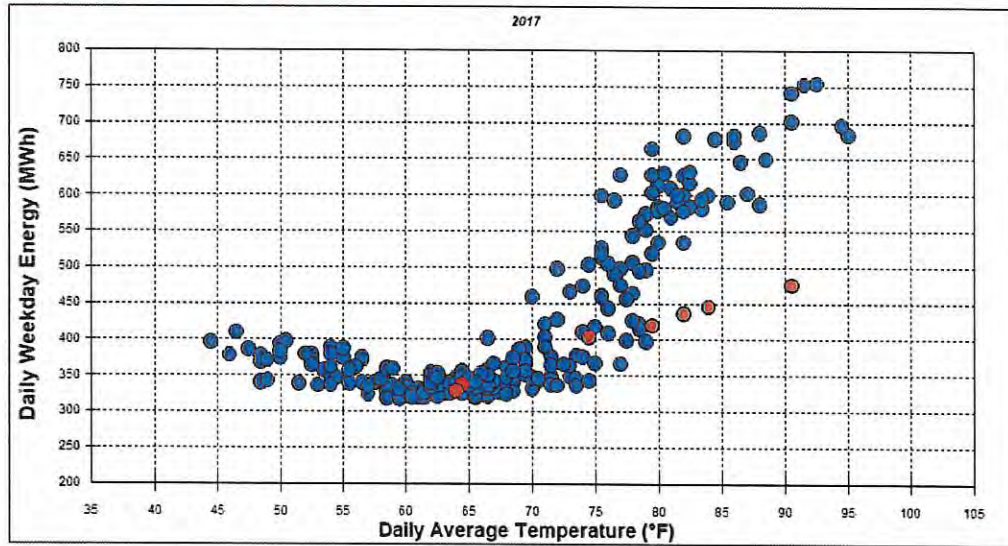
October 11 – 20, 2017



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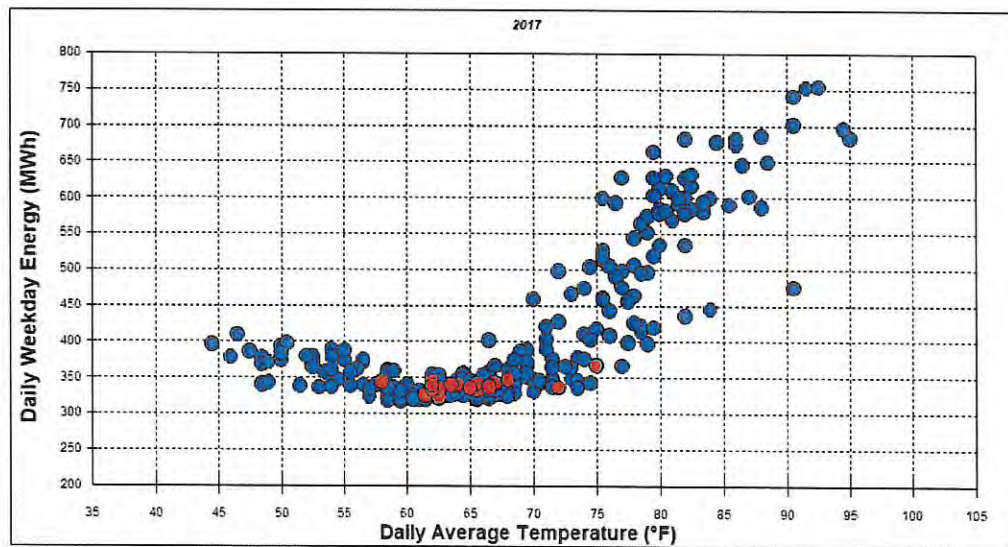
October 21 – 31, 2017



Iron

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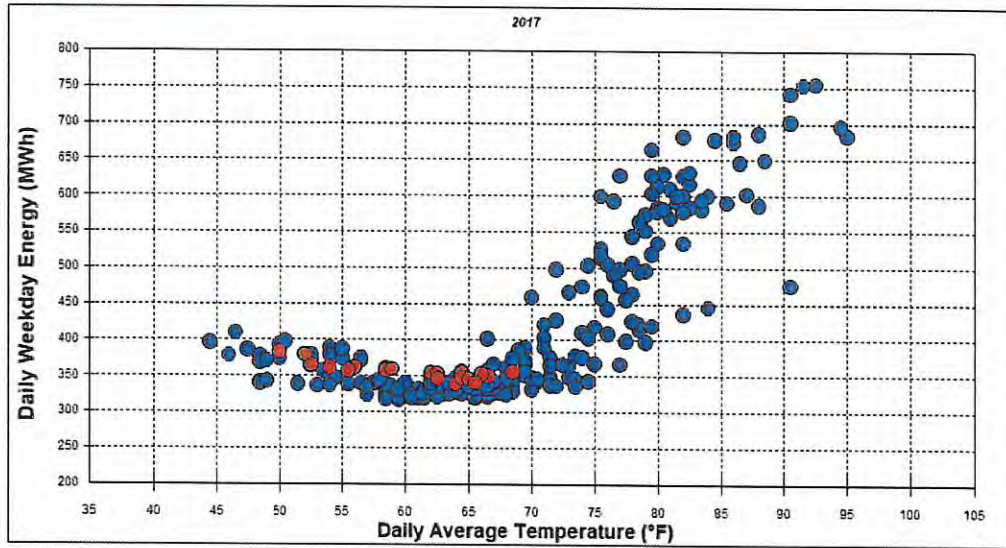
November 2017



Iron

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December 2017



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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: February 12, 2019

SUBJECT: Receive and File Contracts Approved Under the City Manager's Signature Authority for the Month of January 2019.

RECOMMENDATION:

Receive and file Contracts approved under the City Manager's signature authority for the Month of January 2019.

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

Contracts, Change Orders and Sole Sources Approved Within City Manager Signature Authority (2019)

City Manager Approval	Vendor Name	Description of Item/Service	Contact Award Total	Department/Division	Comments
10-Jan-2019	Aragon Geotechnical	Surface Mining & Inspection Services	\$ 18,360.00	City Manager	(C00116) 2nd Amendment to exercise the second option to extend the Agreement for an additional one (1) year term ending on November 17, 2019, and to include additional compensation for the extended contract term in an amount not to exceed SIX THOUSAND ONE HUNDRED TWENTY DOLLARS (\$6,120.00), for a new total Contract amount not to exceed EIGHTEEN THOUSAND THREE HUNDRED SIXTY DOLLARS (\$18,360.00).

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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

MEETING DATE: February 12, 2019

SUBJECT: Resolution No. 2019-14, "Accepting a Federal Surface Transportation Program (STP) grant and Approving the execution of California Department of Transportation (Caltrans) Program Supplemental Agreement No. 005-F to the existing Administering Agency-State Master Agreement including all related documents for Project No. 2014-06, "Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street."

RECOMMENDATION:

The City Council adopt Resolution No. 2019-14:

1. Accepting a Federal Surface Transportation Program (STP) Grant in the amount of \$181,893 and approving the execution of a Supplemental Agreement for the Ramsey Street Rehabilitation Project No. 2014-06, "Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street" ("Project") with the State of California Department of Transportation ("Caltrans") and authorizing the City Manager to execute any documents required to accept the STP grant on behalf of the City of Banning.
2. Authorizing the City Manager or his designee to execute the Supplemental Agreement and all Project related funding requests and documents.
3. Authorizing the City Manager or his designee to make the necessary budget adjustments to record the grant revenue and to make the necessary budget adjustments, appropriations and transfers related to the Supplemental Agreement and administration of the Project grant.

JUSTIFICATION:

The Surface Transportation Program (STP) was first established as one of the primary funding sources under the Federal Transportation Act of 1991 and the current Transportation Act, "Moving Ahead for Progress in the 21st Century" (MAP-21) was signed into law in July of 2012.

The Riverside County Transportation Commission (RCTC) approved an allocation and grant funding award to the City of Banning from the STP for pavement rehabilitation along Ramsey Street, from Hargrave Street to West of Hathaway Street. The funding is administered by the Caltrans with whom a Master Agreement (No. 08-5214F15) was executed with the City of Banning on December 16, 2016, as shown on Attachment No. 1.

Project specific Supplemental Agreements must be executed by the grantee prior to the disbursement of grant funds. The approval of Resolution 2019-14 would authorize the City Manager to execute the Supplemental Agreement (Attachment No. 3) and all project related documents for Project.

BACKGROUND:

In March of 2013, the RCTC announced a call for applications for grants for Federal Surface Transportation Program projects that included road rehabilitation and reconstruction projects. Approximately \$12.5 million in grant funds was made available for Riverside County agencies. STP grants are not guaranteed, and are distributed on a competitive basis to the highest scoring applications submitted. Staff submitted the grant application to RCTC in 2013 for the Project, and subsequently was awarded a grant of \$181,893.

Since the project is federally funded, all federal and state environmental regulations (NEPA and CEQA) had to be met, along with the preparation of numerous reports (e.g. cultural resources study and Preliminary Environmental Study forms). This required a substantial amount of time to prepare the documents required by Caltrans in order to obtain their approval.

If Resolution 2019-14 is approved, staff will finalize the project Specifications and bring the project out for bids in the spring of 2019. The engineer's estimate for the construction of the project is approximately \$351,010.

The scope of work for the project consists of grinding the entire width of Ramsey Street, crack sealing, asphalt concrete (A.C.) overlay, removal and reconstruction of the handicap ramp located at the Northwest Corner of Phillips Street and Ramsey Street, adjusting manholes and water valve covers to grade, striping and signage, traffic control, and cleaning of the job site, within the project limits and in accordance with City of Banning and Caltrans Standard Specifications.

The project limits are shown in the location map attached hereto as Attachment No. 4. City Council approval is required to execute the attached Supplemental Agreement and accept grant funding allocations. As part of the Agreement, Caltrans will reimburse the City for \$181,893 for work during the construction phase.

FISCAL IMPACT:

City Council approval of this resolution will secure \$181,893 in STP grant funding for the Project and the remaining funds will be allocated at the time of the award of the construction contract, when the actual construction costs will be known. The project is expected to go out for Bids in the spring of 2019, and awarded by the summer of 2019.


ALTERNATIVE:

Reject Resolution No. 2019-14 and provide direction to staff.

ATTACHMENTS:

1. Resolution 2019-14
2. Master Agreement No. 08-5214F-15
3. Program Supplemental Agreement No. 005-F
4. Project Location Map

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-14

RESOLUTION 2019-14

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ACCEPTING A FEDERAL SURFACE TRANSPORTATION PROGRAM (STP) GRANT AND APPROVING THE EXECUTION OF CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) PROGRAM SUPPLEMENTAL AGREEMENT NO. 005-F TO THE EXISTING ADMINISTERING AGENCY-STATE MASTER AGREEMENT INCLUDING ALL RELATED DOCUMENTS FOR PROJECT NO. 2014-06, "RAMSEY STREET PAVEMENT REHABILITATION, HARGRAVE STREET TO WEST OF HATHAWAY STREET"

WHEREAS, the Surface Transportation Program (STP) was first established as one of the primary funding sources under the federal transportation act of 1991 and the current Transportation Act, "Moving Ahead for Progress in the 21st Century" (MAP-21) was signed into law in July of 2012; and

WHEREAS, in March of 2013, the Riverside County Transportation Commission (RCTC) announced a call for applications for grants for Federal Surface Transportation Program (STP) projects, that included road rehabilitation and reconstruction projects and staff submitted a grant request for Project No. 2014-06, "Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street" ("Project"); and

WHEREAS, staff was notified that the application was approved and that the RCTC allocated \$181,893 for the Project; and

WHEREAS, Caltrans requires that the City of Banning execute a Supplemental Agreement No. 0005-F to the existing Administering Agency-State Master Agreement for the Project.

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

SECTION 1. The Banning City Council adopts Resolution No. 2019-14, accepting a Federal Surface Transportation Program (STP) Grant in the amount of \$181,893 and approving the execution of a Supplemental Agreement for Project No. 2014-06, "Ramsey Street Pavement Rehabilitation, Hargrave Street to West of Hathaway Street" with the State of California Department of Transportation and authorizing the City Manager to execute any documents required to accept the STP grant on behalf of the City of Banning.

SECTION 2. Authorizing the City Manager or his designee to execute the Supplemental Agreement and all Project related funding requests and documents.

SECTION 3. Authorizing the City Manager or his designee to make the necessary budget adjustments to record the grant revenue and to make the necessary budget adjustments, appropriations and transfers related to the Supplemental Agreement and administration of the Project grant.

PASSED, ADOPTED AND APPROVED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-14, was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Master Agreement
No. 08-5214F-15

MASTER AGREEMENT
ADMINISTERING AGENCY-STATE AGREEMENT FOR
FEDERAL-AID PROJECTS

08 City of Banning

District Administering Agency

Agreement No. 08-5214F15

This AGREEMENT, is entered into effective this 16th day of December, 2016, by and between City of Banning, hereinafter referred to as "ADMINISTERING AGENCY," and the State of California, acting by and through its Department of Transportation (Caltrans), hereinafter referred to as "STATE", and together referred to as "PARTIES" or individually as a "PARTY."

RECITALS:

1. WHEREAS, the Congress of the United States has enacted the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Transportation Authorization Bills to fund transportation programs; and
2. WHEREAS, the Legislature of the State of California has enacted legislation by which certain federal-aid funds may be made available for use on local transportation related projects of public entities qualified to act as recipients of these federal-aid funds in accordance with the intent of federal law; and
3. WHEREAS, before federal funds will be made available for a specific program project, ADMINISTERING AGENCY and STATE are required to enter into an agreement to establish terms and conditions applicable to the ADMINISTERING AGENCY when receiving federal funds for a designated PROJECT facility and to the subsequent operation and maintenance of that completed facility.

NOW, THEREFORE, the PARTIES agree as follows:

ARTICLE I - PROJECT ADMINISTRATION

1. This AGREEMENT shall have no force or effect with respect to any program project unless and until a project-specific "Authorization/Agreement Summary", herein referred to as "E-76" document, is approved by STATE and the Federal Highway Administration (FHWA).
2. The term "PROJECT", as used herein, means that authorized transportation related project and related activities financed in part with federal-aid funds as more fully-described in an "Authorization/ Agreement Summary" or "Amendment/Modification Summary", herein referred to as "E-76" or "E-76 (AMOD)" document authorized by STATE and the Federal Highway Administration (FHWA).
3. The E-76/E-76 (AMOD) shall designate the party responsible for implementing PROJECT, type of work and location of PROJECT.
4. The PROGRAM SUPPLEMENT sets out special covenants as a condition for the ADMINISTERING AGENCY to receive federal-aid funds from/through STATE for designated PROJECT. The PROGRAM SUPPLEMENT shall also show these federal funds that have been initially encumbered for PROJECT along with the matching funds to be provided by ADMINISTERING AGENCY and/or others. Execution of PROGRAM SUPPLEMENT by the PARTIES shall cause ADMINISTERING AGENCY to adopt all of the terms of this AGREEMENT as though fully set forth therein in the PROGRAM SUPPLEMENT. Unless otherwise expressly delegated in a resolution by the governing body of ADMINISTERING AGENCY, and with written concurrence by STATE, the PROGRAM SUPPLEMENT shall be approved and managed by the governing body of ADMINISTERING AGENCY.
5. ADMINISTERING AGENCY agrees to execute and return each project-specific PROGRAM SUPPLEMENT within ninety (90) days of receipt. The PARTIES agree that STATE may suspend future authorizations/obligations and invoice payments for any on-going or future federal-aid project performed by ADMINISTERING AGENCY if any project-specific PROGRAM SUPPLEMENT is not returned within that ninety (90) day period unless otherwise agreed by STATE in writing.
6. ADMINISTERING AGENCY further agrees, as a condition to the release and payment of federal funds encumbered for the PROJECT described in each PROGRAM SUPPLEMENT, to comply with the terms and conditions of this AGREEMENT and all of the agreed-upon Special Covenants or Remarks incorporated within the PROGRAM SUPPLEMENT, and Cooperative/Contribution Agreement where appropriate, defining and identifying the nature of the specific PROJECT.
7. Federal, state and matching funds will not participate in PROJECT work performed in advance of the approval of the E-76 or E-76 (AMOD), unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT. ADMINISTERING AGENCY agrees that it will only proceed with the work authorized for that specific phase(s) on the project-specific E-76 or E-76 (AMOD). ADMINISTERING AGENCY further agrees to not proceed with future phases of PROJECT prior to receiving an E-76 (AMOD) from STATE for that phase(s) unless no further federal funds are needed or for those future phase(s).

8. That PROJECT or portions thereof, must be included in a federally approved Federal Statewide Transportation Improvement Program (FSTIP) prior to ADMINISTERING AGENCY submitting the "Request for Authorization".
9. ADMINISTERING AGENCY shall conform to all state statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of Federal Regulation (CFR) and 2 CFR part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.
10. If PROJECT is not on STATE-owned right of way, PROJECT shall be constructed in accordance with LOCAL ASSISTANCE PROCEDURES that describes minimum statewide design standards for local agency streets and roads. LOCAL ASSISTANCE PROCEDURES for projects off the National Highway System (NHS) allow STATE to accept either the STATE's minimum statewide design standards or the approved geometric design standards of ADMINISTERING AGENCY. Additionally, for projects off the NHS, STATE will accept ADMINISTERING AGENCY-approved standard specifications, standard plans, materials sampling and testing quality assurance programs that meet the conditions described in the then current LOCAL ASSISTANCE PROCEDURES.
11. If PROJECT involves work within or partially within STATE-owned right-of-way, that PROJECT shall also be subject to compliance with the policies, procedures and standards of the STATE Project Development Procedures Manual and Highway Design Manual and, where appropriate, an executed Cooperative Agreement between STATE and ADMINISTERING AGENCY that outlines the PROJECT responsibilities and respective obligations of the PARTIES. ADMINISTERING AGENCY and its contractors shall each obtain an encroachment permit through STATE prior to commencing any work within STATE rights of way or work which affects STATE facilities.
12. When PROJECT is not on the State Highway System but includes work to be performed by a railroad, the contract for such work shall be prepared by ADMINISTERING AGENCY or by STATE, as the PARTIES may hereafter agree. In either event, ADMINISTERING AGENCY shall enter into an agreement with the railroad providing for future maintenance of protective devices or other facilities installed under the contract.
13. If PROJECT is using STATE funds, the Department of General Services, Division of the State Architect, or its designee, shall review the contract PS&E for the construction of buildings, structures, sidewalks, curbs and related facilities for accessibility and usability. ADMINISTERING AGENCY shall not award a PROJECT construction contract for these types of improvements until the State Architect has issued written approval stating that the PROJECT plans and specifications comply with the provisions of sections 4450 and 4454 of the California Government Code, if applicable. Further requirements and guidance are provided in Title 24 of the California Code of Regulations.
14. ADMINISTERING AGENCY will advertise, award and administer PROJECT in accordance with the current LOCAL ASSISTANCE PROCEDURES unless otherwise stated in the executed project-specific PROGRAM SUPPLEMENT.

15. ADMINISTERING AGENCY shall provide or arrange for adequate supervision and inspection of each PROJECT. While consultants may perform supervision and inspection work for PROJECT with a fully qualified and licensed engineer, ADMINISTERING AGENCY shall provide a full-time employee to be in responsible charge of each PROJECT who is not a consultant.

16. ADMINISTERING AGENCY shall submit PROJECT-specific contract award documents to STATE's District Local Assistance Engineer within sixty (60) days after contract award. A copy of the award documents shall also be included with the submittal of the first invoice for a construction contract by ADMINISTERING AGENCY.

17. ADMINISTERING AGENCY shall submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure by ADMINISTERING AGENCY to submit a "Report of Expenditures" within one hundred eighty (180) days of project completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current LOCAL ASSISTANCE PROCEDURES.

18. ADMINISTERING AGENCY shall comply with: (i) section 504 of the Rehabilitation Act of 1973 which prohibits discrimination on the basis of disability in federally assisted programs; (ii) the Americans with Disabilities Act (ADA) of 1990 which prohibits discrimination on the basis of disability irrespective of funding; and (iii) all applicable regulations and guidelines issued pursuant to both the Rehabilitation Act and the ADA.

19. The Congress of the United States, the Legislature of the State of California and the Governor of the State of California, each within their respective jurisdictions, have prescribed certain nondiscrimination requirements with respect to contract and other work financed with public funds. ADMINISTERING AGENCY agrees to comply with the requirements of the FAIR EMPLOYMENT PRACTICES ADDENDUM (Exhibit A attached hereto) and the NONDISCRIMINATION ASSURANCES (Exhibit B attached hereto). ADMINISTERING AGENCY further agrees that any agreement entered into by ADMINISTERING AGENCY with a third party for performance of PROJECT-related work shall incorporate Exhibits A and B (with third party's name replacing ADMINISTERING AGENCY) as essential parts of such agreement to be enforced by that third party as verified by ADMINISTERING AGENCY.

ARTICLE II - RIGHTS OF WAY

1. No contract for the construction of a federal-aid PROJECT shall be awarded until all necessary rights of way have been secured. Prior to the advertising for construction of PROJECT, ADMINISTERING AGENCY shall certify and, upon request, shall furnish STATE with evidence that all necessary rights of way are available for construction purposes or will be available by the time of award of the construction contract.
2. ADMINISTERING AGENCY agrees to indemnify and hold STATE harmless from any liability that may result in the event the right of way for a PROJECT, including, but not limited to, being clear as certified or if said right of way is found to contain hazardous materials requiring treatment or removal to remediate in accordance with Federal and State laws. The furnishing of right of way as provided for herein includes, in addition to all real property required for the PROJECT, title free and clear of obstructions and encumbrances affecting PROJECT and the payment, as required by applicable law, of relocation costs and damages to remainder real property not actually taken but injuriously affected by PROJECT. ADMINISTERING AGENCY shall pay, from its own non-matching funds, any costs which arise out of delays to the construction of PROJECT because utility facilities have not been timely removed or relocated, or because rights of way were not available to ADMINISTERING AGENCY for the orderly prosecution of PROJECT work.
3. Subject to STATE approval and such supervision as is required by LOCAL ASSISTANCE PROCEDURES over ADMINISTERING AGENCY's right of way acquisition procedures, ADMINISTERING AGENCY may claim reimbursement from federal funds for expenditures incurred in purchasing only the necessary rights of way needed for the PROJECT after crediting PROJECT with the fair market value of any excess property retained and not disposed of by ADMINISTERING AGENCY.
4. When real property rights are to be acquired by ADMINISTERING AGENCY for a PROJECT, said ADMINISTERING AGENCY must carry out that acquisition in compliance with all applicable State and Federal laws and regulations, in accordance with State procedures as published in State's current LOCAL ASSISTANCE PROCEDURES and STATE's Right-of-Way Manual, subject to STATE oversight to ensure that the completed work is acceptable under the Federal Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.
5. Whether or not federal-aid is to be requested for right of way, should ADMINISTERING AGENCY, in acquiring right of way for PROJECT, displace an individual, family, business, farm operation, or non-profit organization, relocation payments and services will be provided as set forth in 49 CFR, Part 24. The public will be adequately informed of the relocation payments and services which will be available, and, to the greatest extent practicable, no person lawfully occupying real property shall be required to move from his/her dwelling or to move his/her business or farm operation without at least ninety (90) days written notice from ADMINISTERING AGENCY. ADMINISTERING AGENCY will provide STATE with specific assurances, on each portion of the PROJECT, that no person will be displaced until comparable decent, safe and sanitary replacement housing is available within a reasonable period of time prior to displacement, and that ADMINISTERING AGENCY's relocation program is realistic and adequate to provide orderly, timely and efficient relocation of PROJECT-displaced persons as provided in 49 CFR, Part 24.

6. ADMINISTERING AGENCY shall, along with recording the deed or instrument evidencing title in the name of the ADMINISTERING AGENCY or their assignee, also record an Agreement Declaring Restrictive Covenants (ADRC) as a separate document incorporating the assurances included within Exhibits A and B and Appendices A, B, C and D of this AGREEMENT, as appropriate.

ARTICLE III - MAINTENANCE AND MANAGEMENT

1. ADMINISTERING AGENCY will maintain and operate the property acquired, developed, constructed, rehabilitated, or restored by PROJECT for its intended public use until such time as the parties might amend this AGREEMENT to otherwise provide. With the approval of STATE, ADMINISTERING AGENCY or its successors in interest in the PROJECT property may transfer this obligation and responsibility to maintain and operate PROJECT property for that intended public purpose to another public entity.
2. Upon ADMINISTERING AGENCY's acceptance of the completed federal-aid construction contract or upon contractor being relieved of the responsibility for maintaining and protecting PROJECT, ADMINISTERING AGENCY will be responsible for the maintenance, ownership, liability, and the expense thereof, for PROJECT in a manner satisfactory to the authorized representatives of STATE and FHWA and if PROJECT falls within the jurisdictional limits of another Agency or Agencies, it is the duty of ADMINISTERING AGENCY to facilitate a separate maintenance agreement(s) between itself and the other jurisdictional Agency or Agencies providing for the operation, maintenance, ownership and liability of PROJECT. Until those agreements are executed, ADMINISTERING AGENCY will be responsible for all PROJECT operations, maintenance, ownership and liability in a manner satisfactory to the authorized representatives of STATE and FHWA. If, within ninety (90) days after receipt of notice from STATE that a PROJECT, or any portion thereof, is not being properly operated and maintained and ADMINISTERING AGENCY has not satisfactorily remedied the conditions complained of, the approval of future federal-aid projects of ADMINISTERING AGENCY will be withheld until the PROJECT shall have been put in a condition of operation and maintenance satisfactory to STATE and FHWA. The provisions of this section shall not apply to a PROJECT that has been vacated through due process of law with STATE's concurrence.
3. PROJECT and its facilities shall be maintained by an adequate and well-trained staff of engineers and/or such other professionals and technicians as PROJECT reasonably requires. Said operations and maintenance staff may be employees of ADMINISTERING AGENCY, another unit of government, or a contractor under agreement with ADMINISTERING AGENCY. All maintenance will be performed at regular intervals or as required for efficient operation of the complete PROJECT improvements.

ARTICLE IV - FISCAL PROVISIONS

1. All contractual obligations of STATE are subject to the appropriation of resources by the Legislature and the allocation of resources by the California Transportation Commission (CTC).
2. STATE'S financial commitment of federal funds will occur only upon the execution of this AGREEMENT, the authorization of the project-specific E-76 or E-76 (AMOD), the execution of each project-specific PROGRAM SUPPLEMENT, and STATE's approved finance letter.
3. ADMINISTERING AGENCY may submit signed invoices in arrears for reimbursement of participating PROJECT costs on a regular basis once the project-specific PROGRAM SUPPLEMENT has been executed by STATE.
4. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six (6) months commencing after the funds are encumbered on either the project-specific PROGRAM SUPPLEMENT or through a project-specific finance letter approved by STATE. STATE reserves the right to suspend future authorizations/obligations, and invoice payments for any on-going or future federal-aid project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six (6) month period.
5. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.
6. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.
7. Payments to ADMINISTERING AGENCY can only be released by STATE as reimbursement of actual allowable PROJECT costs already incurred and paid for by ADMINISTERING AGENCY.
8. Indirect Cost Allocation Plans/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.
9. Once PROJECT has been awarded, STATE reserves the right to de-obligate any excess federal funds from the construction phase of PROJECT if the contract award amount is less than the obligated amount, as shown on the PROJECT E-76 or E-76 (AMOD).
10. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

11. The estimated total cost of PROJECT, the amount of federal funds obligated, and the required matching funds may be adjusted by mutual consent of the PARTIES hereto with a finance letter, a detailed estimate, if required, and approved E-76 (AMOD). Federal-aid funding may be increased to cover PROJECT cost increases only if such funds are available and FHWA concurs with that increase.

12. When additional federal-aid funds are not available, ADMINISTERING AGENCY agrees that the payment of federal funds will be limited to the amounts authorized on the PROJECT specific E-76 / E-76 (AMOD) and agrees that any increases in PROJECT costs must be defrayed with ADMINISTERING AGENCY's own funds.

13. ADMINISTERING AGENCY shall use its own non-federal funds to finance the local share of eligible costs and all expenditures or contract items ruled ineligible for financing with federal funds. STATE shall make the determination of ADMINISTERING AGENCY's cost eligibility for federal fund financing of PROJECT costs.

14. ADMINISTERING AGENCY will reimburse STATE for STATE's share of costs for work performed by STATE at the request of ADMINISTERING AGENCY. STATE's costs shall include overhead assessments in accordance with section 8755.1 of the State Administrative Manual.

15. Federal and state funds allocated from the State Transportation Improvement Program (STIP) are subject to the timely use of funds provisions enacted by Senate Bill 45, approved in 1997, and subsequent STIP Guidelines and State procedures approved by the CTC and STATE.

16. Federal funds encumbered for PROJECT are available for liquidation for a period of six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. State funds encumbered for PROJECT are available for liquidation only for six (6) years from the beginning of the State fiscal year the funds were appropriated in the State Budget. Federal or state funds not liquidated within these periods will be reverted unless a Cooperative Work Agreement (CWA) is submitted by ADMINISTERING AGENCY and approved by the California Department of Finance (per Government Code section 16304). The exact date of fund reversion will be reflected in the STATE signed finance letter for PROJECT.

17. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

18. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

19. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

20. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

21. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

22. Should ADMINISTERING AGENCY fail to refund any moneys due upon written demand by STATE as provided hereunder or should ADMINISTERING AGENCY breach this AGREEMENT by failing to complete PROJECT without adequate justification and approval by STATE, then, within thirty 30 days of demand, or within such other period as may be agreed to in writing between the PARTIES, STATE, acting through the State Controller, the State Treasurer, or any other public entity or agency, may withhold or demand a transfer of an amount equal to the amount paid by or owed to STATE from future apportionments, or any other funds due ADMINISTERING AGENCY from the Highway Users Tax Fund or any other sources of funds, and/or may withhold approval of future ADMINISTERING AGENCY federal-aid projects.

23. Should ADMINISTERING AGENCY be declared to be in breach of this AGREEMENT or otherwise in default thereof by STATE, and if ADMINISTERING AGENCY is constituted as a joint powers authority, special district, or any other public entity not directly receiving funds through the State Controller, STATE is authorized to obtain reimbursement from whatever sources of funding are available, including the withholding or transfer of funds, pursuant to Article IV - 22, from those constituent entities comprising a joint powers authority or by bringing of an action against ADMINISTERING AGENCY or its constituent member entities, to recover all funds provided by STATE hereunder.

24. ADMINISTERING AGENCY acknowledges that the signatory party represents the ADMINISTERING AGENCY and further warrants that there is nothing within a Joint Powers Agreement, by which ADMINISTERING AGENCY was created, if any exists, that would restrict or otherwise limit STATE's ability to recover State funds improperly spent by ADMINISTERING AGENCY in contravention of the terms of this AGREEMENT.

ARTICLE V
AUDITS, THIRD PARTY CONTRACTING, RECORDS RETENTION AND REPORTS

1. STATE reserves the right to conduct technical and financial audits of PROJECT work and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by paragraph three (3) of ARTICLE V.
2. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices sent to or paid by STATE.
3. ADMINISTERING AGENCY, ADMINISTERING AGENCY's contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.
4. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year. The Federal Funds received under a PROGRAM SUPPLEMENT are a part of the Catalogue of Federal Domestic Assistance (CFDA) 20.205.
5. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.
6. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contract over \$10,000, or other contracts over \$25,000 (excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)) on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

7. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions 5, 6, 17, 19 and 20 of ARTICLE IV, FISCAL PROVISIONS, and provisions 1, 2, and 3 of this ARTICLE V, AUDITS, THIRD-PARTY CONTRACTING RECORDS RETENTION AND REPORTS.

8. To be eligible for local match credit, ADMINISTERING AGENCY must ensure that local match funds used for a PROJECT meet the fiscal provisions requirements outlined in ARTICLE IV in the same manner as required of all other PROJECT expenditures.

9. In addition to the above, the pre-award requirements of third-party contractor/consultants with ADMINISTERING AGENCY should be consistent with the LOCAL ASSISTANCE PROCEDURES.

ARTICLE VI - FEDERAL LOBBYING ACTIVITIES CERTIFICATION

1. By execution of this AGREEMENT, ADMINISTERING AGENCY certifies, to the best of the signatory officer's knowledge and belief, that:

A. No federal or state appropriated funds have been paid or will be paid, by or on behalf of ADMINISTERING AGENCY, to any person for influencing or attempting to influence an officer or employee of any STATE or federal agency, a member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any STATE or federal contract, including this AGREEMENT, the making of any STATE or federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment, or modification of any STATE or federal contract, grant, loan, or cooperative contract.

B. If any funds other than federal appropriated funds have been paid, or will be paid, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress or an employee of a member of Congress in connection with this AGREEMENT, grant, local, or cooperative contract, ADMINISTERING AGENCY shall complete and submit Standard Form-LLL, "Disclosure Form to Rep Lobbying," in accordance with the form instructions.

C. This certification is a material representation of fact upon which reliance was placed when this AGREEMENT and each PROGRAM SUPPLEMENT was or will be made or entered into. Submission of this certification is a prerequisite for making or entering into this AGREEMENT imposed by Section 1352, Title 31, United States Code. Any party who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

2. ADMINISTERING AGENCY also agrees by signing this AGREEMENT that the language of this certification will be included in all lower tier sub-agreements which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

ARTICLE VII - MISCELLANEOUS PROVISIONS

1. ADMINISTERING AGENCY agrees to use all state funds reimbursed hereunder only for transportation purposes that are in conformance with Article XIX of the California State Constitution and the relevant Federal Regulations.
2. This AGREEMENT is subject to any additional restrictions, limitations, conditions, or any statute enacted by the State Legislature or adopted by the CTC that may affect the provisions, terms, or funding of this AGREEMENT in any manner.
3. ADMINISTERING AGENCY and the officers and employees of ADMINISTERING AGENCY, when engaged in the performance of this AGREEMENT, shall act in an independent capacity and not as officers, employees or agents of STATE or the federal government.
4. Each project-specific E-76 or E-76 (AMOD), PROGRAM SUPPLEMENT and Finance Letter shall separately establish the terms and funding limits for each described PROJECT funded under the AGREEMENT. No federal or state funds are obligated against this AGREEMENT.
5. ADMINISTERING AGENCY certifies that neither ADMINISTERING AGENCY nor its principals are suspended or debarred at the time of the execution of this AGREEMENT. ADMINISTERING AGENCY agrees that it will notify STATE immediately in the event a suspension or a debarment occurs after the execution of this AGREEMENT.
6. ADMINISTERING AGENCY warrants, by execution of this AGREEMENT, that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ADMINISTERING AGENCY for the purpose of securing business. For breach or violation of this warranty, STATE has the right to annul this AGREEMENT without liability, pay only for the value of the work actually performed, or in STATE's discretion, to deduct from the price of consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
7. In accordance with Public Contract Code section 10296, ADMINISTERING AGENCY hereby certifies under penalty of perjury that no more than one final unappealable finding of contempt of court by a federal court has been issued against ADMINISTERING AGENCY within the immediate preceding two (2) year period because of ADMINISTERING AGENCY's failure to comply with an order of a federal court that orders ADMINISTERING AGENCY to comply with an order of the National Labor Relations Board.
8. ADMINISTERING AGENCY shall disclose any financial, business, or other relationship with STATE, FHWA or Federal Transit Administration (FTA) that may have an impact upon the outcome of this AGREEMENT. ADMINISTERING AGENCY shall also list current contractors who may have a financial interest in the outcome of this AGREEMENT.
9. ADMINISTERING AGENCY hereby certifies that it does not have nor shall it acquire any financial or business interest that would conflict with the performance of PROJECT under this AGREEMENT.

10. ADMINISTERING AGENCY warrants that this AGREEMENT was not obtained or secured through rebates, kickbacks or other unlawful consideration either promised or paid to any STATE employee. For breach or violation of this warranty, STATE shall have the right, in its discretion, to terminate this AGREEMENT without liability, to pay only for the work actually performed, or to deduct from the PROGRAM SUPPLEMENT price or otherwise recover the full amount of such rebate, kickback, or other unlawful consideration.

11. Any dispute concerning a question of fact arising under this AGREEMENT that is not disposed of by agreement shall be decided by the STATE's Contract Officer who may consider any written or verbal evidence submitted by ADMINISTERING AGENCY. The decision of the Contract Officer, issued in writing, shall be conclusive and binding on the PARTIES on all questions of fact considered and determined by the Contract Officer.

12. Neither the pending of a dispute nor its consideration by the Contract Officer will excuse ADMINISTERING AGENCY from full and timely performance in accordance with the terms of this AGREEMENT.

13. Neither ADMINISTERING AGENCY nor any officer or employee thereof is responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by STATE, under or in connection with any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that STATE shall fully defend, indemnify and save harmless the ADMINISTERING AGENCY and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation and other theories or assertions of liability occurring by reason of anything done or omitted to be done by STATE under this AGREEMENT.

14. Neither STATE nor any officer or employee thereof shall be responsible for any injury, damage or liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under, or in connection with, any work, authority or jurisdiction arising under this AGREEMENT. It is understood and agreed that ADMINISTERING AGENCY shall fully defend, indemnify and save harmless STATE and all of its officers and employees from all claims, suits or actions of every name, kind and description brought forth under, including, but not limited to, tortious, contractual, inverse condemnation or other theories or assertions of liability occurring by reason of anything done or omitted to be done by ADMINISTERING AGENCY under this AGREEMENT.

15. STATE reserves the right to terminate funding for any PROJECT upon written notice to ADMINISTERING AGENCY in the event that ADMINISTERING AGENCY fails to proceed with PROJECT work in accordance with the project-specific PROGRAM SUPPLEMENT, the bonding requirements if applicable, or otherwise violates the conditions of this AGREEMENT and/or PROGRAM SUPPLEMENT, or the funding allocation such that substantial performance is significantly endangered.

16. No termination shall become effective if, within thirty (30) days after receipt of a Notice of Termination, ADMINISTERING AGENCY either cures the default involved or, if not reasonably susceptible of cure within said thirty (30) day period, ADMINISTERING AGENCY proceeds thereafter to complete the cure in a manner and time line acceptable to STATE. Any such termination shall be accomplished by delivery to ADMINISTERING AGENCY of a Notice of Termination, which notice shall become effective not less than thirty (30) days after receipt, specifying the reason for the termination, the extent to which funding of work under this AGREEMENT is terminated and the date upon which such termination becomes effective, if beyond thirty (30) days after receipt. During the period before the effective termination date, ADMINISTERING AGENCY and STATE shall meet to attempt to resolve any dispute. In the event of such termination, STATE may proceed with the PROJECT work in a manner deemed proper by STATE. If STATE terminates funding for PROJECT with ADMINISTERING AGENCY, STATE shall pay ADMINISTERING AGENCY the sum due ADMINISTERING AGENCY under the PROGRAM SUPPLEMENT and/or STATE approved finance letter prior to termination, provided, however, ADMINISTERING AGENCY is not in default of the terms and conditions of this AGREEMENT or the project-specific PROGRAM SUPPLEMENT and that the cost of PROJECT completion to STATE shall first be deducted from any sum due ADMINISTERING AGENCY.

17. In case of inconsistency or conflicts with the terms of this AGREEMENT and that of a project-specific PROGRAM SUPPLEMENT, the terms stated in that PROGRAM SUPPLEMENT shall prevail over those in this AGREEMENT.

18. Without the written consent of STATE, this AGREEMENT is not assignable by ADMINISTERING AGENCY either in whole or in part.

19. No alteration or variation of the terms of this AGREEMENT shall be valid unless made in writing and signed by the PARTIES, and no oral understanding or agreement not incorporated herein shall be binding on any of the PARTIES.

IN WITNESS WHEREOF, the PARTIES have executed this AGREEMENT by their duly authorized officers.

STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

By *Petrick Louie*
CALTRANS HQ AREA ENGINEER

for Chief, Office of Project Implementation
Division of Local Assistance

Date *December 16, 2016*

City of Banning

By *MR Rock*
Michael Rock
City Manager
City of Banning
Representative Name & Title
(Authorized Governing Body Representative)

Date *12-6-16*

EXHIBIT A

FAIR EMPLOYMENT PRACTICES ADDENDUM

1. In the performance of this Agreement, ADMINISTERING AGENCY will not discriminate against any employee for employment because of race, color, sex, sexual orientation, religion, ancestry or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. ADMINISTERING AGENCY will take affirmative action to ensure that employees are treated during employment without regard to their race, sex, sexual orientation, color, religion, ancestry, or national origin, physical disability, medical condition, marital status, political affiliation, family and medical care leave, pregnancy leave, or disability leave. Such action shall include, but not be limited to, the following: employment; upgrading; demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. ADMINISTERING AGENCY shall post in conspicuous places, available to employees for employment, notices to be provided by STATE setting forth the provisions of this Fair Employment section.

2. ADMINISTERING AGENCY, its contractor(s) and all subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et seq.), and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12900(a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this AGREEMENT by reference and made a part hereof as if set forth in full. Each of the ADMINISTERING AGENCY'S contractors and all subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreements, as appropriate.

3. ADMINISTERING AGENCY shall include the nondiscrimination and compliance provisions of this clause in all contracts and subcontracts to perform work under this AGREEMENT.

4. ADMINISTERING AGENCY will permit access to the records of employment, employment advertisements, application forms, and other pertinent data and records by STATE, the State Fair Employment and Housing Commission, or any other agency of the State of California designated by STATE, for the purposes of investigation to ascertain compliance with the Fair Employment section of this Agreement.

5. Remedies for Willful Violation:

(a) STATE may determine a willful violation of the Fair Employment provision to have occurred upon receipt of a final judgment to that effect from a court in an action to which ADMINISTERING AGENCY was a party, or upon receipt of a written notice from the Fair Employment and Housing Commission that it has investigated and determined that ADMINISTERING AGENCY has violated the Fair Employment Practices Act and had issued an order under Labor Code Section 1426 which has become final or has obtained an injunction under Labor Code Section 1429.

(b) For willful violation of this Fair Employment Provision, STATE shall have the right to terminate this Agreement either in whole or in part, and any loss or damage sustained by STATE in securing the goods or services thereunder shall be borne and paid for by ADMINISTERING AGENCY and by the surety under the performance bond, if any, and STATE may deduct from any moneys due or thereafter may become due to ADMINISTERING AGENCY, the difference between the price named in the Agreement and the actual cost thereof to STATE to cure ADMINISTERING AGENCY's breach of this Agreement.

EXHIBIT B

NONDISCRIMINATION ASSURANCES

ADMINISTERING AGENCY HEREBY AGREES THAT, as a condition to receiving any federal financial assistance from the STATE, acting for the U.S. Department of Transportation, it will comply with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d-42 U.S.C. 2000d-4 (hereinafter referred to as the ACT), and all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964" (hereinafter referred to as the REGULATIONS), the Federal-aid Highway Act of 1973, and other pertinent directives, to the end that in accordance with the ACT, REGULATIONS, and other pertinent directives, no person in the United States shall, on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which ADMINISTERING AGENCY receives federal financial assistance from the Federal Department of Transportation. ADMINISTERING AGENCY HEREBY GIVES ASSURANCE THAT ADMINISTERING AGENCY will promptly take any measures necessary to effectuate this agreement. This assurance is required by subsection 21.7(a) (1) of the REGULATIONS.

More specifically, and without limiting the above general assurance, ADMINISTERING AGENCY hereby gives the following specific assurances with respect to its federal-aid Program:

1. That ADMINISTERING AGENCY agrees that each "program" and each "facility" as defined in subsections 21.23 (e) and 21.23 (b) of the REGULATIONS, will be (with regard to a "program") conducted, or will be (with regard to a "facility") operated in compliance with all requirements imposed by, or pursuant to, the REGULATIONS.

2. That ADMINISTERING AGENCY shall insert the following notification in all solicitations for bids for work or material subject to the REGULATIONS made in connection with the federal-aid Program and, in adapted form, in all proposals for negotiated agreements:

ADMINISTERING AGENCY hereby notifies all bidders that it will affirmatively insure that in any agreement entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, national origin, religion, age, or disability in consideration for an award.

3. That ADMINISTERING AGENCY shall insert the clauses of Appendix A of this assurance in every agreement subject to the ACT and the REGULATIONS.

4. That the clauses of Appendix B of this Assurance shall be included as a covenant running with the land, in any deed effecting a transfer of real property, structures, or improvements thereon, or interest therein.

5. That where ADMINISTERING AGENCY receives federal financial assistance to construct a facility, or part of a facility, the Assurance shall extend to the entire facility and facilities operated in connection therewith.

6. That where ADMINISTERING AGENCY receives federal financial assistance in the form, or for the acquisition, of real property or an interest in real property, the Assurance shall extend to rights to space on, over, or under such property.

7. That ADMINISTERING AGENCY shall include the appropriate clauses set forth in Appendix C and D of this Assurance, as a covenant running with the land, in any future deeds, leases, permits, licenses, and similar agreements entered into by the ADMINISTERING AGENCY with other parties:

Appendix C;

(a) for the subsequent transfer of real property acquired or improved under the federal-aid Program; and

Appendix D;

(b) for the construction or use of or access to space on, over, or under real property acquired, or improved under the federal-aid Program.

8. That this assurance obligates ADMINISTERING AGENCY for the period during which federal financial assistance is extended to the program, except where the federal financial assistance is to provide, or is in the form of, personal property or real property or interest therein, or structures, or improvements thereon, in which case the assurance obligates ADMINISTERING AGENCY or any transferee for the longer of the following periods:

(a) the period during which the property is used for a purpose for which the federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or

(b) the period during which ADMINISTERING AGENCY retains ownership or possession of the property.

9. That ADMINISTERING AGENCY shall provide for such methods of administration for the program as are found by the U.S. Secretary of Transportation, or the official to whom he delegates specific authority, to give reasonable guarantee that ADMINISTERING AGENCY, other recipients, sub-grantees, applicants, sub-applicants, transferees, successors in interest, and other participants of federal financial assistance under such program will comply with all requirements imposed by, or pursuant to, the ACT, the REGULATIONS, this Assurance and the Agreement.

10. That ADMINISTERING AGENCY agrees that the United States and the State of California have a right to seek judicial enforcement with regard to any matter arising under the ACT, the REGULATIONS, and this Assurance.

11. ADMINISTERING AGENCY shall not discriminate on the basis of race, religion, age, disability, color, national origin or sex in the award and performance of any STATE assisted contract or in the administration on its DBE Program or the requirements of 49 CFR Part 26. ADMINISTERING AGENCY shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of STATE assisted contracts. ADMINISTERING AGENCY'S DBE Implementation Agreement is incorporated by reference in this AGREEMENT. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved DBE Implementation Agreement, STATE may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1985 (31USC 3801 et seq.)

THESE ASSURANCES are given in consideration of and for the purpose of obtaining any and all federal grants, loans, agreements, property, discounts or other federal financial assistance extended after the date hereof to ADMINISTERING AGENCY by STATE, acting for the U.S. Department of Transportation, and is binding on ADMINISTERING AGENCY, other recipients, subgrantees, applicants, sub-applicants, transferees, successors in interest and other participants in the federal-aid Highway Program.

APPENDIX A TO EXHIBIT B

During the performance of this Agreement, ADMINISTERING AGENCY, for itself, its assignees and successors in interest (hereinafter collectively referred to as ADMINISTERING AGENCY) agrees as follows:

(1) Compliance with Regulations: ADMINISTERING AGENCY shall comply with the regulations relative to nondiscrimination in federally assisted programs of the Department of Transportation, Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time, (hereinafter referred to as the REGULATIONS), which are herein incorporated by reference and made a part of this agreement.

(2) Nondiscrimination: ADMINISTERING AGENCY, with regard to the work performed by it during the AGREEMENT, shall not discriminate on the grounds of race, color, sex, national origin, religion, age, or disability in the selection and retention of sub-applicants, including procurements of materials and leases of equipment. ADMINISTERING AGENCY shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the REGULATIONS, including employment practices when the agreement covers a program set forth in Appendix B of the REGULATIONS.

(3) Solicitations for Sub-agreements, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by ADMINISTERING AGENCY for work to be performed under a Sub-agreement, including procurements of materials or leases of equipment, each potential sub-applicant or supplier shall be notified by ADMINISTERING AGENCY of the ADMINISTERING AGENCY's obligations under this Agreement and the REGULATIONS relative to nondiscrimination on the grounds of race, color, or national origin.

(4) Information and Reports: ADMINISTERING AGENCY shall provide all information and reports required by the REGULATIONS, or directives issued pursuant thereto, and shall permit access to ADMINISTERING AGENCY's books, records, accounts, other sources of information, and its facilities as may be determined by STATE or FHWA to be pertinent to ascertain compliance with such REGULATIONS or directives. Where any information required of ADMINISTERING AGENCY is in the exclusive possession of another who fails or refuses to furnish this information, ADMINISTERING AGENCY shall so certify to STATE or the FHWA as appropriate, and shall set forth what efforts ADMINISTERING AGENCY has made to obtain the information.

(5) Sanctions for Noncompliance: In the event of ADMINISTERING AGENCY's noncompliance with the nondiscrimination provisions of this agreement, STATE shall impose such agreement sanctions as it or the FHWA may determine to be appropriate, including, but not limited to:

(a) withholding of payments to ADMINISTERING AGENCY under the Agreement within a reasonable period of time, not to exceed 90 days; and/or

(b) cancellation, termination or suspension of the Agreement, in whole or in part.

(6) Incorporation of Provisions: ADMINISTERING AGENCY shall include the provisions of paragraphs (1) through (6) in every sub-agreement, including procurements of materials and leases of equipment, unless exempt by the REGULATIONS, or directives issued pursuant thereto. ADMINISTERING AGENCY shall take such action with respect to any sub-agreement or procurement as STATE or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance, provided, however, that, in the event ADMINISTERING AGENCY becomes involved in, or is threatened with, litigation with a sub-applicant or supplier as a result of such direction, ADMINISTERING AGENCY may request STATE enter into such litigation to protect the interests of STATE, and, in addition, ADMINISTERING AGENCY may request the United States to enter into such litigation to protect the interests of the United States.

The following clauses shall be included in any and all deeds effecting or recording the transfer of PROJECT real property, structures or improvements thereon, or interest therein from the United States.

(GRANTING CLAUSE)

NOW, THEREFORE, the U.S. Department of Transportation, as authorized by law, and upon the condition that ADMINISTERING AGENCY will accept title to the lands and maintain the project constructed thereon, in accordance with Title 23, United States Code, the Regulations for the Administration of federal-aid for Highways and the policies and procedures prescribed by the Federal Highway Administration of the Department of Transportation and, also in accordance with and in compliance with the Regulations pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the ADMINISTERING AGENCY all the right, title, and interest of the U.S. Department of Transportation in, and to, said lands described in Exhibit "A" attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto ADMINISTERING AGENCY and its successors forever, subject, however, to the covenant, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and shall be binding on ADMINISTERING AGENCY, its successors and assigns.

ADMINISTERING AGENCY, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns,

(1) that no person shall on the grounds of race, color, sex, national origin, religion, age or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed (;) (and) *

(2) that ADMINISTERING AGENCY shall use the lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended (;) and

(3) that in the event of breach of any of the above-mentioned nondiscrimination conditions, the U.S. Department of Transportation shall have a right to re-enter said lands and facilities on said land, and the above-described land and facilities shall thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this deed.*

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX C TO EXHIBIT B

The following clauses shall be included in any and all deeds, licenses, leases, permits, or similar instruments entered into by ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7(a) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add "as covenant running with the land") that in the event facilities are constructed, maintained, or otherwise operated on the said property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation program or activity is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.), shall maintain and operate such facilities and services in compliance with all other requirements imposed pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of Secretary, Part 21, Nondiscrimination in federally-assisted programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

APPENDIX D TO EXHIBIT B

The following shall be included in all deeds, licenses, leases, permits, or similar agreements entered into by the ADMINISTERING AGENCY, pursuant to the provisions of Assurance 7 (b) of Exhibit B.

The grantee (licensee, lessee, permittee, etc., as appropriate) for himself, his personal representatives, successors in interest and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds, and leases add "as a covenant running with the land") that:

(1) no person on the ground of race, color, sex, national origin, religion, age or disability, shall be excluded from participation in, denied the benefits of, or otherwise subjected to discrimination in the use of said facilities;

(2) that in the construction of any improvements on, over, or under such land and the furnishing of services thereon, no person on the ground of race, color, sex, national origin, religion, age or disability shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination; and

(3) that the (grantee, licensee, lessee, permittee, etc.,) shall use the premises in compliance with the Regulations.

(Include in licenses, leases, permits, etc.)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to terminate the (license, lease, permit, etc.) and to re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, lease, permit, etc.) had never been made or issued.

(Include in deeds)*

That in the event of breach of any of the above nondiscrimination covenants, ADMINISTERING AGENCY shall have the right to re-enter said land and facilities thereon, and the above-described lands and facilities shall thereupon revert to and vest in and become the absolute property of ADMINISTERING AGENCY, and its assigns.

* Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to effectuate the purposes of Title VI of the Civil Rights Act of 1964.

ATTACHMENT 3

Program Supplemental
Agreement No. 005-F

DEPARTMENT OF TRANSPORTATION

Division of Local Assistance
1120 N STREET
P.O. BOX 942874, MS# 1
Sacramento, CA 94274-0001
TTY 711



October 9, 2018

File : 08-RIV-0-BAN
STPL-5214(011)
Ramsey Street from Hargrave
Street to west of Hathaway Street

Mr. Arturo Vela
Public Works Director/City Engineer
City of Banning
99 East Ramsey Street, P.O. Box 998
Banning, CA 92220-0998

Dear Mr. Vela:

Enclosed are two originals of the Program Supplement Agreement No. 005-F to Administering Agency-State Agreement No. 08-5214F15 and an approved Finance Letter for the subject project. Please retain the signed Finance Letter for your records.

Please note that federal funding will be lost if you proceed with future phase(s) of the project prior to getting the "Authorization to Proceed" with that phase.

Please review the covenants and sign both copies of this Agreement and return both to this office, Office of Project Implementation - MS1 within 90 days from the receipt of this letter. If the signed Agreements are not received back in this office within 90 days, funds will be disencumbered and/or deobligated. Alterations should not be made to the agreement language or funding. **ATTACH YOUR LOCAL AGENCY'S CERTIFIED AUTHORIZING RESOLUTION THAT CLEARLY IDENTIFIES THE OFFICIAL AUTHORIZED TO EXECUTE THE AGREEMENT ON THE AGENCY'S BEHALF.** A fully executed copy of the agreement will be returned to you upon ratification by Caltrans. No invoices for reimbursement can be processed until the agreement is fully executed.

The State budget authority supporting the encumbered funds is only available for liquidation up to specific deadlines. These deadlines are shown on the attached Finance letter as the "Reversion Date". Please ensure that your invoices are submitted at least 60 days prior to the reversion date to avoid any lapse of funds. If your agency is unable to seek reimbursement by this date you may request an extension through a Cooperative Work Agreement (CWA). A CWA is subject to the final approval of the State Department of Finance. If approved, the CWA may extend the deadline for up to two years.

Your prompt action is requested. If you have questions, please contact your District Local Assistance Engineer.

Sincerely,

Patricia L. Hoole
for JOHN HOOLE, Chief
Office of Project Implementation - South
Division of Local Assistance

Enclosure

c: DLA AE Project Files
(08) DLAE - David Lee

DEPARTMENT OF TRANSPORTATION
DIVISION OF ACCOUNTING
LOCAL PROGRAM ACCOUNTING BRANCH

FINANCE LETTER

Date: 10/04/2018
D. CO. RT: 08-RIV-0-BAN
Project No: STPL-5214(011)
Adv Project Id: 0815000176
Agreement End Date: 09/30/2020

EA No:

Attention: City of Banning

FINANCE ITEMS	PRO RATA OR LUMP SUM	TOTAL COST OF WORK	FEDERAL PART. COST	FED. REIMB %	FEDERAL FUNDS M23E	LOCAL FUNDS	OTHER FUNDS
Contract Items: \$319,100							
Contingencies: \$31,910							
Total: \$351,010							
Construction							
	Lump Sum	\$351,010.00	\$351,010.00	51.82%	\$181,893.00	\$169,117.00	\$0.00
Totals:		\$351,010.00	\$351,010.00	0.00%	\$181,893.00	\$169,117.00	\$0.00

Participation Ratio: 100.00%

This Finance Letter was created based on specific financial information provided by the responsible local agency. The following encumbrance history is prepared by Local Assistance Accounting Office and is provided here for local agency's information and action.

Signature:

Patrick Louie

Title: HQ Local Assistance Area Engineer

For questions regarding finance letter, contact:

Printed Name : Patrick Louie

Telephone No: (916) 653-7349

Remarks: SCAG FTIP ID RIV130401. Based on agency's finance letter dated 8/09/18 for construction. Reimbursement ratio = 51.8%.

ACCOUNTING INFORMATION							STPL-5214(011)		Cooperative Work Agreement	
ADV. PROJECT ID	APPROP. UNIT	STATE PROG.	FED/STATE	ENCUMBRANCE AMOUNT	APPROP YEAR	EXPENDITURE AMOUNT	ENCUMBRANCE BALANCE	REVERSION DATE	APPROVED AMOUNT	EXPIRATION DATE
0815000176	18102F	2030010810	F	\$181,893.00	1718	\$0.00	\$181,893.00	06/30/23		

PROGRAM SUPPLEMENT NO. F005
to
**ADMINISTERING AGENCY-STATE AGREEMENT
FOR FEDERAL-AID PROJECTS NO 08-5214F15**

Adv Project ID 0815000176 **Date:** September 28, 2018
Location: 08-RIV-0-BAN
Project Number: STPL-5214(011)
E.A. Number:
Locode: 5214

This Program Supplement hereby adopts and incorporates the Administering Agency-State Agreement for Federal Aid which was entered into between the Administering Agency and the State on 12/16/16 and is subject to all the terms and conditions thereof. This Program Supplement is executed in accordance with Article I of the aforementioned Master Agreement under authority of Resolution No. _____ approved by the Administering Agency on _____
(See copy attached).

The Administering Agency further stipulates that as a condition to the payment by the State of any funds derived from sources noted below obligated to this PROJECT, the Administering Agency accepts and will comply with the special covenants or remarks set forth on the following pages.

PROJECT LOCATION:

Ramsey Street from Hargrave Street to west of Hathaway Street

TYPE OF WORK: Road rehabilitation

LENGTH: 0.5(MILES)

Estimated Cost	Federal Funds		Matching Funds	
	M23E	\$181,893.00	LOCAL	OTHER
\$351,010.00			\$169,117.00	\$0.00

CITY OF BANNING

STATE OF CALIFORNIA
Department of Transportation

By _____

By _____

Title _____

**Chief, Office of Project Implementation
Division of Local Assistance**

Date _____

Attest _____

Date _____

I hereby certify upon my personal knowledge that budgeted funds are available for this encumbrance:

Accounting Officer _____

Date 9/28/18 \$181.893.00

Chapter	Statutes	Item	Year	Program	BC	Category	Fund Source	AMOUNT

SPECIAL COVENANTS OR REMARKS

1.
 - A. The ADMINISTERING AGENCY will advertise, award and administer this project in accordance with the current published Local Assistance Procedures Manual.
 - B. ADMINISTERING AGENCY agrees that it will only proceed with work authorized for specific phase(s) with an "Authorization to Proceed" and will not proceed with future phase(s) of this project prior to receiving an "Authorization to Proceed" from the STATE for that phase(s) unless no further State or Federal funds are needed for those future phase(s).
 - C. STATE and ADMINISTERING AGENCY agree that any additional funds which might be made available by future Federal obligations will be encumbered on this PROJECT by use of a STATE-approved "Authorization to Proceed" and Finance Letter. ADMINISTERING AGENCY agrees that Federal funds available for reimbursement will be limited to the amounts obligated by the Federal Highway Administration.
 - D. Award information shall be submitted by the ADMINISTERING AGENCY to the District Local Assistance Engineer within 60 days of project contract award and prior to the submittal of the ADMINISTERING AGENCY'S first invoice for the construction contract.

Failure to do so will cause a delay in the State processing invoices for the construction phase. Attention is directed to Section 15.7 "Award Package" of the Local Assistance Procedures Manual.
 - E. ADMINISTERING AGENCY agrees, as a minimum, to submit invoices at least once every six months commencing after the funds are encumbered for each phase by the execution of this Project Program Supplement Agreement, or by STATE's approval of an applicable Finance Letter. STATE reserves the right to suspend future authorizations/obligations for Federal aid projects, or encumbrances for State funded projects, as well as to suspend invoice payments for any on-going or future project by ADMINISTERING AGENCY if PROJECT costs have not been invoiced by ADMINISTERING AGENCY for a six-month period.

If no costs have been invoiced for a six-month period, ADMINISTERING AGENCY agrees to submit for each phase a written explanation of the absence of PROJECT activity along with target billing date and target billing amount.

ADMINISTERING AGENCY agrees to submit the final report documents that collectively constitute a "Report of Expenditures" within one hundred eighty (180) days of PROJECT completion. Failure of ADMINISTERING AGENCY to submit a "Final Report of Expenditures" within 180 days of PROJECT completion will result in STATE imposing sanctions upon ADMINISTERING AGENCY in accordance with the current Local Assistance Procedures Manual.
 - F. Administering Agency shall not discriminate on the basis of race, religion, age, disability, color, national origin, or sex in the award and performance of any Federal-

SPECIAL COVENANTS OR REMARKS

assisted contract or in the administration of its DBE Program Implementation Agreement. The Administering Agency shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of Federal-assisted contracts. The Administering Agency's DBE Implementation Agreement is incorporated by reference in this Agreement. Implementation of the DBE Implementation Agreement, including but not limited to timely reporting of DBE commitments and utilization, is a legal obligation and failure to carry out its terms shall be treated as a violation of this Agreement. Upon notification to the Administering Agency of its failure to carry out its DBE Implementation Agreement, the State may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

G. Any State and Federal funds that may have been encumbered for this project are available for disbursement for limited periods of time. For each fund encumbrance the limited period is from the start of the fiscal year that the specific fund was appropriated within the State Budget Act to the applicable fund Reversion Date shown on the State approved project finance letter. Per Government Code Section 16304, all project funds not liquidated within these periods will revert unless an executed Cooperative Work Agreement extending these dates is requested by the ADMINISTERING AGENCY and approved by the California Department of Finance.

ADMINISTERING AGENCY should ensure that invoices are submitted to the District Local Assistance Engineer at least 75 days prior to the applicable fund Reversion Date to avoid the lapse of applicable funds. Pursuant to a directive from the State Controller's Office and the Department of Finance, in order for payment to be made, the last date the District Local Assistance Engineer can forward an invoice for payment to the Department's Local Programs Accounting Office for reimbursable work for funds that are going to revert at the end of a particular fiscal year is May 15th of the particular fiscal year. Notwithstanding the unliquidated sums of project specific State and Federal funding remaining and available to fund project work, any invoice for reimbursement involving applicable funds that is not received by the Department's Local Programs Accounting Office at least 45 days prior to the applicable fixed fund Reversion Date will not be paid. These unexpended funds will be irrevocably reverted by the Department's Division of Accounting on the applicable fund Reversion Date.

H. As a condition for receiving federal-aid highway funds for the PROJECT, the Administering Agency certifies that NO members of the elected board, council, or other key decision makers are on the Federal Government Exclusion List. Exclusions can be found at www.sam.gov.

2. A. ADMINISTERING AGENCY shall conform to all State statutes, regulations and procedures (including those set forth in the Local Assistance Procedures Manual and the Local Assistance Program Guidelines, hereafter collectively referred to as "LOCAL ASSISTANCE PROCEDURES") relating to the federal-aid program, all Title 23 Code of

SPECIAL COVENANTS OR REMARKS

Federal Regulation (CFR) and 2 CFR Part 200 federal requirements, and all applicable federal laws, regulations, and policy and procedural or instructional memoranda, unless otherwise specifically waived as designated in the executed project-specific PROGRAM SUPPLEMENT.

B. Invoices shall be submitted on ADMINISTERING AGENCY letterhead that includes the address of ADMINISTERING AGENCY and shall be formatted in accordance with LOCAL ASSISTANCE PROCEDURES.

C. ADMINISTERING AGENCY must have at least one copy of supporting backup documentation for costs incurred and claimed for reimbursement by ADMINISTERING AGENCY. ADMINISTERING AGENCY agrees to submit supporting backup documentation with invoices if requested by State. Acceptable backup documentation includes, but is not limited to, agency's progress payment to the contractors, copies of cancelled checks showing amounts made payable to vendors and contractors, and/or a computerized summary of PROJECT costs.

D. Indirect Cost Allocation Plan/Indirect Cost Rate Proposals (ICAP/ICRP), Central Service Cost Allocation Plans and related documentation are to be prepared and provided to STATE (Caltrans Audits & Investigations) for review and approval prior to ADMINISTERING AGENCY seeking reimbursement of indirect costs incurred within each fiscal year being claimed for State and federal reimbursement. ICAPs/ICRPs must be prepared in accordance with the requirements set forth in 2 CFR, Part 200, Chapter 5 of the Local Assistance Procedural Manual, and the ICAP/ICRP approval procedures established by STATE.

E. STATE will withhold the greater of either two (2) percent of the total of all federal funds encumbered for each PROGRAM SUPPLEMENT or \$40,000 until ADMINISTERING AGENCY submits the Final Report of Expenditures for each completed PROGRAM SUPPLEMENT PROJECT.

F. Payments to ADMINISTERING AGENCY for PROJECT-related travel and subsistence (per diem) expenses of ADMINISTERING AGENCY forces and its contractors and subcontractors claimed for reimbursement or as local match credit shall not exceed rates authorized to be paid rank and file STATE employees under current State Department of Personnel Administration (DPA) rules. If the rates invoiced by ADMINISTERING AGENCY are in excess of DPA rates, ADMINISTERING AGENCY is responsible for the cost difference, and any overpayments inadvertently paid by STATE shall be reimbursed to STATE by ADMINISTERING AGENCY on demand within thirty (30) days of such invoice.

G. ADMINISTERING AGENCY agrees to comply with 2 CFR, Part 200, Uniform Administrative Requirements, Cost Principles and Audit Requirement for Federal Awards.

H. ADMINISTERING AGENCY agrees, and will assure that its contractors and subcontractors will be obligated to agree, that Contract Cost Principles and Procedures,

SPECIAL COVENANTS OR REMARKS

48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31, et seq., shall be used to determine the allowability of individual PROJECT cost items.

I. Every sub-recipient receiving PROJECT funds under this AGREEMENT shall comply with 2 CFR, Part 200, 23 CFR, 48 CFR Chapter 1, Part 31, Local Assistance Procedures, Public Contract Code (PCC) 10300-10334 (procurement of goods), PCC 10335-10381 (non-A&E services), and other applicable STATE and FEDERAL regulations.

J. Any PROJECT costs for which ADMINISTERING AGENCY has received payment or credit that are determined by subsequent audit to be unallowable under 2 CFR, Part 200, 23 CFR, 48 CFR, Chapter 1, Part 31, and other applicable STATE and FEDERAL regulations, are subject to repayment by ADMINISTERING AGENCY to STATE.

K. STATE reserves the right to conduct technical and financial audits of PROJECT WORK and records and ADMINISTERING AGENCY agrees, and shall require its contractors and subcontractors to agree, to cooperate with STATE by making all appropriate and relevant PROJECT records available for audit and copying as required by the following paragraph:

ADMINISTERING AGENCY, ADMINISTERING AGENCY'S contractors and subcontractors, and STATE shall each maintain and make available for inspection and audit by STATE, the California State Auditor, or any duly authorized representative of STATE or the United States all books, documents, papers, accounting records, and other evidence pertaining to the performance of such contracts, including, but not limited to, the costs of administering those various contracts and ADMINISTERING AGENCY shall furnish copies thereof if requested. All of the above referenced parties shall make such AGREEMENT, PROGRAM SUPPLEMENT, and contract materials available at their respective offices at all reasonable times during the entire PROJECT period and for three (3) years from the date of submission of the final expenditure report by the STATE to the FHWA.

L. ADMINISTERING AGENCY, its contractors and subcontractors shall establish and maintain a financial management system and records that properly accumulate and segregate reasonable, allowable, and allocable incurred PROJECT costs and matching funds by line item for the PROJECT. The financial management system of ADMINISTERING AGENCY, its contractors and all subcontractors shall conform to Generally Accepted Accounting Principles, enable the determination of incurred costs at interim points of completion, and provide support for reimbursement payment vouchers or invoices set to or paid by STATE.

M. ADMINISTERING AGENCY is required to have an audit in accordance with the Single Audit Act of 2 CFR 200 if it expends \$750,000 or more in Federal Funds in a single fiscal year of the Catalogue of Federal Domestic Assistance.

N. ADMINISTERING AGENCY agrees to include all PROGRAM SUPPLEMENTS adopting the terms of this AGREEMENT in the schedule of projects to be examined in

SPECIAL COVENANTS OR REMARKS

ADMINISTERING AGENCY's annual audit and in the schedule of projects to be examined under its single audit prepared in accordance with 2 CFR, Part 200.

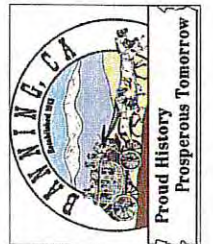
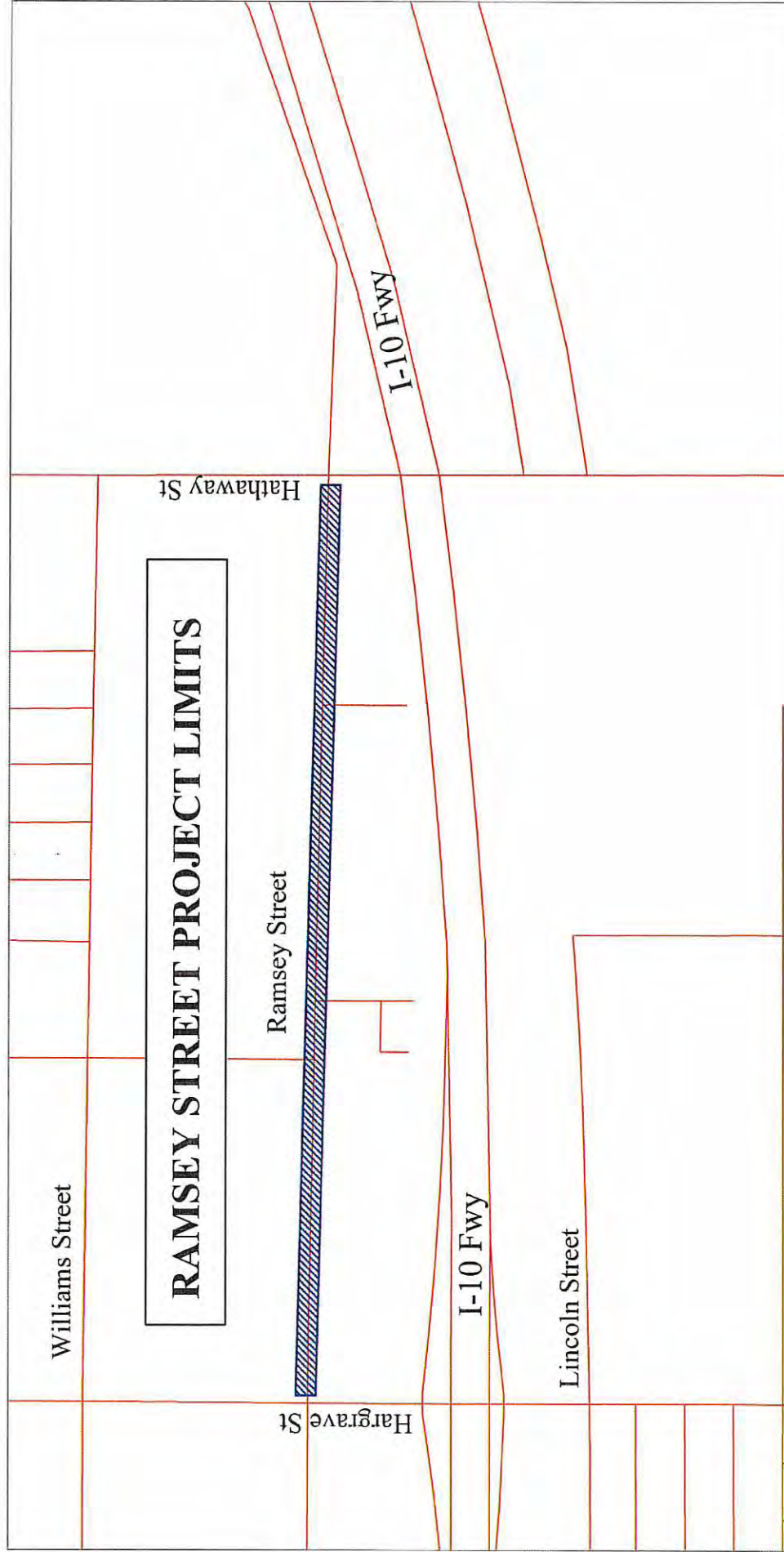
O. ADMINISTERING AGENCY shall not award a non-A&E contract over \$5,000, construction contracts over \$10,000, or other contracts over \$25,000 [excluding professional service contracts of the type which are required to be procured in accordance with Government Code sections 4525 (d), (e) and (f)] on the basis of a noncompetitive negotiation for work to be performed under this AGREEMENT without the prior written approval of STATE. Contracts awarded by ADMINISTERING AGENCY, if intended as local match credit, must meet the requirements set forth in this AGREEMENT regarding local match funds.

P. Any subcontract entered into by ADMINISTERING AGENCY as a result of this AGREEMENT shall contain provisions B, C, F, H, I, K, and L under Section 2 of this agreement.

ATTACHMENT 4

Project Location Map

PROJECT NO. 2014-06, "RAMSEY STREET PAVEMENT REHABILITATION HARGRAVE STREET TO WEST OF HATHAWAY STREET



Project Scope:
Grind entire width, crack seal, 1 1/2" to 2 1/2" A.C. overlay, reconstruct existing h/c ramp at N/W corner of Phillips Street and Ramsey Street, striping, signage, and adjust utility covers.



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Vincent Avila, Interim Police Chief
Debbie Shubin, Code Enforcement Officer

MEETING DATE: February 12, 2019

SUBJECT: Application for Authorization to Access State and Federal Level Summary Criminal History Information for Employment including Volunteers and Contractors, and for Licensing or Certification Purposes for Cannabis Regulatory Permits.

RECOMMENDED ACTION:

Approval for application for authorization to access state and federal level summary criminal history information for employment including volunteers and contractors, and for licensing or certification purposes for Cannabis Regulatory Permits through live scan fingerprint submittal.

BACKGROUND:

The Cannabis regulatory permit application process requires the applicant(s) to provide both State (DOJ) and Federal (FBI) Criminal History Information when submitting the application to the City of Banning for approval. Currently the Banning Police Department can only request DOJ information from a live scan fingerprint submittal for volunteers and contractors, and licensing or certification purposes. The FBI requires an updated resolution be submitted for approval to receive FBI information for volunteers and contractors and for licensing or certification purposes through a live scan fingerprint submittal.

JUSTIFICATION:

Approval will allow the Banning Police Department to submit a request to the FBI, through DOJ, to receive Federal Criminal History Information in the category of volunteers and

contractors and for licensing or certification purposes when conducting live scan fingerprints for cannabis permit applications.

FISCAL IMPACT:

Will allow the City to approve retail cannabis applications which will increase tax revenue for the City.

OPTIONS:

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

ATTACHMENTS:

1. Resolution No. 2019-20

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution No. 2019-20

CITY OF BANNING

RESOLUTION NO. 2019-20

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING AN APPLICATION FOR AUTHORIZATION TO ACCESS STATE AND FEDERAL LEVEL SUMMARY CRIMINAL HISTORY INFORMATION FOR THE CATEGORY "EMPLOYMENT INCLUDING VOLUNTEERS AND CONTRACTORS, AND FOR LICENSING OR CERTIFICATION PURPOSES"

WHEREAS, Penal Code Section 11105(b) (11) and 13300(b) (11) authorize cities, counties, districts and joint powers authorities to access state and local summary criminal history information for employment, licensing or certification purposes; and

WHEREAS, Penal Code Section 11105(b) (11) authorizes cities, counties, districts and joint powers authorities to access federal level criminal history information by transmitting fingerprint images and related information to the Department of Justice to be transmitted to the Federal Bureau of Investigation; and

WHEREAS, Penal Code Section 11105(b) (11) and 13300(b) (11) require that there be a requirement of exclusion from employment, licensing, or certification based on specific criminal conduct on the part of the subject of the record; and

WHEREAS, Penal code Section 11105(b) (11) and 13300(b) (11) require the City Council, Board of Supervisors, governing body of a city, county or district or joint powers authority to specifically authorize access to summary criminal history information for employment, licensing, or certification purposes.

NOW THEREFORE, BE IT RESOLVED, that the City of Banning is hereby authorized to access state and federal level summary criminal history information for employment including volunteers and contractors, contract employees, licensing, and certification purposes and/or for issuance of cannabis regulatory permits, and may not disseminate the information to a private entity.

This Resolution shall become effective immediately upon adoption.

PASSED, APPROVED AND ADOPTED this 12th day of February 2019.

Arthur L. Welch, Mayor

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-20, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works/City Engineer

MEETING DATE: February 12, 2019

SUBJECT: Resolution 2019-19 Approving and Accepting the Right-of-Way Dedication from APN 541-181-032 and APN 541-181-033 along Livingston Street for Road Purposes

RECOMMENDATION:

Approve Resolution 2019-19:

1. Authorizing the City Manager to execute the Right-of-Way Dedication for Road Purposes for the City owned parcels identified as APN 541-181-032 and APN 541-181-033 along Livingston Street.
2. Accepting the Right-of-Way Dedication for Road Purposes from APN 541-181-032 and APN 541-181-033 and direct the City Clerk to sign the certificate of acceptance and to have said dedication recorded with the Office of the County Recorder.

JUSTIFICATION:

The acceptance of the Right-of-Way Dedication is required in order to re-establish a publicly owned right-of-way for Livingston Street, an existing improved street from San Gorgonio Avenue to Martin Street.

BACKGROUND:

The City of Banning ("City") acquired several properties along Ramsey Street between San Gorgonio Avenue and Martin Street for the purpose of developing them. During negotiations with the developers of the Village at Paseo San Gorgonio (VPSG) it was requested that the City vacate the right-of-way along Livingston Street from San Gorgonio Avenue to Martin Street along with Alessandro Road from Ramsey Street to

Livingston Street and an existing alley within the project limits. The City agreed and subsequently vacated the right-of-way. The parcels, while under ownership of the VPSG developers, were reconfigured by the recordation of Parcel Map (PM) 36285 included herein as Exhibit "A". Unfortunately, the VPSG project did not come to fruition and the properties within PM 36285 reverted back to the City.

City Council has directed staff to reestablish the right-of-way for Livingston Street previously vacated as part of the VPSG project.

FISCAL IMPACT:

Not applicable.

ALTERNATIVE

Reject Resolution 2019-19 and provide alternate direction to staff

ATTACHMENTS:

1. Resolution 2019-19
2. Legal and Plat
3. Exhibit "A" Parcel Map 36285

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-19

RESOLUTION 2019-19**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AND ACCEPTING THE RIGHT-OF-WAY DEDICATIONS FROM APN 541-181-032 AND APN 541-181-033 ALONG LIVINGSTON STREET FOR ROAD PURPOSES**

WHEREAS, the City of Banning had previously vacated the existing right-of-way along Livingston Street between San Gorgonio Avenue and Martin Street; and

WHEREAS, the City of Banning desires to re-establish the right-of-way along Livingston Street between San Gorgonio Avenue and Martin Street for the benefit of the public.

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

SECTION 1. The Banning City Council adopts Resolution 2019-19, authorizing the City Manager to execute the Offer of Dedication for Road Purposes for the City owned parcels identified as APN 541-181-032 and APN 541-181-033 along Livingston Street.

SECTION 2. The Banning City Council accepts the Offer of Dedication for Road Purposes from APN 541-181-032 and APN 541-181-033 and directs the City Clerk to sign the certificate of acceptance and to have said dedication recorded with the Office of the County Recorder.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-02 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Right of Way Dedication

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

RIGHT-OF-WAY DEDICATION – ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcels of land, do hereby make an irrevocable Right of Way Dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns for public road, street and highway 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.

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 _____ day of _____, 20____.

Individual/Corporation (Type Name)

Individual/Corporation (Type Name)

Signature

Signature

Name and Title (Type)

Name and Title (Type)

See acknowledgements attached to this document.

ACCEPTANCE CERTIFICATE

The City of Banning hereby accepts the Right of Way 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

Arthur L. Welch
Mayor

ATTEST:

Daryl Betancur
Deputy City Clerk

APPROVED AS TO FORM:

Kevin G. Ennis
Richards, Watson and Gershon

EXHIBIT "A"
LIVINGSTON STREET
ROAD REDEDICATION
LEGAL DESCRIPTION

That portion of Livingston Street (variable width) vacated by Resolution No. 2014-10 recorded December 9, 2014 as Document No. 2014-0470135 in the City of Banning, of Amended Map of Banning Land Company on file in Book 9, Page 44 of Maps, Records of Riverside County, California, described as follows:

COMMENCING at the intersection of the centerline of San Gorgonio Avenue (30.00 feet in easterly half width) with the centerline of said Livingston Street as shown on Parcel Map No. 36285 on file in Book 238, Pages 24 and 25 of Parcel Maps, Records of said Riverside County, California;

THENCE South $89^{\circ}46'41''$ East along said centerline of Livingston Street, a distance of 30.00 feet to the **TRUE POINT OF BEGINNING**;

THENCE continuing South $89^{\circ}46'41''$ East along said centerline of Livingston Street, a distance of 29.01 feet to a point thereon;

THENCE leaving said centerline North $00^{\circ}07'01''$ East, a distance of 30.00 feet to a point on the northerly right of way line of said Livingston Street as shown on said Amended Map of Banning Land Company;

THENCE South $89^{\circ}46'41''$ East along said northerly right of way line, a distance of 283.16 feet to an angle point thereon;

THENCE South $89^{\circ}45'32''$ East continuing along said northerly right of way line, a distance of 309.93 feet to an angle point thereon;

THENCE South $89^{\circ}46'12''$ East continuing along said northerly right of way line, a distance of 269.95 feet to the westerly right of way line of Martin Street (30.00 feet in westerly half width);

THENCE South $00^{\circ}07'55''$ West along said westerly right of way line, a distance of 46.98 feet to a point on the northerly right of way line of Interstate 10 (Route 10) as shown on State of California, Department of Transportation Right of Way Map Numbers 421533 and 421534;


THENCE North $89^{\circ}46'39''$ West along said northerly right of way line and the westerly prolongation thereof, a distance of 892.03 feet;

THENCE North 00°06'51" East, a distance of 17.12 feet to the **TRUE POINT OF BEGINNING**.

Containing 0.94 Acres, more or less.

SEE PLAT ATTACHED HERETO AS EXHIBIT "B" AND MADE A PART HEREOF.

PREPARED UNDER MY SUPERVISION



Michael E. Johnson, L.S.7673

1/23/18

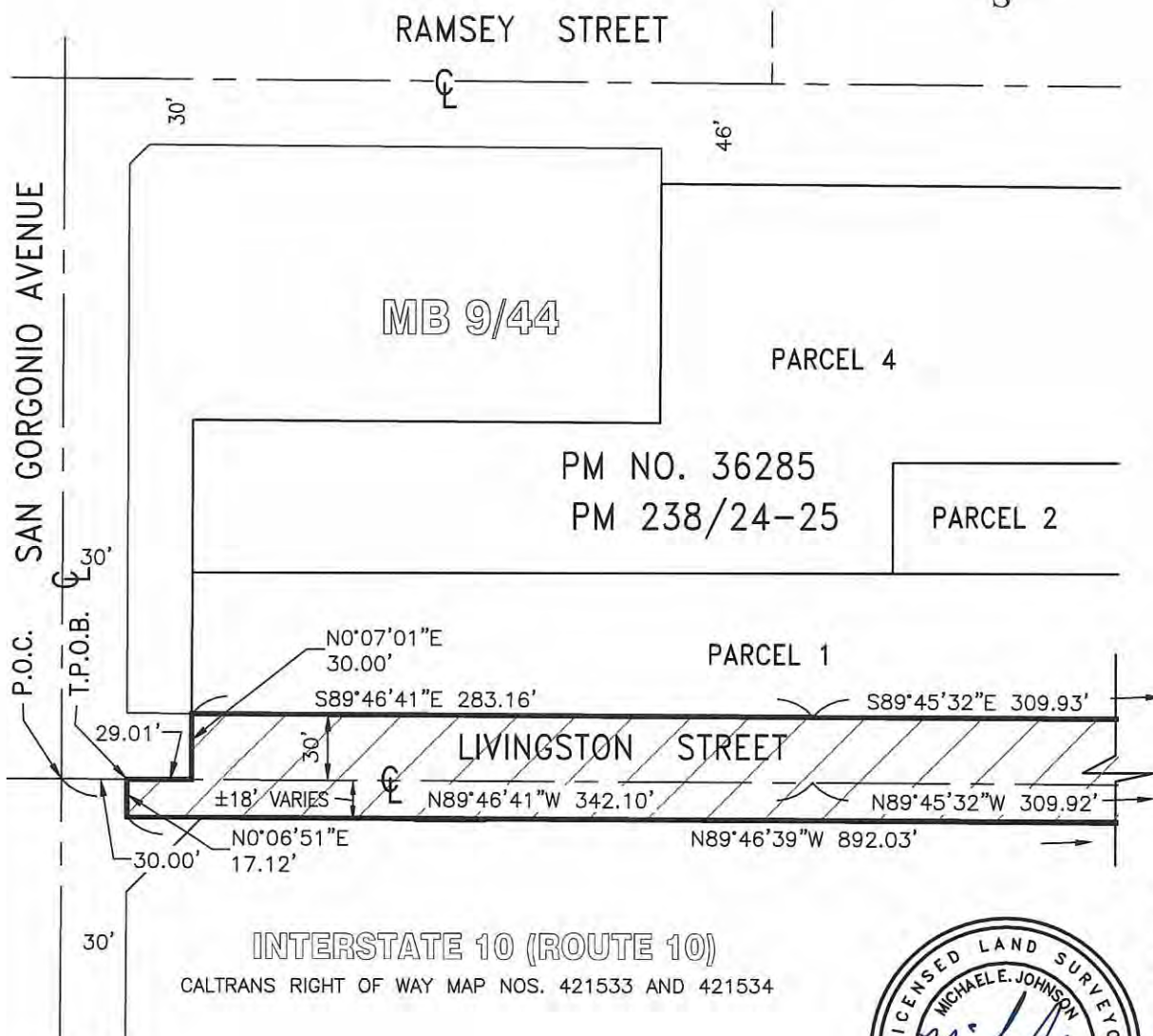
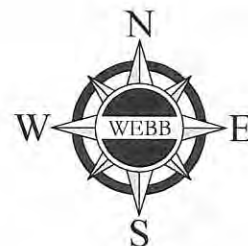
Date



Prepared by: LB
Checked by: rhj

EXHIBIT "B"

ROAD REDEDICATION



SEE SHEET 2

1-23-19

ALBERT A.
WEBB
ASSOCIATES

CITY OF BANNING

G:\2018\18-0271\Drawings\Mapping\Legals & Plats\18-0271 St dedication.dwg

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) IN THE ATTACHED DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DOCUMENT.

SHEET 1 OF 2

W.O.
18-0271

SCALE: 1"=80'

DRWN BY LR
CHKD BY mfj

DATE 1-23-19
DATE 1-23-19

SUBJECT: ROAD REDEDICATION

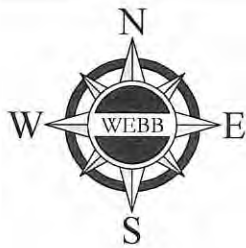
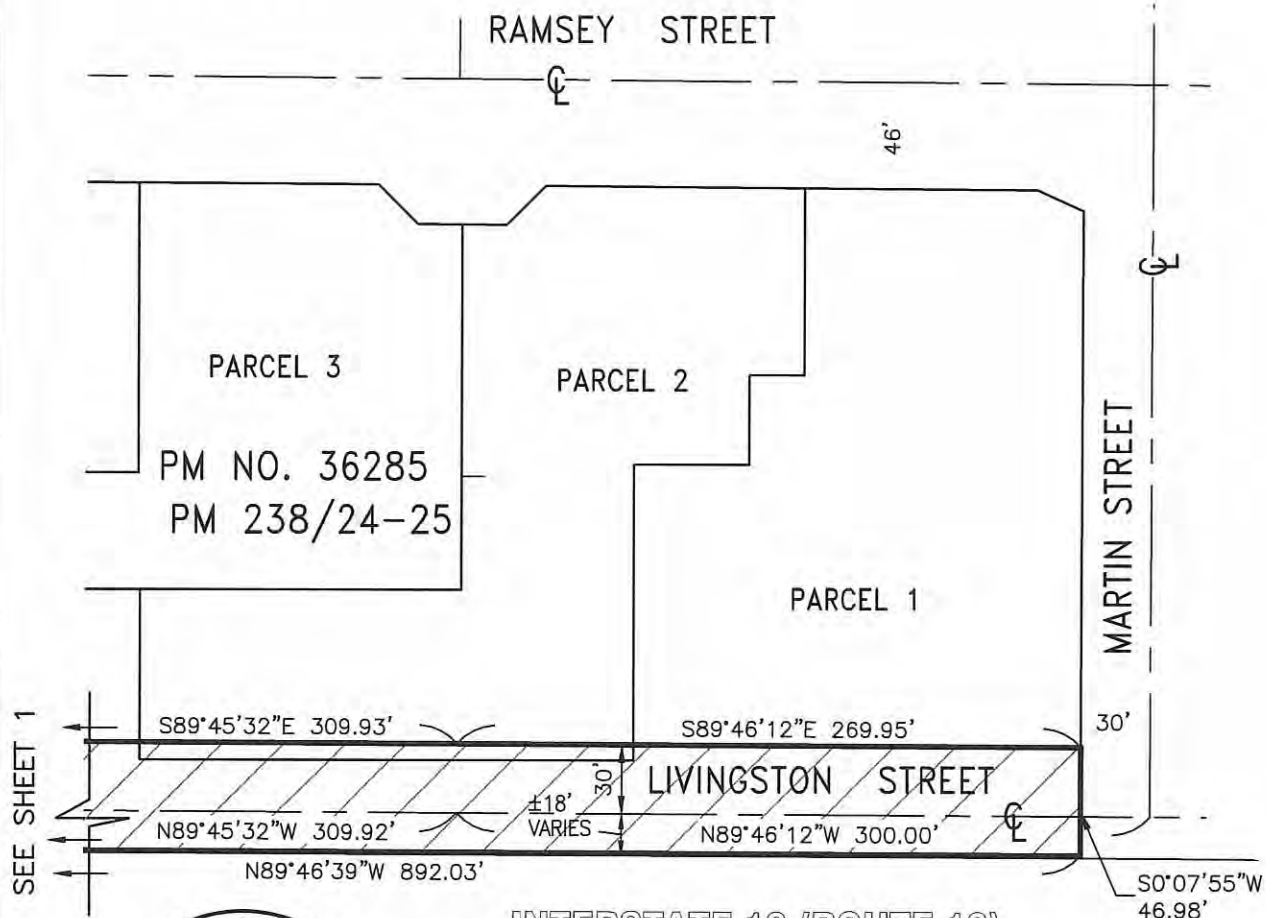


EXHIBIT "B"
ROAD REDEDICATION



INTERSTATE 10 (ROUTE 10)
CALTRANS RIGHT OF WAY MAP NOS. 421533 AND 421534

1-23-19

**ALBERT A.
WEBB
ASSOCIATES**

CITY OF BANNING

G:\2018\18-0271\Drawings\Mapping\Legals & Plats\18-0271 St dedication.dwg

THIS PLAT IS SOLELY AN AID IN LOCATING THE PARCEL(S) IN THE ATTACHED DOCUMENT. ALL PRIMARY CALLS ARE LOCATED IN THE WRITTEN DOCUMENT.

SHEET 2 OF 2

W.O.
18-0271

SCALE: 1"=80'

DRWN BY LB
CHKD BY nmj

DATE 1-23-19
DATE 1-23-19

SUBJECT: ROAD REDEDICATION

ATTACHMENT 3

Exhibit "A"

Parcel Map 36285

2014-0470134
ORIGINAL

238
15

177

SHEET 2 OF 2 SHEETS



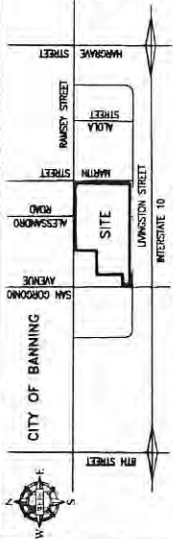
IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

PARCEL MAP NO. 36285

BEING A SUBDIVISION OF A PORTION OF LOTS 18 THROUGH 25, INCLUSIVE, IN BLOCK 28, LOT 51 IN BLOCK 30, BLOCK 31, ALESSANDRO ROAD (FORMERLY ELLA ST.), AND LIVINGSTON STREET AS PER AMENDED MAP OF BANNING LAND COMPANY ON FILE IN BOOK 9 PAGE 44 OF MAPS, SAN BERNARDINO COUNTY RECORDS AND A PORTION OF MURRAY STREET AND AN UNNAMED ALLEY VACATED BY RESOLUTION RECORDED SEPTEMBER 14, 1977 AS INSTRUMENT NO. 179864, OFFICIAL RECORDS OF RIVERSIDE COUNTY, CALIFORNIA, LYING WITHIN SECTION 10, TOWNSHIP 3 SOUTH, RANGE 1 EAST, S.B.M.

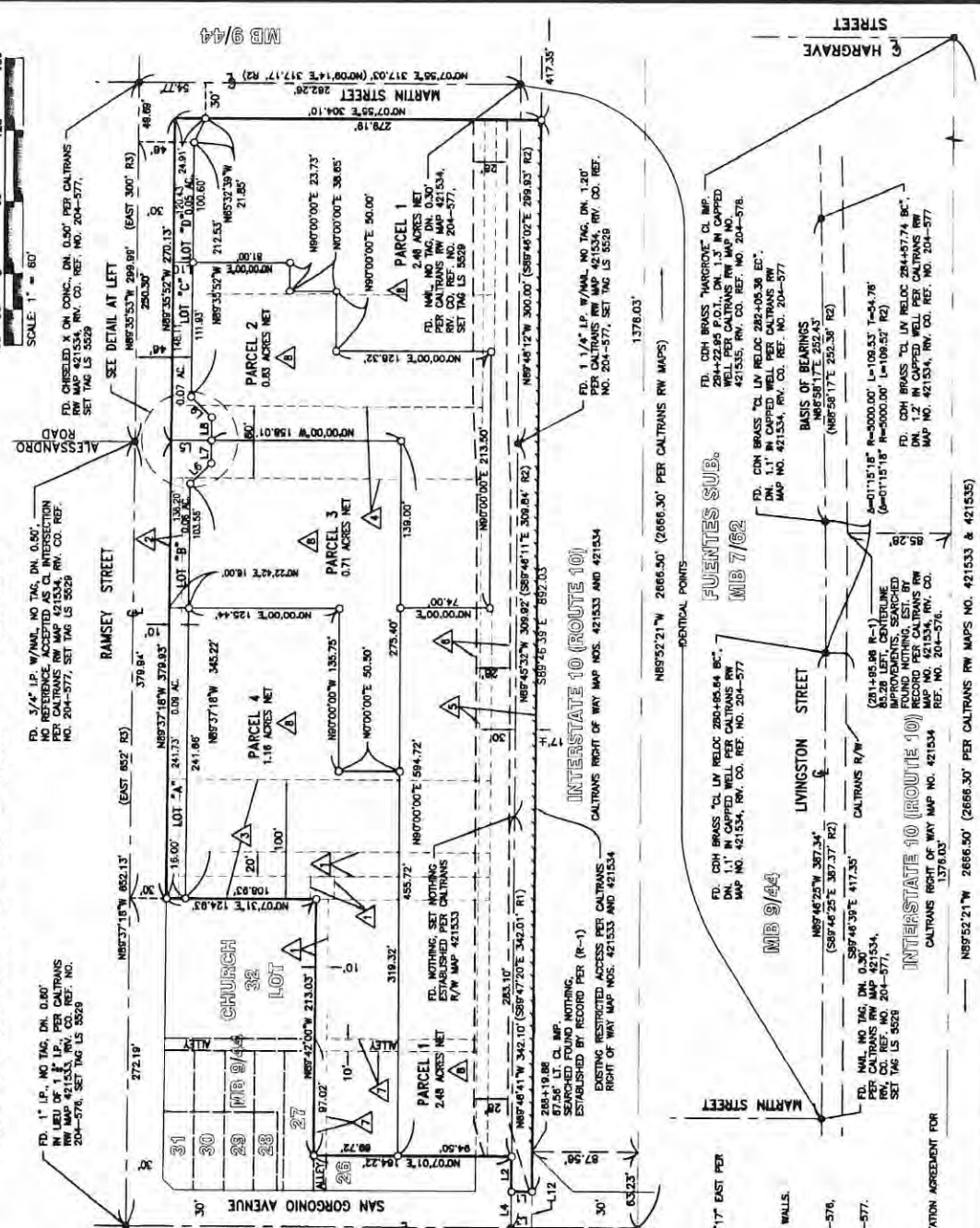
MAY 2014

ALBERT A. WEBB ASSOCIATES - CIVIL ENGINEERS



- ### EASEMENT NOTES
- NOT TO SCALE
- △ AN EASEMENT FOR PRELIMINARY AND MAINTENANCE WITH THE RIGHT OF INGRESS AND EGRESS TO THE CITY OF BANNING, AS SHOWN HEREON, PER INSTRUMENT NO. 179864, RECORDED SEPTEMBER 14, 1977 O.R.
 - △ AN EASEMENT FOR LIVINGSTON, IN FAVOR OF THE CITY OF BANNING PER INSTRUMENT NO. 125492, RECORDED APRIL 5, 1980, O.R.
 - △ A PORTION OF MURRAY STREET VACATED PER INSTRUMENT NO. 179864, RECORDED 9/14/77, OFFICIAL RECORDS.
 - △ A PORTION OF ALESSANDRO ROAD VACATED BY CITY OF BANNING PER INSTRUMENT NO. 2014-0470134, RECORDED 12/10/14, OFFICIAL RECORDS.
 - △ A PORTION OF LIVINGSTON STREET VACATED BY CITY OF BANNING PER INSTRUMENT NO. 2014-0470134, RECORDED 12/10/14, OFFICIAL RECORDS.
 - △ A 28.00' WIDE EASEMENT FOR PUBLIC INGRESS, EGRESS AND UTILITIES, DEDICATED TO THE CITY OF BANNING, AS SHOWN HEREON.
 - △ A PORTION OF ALLEY VACATED BY CITY OF BANNING PER DOCUMENT NO. 2014-0470134, RECORDED 12/10/14, OFFICIAL RECORDS.
 - △ A PRIVATE CROSS LOT DRAINAGE EASEMENT AS SHOWN HEREON.

LINE #	DISTANCE	BEARING
L1	17.12'	N07°05'1"E
L2	28.01'	N87°46'41"W
L3	17.12'	N07°09'42"E
L4	30.00'	N87°46'41"W
L5	33.00'	N07°24'08"E
L6	24.08'	M44°43'57"W
L7	17.58'	N87°37'18"W
L8	19.27'	N87°35'52"W
L9	23.99'	M45°15'40"E
L10	18.00'	N07°24'08"E



- ### SURVEYOR'S NOTES
- BASES OF BEARINGS IS THE CENTERLINE OF LIVINGSTON STREET TAKEN AS NORTH BEARING 17° EAST PER CALTRANS RW MAP NO. 421534, RV. CO. REF. NO. 204-577.
 - INDICATES FOUND MONUMENTS AS NOTED.
 - INDICATES SET 1" IRON PIPE WITH TAG STAMPED L.S. 5528, FLUSH OR NAIL AND TAG IN LEAD STAMPED L.S. 5528 SET IN CONCRETE AREAS AND TOP OF WALLS.
 - TOTAL AREA WITHIN THE DISTINCTIVE BORDER IS 3.47 ACRES GROSS.
 - (R1) INDICATES RECORD PER CALTRANS RW MAP NO. 421533, RV. CO. REF. NO. 204-576, UNLESS OTHERWISE NOTED.
 - (R2) INDICATES RECORD PER CALTRANS RW MAP NO. 421534, RV. CO. REF. NO. 204-577.
 - (R3) INDICATES RECORD PER M.B. 9/44 S.B. CO. REC.
 - CON INDICATES "CALIFORNIA DIVISION OF HIGHWAYS".
 - ALL MONUMENTS SHOWN AS "SET" SHALL BE SET IN ACCORDANCE WITH THE MONUMENTATION AGREEMENT FOR THIS MAP, UNLESS OTHERWISE NOTED.
 - INDICATES RESTRICTED ACCESS.

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: February 12, 2019

SUBJECT: Adopt Resolution No. 2019-23, Approving an Agreement for the Purchase of Right-of-Way Dedication from Fountain of Life Temple of God in Christ, Inc. in an Amount Not To Exceed \$20,560

RECOMMENDED ACTION:

That the City Council Adopt Resolution No. 2019-23:

1. Approving the "Agreement for Purchase and Sale and Escrow Instructions Between City of Banning and Fountain of Life Temple of God In Christ, Inc., A California Corporation In Connection With Ramsey-Hathaway Street Improvement Project (Portions of APN 541-170-020)";
2. Authorize the City Manager to execute the Agreement for Purchase and Sale and Escrow Instructions and Certificate of Acceptance for portions of APN 541-170-020; and
3. Authorize Administrative Services Director to make necessary budget adjustments and appropriations for FY 2018.

BACKGROUND:

Under the City's Capital Improvement Program, the Ramsey and Hathaway Street Widening project has concluded design and engineering work. The project, as planned and designed, will improve circulation in this area of the City and will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. Widening will also occur along Hathaway Street from Ramsey Street approximately 1,400 feet north.

Further, the project will construct a new 12-inch ductile iron water line along Ramsey Street. The construction of the project will require the acquisition of right of way in order to be completed.

City staff has held several meetings to discuss the project with property owners in the area and most would only consider right-of-way dedication in exchange for compensation. Prior to acquisition, the City determined fair market value for the necessary right of way required. Values established through the appraisal process, by a state licensed real estate appraiser provide a justification and amount for establishing compensation in exchange for the right-of-way dedications.

In total, the Hathaway and Ramsey Street Widening project consists of eleven parcels and seventeen separate right of way sections within those parcels. Fountain of Life Temple of God in Christ, Inc. has agreed to terms based upon the appraised value which includes acquisition of approximately 4,907 square feet for the permanent use as a roadway and an approximate 2,112 square feet Temporary Construction Easement ("TCE"). The total appraised value for both the permanent dedication and TCE as \$18,560. Staff is also requesting an amount not to exceed \$2,000 for associated escrow and title services, totaling \$20,560.

FISCAL IMPACT:

The purchase price is \$18,560 plus escrow and title charges not to exceed \$2,000 for a total expenditure of up to \$20,560. Funds to be sourced from Account 841-9500-490.93-30.

ATTACHMENTS:

1. Resolution 2019-23
2. Purchase and Sale and Escrow Instructions Agreement – Partially Executed

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-23

RESOLUTION 2019-23

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT FOR THE PURCHASE OF CERTAIN REAL PROPERTY INTERESTS FROM THE REAL PROPERTY AT THE SOUTHWEST CORNER OF N. HATHAWAY AND E. WILLIAMS STREET (APN 541-170-020)

WHEREAS, the City of Banning seeks to construct the Ramsey-Hathaway Street Improvement Project ("Project") to improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street; and

WHEREAS, the Property requires the acquisition of certain property interests from eleven larger parcels; and

WHEREAS, on November 8, 2018, the City extended to the record owner, Fountain of Life Temple Church of God in Christ, Inc., a California Corporation, a written offer pursuant to Government Code Section 7267.2 to purchase an approximate 4,907 square foot fee portion ("Subject Fee Property") of the real property located on the southwest corner of N. Hathaway and E. Williams Street in Banning, and identified as Riverside County Tax Assessor's Parcel Number 541-170-020 ("Fountain of Life Parcel") for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto. The City also offered to purchase and approximate 2,112 square foot temporary construction easement on the Fountain of Life Parcel for a term of nine months ("TCE") to help facilitate the City's construction of the Project. The Subject Fee Property and TCE are more particularly described in the exhibits to the Agreement for Purchase and Sale and Escrow Instructions attached as Attachment 2 to the staff report. The City's offer was based on the fair market value estimate determined by the City's independent appraiser; and

WHEREAS, the record owner has accepted the City's offer to purchase the Subject Fee Property and the TCE; and

WHEREAS, the City studied the environmental effects of the subject road widening Project in accordance with the California Environmental Quality Act ("CEQA"). Pursuant to Section 15301 of Article 19 (Categorical Exemptions) of the State CEQA Guidelines, City Staff found that the Project is exempt from CEQA because it involves minor alterations of existing public streets, sidewalks, gutters, and related facilities with negligible expansion.

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

SECTION 1. The Banning City Council adopts Resolution 2019-23 approving the Agreement for Purchase and Sale and Escrow Instructions between City of Banning

and Fountain of Life Temple Church of God in Christ, Inc., a California Corporation in Connection with the Ramsey-Hathaway Street Improvement Project (Portions of APN 541-170-020) for the purchase of the Subject Fee Property and the TCE for the sum of \$18,560. A copy of the Agreement is attached as Attachment 2 to the staff report that accompanies this Resolution. This approval of the Agreement is not an announcement of the City's intent to acquire any other real property interests for the Project and does not commit the City to acquire any other real property interests for the Project.

SECTION 2. The environmental effects of the Project, including the acquisition of the Subject Fee Property and the TCE, were studied as an integral part of the environmental review for the Project. The City Council concurs with City Staff's determination that the Project qualifies as exempt from CEQA pursuant to Section 15103 of the State CEQA Guidelines because the Project involves minor alterations to existing public streets. The City Council directs City staff to file a Notice of Exemption in connection with this Project in accordance with CEQA.

SECTION 3. The City Manager is authorized to execute the Agreement, in substantially the form attached as Attachment 2 to the staff report that accompanies the Resolution, the TCE Agreement in substantially the form attached as an exhibit to the Agreement, Certificate of Acceptance, escrow documents, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated in the Agreement or to memorialize any necessary extension of the term of the TCE as provided for in the TCE Agreement.

SECTION 4. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers to effectuate the property transactions contemplated in the Agreement, including but not limited to the payment of the Purchase Price of \$18,560, compensation for any necessary extension of the term of the TCE in accordance with the TCE Agreement, and escrow-related charges, which are not estimated to exceed \$2,000.

SECTION 5. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-23, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Purchase and Sale and Escrow Instructions Agreement Partially Executed

**AGREEMENT FOR PURCHASE AND SALE AND ESCROW
INSTRUCTIONS BETWEEN CITY OF BANNING AND FOUNTAIN OF
LIFE TEMPLE CHURCH OF GOD IN CHRIST, INC., A CALIFORNIA
CORPORATION IN CONNECTION WITH RAMSEY-HATHAWAY
STREET IMPROVEMENT PROJECT (PORTIONS OF APN 541-170-020)**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS BETWEEN THE CITY OF BANNING AND FOUNTAIN OF LIFE TEMPLE CHURCH OF GOD IN CHRIST, INC., A CALIFORNIA CORPORATION IN CONNECTION WITH RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT (PORTIONS OF APN 541-170-020) ("Agreement") is entered into by and between the CITY OF BANNING, a municipal corporation ("Buyer" or "City"), and FOUNTAIN OF LIFE TEMPLE CHURCH OF GOD IN CHRIST, INC., a California Corporation ("Seller") and constitutes an agreement to purchase and sell certain real property interests between Seller and Buyer and the joint escrow instructions directed to Sentry Escrow Service, Inc., attention Judy A. Russell, President ("Escrow Holder"). Seller and Buyer are referred to below collectively as the "Parties". The Agreement is effective on the date it is fully executed by the Parties ("Effective Date"). Upon execution of this Agreement by Buyer, Buyer shall promptly deliver a copy of this executed Agreement to Seller.

RECITALS

A. Seller is the owner of that certain real property located at the southwest corner of N. Hathaway and E. Williams Street in the City of Banning, California, and identified as Riverside County Tax Assessor's Parcel Number 541-170-020 ("Larger Parcel"). The Larger Parcel is a vacant, unimproved parcel that is approximately 0.92 acres (40,075 square feet) in size.

B. The City seeks to construct the Ramsey-Hathaway Street Improvement Project ("Project") to improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street.

C. The City extended to Seller a written offer dated November 8th, 2018 pursuant to Government Code Section 7267.2 to purchase in fee an approximate 4,907 square foot portion of the Larger Parcel ("Subject Fee Property") for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project. The approximate 4,907 square foot Subject Fee Property that the City seeks to acquire in fee is described more particularly on Exhibit "A" hereto and depicted on Exhibit "B" hereto, which are incorporated herein by this reference. The City also offered to purchase an approximate 2,112 square foot temporary construction easement for a term of nine months ("TCE") to facilitate the construction of the Project. The approximate 2,112 square foot TCE is described more particularly on Exhibit "A-1" hereto and depicted on Exhibit "B-1" hereto, which are incorporated herein by this reference.

D. The Parties negotiated the City's purchase in fee of the Subject Fee Property and the City's use of the TCE for a term of nine months, and have reached an agreement regarding the

terms of the City's purchase of the Subject Fee Property and TCE, subject to ratification by the City Council.

E. The Parties acknowledge that the City is authorized to acquire real property by eminent domain for a public use, including public street purposes, and all uses necessary or convenient thereto, including, but not limited to, street, sewer, drainage, and utilities, pursuant to the authority conferred upon the City of Banning by California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq.* (Eminent Domain Law). The Project is a public use for which City has the authority to exercise the power of eminent domain. The City Council of the City of Banning, as the City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). If Seller and the City had not reached an agreement for City's purchase of the Subject Fee Property and use of the TCE, City staff would have recommended that the City Council consider the adoption of a resolution of necessity authorizing the initiation of eminent domain proceedings to acquire the Subject Fee Property and TCE in accordance with the Eminent Domain Law. The City Council, however, has the exclusive and sole discretion to adopt a resolution of necessity. The adoption of any such resolution of necessity would require the City's compliance with applicable law, including Government Code Section 7260 *et seq.* and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that the City may need for the Project. Seller is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Seller's sale of the TCE to the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

F. Seller desires to authorize the City to purchase the Subject Fee Property and to use the TCE for a term of nine months, and the City desires to purchase the Subject Fee Property and use the TCE for a term of nine months, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, City and Seller agree as follows.

1. SALE AND PURCHASE PRICE.

1.1 Sale and Purchase. Seller agrees to sell the Subject Fee Property and the TCE to City and City agrees to purchase the Subject Fee Property and TCE upon the terms and conditions hereafter set forth.

a. Subject Fee Property. On the Close of Escrow (as defined in Section 3.2 below), Seller agrees to sell in fee to the City the approximate 4,907 square foot Subject Fee Property described in Exhibit "A" and depicted on Exhibit "B" hereto, and the City agrees to purchase in fee the Subject Fee Property pursuant to a Grant Deed, in the form of which is attached as Exhibit "C" hereto, and incorporated herein by this reference.

b. *Temporary Construction Easement.* Seller further agrees to authorize City to use the approximate 2,112 square foot TCE described on Exhibit "A-1" hereto and depicted on Exhibit "B-1" hereto for a term of nine months to facilitate the City's construction of the Project, including construction of street and drainage improvements in the new right of way area, construction staging purposes, storage of material and equipment, if necessary. City's use of the TCE is subject to the terms of the Temporary Construction Easement Agreement in the form attached as Exhibit "D" hereto, and incorporated herein by this reference.

1.2 Purchase Price. The total purchase price ("Purchase Price") for the Subject Fee Property and the TCE is \$18,560.00 (Eighteen Thousand Five Hundred Sixty Dollars).

2. TITLE AND TITLE INSURANCE.

2.1 General. Title to the Subject Fee Property shall be conveyed by a Grant Deed in the form attached hereto as Exhibit "C".

2.2 Title Insurance. Upon the Opening of Escrow, Escrow Holder will obtain from First American Title Company a title commitment for the Subject Fee Property. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitment. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and the title commitment to City and Seller. First American Title Insurance Company, 323 Court Street, San Bernardino, California 92401, Title Officer: Tammy Kerr or Cheryl Campbell ("Title Company") will insure City's interest in the Subject Fee Property at the Close of Escrow by a CLTA Owner's Standard Coverage Policy of Title Insurance in the amount of the Purchase Price ("Title Policy"), with liability in the full amount of the Purchase Price, insuring title to the Subject Fee Property as vested in the City, free and clear of all liens and encumbrances and other matters affecting title to the Subject Fee Property, except title exceptions which Buyer has approved in writing (which shall constitute "Permitted Title Exceptions"). Buyer, in its sole discretion, may request that Title Company insure Buyer's interest in the Subject Fee Property by an ALTA Extended Coverage Form of Title Policy. In such case, Buyer shall pay for the costs of the ALTA Extended Coverage Policy and survey.

2.3 Acts After Date of Agreement. During the period from the date of this Agreement through the Close of Escrow, Seller shall not record or permit to be recorded any document or instrument relating to the Subject Fee Property or physically alter the Subject Fee Property or permit or cause to be altered without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion. Further, Seller agrees not to authorize any other party to use the TCE during the term of the TCE.

3. ESCROW.

3.1 Escrow Holder. The escrow shall be opened with Sentry Escrow Service, Inc. (Attention: Judy A. Russell, President) ("Escrow Holder"), within five (5) business days after the execution of this Agreement by Buyer and Seller depositing an executed copy or executed counterparts of this Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the Parties, with such further instructions as Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder. For the purposes of this

Agreement, "Opening of Escrow" means the date on which Escrow Holder receives a copy of the fully-executed Agreement or counterparts of this Agreement.

3.2 Close of Escrow. For the purposes of this Agreement, "Close of Escrow" shall be the date on which the Grant Deed for the Subject Fee Property in favor of Buyer and the TCE Agreement are recorded in the Official Records of the Riverside County Recorder's Office. Provided all of Seller's and Buyer's obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close 30 calendar days after the Opening of Escrow ("Closing Date"). All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

3.3 Seller Required to Deliver. Before the Close of Escrow, Seller shall deposit into escrow the following:

- a. A grant deed conveying the Property to Buyer, in the form attached hereto as Exhibit "C", duly executed by Seller and acknowledged ("Grant Deed");
- b. The executed Temporary Construction Easement Agreement in the form attached hereto as Exhibit "D", duly executed by Seller and acknowledged ("TCE Agreement");
- c. A California 593 certificate and federal non-foreign affidavit (with respect to Seller); and
- d. Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Seller to carry out this escrow.

3.4 Buyer Required to Deliver. On or before the Close of Escrow, Buyer shall deposit into escrow the following (properly executed and acknowledged, if applicable):

- a. An executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "C");
- b. The executed TCE Agreement in the form attached hereto as Exhibit "D", duly executed by the City;
- c. The City covenants and agrees to deposit with Escrow Holder the Purchase Price and such escrow funds as are required within five business days of receiving written notice from Escrow Holder regarding the confirmation of the completion of the conditions required herein for the Close of Escrow; and
- d. Any other documents reasonably required by Escrow Holder to be deposited by Buyer to carry out this escrow.

3.5 Conditions to the Close of Escrow. Escrow shall not close unless and until both Parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally, Buyer's obligation to proceed with the transaction

contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

a. Seller shall have performed all agreements to be performed by Seller hereunder.

b. Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price, showing fee title to the Subject Fee Property to be vested in Buyer subject only to the Approved Title Exceptions. Escrow Holder will use the proceeds of the Purchase Price to obtain a full reconveyance of any monetary liens encumbering the approximate Subject Fee Property, so that said Subject Fee Property is free and clear of monetary liens and encumbrances at the Close of Escrow. Escrow Holder will obtain final approval from Seller regarding the disbursement of the proceeds prior to disbursing any such proceeds to the holder(s) of the monetary liens encumbering the Subject Fee Property.

c. If any of the conditions to Close of Escrow are not timely satisfied for a reason other than a default of Buyer or Seller under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all funds and documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less any escrow cancellation charges).

3.6 Recordation of Grant Deed and TCE Agreement; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in this Section 3, Escrow Holder shall cause the Grant Deed and TCE Agreement to be recorded in the Office of the County Recorder of Riverside County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Buyer and Seller) to Seller, and Seller shall deliver possession of the Subject Fee Property to Buyer free and clear of all occupants. Buyer shall be authorized to use the TCE in accordance with the terms of the TCE Agreement.

3.7 Prorations. Real property taxes for the Subject Fee Property shall not be prorated, but must be paid by Seller for the current tax period. Seller may apply for a refund of property taxes in the event any property taxes paid are allocable to the period after the Close of Escrow and Buyer shall reasonably cooperate therewith. Buyer, as a municipal corporation acquiring property within its jurisdiction, is exempt from property taxes. All property assessments shall be prorated between Buyer and Seller as of the Close of Escrow based on the latest available tax information. All prorations for such assessments shall be determined on the basis of a 365-day year. Escrow Holder is authorized to pay from the Purchase Price any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds recorded against the Subject Fee Property.

3.8 Costs of Escrow. Buyer will pay for the cost of the Title Policy (or ALTA Extended Coverage if Buyer elects to obtain such extended coverage). City will also pay for escrow fees and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone calls, etc. City will pay for recording the Grant Deed and TCE Agreement, and any documentary or other local transfer taxes, if any, and any recording costs (if any).

3.9 Brokers. Buyer and Seller represent to one another that they have not engaged any broker or finder in connection with the transaction contemplated by this Agreement. Seller shall pay commissions to such broker in accordance with the agreement between Seller and such broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party. Each party agrees to defend, indemnify and hold harmless the other party and its respective employees, agents, representatives, council members, attorneys, successors and assigns, from and against all claims of any agent, broker, finder or other similar party arising from or in connection with its activities relating to the sale of the Property to Buyer.

3.10 Escrow Cancellation Charges. If escrow fails to close through no fault of either party, the City will pay all escrow and title cancellation charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges.

4. PERMISSION TO ENTER/DUE DILIGENCE TESTING. Seller hereby grants to City and City's authorized agents, contractors, consultants, assigns, attorneys, accountants and other representatives an irrevocable license/permission to enter upon the Subject Fee Property for the purpose of making any due diligence testing and other examinations of the Subject Fee Property, including, but not limited to, the right to perform soil and geological tests of the Subject Fee Property and environmental site assessments thereof, that City considers necessary. City will give Seller 48-hours written notice before going on the Subject Fee Property to conduct such due diligence testing. City does hereby indemnify and forever save Seller, Seller's heirs, successors and assigns free and harmless from and against any and all liability, loss, damages, costs, expenses, demands, causes of action, claims or judgments, whether or not arising from or occurring out of any damage to the Subject Fee Property arising from any accident or other occurrence at the Subject Fee Property in connection with City's due diligence testing and environmental site assessments involving entrance onto the Subject Fee Property pursuant to this Section. If City fails to acquire the Subject Fee Property due to City's default, this license/permission to enter will terminate upon the termination of City's right to purchase said Subject Fee Property. In such event, City will remove or cause to be removed all of its personal property, facilities, tools, and equipment from the Subject Fee Property left in the area comprising the Subject Fee Property in connection with the due diligence testing and restore said area as close to possible to the condition of said area prior to City's due diligence testing. The obligation of City to indemnify Seller for any such damage to the Subject Fee Property arising from the due diligence testing and/or environmental site assessment and related testing under this Section 4 will survive Close of Escrow or termination of Escrow.

5. REPRESENTATION AND WARRANTIES OF SELLER. Seller hereby represents and warrants to City the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

5.1 That to the best of Seller's knowledge on the Close of Escrow (i) the Subject Fee Property will be free and clear of Hazardous Materials (defined in Section 10.1. below) or toxic substances and waste, including, but not limited to, asbestos; (ii) businesses, if any, on the

Subject Fee Property have disposed of their waste in accordance with all applicable statutes, ordinances, and regulations; and (iii) Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the Subject Fee Property or alleged violation of Environmental Laws (defined in Section 10.2. below), health or safety statutes, ordinance, or regulations.

5.2 That Seller is the sole owner of the Subject Fee Property free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Subject Fee Property onto adjacent property, or rights of way of any nature, other than those that may appear on the title commitment. Seller will not further encumber the Subject Fee Property or allow the Subject Fee Property to be further encumbered prior to the Close of Escrow.

5.3 Neither this Agreement nor anything provided to be done hereunder, including the transfer of the Subject Fee Property to City, violates or will violate any contract, agreement or instrument to which Seller is a party, or which affects the Subject Fee Property, and the Seller's grant to City of the Subject Fee Property pursuant to this Agreement does not require the consent of any party not a signatory hereto.

5.4 Except as disclosed in the title commitment referred to in Section 2.2, there are no claims or liens presently claimed or that will be claimed against the Subject Fee Property by contractors, subcontractors, or suppliers, engineers, architects, surveyors or others that may have lien rights for work performed or commenced prior to the Effective Date. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including reasonable attorneys' fees, arising from or relating to any such lien or any similar lien claimed against the Subject Fee Property and arising from work performed or commenced prior to the Close of Escrow.

5.5 There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the Subject Fee Property, TCE, or any part thereof, and no persons have any right of possession to the Subject Fee Property, TCE, or any part thereof. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Subject Fee Property or the TCE.

5.6 Seller has no knowledge of any pending, threatened or potential litigation, action or proceeding against Seller or any other party before any court or administrative tribunal that involves the Subject Fee Property.

6. REPRESENTATIONS AND WARRANTIES OF CITY. City hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

6.1 City has taken all required action to permit it to execute, deliver, and perform its obligations under this Agreement.

6.2 City has the power and authority to execute and deliver this Agreement and carry out its obligations hereunder and consummate the transaction contemplated herein.

7. TOTAL CONSIDERATION.

7.1 City's Payment of Purchase Price. City's payment to Seller of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the Subject Fee Property, any improvements located on the Subject Fee Property, use by the City of the TCE for a term of nine months, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, any other damages of every kind and nature suffered by Seller by reason of City's acquisition of the Subject Fee Property and the TCE or the proposed Project for which City is acquiring the Subject Fee Property and TCE, and all costs and expenses whatever in connection therewith.

7.2 No Loss of Business Goodwill. Seller further acknowledges and agrees that Seller will not suffer any loss of goodwill under Code of Civil Procedure Section 1263.510 as a result of City's acquisition of the Subject Fee Property or the construction of the Project because the Larger Parcel is a vacant, unimproved parcel and no business is operated on said parcel. Under Code of Civil Procedure Section 1263.510, the owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, will be compensated for loss of goodwill if the owner proves that (i) the loss is caused by City's acquisition of the property or the injury to the remainder; (ii) the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill; (iii) compensation for the loss will not be included in payments under Government Code Section 7262; and (iv) compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

7.3 No Relocation Assistance. The Larger Parcel consists of a vacant, unimproved parcel. The City's acquisition of the Subject Fee Property and TCE will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Subject Fee Property and TCE in connection with the Project.

8. RELEASES.

8.1 This Agreement is a voluntary agreement and Seller on the Close of Escrow, on behalf of Seller, Seller's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Subject Fee Property and TCE, or any preliminary steps thereto. Seller further releases

and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Subject Fee Property and TCE.

8.2 Seller acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Seller hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Seller may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 8, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Seller's Initials: C. A.

City's Initials: _____

Seller's waiver of rights and release of claims set forth above in Section 8.1 and Section 8.2 will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9. CITY'S CONTINGENCIES. For the benefit of City, the Close of Escrow and City's obligation to consummate the purchase of the Subject Fee Property and TCE will be contingent upon and subject to the occurrence of all of the following (or City's written waiver thereof, it being agreed that City can waive any or all such contingencies) on or before the Close of Escrow:

9.1 That as of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct;

9.2 The delivery to Escrow Holder of all documents pursuant to Sections 3.3 and 3.4 of this Agreement;

9.3 Escrow Holder's commitment to issue, in favor of City, the Policy with liability equal to the Purchase Price showing City's interest in the Subject Fee Property, subject only to the Permitted Title Exceptions; and

9.4 City's approval prior to the Close of Escrow of any due diligence testing, environmental site assessment, soils or geological reports, or other physical inspections of the Subject Fee Property that City might perform prior to the Close of Escrow.

10. CERTAIN DEFINITIONS.

10.1 The term "Hazardous Materials" will mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 *et seq.*; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; any substance defined as a "hazardous substance" in California Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

10.2 The term "Environmental Laws" will mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on or prior to the Effective Date relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 *et seq.*; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local environmental statutes and ordinances, with implementing regulations and rules in effect on or prior to the Effective Date.

11. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of \$18,560.00 or any inference of per square foot value of the Subject Fee Property or TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the Subject Fee Property or TCE in any eminent domain or other proceeding or litigation concerning the Subject Fee Property, or any portion thereof.

12. DEFAULT. In the event of a breach or default under this Agreement by either City or Seller, the non-defaulting party will have, in addition to all rights available at law or equity, the right to terminate this Agreement and the Escrow for the purchase and sale of the Subject Fee Property and TCE, by delivering written notice thereof to the defaulting party and to Escrow Holder, and if City is the non-defaulting party, City will thereupon promptly receive a refund of

all of the deposits it deposited with Escrow Holder, if any, less City's share of any Escrow cancellation charges. Such termination of the Escrow by a non-defaulting party will be without prejudice to the non-defaulting party's rights and remedies at law or equity.

13. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
355 South Grand Avenue
40th Floor
Los Angeles, California 90071-3101
Attention: Kevin Ennis, City Attorney

SELLER: Fountain of Life Temple Church of God in Christ, Inc.
Post Office Box 423
Banning, California 92220-0016

ESCROW
HOLDER: Sentry Escrow Service, Inc.
Attention: Judy A. Russell, President
300 S. Highland Springs Ave., #10C
Banning, California 92220
(951)849-4505 or (909)793-3147 (phone)
(951)849-9262 (facsimile)

TITLE
COMPANY: First American Title Company
323 Court Street
San Bernardino, California 92401
Attention: Tammy Kerr or Cheryl Campbell

14. MISCELLANEOUS

14.1 Attorneys' Fees. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

14.2 Entire Agreement. This Agreement and the TCE Agreement contain all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

14.3 Counterparts, Facsimile, and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

14.4 Time of the Essence. Time is of the essence of this Agreement.

14.5 Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

14.6 Third Parties. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

14.7 Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

14.8 Additional Documents. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

14.9 Authority of City Manager. The City Manager may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager may execute the TCE Agreement, Certificate of Acceptance, escrow documents, and any

such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

14.10 Legal Representation. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

14.11 Remedies Not Exclusive and Waivers. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

14.12 Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

SELLER

Fountain of Life Temple Church of God in Christ, Inc., a California Corporation

Dated: 02-05-19

By: Carlton Anderson

Title: PRESIDENT

Dated: 02-09-2019

By: Kim A. J...

Title: BOARD member

BUYER

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Subject Fee Property

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 541-170-020

THAT PORTION OF BLOCK 172 OF BANNING COLONY LAMES, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 5, PAGE 186 OF MAPS, LYING WITHIN THE LAND DESCRIBED IN A PARTNERSHIP GRANT DEED TO FOUNDATION OF LIFE TEMPLE OF GOD IN CHRIST, INC. RECORDED MARCH 31, 1987 AS INSTRUMENT NO. 87035 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON CASTILLA SUBDIVISION, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 14, PAGE 88 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 398.33 FEET TO THE POINT OF BEGINNING;

THENCE, CONTINUING ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 260.01 FEET TO THE INTERSECTION WITH THE
 CENTERLINE OF WILLIAMS STREET AS SHOWN ON MEX-AMERI MAP, IN SAID CITY
 OF BANNING, PER MAP FILED IN BOOK 20, PAGE 69 OF MAPS, IN SAID OFFICE
 OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF WILLIAMS STREET,
 NORTH 89°26'33" WEST, 73.51 FEET;

THENCE, PERPENDICULAR TO SAID CENTERLINE OF WILLIAMS STREET,
 SOUTH 00°13'39" WEST, 30.00 FEET TO THE NORTHERLY LINE OF SAID BLOCK
 172;

THENCE, TRAVERSING THE INTERIOR OF SAID BLOCK 172, THE FOLLOWING
 COURSES:

SOUTH 42°22'44" EAST, 33.23 FEET TO A LINE PARALLEL WITH AND
 50.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 204.22 FEET TO
 THE SOUTHERLY LINE OF THE NORTHERLY 230.00 FEET OF SAID BLOCK
 172;

ALONG SAID SOUTHERLY LINE OF THE NORTHERLY 230.00 FEET OF BLOCK
 172, SOUTH 89°26'23" EAST, 50.00 FEET TO THE POINT OF BEGINNING.

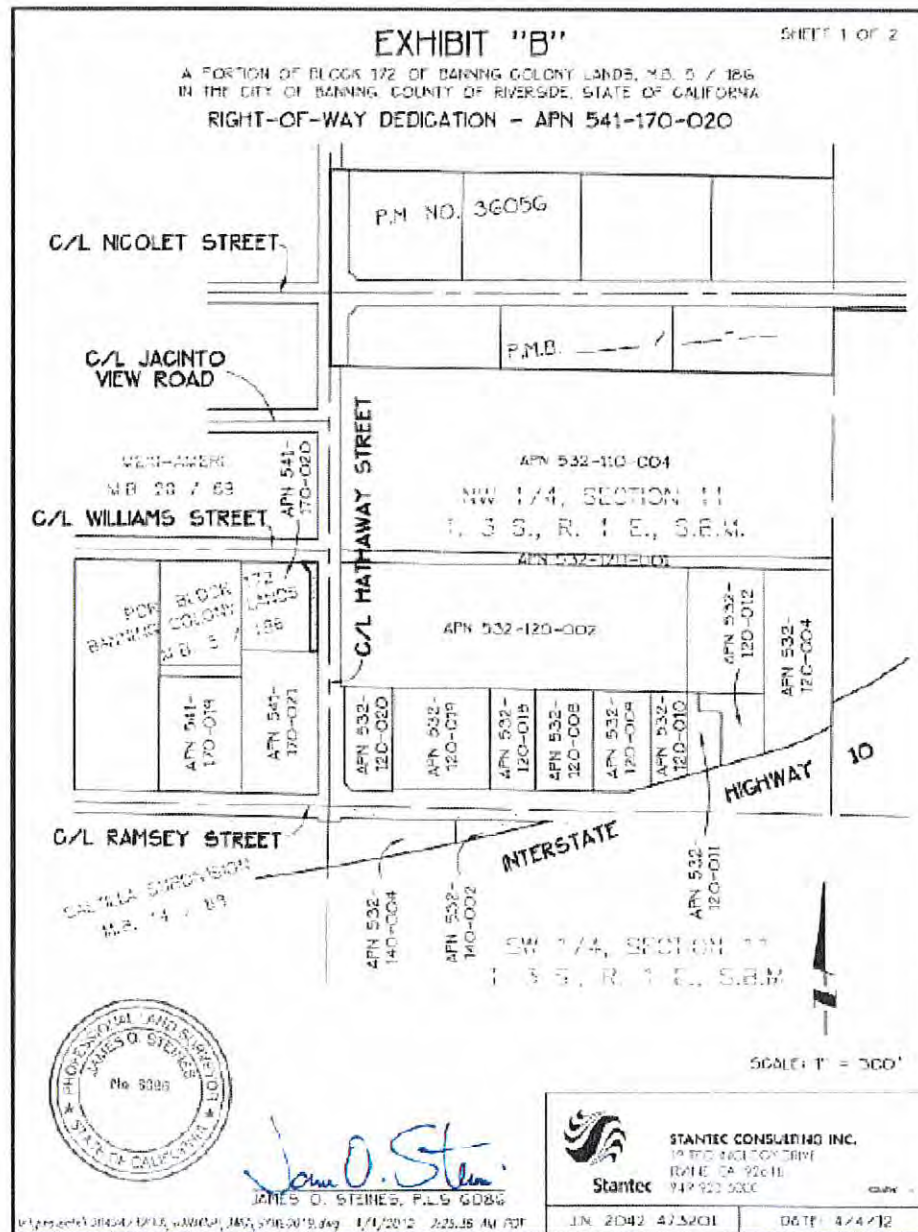
EXCEPTING THEREFROM THOSE PORTIONS INCLUDED WITHIN THE EXISTING RIGHT-
 OF-WAY OF HATHAWAY STREET AND THE EXISTING RIGHT-OF-WAY OF WILLIAMS
 STREET,

CONTAINING 4,967 SQUARE FEET, MORE OR LESS.

✓ RECORDED IN RIVERSIDE COUNTY RECORDS ON 11/19/2006

1 OF 2

Exhibit "B"
Depiction of Subject Fee Property



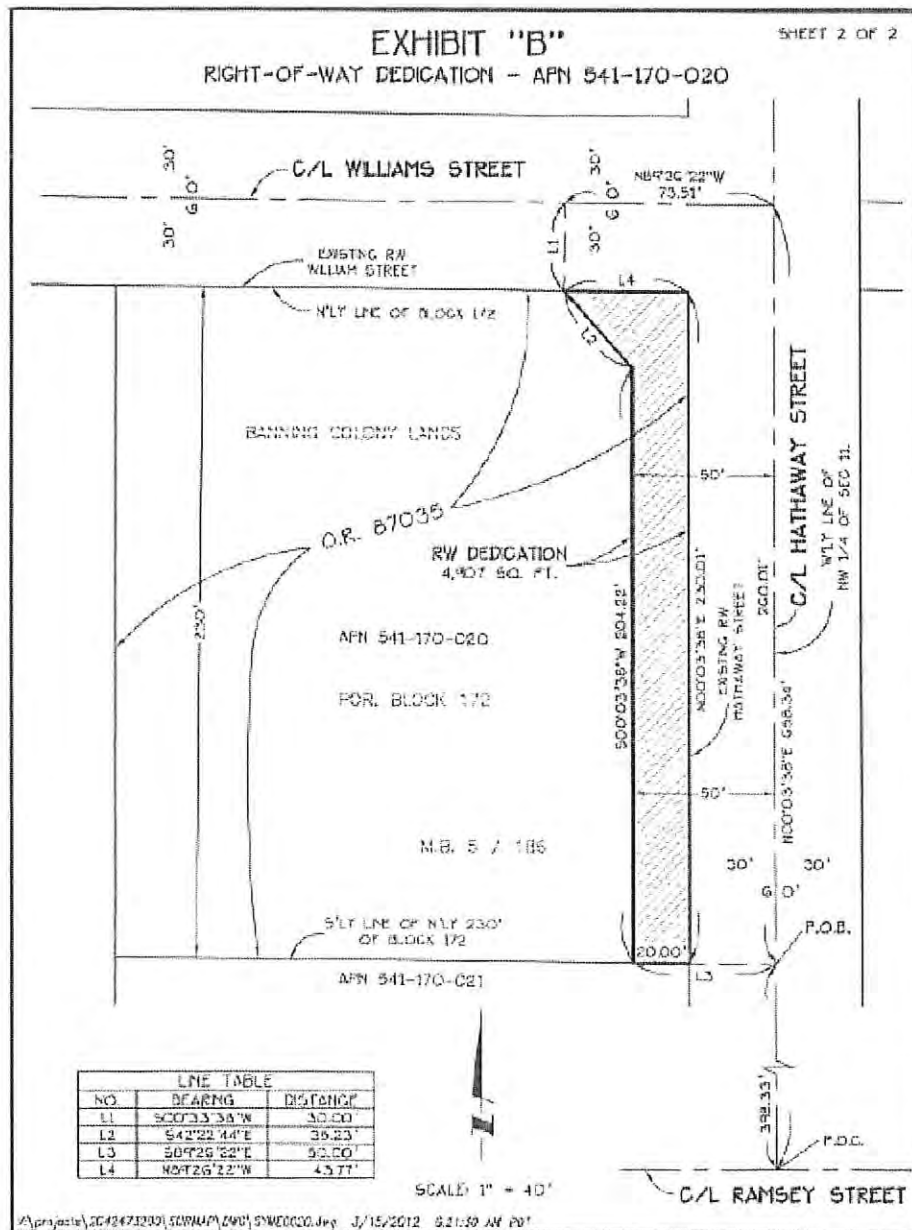


Exhibit "B"
Page 2 of 2

Exhibit "A-1"
Legal Description of Temporary Construction Easement

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 541-170-020

THAT PORTION OF BLOCK 172 OF BANNING COLONY LANDS, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 5, PAGE 186 OF MAPS, LYING WITHIN THE LAND DESCRIBED IN A PARTNERSHIP GRANT DEED TO FOUNDATION OF LIFE TEMPLE OF GOD IN CHRIST, INC. RECORDED MARCH 11, 1987 AS INSTRUMENT NO. 87025 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON CASTILLA SUBDIVISION, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 14, PAGE 88 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'18" EAST, 658.34 FEET TO THE INTERSECTION WITH THE CENTERLINE OF WILLIAMS STREET AS SHOWN ON MEK-ANNEI MAP, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 20, PAGE 69 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF WILLIAMS STREET, NORTH 89°26'22" WEST, 73.51 FEET;

THENCE, PERPENDICULAR TO SAID CENTERLINE OF WILLIAMS STREET, SOUTH 00°33'38" WEST, 30.00 FEET TO THE NORTHERLY LINE OF SAID BLOCK 172;

THENCE, TRAVERSING THE INTERIOR OF SAID BLOCK 172, THE FOLLOWING COURSES:

SOUTH 29°39'59" EAST, 31.81 FEET TO A LINE PARALLEL WITH AND 58.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 82.01 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, NORTH 89°56'22" WEST, 3.00 FEET TO A LINE PARALLEL WITH AND 61.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 142.49 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, SOUTH 89°56'22" EAST, 4.00 FEET TO A LINE PARALLEL WITH AND 57.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 225.05 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, NORTH 89°56'22" WEST, 3.00 FEET TO A LINE PARALLEL WITH AND 60.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

1 OF 2

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 541-170-020

ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 65.60 FEET;

SOUTH 96°41'26" WEST, 23.06 FEET;

SOUTH 26°36'56" WEST, 73.25 FEET;

SOUTH 80°55'49" WEST, 53.50 FEET TO SAID CENTERLINE OF RAMSEY STREET;

ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°04'51" EAST, 155.13 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF HIGHWAY STREET AND THE EXISTING RIGHT-OF-WAY OF WILLIAMS STREET.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE RIGHT-OF-WAY DEDICATION TO THE CITY OF SANMING RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 2,112 SQUARE FEET, MORE OR LESS.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HEREBY MADE A PART HEREOF.

SUBJECT TO EASEMENTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



PREPARED BY: STANTEC CONSULTING INC.
 UNDER THE DIRECTION OF:

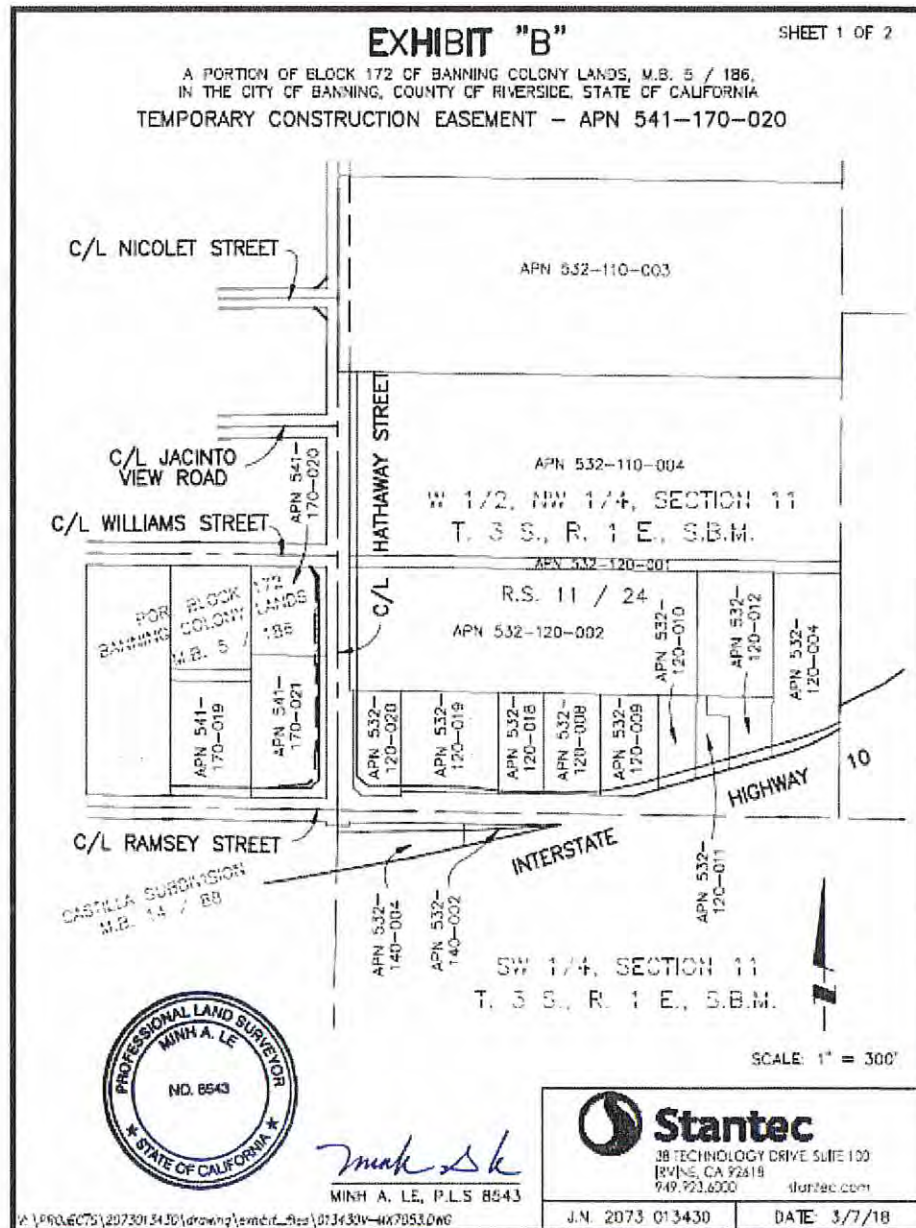
Minh A. Le

MINH A. LE, P.L.S. 8543

MARCH 7, 2018
 J.M. 2018013430

2 OF 2

Exhibit "B-1"
 Depiction of Temporary Construction Easement



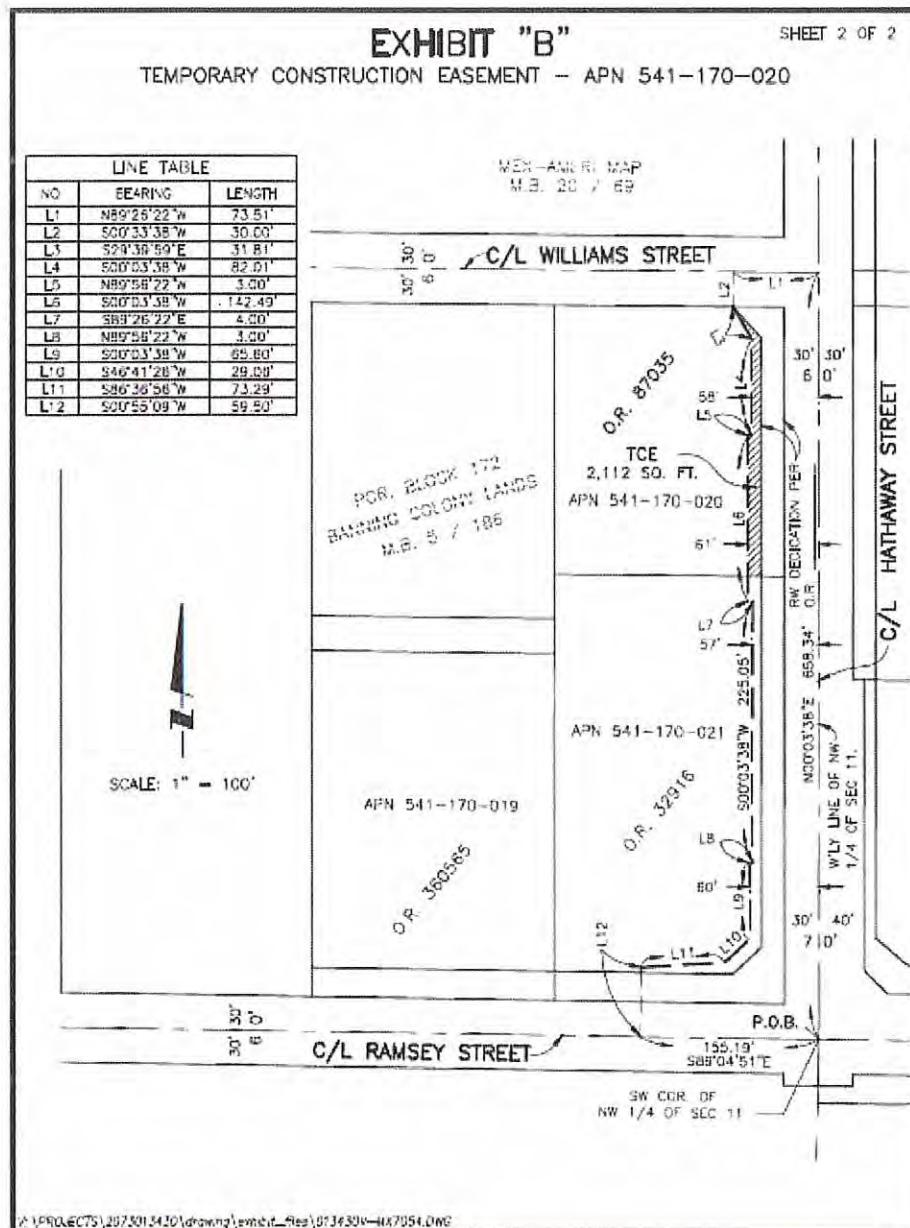


Exhibit "C"
Form of Grant Deed

Recording Requested by
 and when recorded return to:

CITY OF BANNING
 99 E. Ramsey Street
 Banning, California 92220
 Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 541-170-020

☒ Portions

Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Banning and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

GRANT DEED

FOUNTAIN OF LIFE TEMPLE CHURCH OF GOD IN CHRIST, INC., a California Corporation ("Grantor") is the record fee owner of that certain real property located at the southwest corner of N. Hathaway and E. Williams Street in the City of Banning, California, and identified as Riverside County Tax Assessor's Parcel Number 541-170-020 ("Larger Parcel").

Grantor seeks to grant to the CITY OF BANNING, a California municipal corporation, in fee an approximate 4,907 square foot portion of the Larger Parcel described more particularly below ("Subject Fee Property") for public use.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to the CITY OF BANNING, a municipal corporation ("Grantee") in fee the Subject Fee Property described more particularly on Exhibit "A" and depicted on Exhibit "B", which are attached hereto and incorporated herein by this reference, for public use, namely public street purposes, and all uses necessary or convenient thereto, including but not limited to street, sewer, drainage, and utilities in connection with the Ramsey-Hathaway Street Improvement Project. The Subject Fee Property includes all of the interests of Grantor in and to the Subject Fee Property, including all improvements thereon, and any rights, title, and interest of Grantor in and to adjacent streets, alleys, or rights of way.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

GRANTOR

**Fountain of Life Temple Church of God in Christ, Inc.,
a California Corporation**

Dated: _____ Dated: _____

By: _____ By: _____

Title: _____ Title: _____

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 541-170-020

FILE AS SHOWN ON EXHIBIT "A" ATTACHED HERETO AND HERETO MAKE A PART
 HEREOF

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS,
 EASEMENTS, AND EIGHTH-PAY OR RECORD, IF ANY.

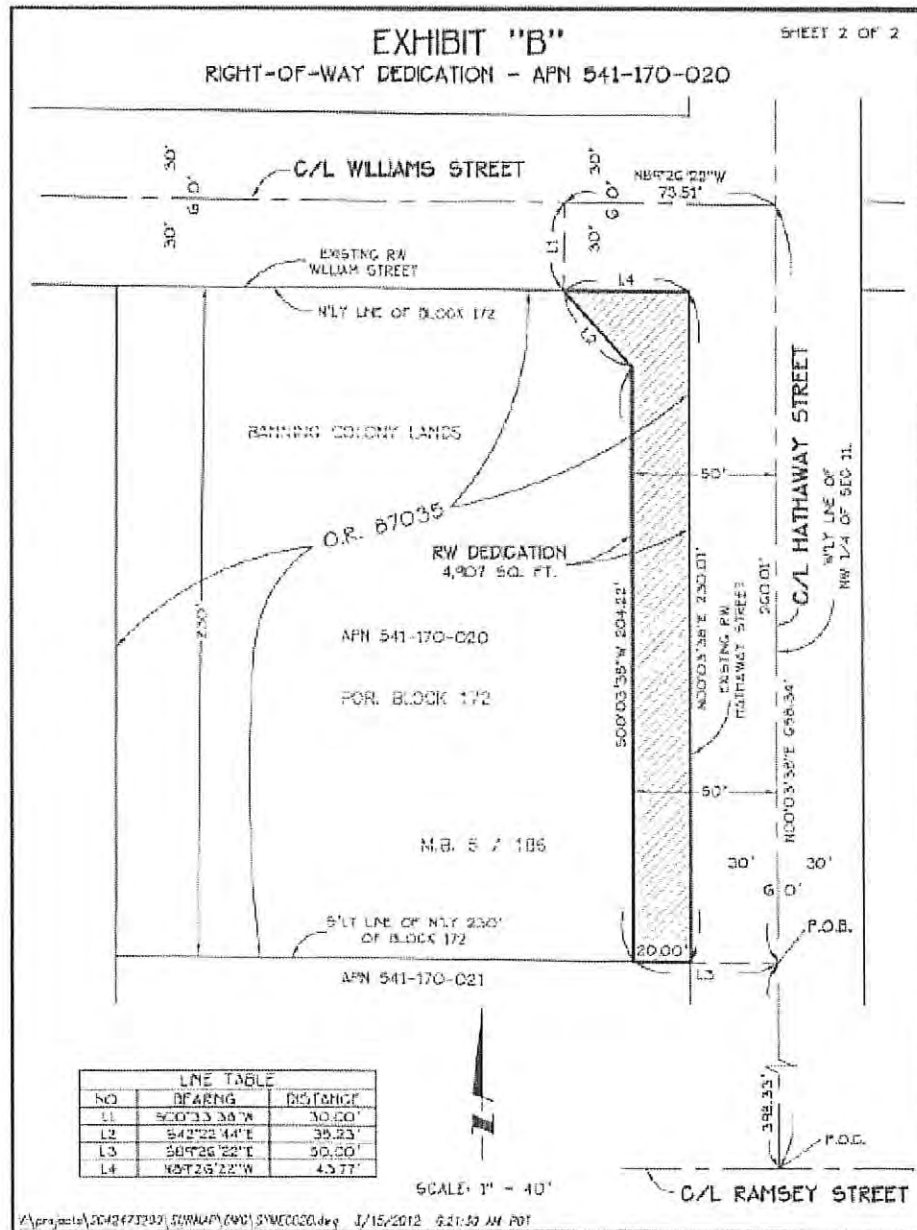


PREPARED BY: STEARNS CONSULTING, INC.
 UNDER THE DIRECTION OF:

James O. Stearns

JAMES O. STEARNS P.L.S. 6068

APRIL 3, 2012
 J.N. 2042 473291



Signer Is Representing: _____

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

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

(Gov't Code § 27281)
(Portions of APN 541-170-020)

This is to certify that the grant to the City of Banning of that certain approximate 4,907 square foot portion of that certain real property located at the southwest corner of N. Hathaway and E. Williams Street in the City of Banning, and identified as Riverside County Tax Assessor's Parcel Number 541-170-020, which is described more particularly in Exhibit "A" and depicted on Exhibit "B" to the attached Grant Deed is hereby accepted under the authority of the City Council of the City of Banning, and the City of Banning hereby consents to the recordation thereof by its duly authorized officer.

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

Attest:

By: _____
Marie Calderon, City Clerk

Approved as to form:

By: _____
Kevin Ennis, City Attorney

Exhibit "D"**Form of Temporary Construction Easement Agreement**

Recording Requested by
and when recorded return to:

CITY OF BANNING
99 E. Ramsey Street
Banning, California 92220
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 541-170-020

[X] Portions

Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Banning and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement ("TCE Agreement") is entered into by and between FOUNTAIN OF LIFE TEMPLE CHURCH OF GOD IN CHRIST, INC., a California Corporation ("Grantor") and the CITY OF BANNING, a California municipal corporation ("City" or "Grantee") and is effective as of the date it is fully executed by the Parties.

This TCE Agreement is based on the following facts, which are incorporated herein by this reference:

A. Seller is the record fee owner of that certain real property located at the southwest corner of N. Hathaway Street and E. Williams Street in the City of Banning, State of California, identified as Riverside County Tax Assessor's Parcel Number 541-170-020 ("Larger Parcel"). The Larger Parcel is a vacant, unimproved parcel that is approximately 0.92 acres (40,075 square feet) in size.

B. Grantor and City have entered into a Purchase and Sale Agreement ("Purchase Agreement") for City's purchase in fee of an approximate 4,907 square foot portion of Grantor's Larger Parcel for public use, namely public street purposes and all uses necessary or convenient thereto in connection with the Ramsey-Hathaway Street Improvement Project ("Project"). The Project will improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street.

C. Pursuant to the Purchase Agreement, City is also purchasing the approximate 2,112 square foot temporary construction easement described below for a term of nine months on the Larger Parcel to facilitate the construction of the Project. City's use of the TCE is subject to the terms and conditions of this TCE Agreement.

NOW THEREFORE, for a valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor and City agree to the following:

1. Grant of 2,112 Square Foot Temporary Construction Easement. Grantor hereby grants to City, its contractors, agents, representatives, employees, and all others reasonably deemed necessary by City ("City Designees"), that certain approximate 2,112 square foot Temporary Construction Easement more particularly described on Exhibit "A" and depicted on Exhibit "B" hereto ("TCE") in, over, under and across the Larger Parcel for a term of nine months. Exhibit "A" and Exhibit "B" are attached hereto, and incorporated herein by this reference.

2. Term. The term of the TCE will commence thirty calendar days from the date that the City provides written notice to Grantor that it intends to commence construction of the Project. The thirtieth calendar day after the date of the City's notice is the "commencement date" of the TCE. The TCE will terminate automatically nine months from the commencement date ("termination date"). City is authorized to use the approximate 2,112 square foot TCE from the commencement date to the termination date to facilitate City's construction of the Project. The temporary construction easement will expire on the earlier of (i) the termination date or (ii) the date on which City records a notice of termination of the Temporary Construction Easement in the Official Records of the County of Riverside.

3. Option to Extend Term. The City has the option to extend the term by up to six months provided that the City provides Grantor written notice 15 calendar days before the termination date (as defined in 2) notifying Grantor that the City wishes to exercise the option to extend the term by up to six months. During any such extension period, the Parties agree that the City will pay to Grantor the sum of \$61.42 per month for any portion of a month in which the City continues to use the TCE. The monthly compensation is based on compensation at \$3.49 per square foot with a net annual rate of return of ten percent. Thus, if the City uses the TCE for an additional 2.3 months, the City will pay Grantor the sum of \$184.26, which represents the compensation for three months (\$61.42 x 3 months). The City will pay any such compensation for the extension term within 30 calendar days of the date on which the City's use of the TCE terminates.

4. Scope of Temporary Construction Easement. The 2,112 square foot TCE is for the use by City Designees for the above-referenced approximate nine-month period to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the new right of way, construction staging purposes, and storage of material and equipment on the TCE, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

5. No Liens. City agrees to keep the approximate 2,112 square foot TCE and the Larger Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Larger Parcel in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Grantor will have the right to remove or bond over the lien, and City, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Grantor in connection with such removal or bond.

6. City's Obligations at End of Term. City agrees that as of the termination date of the TCE, City will leave the TCE in as close as possible to the condition in which said TCE existed at the commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this TCE Agreement, including, without limitation, City will record at City's expense, such termination or extinguishment as is in form and substance reasonably acceptable to Grantor and sufficient to remove this TCE Agreement as an encumbrance against title.

7. Warranties. City warrants that on the completion of its use of the TCE, and following removal of any construction equipment and facilities and cleanup required by Section 5, it shall cause its contractor to leave the TCE area in a neat manner conforming to the natural appearance of the TCE area prior to City's use of said area.

8. Insurance. Prior to entry onto the approximate 2,112 square foot TCE area, City will procure and maintain (and cause City's contractor for the Project to procure and maintain) a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Grantor covering the use by and activities of City and City's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder with respect to the use by Grantee and Grantee's Designees of the TCE. Such insurance will be maintained in force throughout the term of this Temporary Construction Easement.

9. City's Agreement to Indemnify. City will, and will cause its contractor for the proposed Project to, indemnify, defend and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the TCE by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this TCE Agreement or any breach of City's or City's contractor's obligations under this TCE Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and

use of the area comprising the TCE by said contractor and/or its designees in connection with the Project or any breach of City's or its contractor's obligations under this TCE Agreement.

10. Notices. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
355 South Grand Avenue
40th Floor
Los Angeles, California 90071-3101
Attention: Kevin Ennis, City Attorney

SELLER: Fountain of Life Temple Church of Christ, Inc.
Post Office Box 423
Banning, California 92220-0016

11. Miscellaneous Provisions.

11.1 *Governing Law*. This TCE Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This TCE Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

11.2 *Entire Agreement*. This TCE Agreement, together with the Purchase Agreement, contains the entire agreement between Grantor and Grantee regarding the TCE. No person is authorized to make, and by execution hereof Grantor and Grantee acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and any such agreement, statement, representation or promise not contained in said Purchase Agreement and this TCE Agreement will not be binding on Grantor or City.

11.3 *Amendments*. Any amendments to this TCE Agreement will be effective only by a writing executed by all Parties to this TCE Agreement.

11.4 *Successors and Assigns.* This TCE Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

11.5 *Counterparts, Facsimile and Electronic Signatures.* This TCE Agreement may be executed in whole or in counterparts, which together shall constitute the entire Agreement. Facsimile or electronic signatures/counterparts to this TCE Agreement shall be effective as if the original signed counterpart were delivered.

11.6 *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this TCE Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented. The Parties further acknowledge that, prior to executing this TCE Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of said Agreement.

11.7 *Attorneys' Fees.* If either of the Parties hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this TCE Agreement or because of a breach of this TCE Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees from the other party.

11.8 *Severability.* If any part, term or provision of this TCE Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this TCE Agreement did not contain the particular part, term or provision held to be invalid.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and City have entered into this TCE Agreement as of the date set forth below.

GRANTOR

Fountain of Life Temple Church of God in Christ, Inc., a California Corporation

Dated: _____

By: _____

Title: _____

Dated: _____

By: _____

Title: _____

GRANTEE

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Temporary Construction Easement

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 541-170-020

THAT PORTION OF BLOCK 172 OF BANNING COUNTY LANDS, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 5, PAGE 186 OF MAPS, LYING WITHIN THE LAND DESCRIBED IN A PARTNERSHIP GRANT DEED TO FOUNDATION OF LIFE TEMPLE OF GOD IN CHRIST, INC. RECORDED MARCH 21, 1987 AS INSTRUMENT NO. 87025 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON CASTILLA SUBDIVISION, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 14, PAGE 82 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°01'38" EAST, 658.34 FEET TO THE INTERSECTION WITH THE CENTERLINE OF WILLIAMS STREET AS SHOWN ON MEX-AMERI MAP, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 10, PAGE 69 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF WILLIAMS STREET, NORTH 89°26'22" WEST, 73.51 FEET;

THENCE, PERPENDICULAR TO SAID CENTERLINE OF WILLIAMS STREET, SOUTH 00°33'38" WEST, 30.00 FEET TO THE NORTHERLY LINE OF SAID BLOCK 172;

THENCE, TRAVERSING THE INTERIOR OF SAID BLOCK 172, THE FOLLOWING COURSES:

SOUTH 29°39'59" EAST, 31.81 FEET TO A LINE PARALLEL WITH AND 58.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 82.01 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, NORTH 89°56'22" WEST, 3.00 FEET TO A LINE PARALLEL WITH AND 61.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 142.49 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, SOUTH 89°56'22" EAST, 4.00 FEET TO A LINE PARALLEL WITH AND 57.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 225.05 FEET;

PERPENDICULAR TO SAID CENTERLINE OF HATHAWAY STREET, NORTH 89°56'22" WEST, 3.00 FEET TO A LINE PARALLEL WITH AND 60.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

1 OF 2

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 541-170-020

ALONG SAID PARALLEL LINE, SOUTH 80°03'22" WEST, 65.60 FEET;

SOUTH 46°41'26" WEST, 28.06 FEET;

SOUTH 88°38'56" WEST, 73.22 FEET;

SOUTH 80°55'05" WEST, 59.90 FEET TO SAID CENTERLINE OF RAMSEY STREET;

ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°04'51" EAST, 155.13 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF BATHURST STREET AND THE EXISTING RIGHT-OF-WAY OF WILLIAMS STREET.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE RIGHT-OF-WAY DEDICATION TO THE CITY OF SAN JOSE RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 2,112 SQUARE FEET, MORE OR LESS.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HEREBY MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



PREPARED BY: STANTEC CONSULTING INC.
 UNDER THE DIRECTION OF:

Minh A. Le

MINH A. LE, P.L.S. #543

MARCH 7, 2018
 J.M. 2073013430

2 OF 2

EXHIBIT "B"

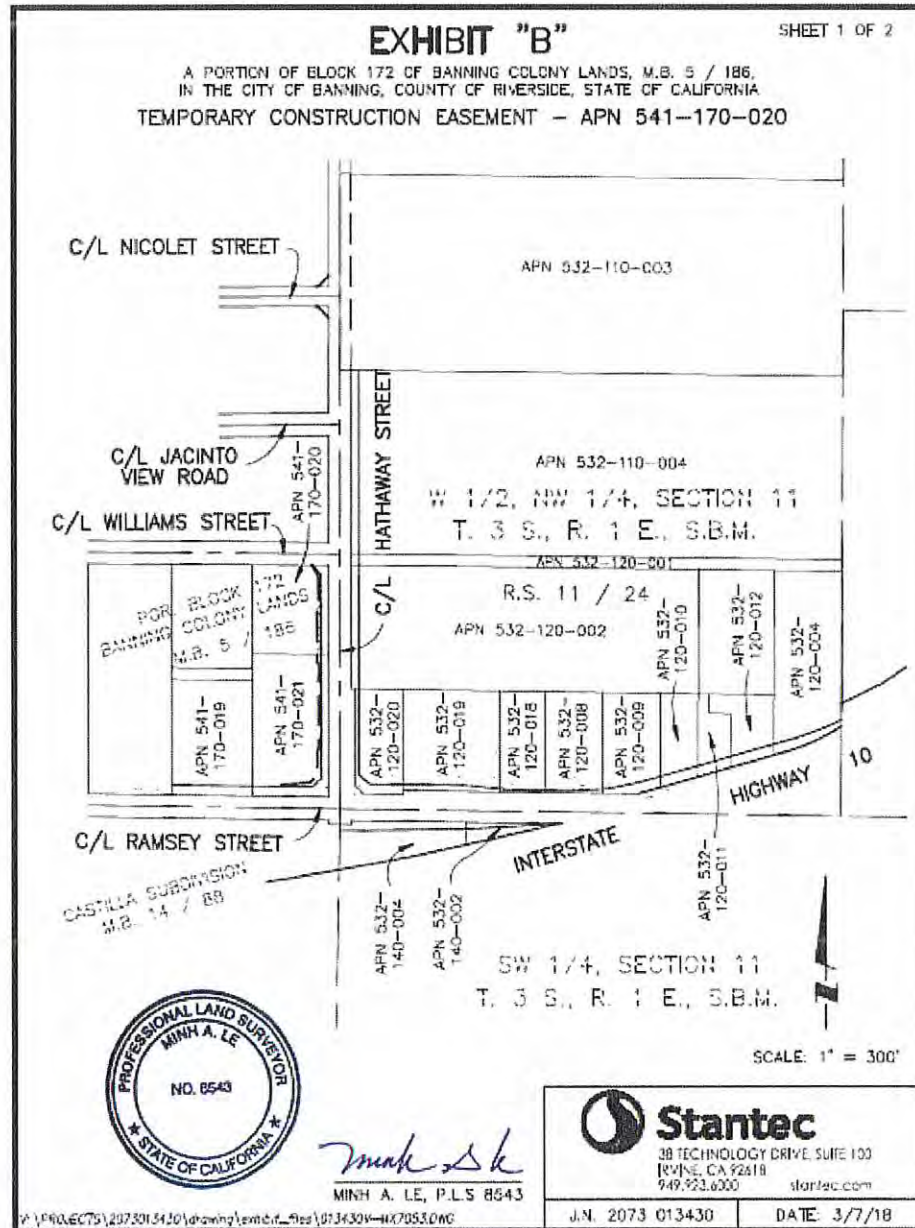
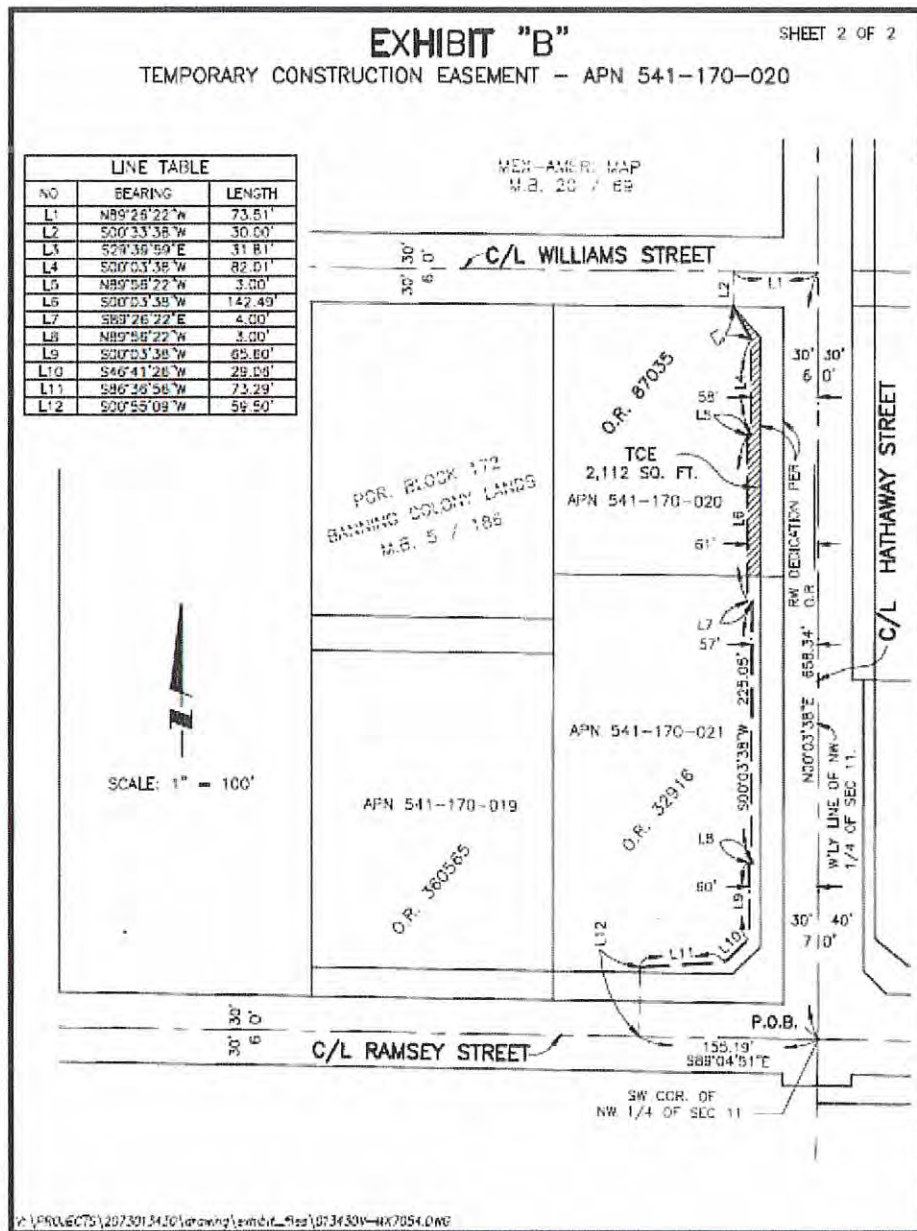


Exhibit "B"

Page 1 of 3



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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: February 12, 2019

SUBJECT: Resolution No. 2019-22, Approving an Agreement for the Purchase of Right-of-Way Dedication from Krystal P. Cruz in an Amount Not To Exceed \$17,100

RECOMMENDED ACTION:

That the City Council Adopt Resolution No. 2019-22:

1. Approving the "Agreement for Purchase and Sale and Escrow Instructions Between City of Banning and Krystal P. Cruz In Connection With Ramsey-Hathaway Street Improvement Project (Portions of APN 532-120-004)";
2. Authorize the City Manager to execute the Agreement for Purchase and Sale and Escrow Instructions and Certificate of Acceptance for portions of APN 532-120-004; and
3. Authorize Administrative Services Director to make necessary budget adjustments and appropriations for FY 2018.

BACKGROUND:

Under the City's Capital Improvement Program, the Ramsey and Hathaway Street Widening project has concluded design and engineering work. The project, as planned and designed, will improve circulation in this area of the City and will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. Widening will also occur along Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the project will construct a new 12-inch ductile iron water line along Ramsey Street. The construction of the project will require the acquisition of right of way in order to be completed.

City staff has held several meetings to discuss the project with property owners in the area and most would only consider right-of-way dedication in exchange for compensation. Prior to acquisition, the City determined fair market value for the necessary right of way required. Values established through the appraisal process, by a state licensed real estate appraiser provide a justification and amount for establishing compensation in exchange for the right-of-way dedications.

In total, the Hathaway and Ramsey Street Widening project consists of eleven parcels and seventeen separate right of way sections within those parcels. Krystal P. Cruz has agreed to terms based upon the appraised value which includes acquisition of approximately 4,410 square feet for the permanent use as a roadway and an approximate 424 square feet Temporary Construction Easement ("TCE"). The total appraised value for both the permanent dedication and TCE as \$15,100. Staff is also requesting funds not to exceed \$2,000 for associated escrow and title services, totaling \$17,100.

FISCAL IMPACT:

The purchase price is \$15,100 plus escrow and title charges not to exceed \$2,000 for a total expenditure of up to \$17,100. Funds to be sourced from Account 841-9500-490.93-30.

ATTACHMENTS:

1. Resolution 2019-22
2. Purchase and Sale and Escrow Instructions Agreement – Partially Executed

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-22

RESOLUTION 2019-22**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT FOR THE PURCHASE OF CERTAIN REAL PROPERTY INTERESTS FROM THE REAL PROPERTY AT 1955 E. RAMSEY STREET, BANNING (APN 532-120-004)**

WHEREAS, the City of Banning seeks to construct the Ramsey-Hathaway Street Improvement Project ("Project") to improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street; and

WHEREAS, the Property requires the acquisition of certain property interests from eleven larger parcels; and

WHEREAS, on November 8, 2018, the City extended to the record owner, Krystal P. Cruz, a written offer pursuant to Government Code Section 7267.2 to purchase an approximate 4,410 square foot fee portion ("Subject Fee Property") of the real property located at 1955 E. Ramsey Street, Banning, and identified as Riverside County Tax Assessor's Parcel Number 532-120-004 ("Cruz Parcel") for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto. The City also offered to purchase and approximate 424 square foot temporary construction easement on the Cruz Parcel for a term of nine months ("TCE") to help facilitate the City's construction of the Project. The Subject Fee Property and TCE are more particularly described in the exhibits to the Agreement for Purchase and Sale and Escrow Instructions attached as Attachment 2 to the staff report. The City's offer was based on the fair market value estimate determined by the City's independent appraiser; and

WHEREAS, the record owner has accepted the City's offer to purchase the Subject Fee Property and the TCE; and

WHEREAS, the City studied the environmental effects of the subject road widening Project in accordance with the California Environmental Quality Act ("CEQA"). Pursuant to Section 15301 of Article 19 (Categorical Exemptions) of the State CEQA Guidelines, City Staff found that the Project is exempt from CEQA because it involves minor alterations of existing public streets, sidewalks, gutters, and related facilities with negligible expansion.

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

SECTION 1. The Banning City Council adopts Resolution 2019-22 approving the Agreement for Purchase and Sale and Escrow Instructions between City of Banning

and Krystal P. Cruz in Connection with the Ramsey-Hathaway Street Improvement Project (Portions of APN 532-120-004) for the purchase of the Subject Fee Property and the TCE for the sum of \$15,100. A copy of the Agreement is attached as Attachment 2 to the staff report that accompanies this Resolution. This approval of the Agreement is not an announcement of the City's intent to acquire any other real property interests for the Project and does not commit the City to acquire any other real property interests for the Project.

SECTION 2. The environmental effects of the Project, including the acquisition of the Subject Fee Property and the TCE, were studied as an integral part of the environmental review for the Project. The City Council concurs with City Staff's determination that the Project qualifies as exempt from CEQA pursuant to Section 15103 of the State CEQA Guidelines because the Project involves minor alterations to existing public streets. The City Council directs City staff to file a Notice of Exemption in connection with this Project in accordance with CEQA.

SECTION 3. The City Manager is authorized to execute the Agreement, in substantially the form attached as Attachment 2 to the staff report that accompanies the Resolution, the TCE Agreement in substantially the form attached as an exhibit to the Agreement, Certificate of Acceptance, escrow documents, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated in the Agreement or to memorialize any necessary extension of the term of the TCE as provided for in the TCE Agreement.

SECTION 4. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers to effectuate the property transactions contemplated in the Agreement, including but not limited to the payment of the Purchase Price of \$15,100, compensation for any necessary extension of the term of the TCE in accordance with the TCE Agreement, and escrow-related charges, which are not estimated to exceed \$2,000.

SECTION 5. The City Clerk shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

ATTACHMENT 2

Purchase and Sale and
Escrow Instructions
Agreement
Partially Executed

**AGREEMENT FOR PURCHASE AND SALE AND ESCROW
INSTRUCTIONS BETWEEN CITY OF BANNING AND KRYSTAL P.
CRUZ IN CONNECTION WITH RAMSEY-HATHAWAY STREET
IMPROVEMENT PROJECT (PORTIONS OF APN 532-120-004)**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS BETWEEN THE CITY OF BANNING AND KRYSTAL P. CRUZ IN CONNECTION WITH RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT (PORTIONS OF APN 532-120-004) ("Agreement") is entered into by and between the CITY OF BANNING, a municipal corporation ("Buyer" or "City"), and KRYSTAL P. CRUZ ("Seller") and constitutes an agreement to purchase and sell certain real property interests between Seller and Buyer and the joint escrow instructions directed to Sentry Escrow Service, Inc., attention Judy A. Russell, President ("Escrow Holder"). Seller and Buyer are referred to below collectively as the "Parties". The Agreement is effective on the date it is fully executed by the Parties ("Effective Date"). Upon execution of this Agreement by Buyer, Buyer shall promptly deliver a copy of this executed Agreement to Seller.

RECITALS

A. Seller is the owner of that certain real property located at 1955 E. Ramsey Street, in the City of Banning, California, and identified as Riverside County Tax Assessor's Parcel Number 532-120-004 ("Larger Parcel").

B. The City seeks to construct the Ramsey-Hathaway Street Improvement Project ("Project") to improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street.

C. The City extended to Seller a written offer dated November 8th, 2018 pursuant to Government Code Section 7267.2 to purchase in fee an approximate 4,410 square foot portion of the Larger Parcel ("Subject Fee Property") for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the City's proposed construction of the Project. The approximate 4,410 square foot Subject Fee Property that the City seeks to acquire in fee is described more particularly on Exhibit "A" hereto and depicted on Exhibit "B" hereto, which are incorporated herein by this reference. The City also offered to purchase an approximate 424 square foot temporary construction easement for a term of nine months ("TCE") to facilitate the construction of the Project. The approximate 424 square foot TCE is described more particularly on Exhibit "A-1" hereto and depicted on Exhibit "B-1" hereto, which are incorporated herein by this reference.

D. The Parties negotiated the City's purchase in fee of the Subject Fee Property and the City's use of the TCE for a term of nine months, and have reached an agreement regarding the terms of the City's purchase of the Subject Fee Property and TCE, subject to ratification by the City Council.

E. The Parties acknowledge that the City is authorized to acquire real property by eminent domain for a public use, including public street purposes, and all uses necessary or

convenient thereto, including, but not limited to, street, sewer, drainage, and utilities, pursuant to the authority conferred upon the City of Banning by California Constitution Article 1, Section 19, California Government Code Sections 37350, 37350.5, 37351, 40401 and 40404 and California Code of Civil Procedure Section 1230.010 *et seq.* (Eminent Domain Law). The Project is a public use for which City has the authority to exercise the power of eminent domain. The City Council of the City of Banning, as the City's governing body, has sole discretion to make the findings required by Code of Civil Procedure Section 1240.030 for the adoption of a resolution of necessity pursuant to the Eminent Domain Law. (Code of Civil Procedure Section 1245.220). If Seller and the City had not reached an agreement for City's purchase of the Subject Fee Property and use of the TCE, City staff would have recommended that the City Council consider the adoption of a resolution of necessity authorizing the initiation of eminent domain proceedings to acquire the Subject Fee Property and TCE in accordance with the Eminent Domain Law. The City Council, however, has the exclusive and sole discretion to adopt a resolution of necessity. The adoption of any such resolution of necessity would require the City's compliance with applicable law, including Government Code Section 7260 *et seq.* and the Eminent Domain Law. This Agreement is not a commitment or announcement of intent to acquire any other real property interests that the City may need for the Project. Seller is solely responsible for consulting its tax advisors or seeking a letter ruling from the Internal Revenue Service regarding the applicability of 26 U.S.C. Section 1033 to Seller's sale of the TCE to the City in connection with the Project. The City makes no express or implied representation regarding the applicability of 26 U.S.C. Section 1033 to this transaction.

F. Seller desires to authorize the City to purchase the Subject Fee Property and to use the TCE for a term of nine months, and the City desires to purchase the Subject Fee Property and use the TCE for a term of nine months, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above Recitals, which are incorporated herein by this reference and for other valuable consideration, the sufficiency of which is hereby acknowledged, City and Seller agree as follows.

1. SALE AND PURCHASE PRICE.

1.1 Sale and Purchase. Seller agrees to sell the Subject Fee Property and the TCE to City and City agrees to purchase the Subject Fee Property and TCE upon the terms and conditions hereafter set forth.

a. *Subject Fee Property.* On the Close of Escrow (as defined in Section 3.2 below), Seller agrees to sell in fee to the City the approximate 4,410 square foot Subject Fee Property described in Exhibit "A" and depicted on Exhibit "B" hereto, and the City agrees to purchase in fee the Subject Fee Property pursuant to a Grant Deed, in the form of which is attached as Exhibit "C" hereto, and incorporated herein by this reference.

b. *Temporary Construction Easement.* Seller further agrees to authorize City to use the approximate 424 square foot TCE described on Exhibit "A-1" hereto and depicted on Exhibit "B-1" hereto for a term of nine months to facilitate the City's construction of the Project, including construction of street and drainage improvements in the new right of way area, construction staging purposes, storage of material and equipment, if

necessary. City's use of the TCE and option to extend the TCE for up to an additional six months is subject to the terms of the Temporary Construction Easement Agreement (TCE Agreement), the form of which is attached as Exhibit "D" hereto, and incorporated herein by this reference.

1.2 Purchase Price. The total purchase price ("Purchase Price") for the Subject Fee Property and the TCE is \$15,100.00 (Fifteen Thousand One Hundred Dollars).

2. TITLE AND TITLE INSURANCE.

2.1 General. Title to the Subject Fee Property shall be conveyed by a Grant Deed in the form attached hereto as Exhibit "C".

2.2 Title Insurance. Upon the Opening of Escrow, Escrow Holder will obtain from First American Title Company a title commitment for the Subject Fee Property. Escrow Holder will also request two copies each of all instruments identified as exceptions on said title commitment. Upon receipt of the foregoing, Escrow Holder will deliver these instruments and the title commitment to City and Seller. First American Title Insurance Company, 323 Court Street, San Bernardino, California 92401, Title Officer: Tammy Kerr or Cheryl Campbell ("Title Company") will insure City's interest in the Subject Fee Property at the Close of Escrow by a CLTA Owner's Standard Coverage Policy of Title Insurance in the amount of the Purchase Price ("Title Policy"), with liability in the full amount of the Purchase Price, insuring title to the Subject Fee Property as vested in the City, free and clear of all liens and encumbrances and other matters affecting title to the Subject Fee Property, except title exceptions which Buyer has approved in writing (which shall constitute "Permitted Title Exceptions"). Buyer, in its sole discretion, may request that Title Company insure Buyer's interest in the Subject Fee Property by an ALTA Extended Coverage Form of Title Policy. In such case, Buyer shall pay for the costs of the ALTA Extended Coverage Policy and survey.

2.3 Acts After Date of Agreement. During the period from the date of this Agreement through the Close of Escrow, Seller shall not record or permit to be recorded any document or instrument relating to the Subject Fee Property or physically alter the Subject Fee Property or permit or cause to be altered without the prior written consent of Buyer, which consent may be withheld in Buyer's sole and absolute discretion. Further, Seller agrees not to authorize any other party to use the TCE during the term of the TCE.

3. ESCROW.

3.1 Escrow Holder. The escrow shall be opened with Sentry Escrow Service, Inc. (Attention: Judy A. Russell, President) ("Escrow Holder"), within five (5) business days after the execution of this Agreement by Buyer and Seller depositing an executed copy or executed counterparts of this Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the Parties, with such further instructions as Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder. For the purposes of this Agreement, "Opening of Escrow" means the date on which Escrow Holder receives a copy of the fully-executed Agreement or counterparts of this Agreement.

3.2 Close of Escrow. For the purposes of this Agreement, "Close of Escrow" shall be the date on which the Grant Deed for the Subject Fee Property in favor of Buyer and the TCE Agreement are recorded in the Official Records of the Riverside County Recorder's Office. Provided all of Seller's and Buyer's obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close 30 calendar days after the Opening of Escrow ("Closing Date"). All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

3.3 Seller Required to Deliver. Before the Close of Escrow, Seller shall deposit into escrow the following:

- a. A grant deed conveying the Property to Buyer, in the form attached hereto as Exhibit "C", duly executed by Seller and acknowledged ("Grant Deed");
- b. The executed Temporary Construction Easement Agreement in the form attached hereto as Exhibit "D", duly executed by Seller and acknowledged ("TCE Agreement");
- c. A California 593 certificate and federal non-foreign affidavit (with respect to Seller); and
- d. Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Seller to carry out this escrow.

3.4 Buyer Required to Deliver. On or before the Close of Escrow, Buyer shall deposit into escrow the following (properly executed and acknowledged, if applicable):

- a. An executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "C");
- b. The executed TCE Agreement in the form attached hereto as Exhibit "D", duly executed by the City;
- c. The City covenants and agrees to deposit with Escrow Holder the Purchase Price and such escrow funds as are required within five business days of receiving written notice from Escrow Holder regarding the confirmation of the completion of the conditions required herein for the Close of Escrow; and
- d. Any other documents reasonably required by Escrow Holder to be deposited by Buyer to carry out this escrow.

3.5 Conditions to the Close of Escrow. Escrow shall not close unless and until both Parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally, Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

a. Seller shall have performed all agreements to be performed by Seller hereunder.

b. Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price, showing fee title to the Subject Fee Property to be vested in Buyer subject only to the Approved Title Exceptions. Escrow Holder will use the proceeds of the Purchase Price to obtain a full reconveyance of any monetary liens encumbering the approximate Subject Fee Property, so that said Subject Fee Property is free and clear of monetary liens and encumbrances at the Close of Escrow. Escrow Holder will obtain final approval from Seller regarding the disbursement of the proceeds prior to disbursing any such proceeds to the holder(s) of the monetary liens encumbering the Subject Fee Property.

c. If any of the conditions to Close of Escrow are not timely satisfied for a reason other than a default of Buyer or Seller under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all funds and documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less any escrow cancellation charges).

3.6 Recordation of Grant Deed and TCE Agreement; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in this Section 3, Escrow Holder shall cause the Grant Deed and TCE Agreement to be recorded in the Office of the County Recorder of Riverside County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Buyer and Seller) to Seller, and Seller shall deliver possession of the Subject Fee Property to Buyer free and clear of all occupants. Buyer shall be authorized to use the TCE in accordance with the terms of the TCE Agreement.

3.7 Prorations. Real property taxes for the Subject Fee Property shall not be prorated, but must be paid by Seller for the current tax period. Seller may apply for a refund of property taxes in the event any property taxes paid are allocable to the period after the Close of Escrow and Buyer shall reasonably cooperate therewith. Buyer, as a municipal corporation acquiring property within its jurisdiction, is exempt from property taxes. All property assessments shall be prorated between Buyer and Seller as of the Close of Escrow based on the latest available tax information. All prorations for such assessments shall be determined on the basis of a 365-day year. Escrow Holder is authorized to pay from the Purchase Price any unpaid delinquent taxes and/or penalties and interest thereon, and for any delinquent or non-delinquent assessments or bonds recorded against the Subject Fee Property.

3.8 Costs of Escrow. Buyer will pay for the cost of the Title Policy (or ALTA Extended Coverage if Buyer elects to obtain such extended coverage). City will also pay for escrow fees and Escrow Holder's customary out-of-pocket expenses for messenger services, long distance telephone calls, etc. City will pay for recording the Grant Deed and TCE Agreement, and any documentary or other local transfer taxes, if any, and any recording costs (if any).

3.9 Brokers. Buyer and Seller represent to one another that they have not engaged any broker or finder in connection with the transaction contemplated by this Agreement.

Seller shall pay commissions to such broker in accordance with the agreement between Seller and such broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party. Each party agrees to defend, indemnify and hold harmless the other party and its respective employees, agents, representatives, council members, attorneys, successors and assigns, from and against all claims of any agent, broker, finder or other similar party arising from or in connection with its activities relating to the sale of the Property to Buyer.

3.10 Escrow Cancellation Charges. If escrow fails to close through no fault of either party, the City will pay all escrow and title cancellation charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges.

4. PERMISSION TO ENTER/DUE DILIGENCE TESTING. Seller hereby grants to City and City's authorized agents, contractors, consultants, assigns, attorneys, accountants and other representatives an irrevocable license/permission to enter upon the Subject Fee Property for the purpose of making any due diligence testing and other examinations of the Subject Fee Property, including, but not limited to, the right to perform soil and geological tests of the Subject Fee Property and environmental site assessments thereof, that City considers necessary. City will give Seller 48-hours written notice before going on the Subject Fee Property to conduct such due diligence testing. City does hereby indemnify and forever save Seller, Seller's heirs, successors and assigns free and harmless from and against any and all liability, loss, damages, costs, expenses, demands, causes of action, claims or judgments, whether or not arising from or occurring out of any damage to the Subject Fee Property arising from any accident or other occurrence at the Subject Fee Property in connection with City's due diligence testing and environmental site assessments involving entrance onto the Subject Fee Property pursuant to this Section. If City fails to acquire the Subject Fee Property due to City's default, this license/permission to enter will terminate upon the termination of City's right to purchase said Subject Fee Property. In such event, City will remove or cause to be removed all of its personal property, facilities, tools, and equipment from the Subject Fee Property left in the area comprising the Subject Fee Property in connection with the due diligence testing and restore said area as close to possible to the condition of said area prior to City's due diligence testing. The obligation of City to indemnify Seller for any such damage to the Subject Fee Property arising from the due diligence testing and/or environmental site assessment and related testing under this Section 4 will survive Close of Escrow or termination of Escrow.

5. REPRESENTATION AND WARRANTIES OF SELLER. Seller hereby represents and warrants to City the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

5.1 That to the best of Seller's knowledge on the Close of Escrow (i) the Subject Fee Property will be free and clear of Hazardous Materials (defined in Section 10.1. below) or toxic substances and waste, including, but not limited to, asbestos; (ii) businesses, if any, on the Subject Fee Property have disposed of their waste in accordance with all applicable statutes, ordinances, and regulations; and (iii) Seller has no notice of any pending or threatened action or

proceeding arising out of the condition of the Subject Fee Property or alleged violation of Environmental Laws (defined in Section 10.2. below), health or safety statutes, ordinance, or regulations.

5.2 That Seller is the sole owner of the Subject Fee Property free and clear of all liens, claims, encumbrances, easements, encroachments from adjacent properties, encroachments by improvements or vegetation on the Subject Fee Property onto adjacent property, or rights of way of any nature, other than those that may appear on the title commitment. Seller will not further encumber the Subject Fee Property or allow the Subject Fee Property to be further encumbered prior to the Close of Escrow.

5.3 Neither this Agreement nor anything provided to be done hereunder, including the transfer of the Subject Fee Property to City, violates or will violate any contract, agreement or instrument to which Seller is a party, or which affects the Subject Fee Property, and the Seller's grant to City of the Subject Fee Property pursuant to this Agreement does not require the consent of any party not a signatory hereto.

5.4 Except as disclosed in the title commitment referred to in Section 2.2, there are no claims or liens presently claimed or that will be claimed against the Subject Fee Property by contractors, subcontractors, or suppliers, engineers, architects, surveyors or others that may have lien rights for work performed or commenced prior to the Effective Date. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including reasonable attorneys' fees, arising from or relating to any such lien or any similar lien claimed against the Subject Fee Property and arising from work performed or commenced prior to the Close of Escrow.

5.5 There are no written or oral leases or contractual right or option to lease, purchase, or otherwise enjoy possession, rights, or interest of any nature in and to the Subject Fee Property, TCE, or any part thereof, and no persons have any right of possession to the Subject Fee Property, TCE, or any part thereof. Seller agrees to hold City harmless from all costs, expenses, liabilities, losses, charges, fees, including attorneys' fees, arising from or relating to any claims by any person or entity claiming rights to possession of any portion of the Subject Fee Property or the TCE.

5.6 Seller has no knowledge of any pending, threatened or potential litigation, action or proceeding against Seller or any other party before any court or administrative tribunal that involves the Subject Fee Property.

6. REPRESENTATIONS AND WARRANTIES OF CITY. City hereby represents and warrants to Seller the following, it being expressly understood and agreed that all such representations and warranties are to be true and correct as of the Close of Escrow and will survive the Close of Escrow:

6.1 City has taken all required action to permit it to execute, deliver, and perform its obligations under this Agreement.

6.2 City has the power and authority to execute and deliver this Agreement and carry out its obligations hereunder and consummate the transaction contemplated herein.

7. TOTAL CONSIDERATION.

7.1 City's Payment of Purchase Price. City's payment to Seller of the Purchase Price set forth in this Agreement is an all-inclusive settlement and is the full and complete consideration and payment of just compensation for the fair market value of the Subject Fee Property, any improvements located on the Subject Fee Property, use by the City of the TCE for a term of nine months, severance damages, inverse condemnation, precondemnation damages, attorneys' fees, interest, appraisal costs, loss of rents, lost profits, any other damages of every kind and nature suffered by Seller by reason of City's acquisition of the Subject Fee Property and the TCE or the proposed Project for which City is acquiring the Subject Fee Property and TCE, and all costs and expenses whatever in connection therewith.

7.2 No Loss of Business Goodwill. Seller further acknowledges and agrees that Seller will not suffer any loss of goodwill under Code of Civil Procedure Section 1263.510 as a result of City's acquisition of the Subject Fee Property or the construction of the Project because the Larger Parcel is a vacant, unimproved parcel and no business is operated on said parcel. Under Code of Civil Procedure Section 1263.510, the owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, will be compensated for loss of goodwill if the owner proves that (i) the loss is caused by City's acquisition of the property or the injury to the remainder; (ii) the loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill; (iii) compensation for the loss will not be included in payments under Government Code Section 7262; and (iv) compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

7.3 No Relocation Assistance. The Larger Parcel consists of a vacant, unimproved parcel. The City's acquisition of the Subject Fee Property and TCE will not result in the displacement of any person or business. Accordingly, no relocation assistance and benefits pursuant to applicable federal or state relocation laws or regulations, including without limitation, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 *et seq.*), if applicable, or under Title 1, Division 7, Chapter 1 of the Government Code of the State of California (Section 7260 *et seq.*), or the Relocation Assistance and Real Property Acquisition Guidelines (Chapter 6 of Title 25 of the California Code of Regulations) are triggered as a result of the City's acquisition of the Subject Fee Property and TCE in connection with the Project.

8. RELEASES.

8.1 This Agreement is a voluntary agreement and Seller on the Close of Escrow, on behalf of Seller, Seller's successors and assigns, fully releases City, its Council Members, officers, counsel, employees, representatives and agents, from all claims and causes of action by reason of any damage that has been sustained, or may be sustained, as a result of City's efforts to acquire the Subject Fee Property and TCE, or any preliminary steps thereto. Seller further releases and agrees to hold City harmless from any and all claims and causes of action asserted by any party claiming to have rights to possession of any portion of the Subject Fee Property and TCE.

8.2 Seller acknowledges that it may have sustained damage, loss, costs or expenses that are presently unknown and unsuspected, and such damage, loss, costs or expenses that may have been sustained, may give rise to additional damages, loss, costs or expenses in the future. Nevertheless, Seller hereby acknowledges that this Agreement has been negotiated and agreed upon in light of that situation, and hereby expressly waives any and all rights that Seller may have under California Civil Code Section 1542 as it relates to the releases set forth in this Section 8, or under any statute or common law or equitable principle of similar effect. California Civil Code Section 1542 provides as follows:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Seller's Initials: KPC

City's Initials: _____

Seller's waiver of rights and release of claims set forth above in Section 8.1 and Section 8.2 will not extend to and is not intended to extend to claims related to or alleged to arise out of negligence on the part of City, its agents or contractors, in connection with the physical construction of the Project.

This Section 8 will survive the Close of Escrow.

9. CITY'S CONTINGENCIES. For the benefit of City, the Close of Escrow and City's obligation to consummate the purchase of the Subject Fee Property and TCE will be contingent upon and subject to the occurrence of all of the following (or City's written waiver thereof, it being agreed that City can waive any or all such contingencies) on or before the Close of Escrow:

9.1 That as of the Close of Escrow the representations and warranties of Seller contained in this Agreement are all true and correct;

9.2 The delivery to Escrow Holder of all documents pursuant to Sections 3.3 and 3.4 of this Agreement;

9.3 Escrow Holder's commitment to issue, in favor of City, the Policy with liability equal to the Purchase Price showing City's interest in the Subject Fee Property, subject only to the Permitted Title Exceptions; and

9.4 City's approval prior to the Close of Escrow of any due diligence testing, environmental site assessment, soils or geological reports, or other physical inspections of the Subject Fee Property that City might perform prior to the Close of Escrow.

10. CERTAIN DEFINITIONS.

10.1 The term "Hazardous Materials" will mean and include the following, including mixtures thereof: any hazardous substance, pollutant, contaminant, waste, by-product

or constituent regulated under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601 *et seq.*; oil and petroleum products and natural gas, natural gas liquids, liquefied natural gas and synthetic gas usable for fuel; pesticides regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136 *et seq.*; asbestos and asbestos-containing materials, PCBs and other substances regulated under the Toxic Substances Control Act, 15 U.S.C. Section 2601 *et seq.*; source material, special nuclear material, by-product material and any other radioactive materials or radioactive wastes, however produced, regulated under the Atomic Energy Act or the Nuclear Waste Policy Act of 1982; chemicals subject to the OSHA Hazard Communication Standard, 29 C.F.R. Section 1910.1200 *et seq.*; industrial process and pollution control wastes, whether or not hazardous within the meaning of the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901 *et seq.*; any substance defined as a "hazardous substance" in California Civil Code Section 2929.5(e)(2) or California Code of Civil Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

10.2 The term "Environmental Laws" will mean and include all federal, state and local statutes, ordinances, regulations and rules in effect on or prior to the Effective Date relating to environmental quality, health, safety, contamination and clean-up, including, without limitation, the Clean Air Act, 42 U.S.C. Section 7401 *et seq.*; the Clean Water Act, 33 U.S.C. Section 1251 *et seq.*; and the Water Quality Act of 1987; the Federal Insecticide, Fungicide, and Rodenticide Act 7 U.S.C. Section 136 *et seq.*; the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. Section 1401 *et seq.*; the National Environmental Policy Act, 42 U.S.C. Section 4321 *et seq.*; the Noise Control Act, 42 U.S.C. Section 4901 *et seq.*; the Occupational Safety and Health Act, 29 U.S.C. Section 651 *et seq.*; the Resource Conservation and Recovery Act 42 U.S.C. Section 6901 *et seq.*; as amended by the Hazardous and Solid Waste Amendments of 1984; the Safe Drinking Water Act, 42 U.S.C. Section 300f *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act 42 U.S.C. Section 9601 *et seq.* as amended by the Superfund Amendments and Reauthorization Act, the Emergency Planning and Community Right-to-Know Act and the Radon Gas and Indoor Air Quality Research Act; the Toxic Substances Control Act 15 U.S.C. Section 2601 *et seq.*; the Atomic Energy Act, 42 U.S.C. Section 2011 *et seq.*; and the Nuclear Waste Policy Act of 1982, 42 U.S.C. Section 10101 *et seq.*; and state and local environmental statutes and ordinances, with implementing regulations and rules in effect on or prior to the Effective Date.

11. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of \$15,100.00 or any inference of per square foot value of the Subject Fee Property or TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the Subject Fee Property or TCE in any eminent domain or other proceeding or litigation concerning the Subject Fee Property, or any portion thereof.

12. DEFAULT. In the event of a breach or default under this Agreement by either City or Seller, the non-defaulting party will have, in addition to all rights available at law or equity, the right to terminate this Agreement and the Escrow for the purchase and sale of the Subject Fee Property and TCE, by delivering written notice thereof to the defaulting party and to Escrow Holder, and if City is the non-defaulting party, City will thereupon promptly receive a refund of all of the deposits it deposited with Escrow Holder, if any, less City's share of any Escrow

cancellation charges. Such termination of the Escrow by a non-defaulting party will be without prejudice to the non-defaulting party's rights and remedies at law or equity.

13. NOTICES. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express or other overnight carrier. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express or other overnight carrier. A copy of all notices will be sent to Escrow Holder. The Parties will address such notices as provided below or as may be amended by written notice:

BUYER:	City of Banning 99 E. Ramsey Street Banning, California 92220 Attention: City Manager
COPY TO:	Richards, Watson & Gershon 355 South Grand Avenue 40th Floor Los Angeles, California 90071-3101 Attention: Kevin Ennis, City Attorney
SELLER:	Krystal P. Cruz 1300 E. Ramsey Street Banning, California 92220-5930
ESCROW HOLDER:	Sentry Escrow Service, Inc. Attention: Judy A. Russell, President 300 S. Highland Springs Ave., #10C Banning, California 92220 (951)849-4505 or (909)793-3147 (phone) (951)849-9262 (facsimile)
TITLE COMPANY:	First American Title Company 323 Court Street San Bernardino, California 92401 Attention: Tammy Kerr or Cheryl Campbell

14. MISCELLANEOUS

14.1 Attorneys' Fees. In any action between Buyer and Seller seeking enforcement of any of the terms and provisions of this Agreement, the prevailing party in such action shall be awarded, in addition to damages, injunctive or other relief, its reasonable costs and expenses, not limited to taxable costs, reasonable attorneys' fees and reasonable fees of expert witnesses.

14.2 Entire Agreement. This Agreement and the TCE Agreement contain all of the agreements of the Parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the Parties hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

14.3 Counterparts, Facsimile, and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. Facsimile or electronic signatures/counterparts to this Agreement will be effective as if the original signed counterpart were delivered.

14.4 Time of the Essence. Time is of the essence of this Agreement.

14.5 Governing Law. This Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein will not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, will be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This Agreement will be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties will be governed by, and construed and enforced in accordance with, the laws of the State of California.

14.6 Third Parties. Nothing contained in this Agreement, expressed or implied, is intended to confer upon any person, other than the Parties hereto and their successors and assigns, any rights or remedies under or by reason of this Agreement.

14.7 Severability. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten business days after the party giving such notice becomes aware of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

14.8 Additional Documents. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

14.9 Authority of City Manager. The City Manager may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager may execute the TCE Agreement, Certificate of Acceptance, escrow documents, and any

such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

14.10 Legal Representation. Each of the Parties acknowledge that in connection with the negotiation and execution of this Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented; and, prior to executing this Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of this Agreement.

14.11 Remedies Not Exclusive and Waivers. No remedy conferred by any of the specific provisions of this Agreement is intended to be exclusive of any other remedy and each and every remedy will be cumulative and will be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. The election of any one or more remedies will not constitute a waiver of the right to pursue other available remedies.

14.12 Severability. If any part, term or provision of this Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this Agreement did not contain the particular part, term or provision held to be invalid.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date set forth below.

SELLER

Krystal P. Cruz

Dated: 02-05-19

By: 
Krystal P. Cruz

BUYER

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Subject Fee Property

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 532-120-004

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, WITHIN THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST DATED AUGUST 14, 2001, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°07'14" EAST, 165.00 FEET TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED AS PARCEL 1 IN A CORPORATION GRANT DEED TO PETER MARINO RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, NORTH 00°03'38" EAST, 65.01 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET AND THE POINT OF BEGINNING;

THENCE, TRAVERSING THE INTERIOR OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, THE FOLLOWING COURSES:

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 162.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 212.00 FEET;

EASTERLY 21.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25";

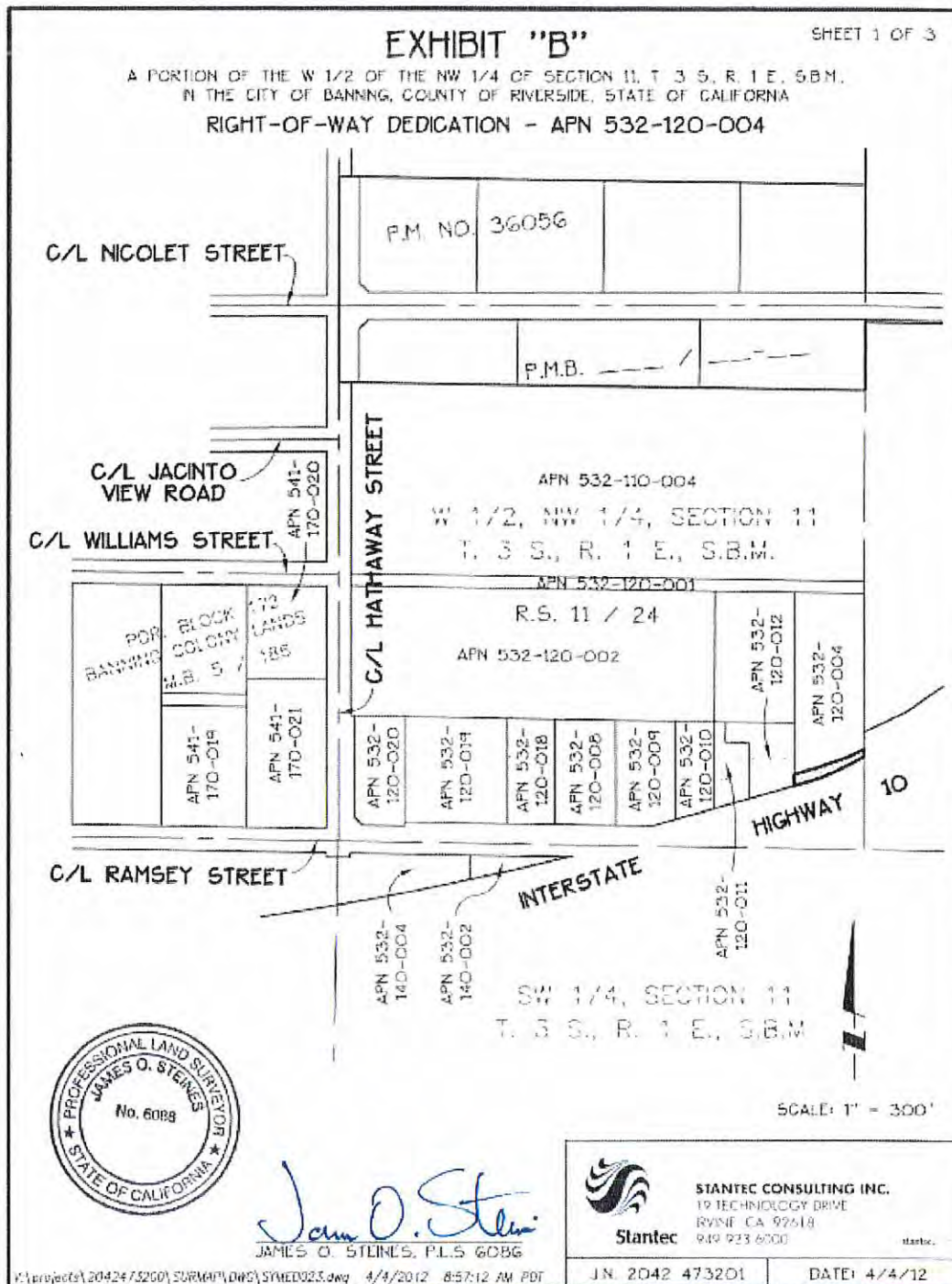
SOUTH 83°24'49" EAST, 80.62 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 188.00 FEET, SAID CURVE BEING TANGENT WITH A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

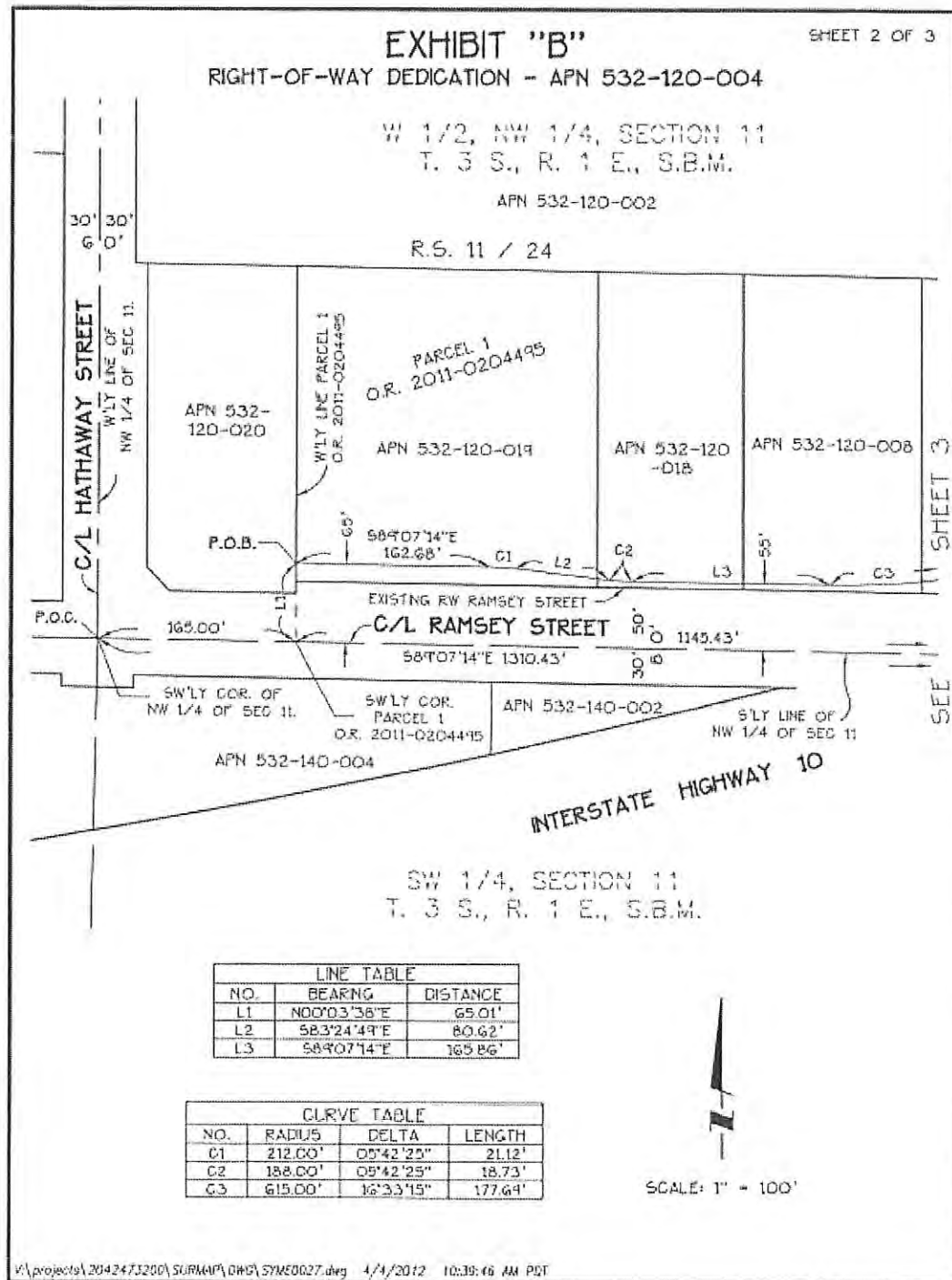
EASTERLY 18.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25" TO SAID PARALLEL LINE;

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 165.86 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 615.00 FEET;

EASTERLY 177.69 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°33'15";

Exhibit "B"
 Depiction of Subject Fee Property





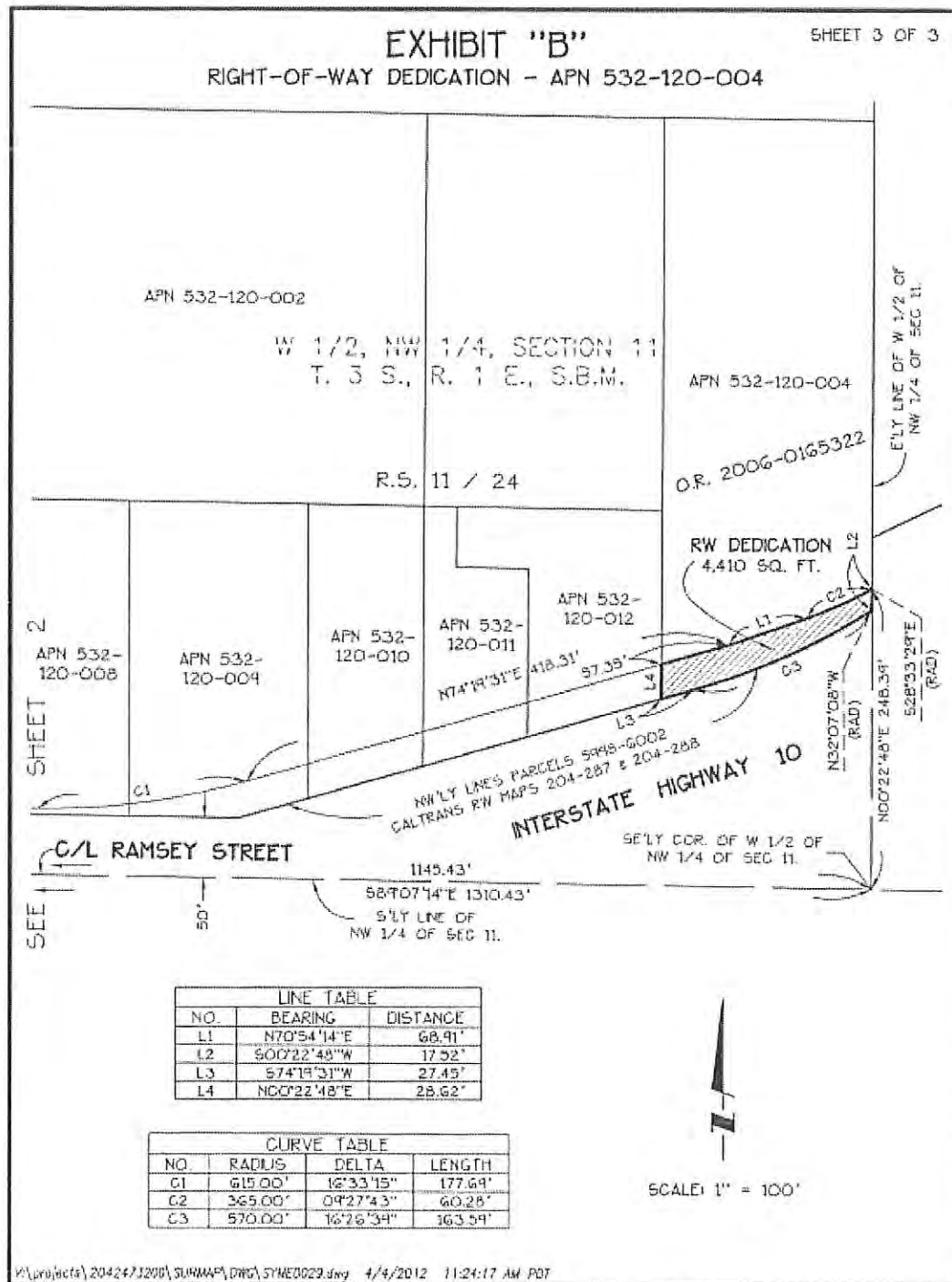


Exhibit "B"
Page 3 of 3

Exhibit "A-1"

Legal Description of Temporary Construction Easement

EXHIBIT "A"

TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF HANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, WITHIN THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST DATED AUGUST 14, 2001, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED REFERENCE LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'38" EAST, 1635.00 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, RECORDED APRIL 10, 2008 AS DOCUMENT NO. 2008-0178325, OFFICIAL RECORDS OF SAID COUNTY, AND THE POINT OF BEGINNING;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, SOUTH 89°15'37" EAST, 52.00 FEET TO A LINE PARALLEL WITH AND 52.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 125.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 53.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 29.50 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 54.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 99.85 FEET;

THENCE, SOUTH 44°59'49" EAST, 43.56 FEET;

THENCE, SOUTH 00°03'16" EAST, 61.19 FEET;

THENCE, SOUTH 45°00'11" WEST, 40.99 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 126.26 FEET TO THE NORTHERLY LINE OF PARCEL 6 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID NORTHERLY LINE, NORTH 89°14'00" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

1 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 280.84 FEET;

THENCE, SOUTH 89°56'22" EAST, 2.00 FEET TO A LINE PARALLEL WITH AND 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 69.37 FEET;

THENCE, NORTH 89°56'22" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 105.38 FEET;

THENCE, SOUTH 53°55'49" EAST, 11.13 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.32 FEET;

THENCE, SOUTH 51°09'39" WEST, 12.85 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 219.93 FEET;

THENCE, SOUTH 38°57'16" EAST, 14.30 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.56 FEET;

THENCE, SOUTH 61°37'51" WEST, 10.23 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.62 FEET TO THE SOUTHERLY LINE OF PARCEL 2 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 89°07'14" EAST, 9.00 FEET TO A LINE PARALLEL WITH AND 64.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.71 FEET;

THENCE, SOUTH 49°31'47" WEST, 9.21 FEET TO A LINE PARALLEL WITH AND 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 52.53 FEET;

THENCE, SOUTH 81°47'21" WEST, 66.27 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 57.98 FEET;

THENCE, SOUTH 50°12'34" EAST, 21.36 FEET TO A LINE PARALLEL WITH AND 74.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

2 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 91.57 FEET TO THE WESTERLY LINE OF PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°03'38" WEST, 9.00 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 117.32 FEET;

THENCE, NORTH 00°03'38" EAST, 18.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 65.00 FEET;

THENCE, SOUTH 00°03'38" WEST, 20.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 212.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 06°12'06" EAST;

THENCE, EASTERLY 1.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'05";

THENCE, SOUTH 83°24'49" EAST, 70.70 FEET TO THE EASTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495;

THENCE, ALONG SAID EASTERLY LINE, NORTH 00°03'38" EAST, 10.20 FEET;

THENCE, SOUTH 89°56'22" EAST, 42.00 FEET;

THENCE, SOUTH 00°23'37" EAST, 12.72 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 78.89 FEET TO THE WESTERLY LINE OF PARCEL 3 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0882568;

THENCE, ALONG SAID WESTERLY LINE, NORTH 00°03'38" EAST, 14.00 FEET TO A LINE PARALLEL WITH AND 69.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 42.66 FEET;

THENCE, SOUTH 81°14'46" EAST, 21.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 604.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 01°48'41" WEST;

THENCE, EASTERLY 86.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°11'48" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 06°23'07" EAST;

1 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 00°03'38" EAST, 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 602.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 06°24'24" EAST;

THENCE, EASTERLY 59.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°38'47" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 12°01'11" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 72°27'02" EAST, 27.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 600.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 14°39'01" EAST;

THENCE, EASTERLY 10.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°01'25";

THENCE, NORTH 74°19'31" EAST, 57.22 FEET;

THENCE, SOUTH 00°03'38" WEST, 4.16 FEET;

THENCE, NORTH 74°19'31" EAST, 35.48 FEET;

THENCE, NORTH 63°02'37" EAST, 56.23 FEET;

THENCE, NORTH 74°19'31" EAST, 12.45 FEET TO THE EASTERLY LINE OF PARCEL 5 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 7.28 FEET;

THENCE, NORTH 74°19'31" EAST, 90.54 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO HUMBERTO RAMIREZ RECORDED APRIL 1, 2011 AS DOCUMENT NO. 2011-0145549, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, CONTINUING NORTH 74°19'31" EAST, 22.89 FEET;

THENCE, NORTH 82°52'09" EAST, 40.39 FEET;

THENCE, NORTH 74°19'31" EAST, 53.82 FEET TO THE WESTERLY LINE OF SAID LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°22'48" WEST, 2.08 FEET;

THENCE, NORTH 74°19'31" EAST, 36.50 FEET;

THENCE, NORTH 81°52'04" EAST, 42.65 FEET;

THENCE, NORTH 70°54'14" EAST, 45.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 365.00 FEET;

4 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 248.39 FEET TO THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 11 AND THE TERMINUS OF THE REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE RIGHT-OF-WAY DEDICATION TO THE CITY OF HANNING RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 424 SQUARE FEET, MORE OR LESS.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HEREBY MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



PREPARED BY: STANTEC CONSULTING INC.
 UNDER THE DIRECTION OF:

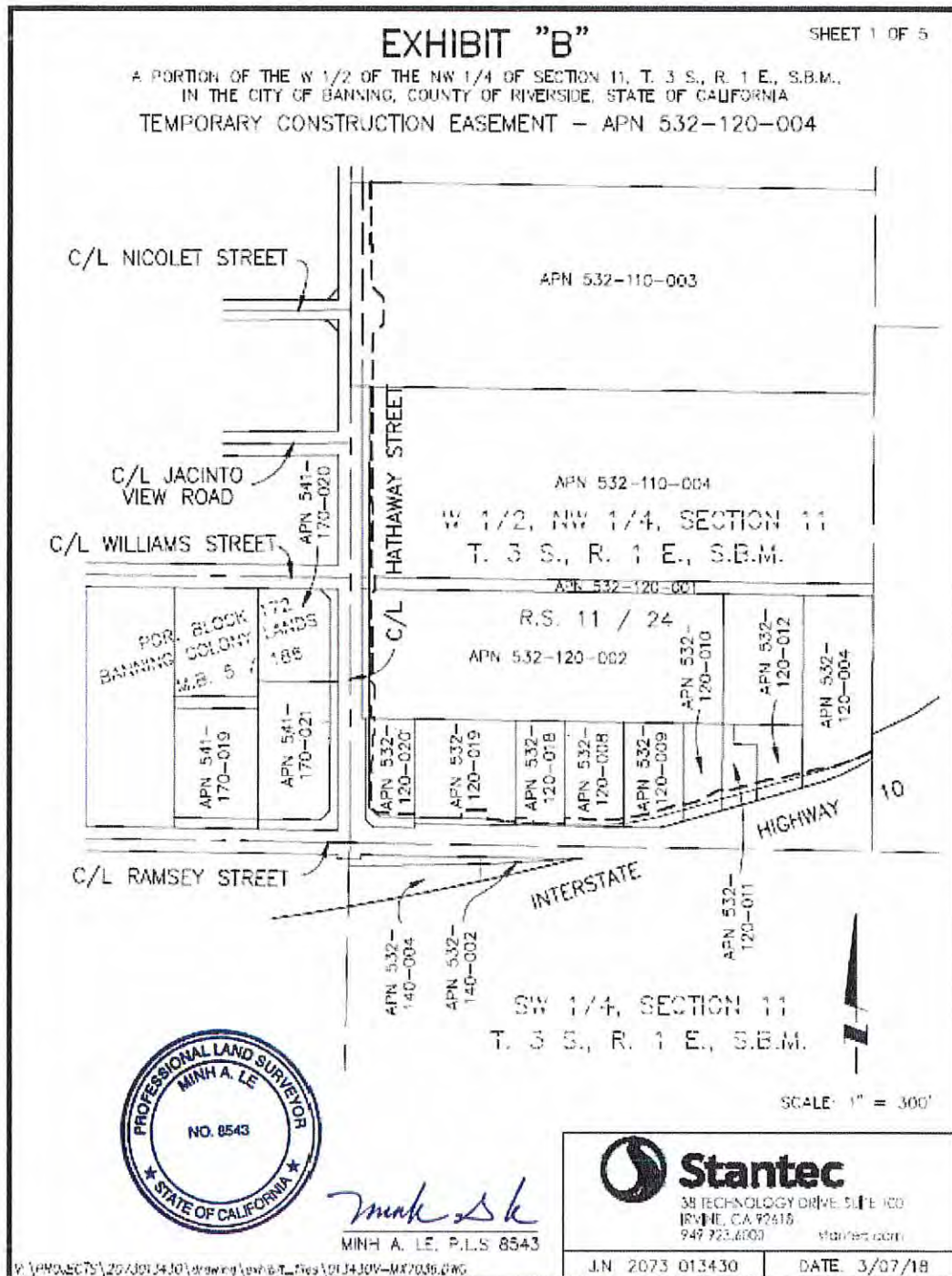
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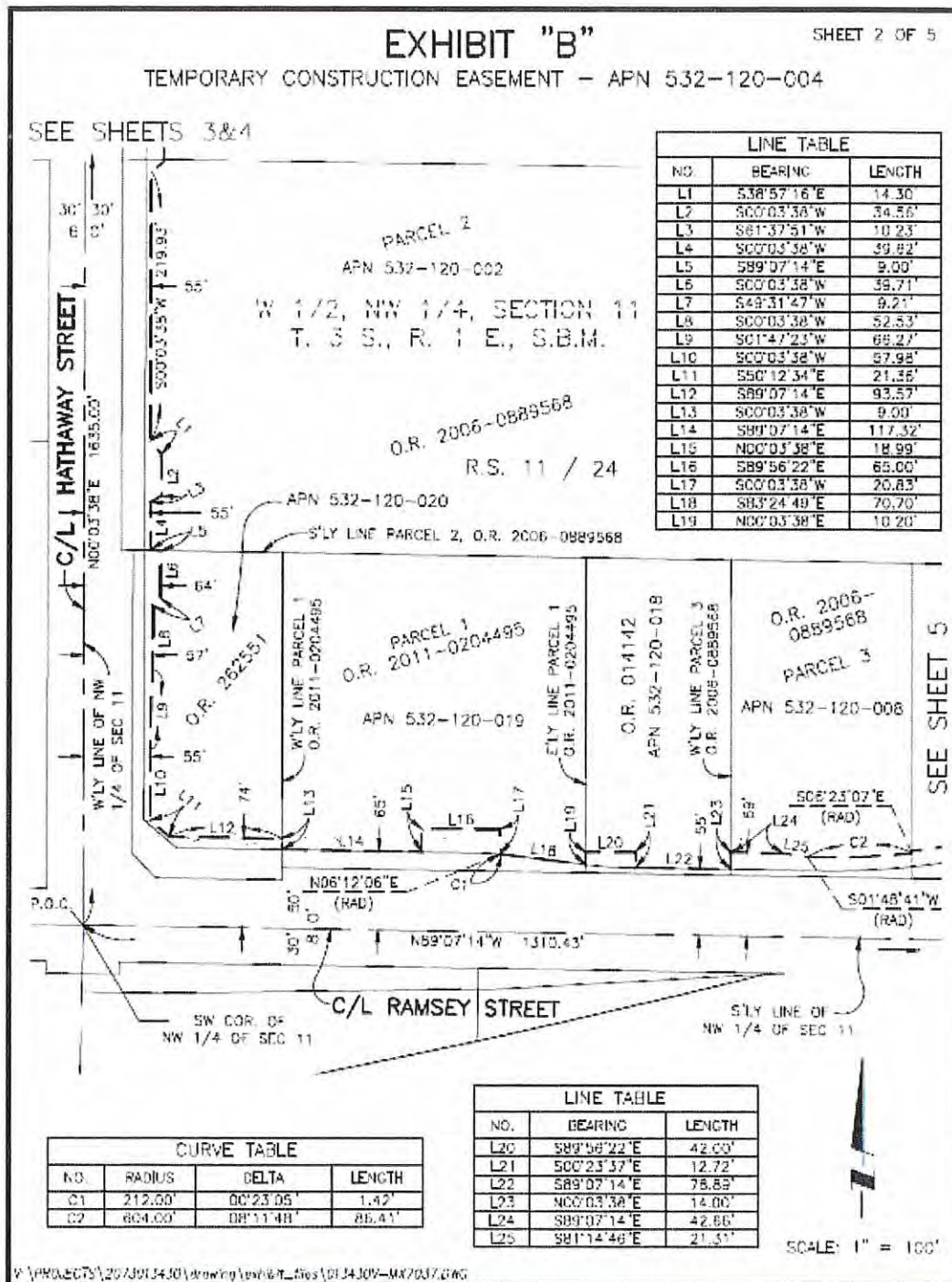
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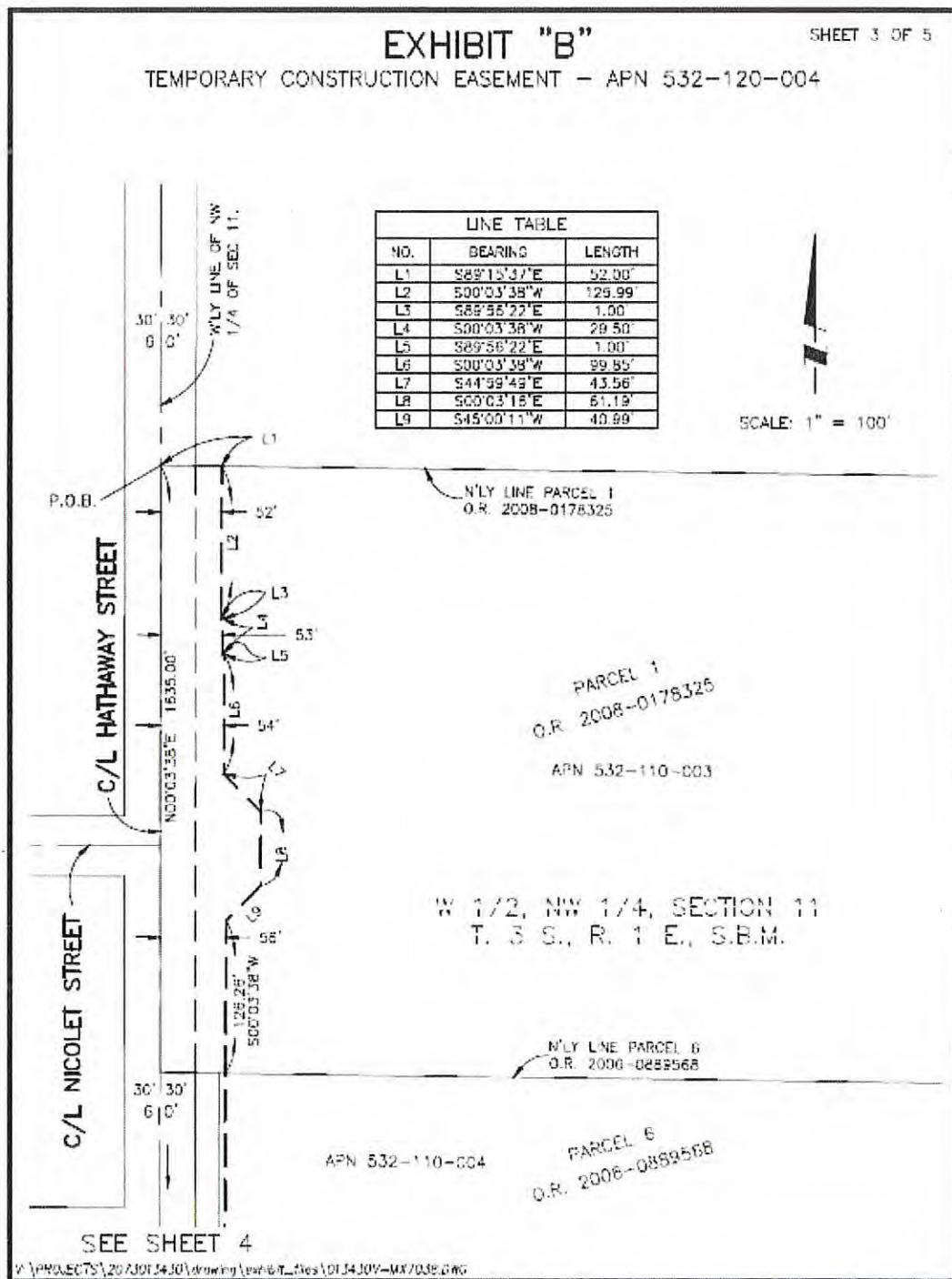
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 J.N. 2073 013430

5 OF 5

Exhibit "B-1"
 Depiction of Temporary Construction Easement







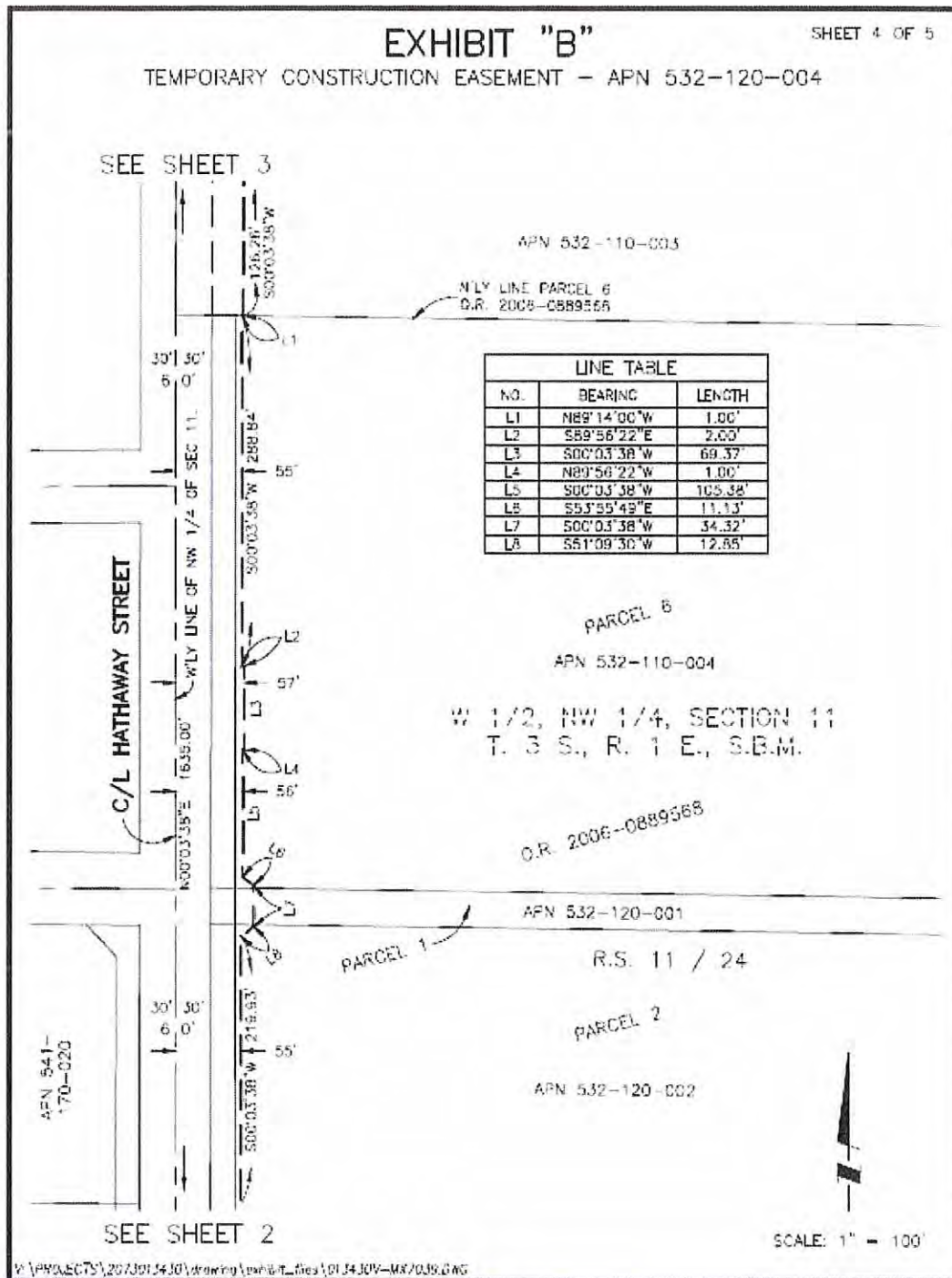


Exhibit "C"
Form of Grant Deed

Recording Requested by
 and when recorded return to:

CITY OF BANNING
 99 E. Ramsey Street
 Banning, California 92220
 Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 532-120-004

☒ Portions

Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Banning and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

GRANT DEED

KRYSTAL P. CRUZ ("Grantor") is the record fee owner of that certain real property located at 1955 E. Ramsey Street, in the City of Banning, California, and identified as Riverside County Tax Assessor's Parcel Number 532-120-004 ("Larger Parcel").

Grantor seeks to grant to the CITY OF BANNING, a California municipal corporation, in fee an approximate 4,410 square foot portion of the Larger Parcel described more particularly below ("Subject Fee Property") for public use.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to the CITY OF BANNING, a municipal corporation ("Grantee") in fee the Subject Fee Property described more particularly on Exhibit "A" and depicted on Exhibit "B", which are attached hereto and incorporated herein by this reference, for public use, namely public street purposes, and all uses necessary or convenient thereto, including but not limited to street, sewer, drainage, and utilities in connection with the Ramsey-Hathaway Street Improvement Project. The Subject Fee Property includes all of the interests of Grantor in and to the Subject Fee Property, including all improvements thereon, and any rights, title, and interest of Grantor in and to adjacent streets, alleys, or rights of way.

IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

GRANTOR
Krystal P. Cruz

Dated: _____

By: _____
Krystal P. Cruz

Exhibit "A"
Legal Description of Subject Fee Property

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 532-120-004

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, WITHIN THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST DATED AUGUST 14, 2001, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165323 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°07'14" EAST, 165.00 FEET TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED AS PARCEL 1 IN A CORPORATION GRANT DEED TO PETER MARINO RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, NORTH 00°03'38" EAST, 65.01 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET AND THE POINT OF BEGINNING;

THENCE, TRAVERSING THE INTERIOR OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, THE FOLLOWING COURSES:

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 162.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 212.00 FEET;

EASTERLY 21.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25";

SOUTH 83°24'49" EAST, 80.62 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 188.00 FEET, SAID CURVE BEING TANGENT WITH A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

EASTERLY 19.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25" TO SAID PARALLEL LINE;

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 165.86 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 615.00 FEET;

EASTERLY 177.69 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°33'15";

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 532-120-004

NORTH 74°19'11" EAST, 418.31 FEET;

NORTH 70°54'14" EAST, 68.91 FEET TO THE BEGINNING OF A CURVE
 CONCAVE NORTHWESTERLY HAVING A RADIUS OF 365.00 FEET;

NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE
 OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE
 NORTHWEST QUARTER OF SECTION 11.

CONTAINING 4,410 SQUARE FEET, MORE OR LESS.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HEREBY MADE A PART
 HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS,
 EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



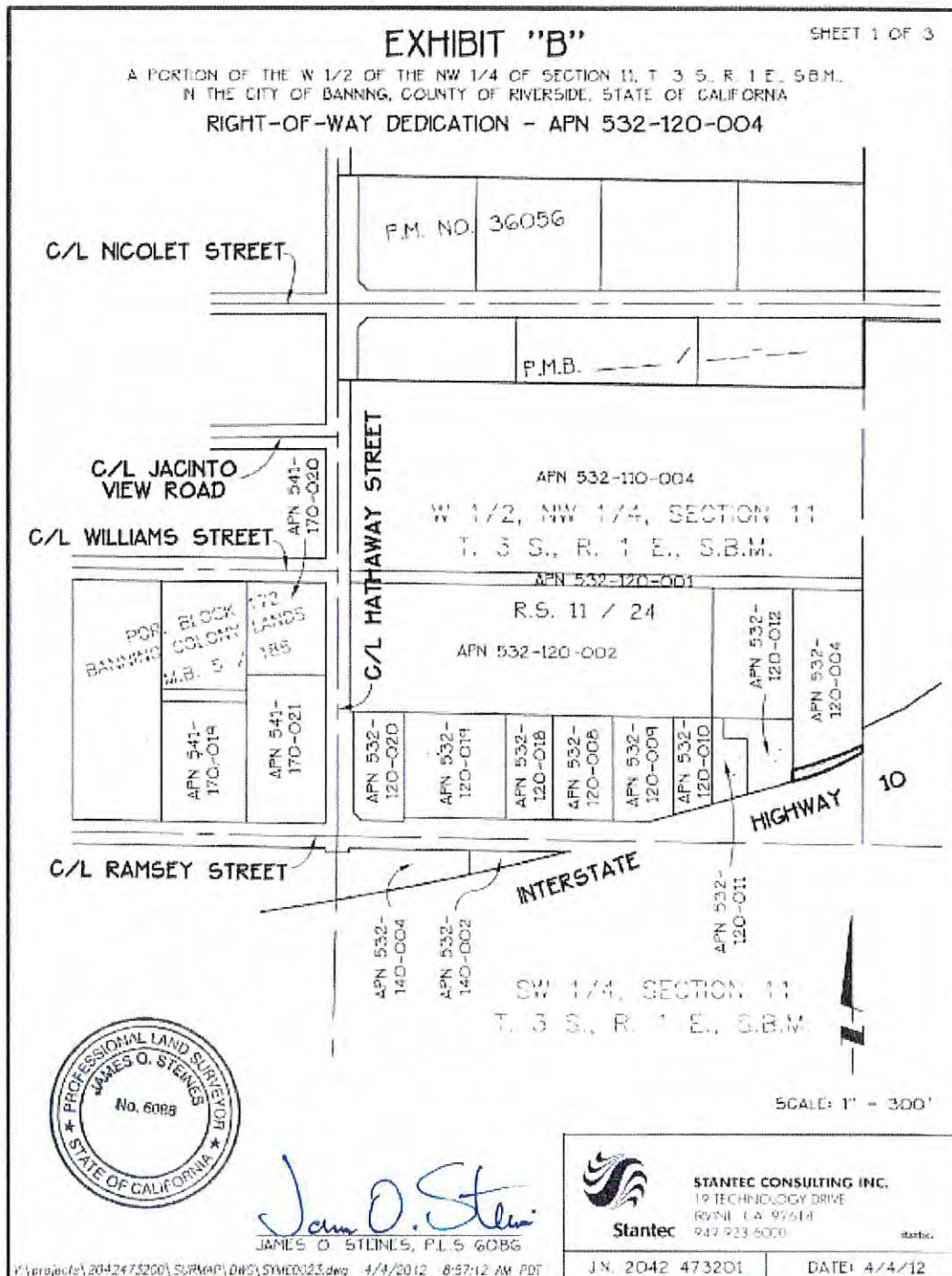
PREPARED BY: STANTEC CONSULTING INC.
 UNDER THE DIRECTION OF:

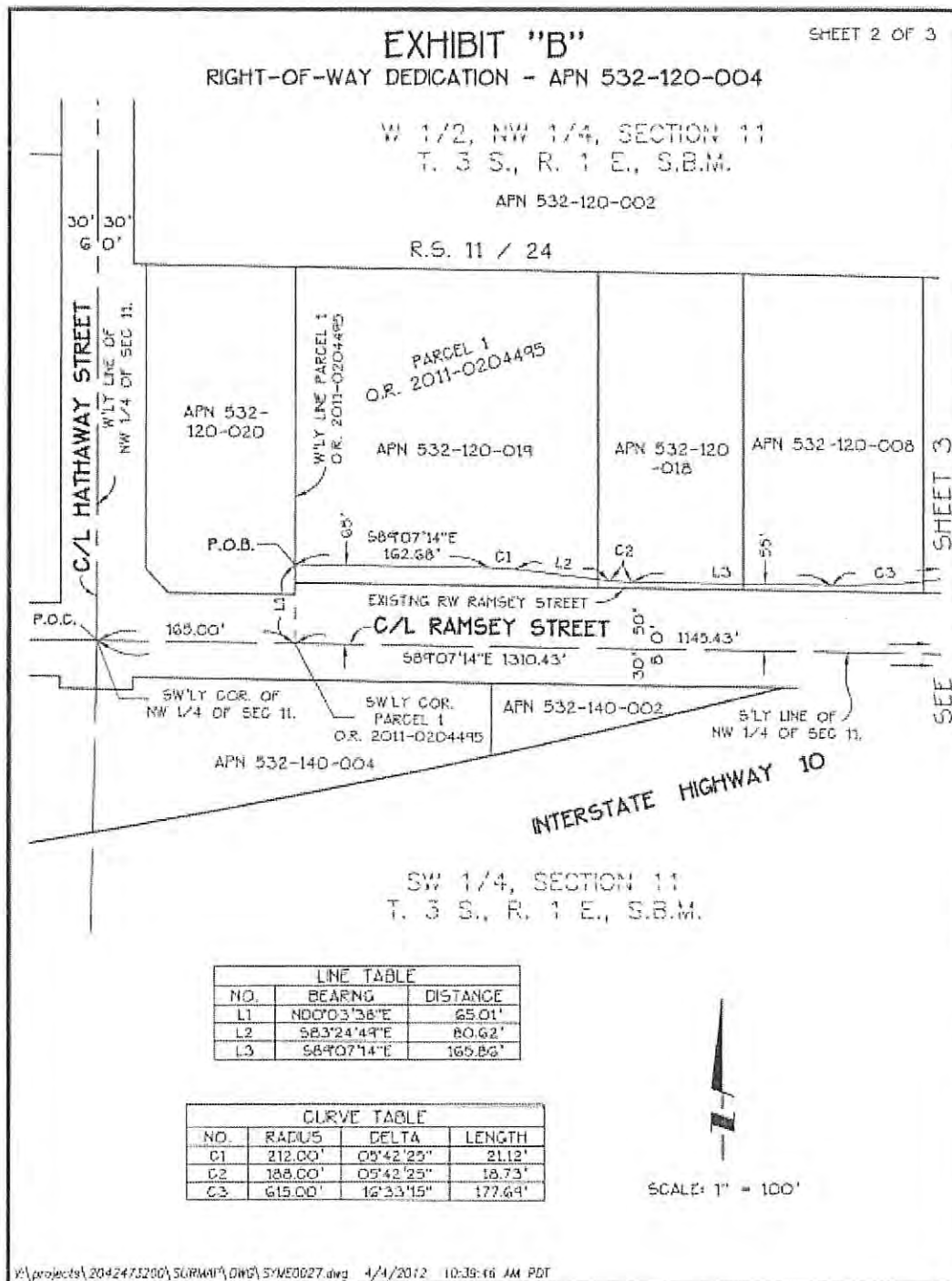
Jan O. Steines

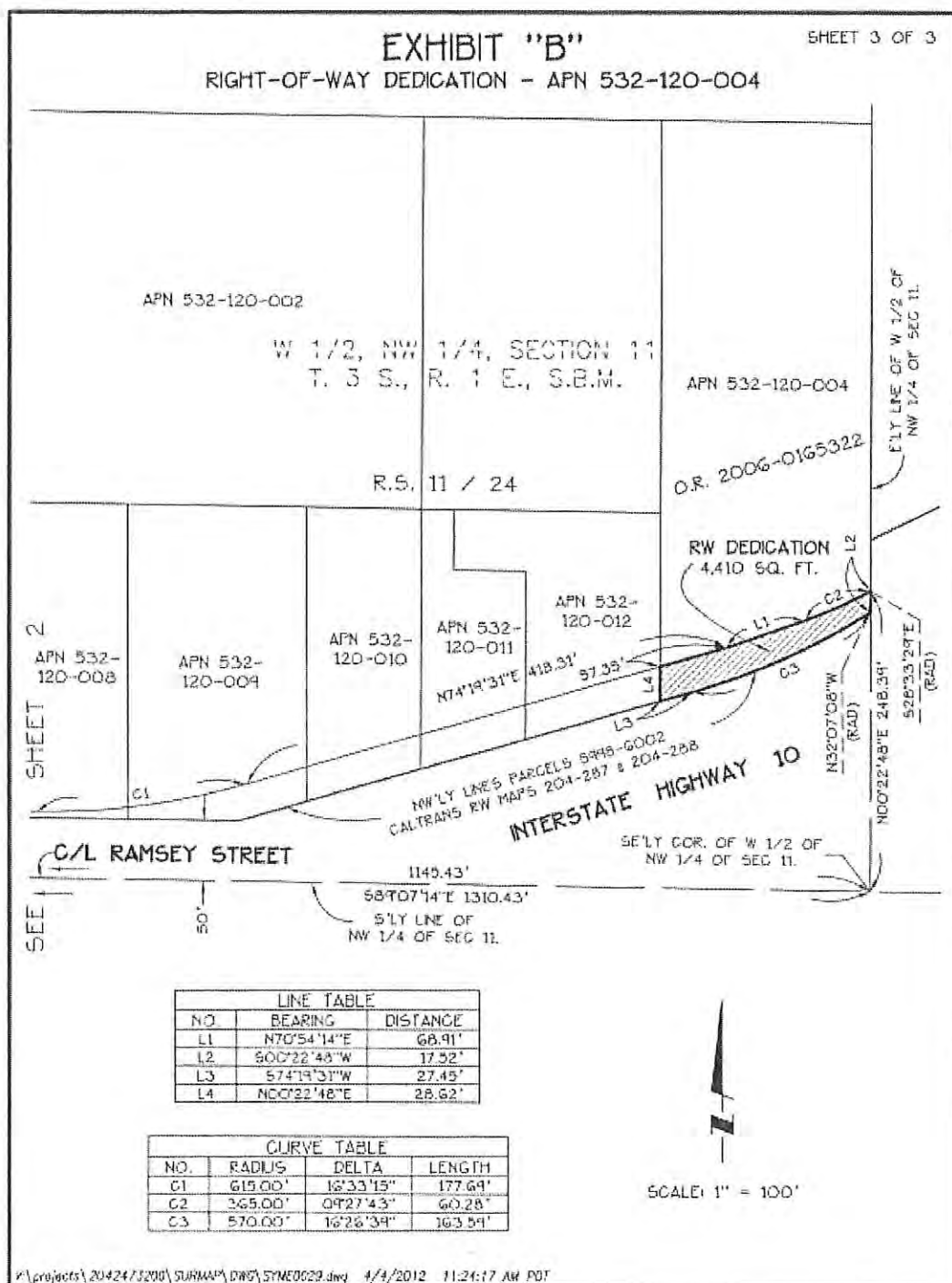
JAMES O. STEINES, P.L.S. 6086

APRIL 4, 2012
 J.N. 2042 473201

Exhibit "B"
Depiction of Subject Fee Property







Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**CIVIL CODE § 1189**

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

State of California)
) ss.
 County of Riverside)

On _____ before me, _____, Notary Public,

personally appeared _____,

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity, and that by his/her/their signature(s) on the instrument the person(s), or the entity(ies) upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

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

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

(Gov't Code § 27281)
(Portions of APN 532-120-004)

This is to certify that the grant to the City of Banning of that certain approximate 4,410 square foot portion of that certain real property located at 1955 E. Ramsey Street, in the City of Banning, and identified as Riverside County Tax Assessor's Parcel Number 532-120-004, which is described more particularly in Exhibit "A" and depicted on Exhibit "B" to the attached Grant Deed is hereby accepted under the authority of the City Council of the City of Banning, and the City of Banning hereby consents to the recordation thereof by its duly authorized officer.

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

Attest:

By: _____
Marie Calderon, City Clerk

Approved as to form:

By: _____
Kevin Ennis, City Attorney

Exhibit "D"**Form of Temporary Construction Easement Agreement**

Recording Requested by
and when recorded return to:

CITY OF BANNING
99 E. Ramsey Street
Banning, California 92220
Attention: City Clerk

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. 532-120-004

☒ Portions

Documentary Transfer Tax \$0.00

This Instrument is for the benefit of the City of Banning and is exempt from Recording Fees (Govt. Code § 27383), Filing Fees (Govt. Code § 6103), and Documentary Transfer Tax (Rev & Tax Code § 11922).

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement ("TCE Agreement") is entered into by and between KRYSTAL P. CRUZ ("Grantor") and the CITY OF BANNING, a California municipal corporation ("City" or "Grantee") and is effective as of the date it is fully executed by the Parties.

This TCE Agreement is based on the following facts, which are incorporated herein by this reference:

A. Seller is the record fee owner of that certain real property located at 1955 E. Ramsey Street in the City of Banning, State of California, identified as Riverside County Tax Assessor's Parcel Number 532-120-004 ("Larger Parcel"). The Larger Parcel is approximately 1.64 acres (71,438 square feet) in size and is located on the north side of E. Ramsey Street, east of N. Hathaway Street. The Larger Parcel is a vacant, unimproved parcel.

B. Grantor and City have entered into a Purchase and Sale Agreement ("Purchase Agreement") for City's purchase in fee of an approximate 4,410 square foot portion of Grantor's Larger Parcel for public use, namely public street purposes and all uses necessary or convenient thereto in connection with the Ramsey-Hathaway Street Improvement Project ("Project"). The Project will improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street.

C. Pursuant to the Purchase Agreement, City is also purchasing the approximate 424 square foot temporary construction easement described below for a term of nine months on the Larger Parcel to facilitate the construction of the Project. City's use of the TCE is subject to the terms and conditions of this TCE Agreement.

NOW THEREFORE, for a valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor and City agree to the following:

1. Grant of 424 Square Foot Temporary Construction Easement. Grantor hereby grants to City, its contractors, agents, representatives, employees, and all others reasonably deemed necessary by City ("City Designees"), that certain approximate 424 square foot Temporary Construction Easement more particularly described on Exhibit "A" and depicted on Exhibit "B" hereto ("TCE") in, over, under and across the Larger Parcel for a term of nine months. Exhibit "A" and Exhibit "B" are attached hereto, and incorporated herein by this reference.

2. Term. The term of the TCE will commence thirty calendar days from the date that the City provides written notice to Grantor that it intends to commence construction of the Project. The thirtieth calendar day after the date of the City's notice is the "commencement date" of the TCE. The TCE will terminate automatically nine months from the commencement date ("termination date"). City is authorized to use the approximate 424 square foot TCE from the commencement date to the termination date to facilitate City's construction of the Project. The temporary construction easement will expire on the earlier of (i) the termination date or (ii) the date on which City records a notice of termination of the Temporary Construction Easement in the Official Records of the County of Riverside.

3. Option to Extend Term. The City has the option to extend the term of the TCE by up to six months provided that the City provides Grantor written notice 15 calendar days before the termination date (as defined in 2) notifying Grantor that the City wishes to exercise the option to extend the term by up to six months. During any such extension period, the Parties agree that the City will pay to Grantor the sum of \$11.00 per month for any portion of a month in which the City continues to use the TCE. The monthly compensation is based on compensation at \$3.12 per square foot with a net annual rate of return of ten percent. Thus, if the City uses the TCE for an additional 2.3 months, the City will pay Grantor the sum of \$33.00, which represents the compensation for three months (\$11.00 x 3 months). The City will pay any such compensation for the extension term within 30 calendar days of the date on which the City's use of the TCE terminates.

4. Scope of Temporary Construction Easement. The 424 square foot TCE is for the use by City Designees for the above-referenced approximate nine-month period to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the new right of way, construction staging purposes, and storage of material and equipment on the TCE, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project.

5. No Liens. City agrees to keep the approximate 424 square foot TCE and the Larger Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Larger Parcel in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Grantor will have the right to remove or bond over the lien, and City, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorney's fees incurred by Grantor in connection with such removal or bond.

6. City's Obligations at End of Term. City agrees that as of the termination date of the TCE, City will leave the TCE in as close as possible to the condition in which said TCE existed at the commencement date, including removal of any equipment and materials stored on the TCE in connection with the Project. Further, upon the expiration of the term of the TCE, City agrees to take such actions as reasonably necessary to evidence and give effect to the extinguishment of the TCE and the relinquishment of City's rights and interests in the TCE pursuant to this TCE Agreement, including, without limitation, City will record at City's expense, such termination or extinguishment as is in form and substance reasonably acceptable to Grantor and sufficient to remove this TCE Agreement as an encumbrance against title.

7. Warranties. City warrants that on the completion of its use of the TCE, and following removal of any construction equipment and facilities and cleanup required by Section 5, it shall cause its contractor to leave the TCE area in a neat manner conforming to the natural appearance of the TCE area prior to City's use of said area.

8. Insurance. Prior to entry onto the approximate 424 square foot TCE area, City will procure and maintain (and cause City's contractor for the Project to procure and maintain) a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Grantor covering the use by and activities of City and City's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder with respect to the use by Grantee and Grantee's Designees of the TCE. Such insurance will be maintained in force throughout the term of this Temporary Construction Easement.

9. City's Agreement to Indemnify. City will, and will cause its contractor for the proposed Project to, indemnify, defend and hold Grantor harmless from any and all liability for loss, damages, costs, expenses, demands, causes of action, claims or judgments, arising from or arising out of or in any way connected with the entry, access and use of the TCE by said contractor and its designees in connection with the exercise of the rights of the contractor and its designees under this TCE Agreement or any breach of City's or City's contractor's obligations under this TCE Agreement, and will reimburse Grantor for all reasonable costs, expenses and losses, including reasonable attorneys' fees, incurred by Grantor in consequence of any claims, demands and causes of action that may be made or brought against Grantor arising out of the entry on and

use of the area comprising the TCE by said contractor and/or its designees in connection with the Project or any breach of City's or its contractor's obligations under this TCE Agreement.

10. Notices. All notices and demands will be given in writing by certified mail, postage prepaid, and return receipt requested, by personal delivery, or by Federal Express. Notices will be considered given upon the earlier of (a) personal delivery, (b) two business days following deposit in the United States mail, postage prepaid, certified or registered, return receipt requested, or (c) one business day following deposit with Federal Express. The Parties will address such notices as provided below or as may be amended by written notice:

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

COPY TO: Richards, Watson & Gershon
355 South Grand Avenue
40th Floor
Los Angeles, California 90071-3101
Attention: Kevin Ennis, City Attorney

SELLER: Krystal P. Cruz
1300 E. Ramsey Street
Banning, California 92220-5930

11. Miscellaneous Provisions.

11.1 *Governing Law*. This TCE Agreement is deemed to have been prepared by each of the Parties hereto, and any uncertainty or ambiguity herein shall not be interpreted against the drafter, but rather, if such uncertainty or ambiguity exists, shall be interpreted according to the applicable rules of interpretation of contracts under the laws of the State of California, and not the substantive law of another state or the United States or federal common law. This TCE Agreement shall be deemed to have been executed and delivered within the State of California, and the rights and obligations of the Parties shall be governed by, and construed and enforced in accordance with, the laws of the State of California.

11.2 *Entire Agreement*. This TCE Agreement, together with the Purchase Agreement, contains the entire agreement between Grantor and Grantee regarding the TCE. No person is authorized to make, and by execution hereof Grantor and Grantee acknowledge that no person has made, any representation, warranty, guaranty or promise except as set forth herein; and any such agreement, statement, representation or promise not contained in said Purchase Agreement and this TCE Agreement will not be binding on Grantor or City.

11.3 *Amendments*. Any amendments to this TCE Agreement will be effective only by a writing executed by all Parties to this TCE Agreement.

11.4 *Successors and Assigns.* This TCE Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and assigns of the Parties hereto.

11.5 *Counterparts, Facsimile and Electronic Signatures.* This TCE Agreement may be executed in whole or in counterparts, which together shall constitute the entire Agreement. Facsimile or electronic signatures/counterparts to this TCE Agreement shall be effective as if the original signed counterpart were delivered.

11.6 *Legal Representation.* Each of the Parties acknowledge that in connection with the negotiation and execution of this TCE Agreement, they have each been represented by independent counsel of their own choosing and the Parties executed this Agreement after review by such independent counsel, or, if they were not so represented, said non-representation is and was the voluntary, intelligent and informed decision and election of any of the Parties not so represented. The Parties further acknowledge that, prior to executing this TCE Agreement, each of the Parties has had an adequate opportunity to conduct an independent investigation of all the facts and circumstances with respect to the matters that are the subject of said Agreement.

11.7 *Attorneys' Fees.* If either of the Parties hereto incurs attorneys' fees in order to enforce, defend or interpret any of the terms, provisions or conditions of this TCE Agreement or because of a breach of this TCE Agreement by the other party, the prevailing party, whether by suit, negotiation, arbitration or settlement will be entitled to recover reasonable attorneys' fees from the other party.

11.8 *Severability.* If any part, term or provision of this TCE Agreement is held by a court of competent jurisdiction to be illegal or in conflict with any law, the validity of the remaining provisions will not be affected, and the rights and obligations of the Parties will be construed and enforced as if this TCE Agreement did not contain the particular part, term or provision held to be invalid.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and City have entered into this TCE Agreement as of the date set forth below.

GRANTOR

Krystal P. Cruz

Dated: _____

By: _____
Krystal P. Cruz

GRANTEE

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Temporary Construction Easement

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THAT PORTION OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, WITHIN THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST DATED AUGUST 14, 2001, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED REFERENCE LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSKY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'38" EAST, 1635.00 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, RECORDED APRIL 10, 2008 AS DOCUMENT NO. 2008-0178325, OFFICIAL RECORDS OF SAID COUNTY, AND THE POINT OF BEGINNING;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, SOUTH 89°15'37" EAST, 52.00 FEET TO A LINE PARALLEL WITH AND 52.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 125.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 53.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 29.50 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 54.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 99.85 FEET;

THENCE, SOUTH 44°59'49" EAST, 43.56 FEET;

THENCE, SOUTH 00°03'16" EAST, 61.19 FEET;

THENCE, SOUTH 45°00'11" WEST, 40.99 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'30" WEST, 126.26 FEET TO THE NORTHERLY LINE OF PARCEL 6 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID NORTHERLY LINE, NORTH 89°14'00" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

1 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 288.84 FEET;

THENCE, SOUTH 89°56'22" EAST, 2.00 FEET TO A LINE PARALLEL WITH AND 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 69.37 FEET;

THENCE, NORTH 89°56'22" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 105.38 FEET;

THENCE, SOUTH 53°55'49" EAST, 11.13 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.32 FEET;

THENCE, SOUTH 51°09'39" WEST, 12.85 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 219.93 FEET;

THENCE, SOUTH 18°57'16" EAST, 14.30 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.56 FEET;

THENCE, SOUTH 61°37'51" WEST, 10.23 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 39.62 FEET TO THE SOUTHERLY LINE OF PARCEL 2 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 89°07'14" EAST, 9.00 FEET TO A LINE PARALLEL WITH AND 54.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 39.71 FEET;

THENCE, SOUTH 49°11'47" WEST, 9.21 FEET TO A LINE PARALLEL WITH AND 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 52.53 FEET;

THENCE, SOUTH 81°47'23" WEST, 66.27 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'18" WEST, 57.98 FEET;

THENCE, SOUTH 50°12'34" EAST, 21.36 FEET TO A LINE PARALLEL WITH AND 74.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

2 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 91.57 FEET TO THE WESTERLY LINE OF PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°03'38" WEST, 9.00 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 117.32 FEET;

THENCE, NORTH 00°03'38" EAST, 16.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 65.00 FEET;

THENCE, SOUTH 00°03'38" WEST, 20.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 212.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 06°12'06" EAST;

THENCE, EASTERLY 1.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'05";

THENCE, SOUTH 83°24'49" EAST, 70.70 FEET TO THE EASTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495;

THENCE, ALONG SAID EASTERLY LINE, NORTH 00°03'38" EAST, 10.20 FEET;

THENCE, SOUTH 89°56'22" EAST, 42.00 FEET;

THENCE, SOUTH 00°23'37" EAST, 12.72 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 78.89 FEET TO THE WESTERLY LINE OF PARCEL 3 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID WESTERLY LINE, NORTH 00°03'38" EAST, 14.00 FEET TO A LINE PARALLEL WITH AND 69.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 42.66 FEET;

THENCE, SOUTH 81°14'46" EAST, 21.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 604.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 01°48'41" WEST;

THENCE, EASTERLY 86.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°11'49" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 06°23'07" EAST;

3 OF 5

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 00°03'38" EAST, 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 602.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 06°24'24" EAST;

THENCE, EASTERLY 59.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°38'47" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 12°03'11" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 72°27'02" EAST, 27.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 600.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 14°39'03" EAST;

THENCE, EASTERLY 10.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°01'26";

THENCE, NORTH 74°19'31" EAST, 57.22 FEET;

THENCE, SOUTH 00°03'28" WEST, 4.16 FEET;

THENCE, NORTH 74°19'31" EAST, 35.48 FEET;

THENCE, NORTH 63°02'37" EAST, 56.23 FEET;

THENCE, NORTH 74°19'31" EAST, 12.45 FEET TO THE EASTERLY LINE OF PARCEL 5 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 7.28 FEET;

THENCE, NORTH 74°19'31" EAST, 90.54 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO HUMBERTO RAMIREZ RECORDED APRIL 1, 2011 AS DOCUMENT NO. 2011-0145549, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, CONTINUING NORTH 74°19'31" EAST, 22.89 FEET;

THENCE, NORTH 02°52'09" EAST, 40.39 FEET;

THENCE, NORTH 74°19'31" EAST, 53.02 FEET TO THE WESTERLY LINE OF SAID LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°22'48" WEST, 2.08 FEET;

THENCE, NORTH 74°19'31" EAST, 36.50 FEET;

THENCE, NORTH 01°52'04" EAST, 42.65 FEET;

THENCE, NORTH 70°54'14" EAST, 45.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 365.00 FEET;

4 OF 5

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N. 532-120-004

THENCE, NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 146.39 FEET TO THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 11 AND THE TERMINUS OF THE REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE EIGHT-OF-WAY EEDICATION TO THE CITY OF HANNING RECORDED _____, AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 424 SQUARE FEET, MORE OR LESS.

ALSO AS SHOWN ON EXHIBIT "B" ATTACHED HERETO AND HERENY MADE A PART HEREOF.

SUBJECT TO COVENANTS, CONDITIONS, RESTRICTIONS, RESERVATIONS, EASEMENTS, AND RIGHTS-OF-WAY OF RECORD, IF ANY.



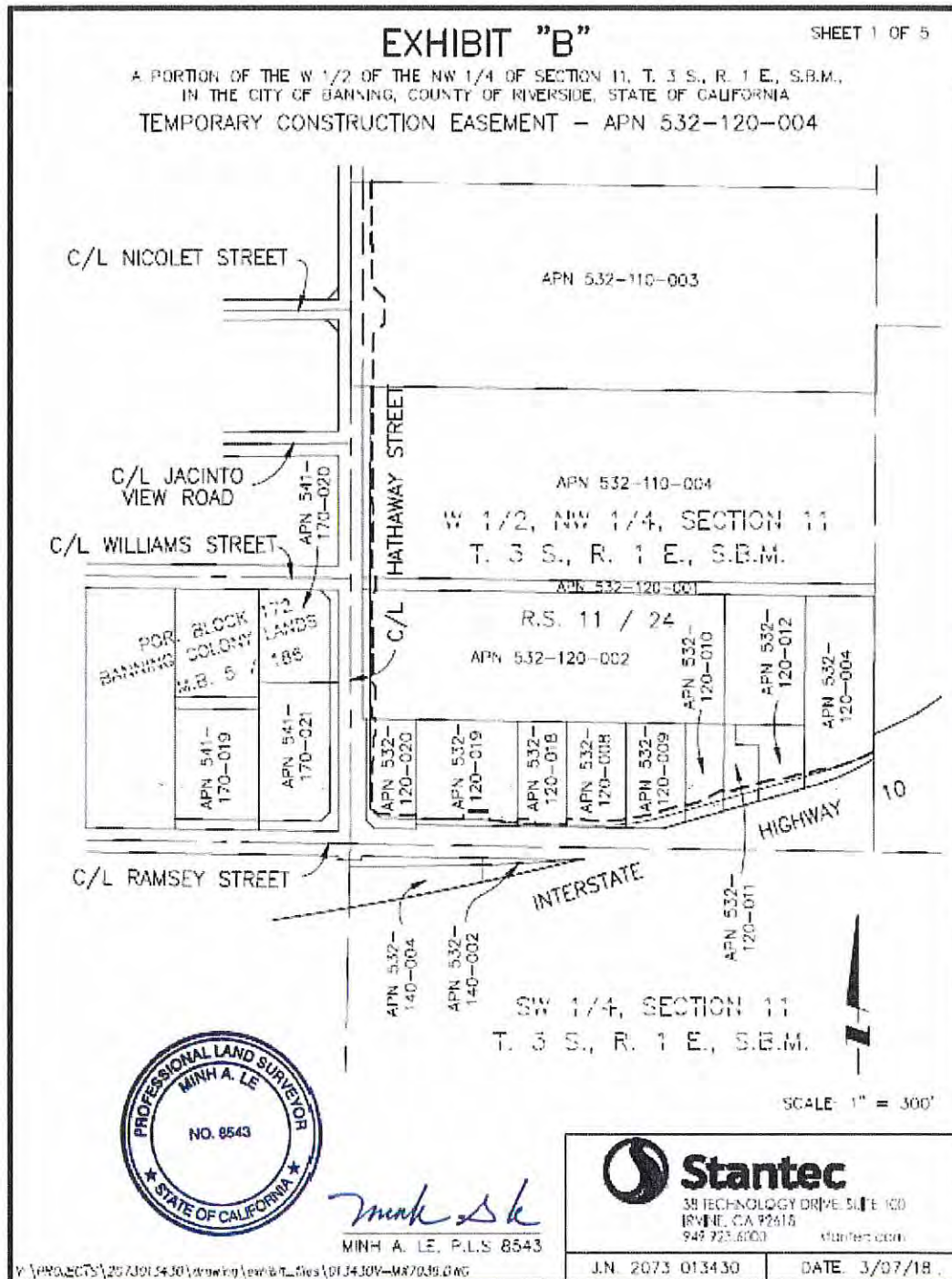
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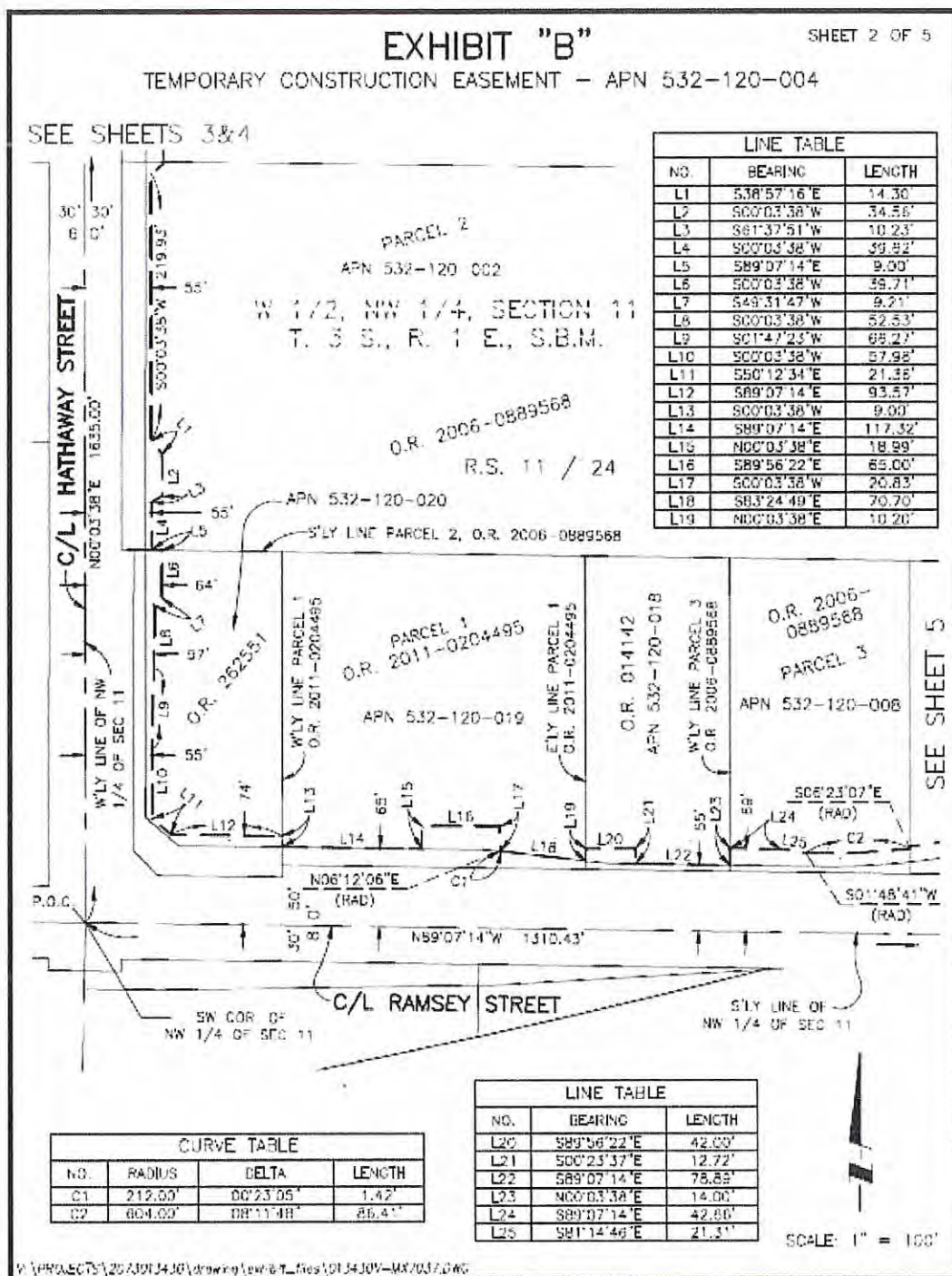
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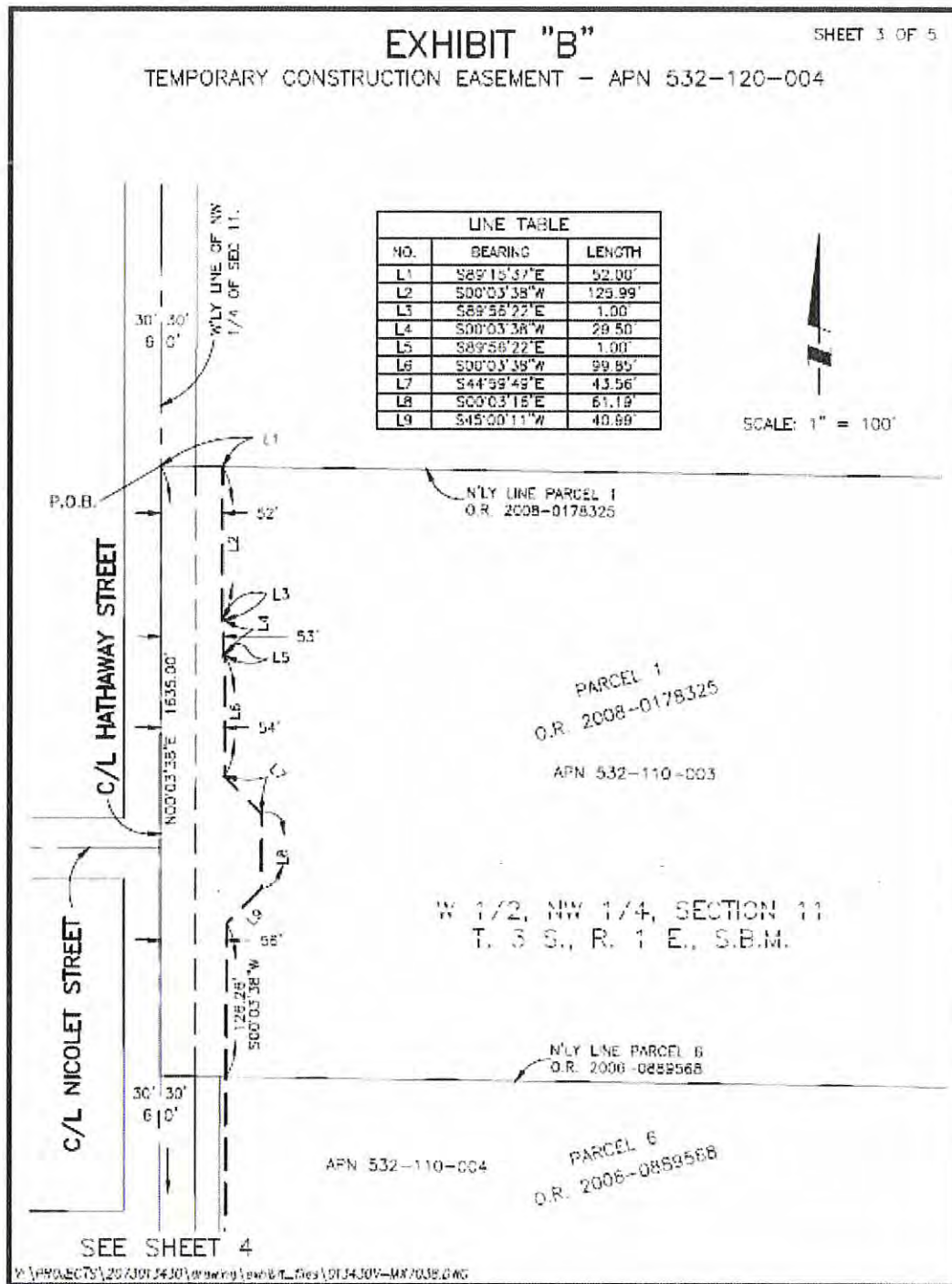
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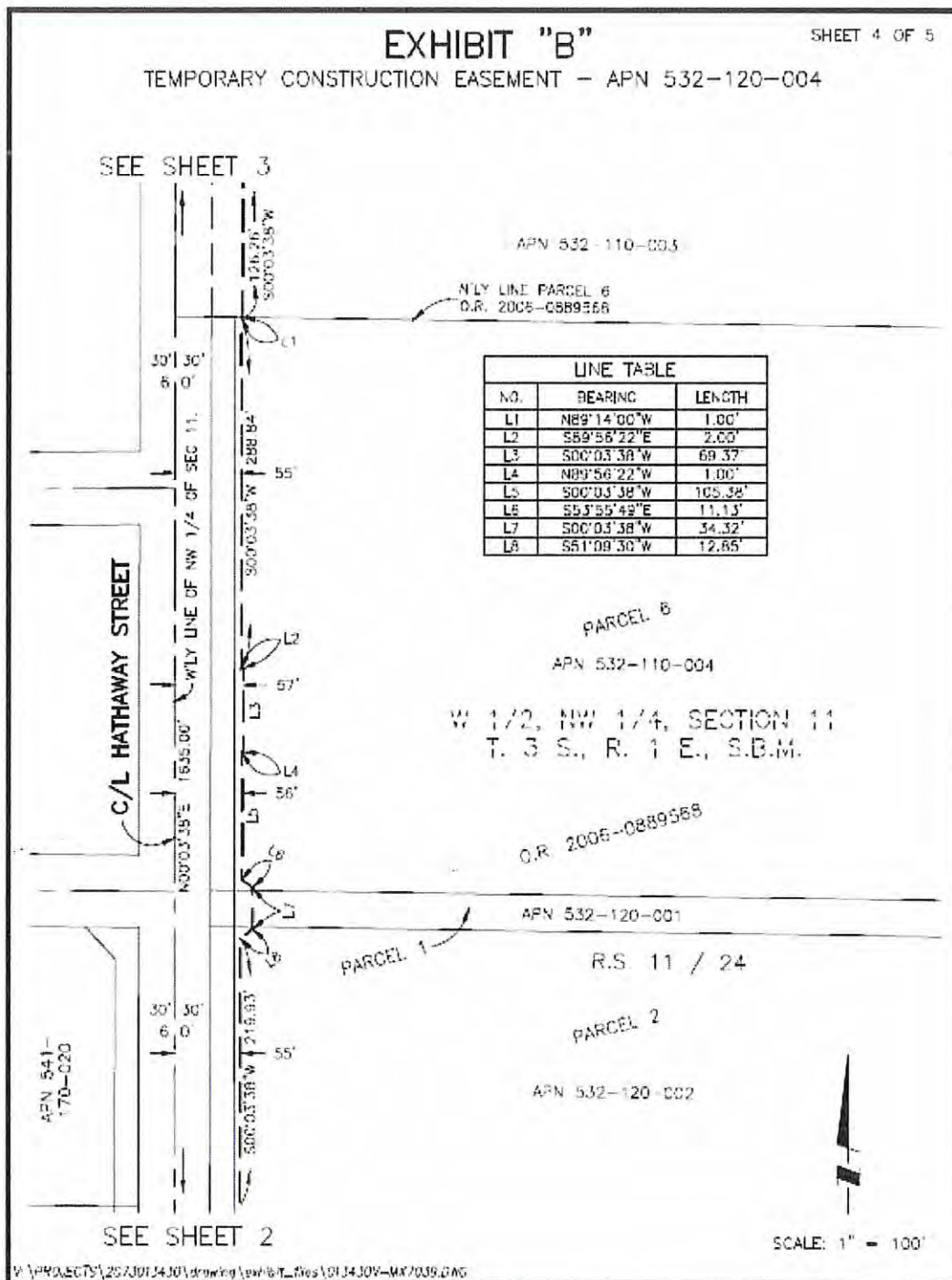
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5 OF 5

Exhibit "B"







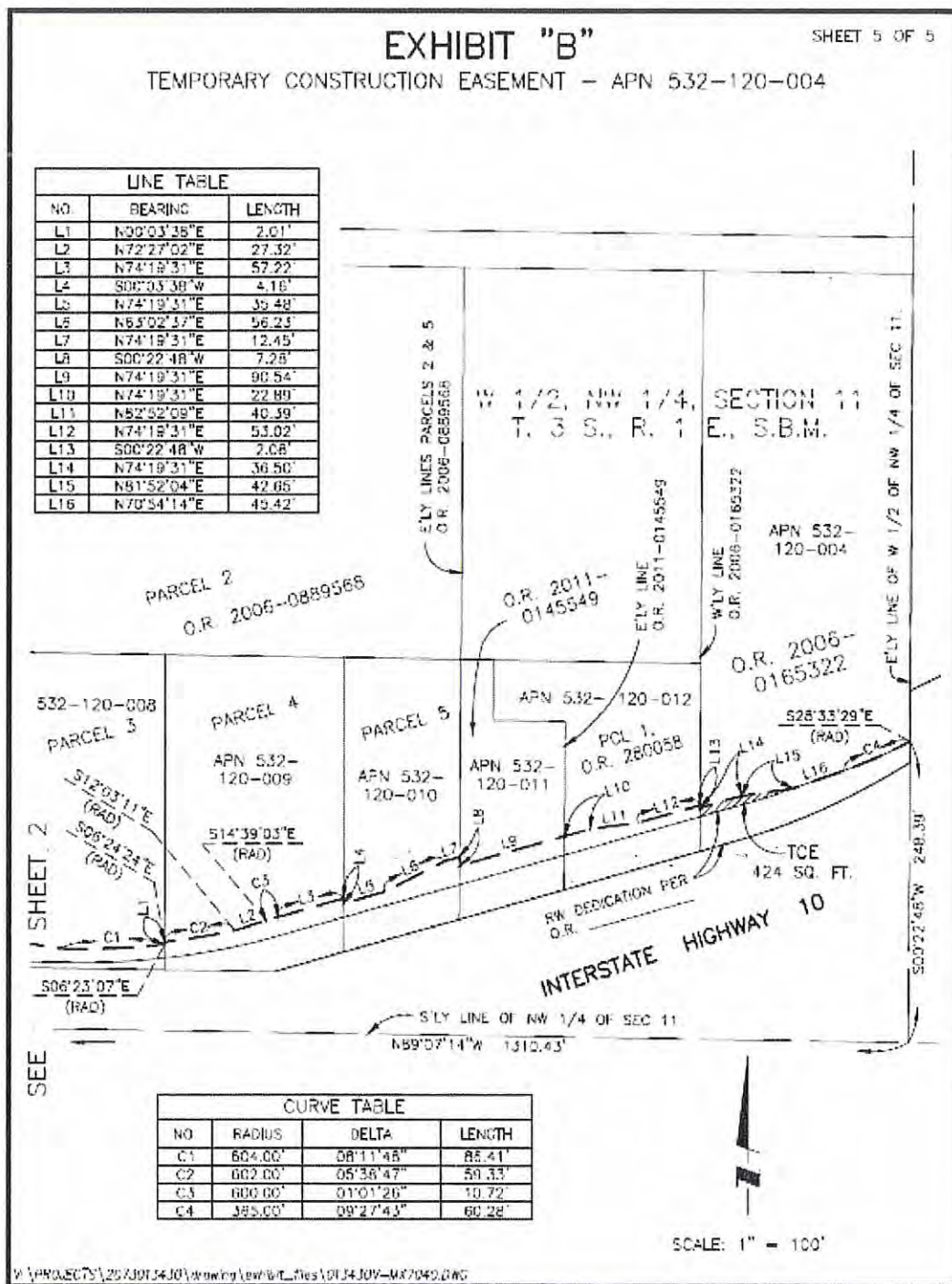


Exhibit "B"
Page 5 of 7



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: February 12, 2019

SUBJECT: Resolution 2019-04, Approving Final Payment to Southern California Edison in the amount of \$96,705.61 for the Relocation of Overhead Transmission Facilities related to the Mid-County Justice Center

RECOMMENDED ACTION:

Staff recommends that the City Council adopt Resolution 2019-04:

1. Approving final payment to Southern California Edison in the amount of \$96,705.61 for the relocation of overhead transmission facilities related to the Sale of Real Property APN 541-146-003 to the State of California for the development of the Mid-County Justice Center.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the final payment to Southern California Edison (SCE).

BACKGROUND:

On September 8, 2009, the Community Redevelopment Agency (CRA) and City Council approved the Sale of Real Property (APN 541-146-003) to the State of California ("State") for the development of the Mid-County Justice Center. As part of the sale of the property, the City of Banning ("City") agreed to fund the relocation of overhead transmission facilities to accommodate the new Mid-County Justice Center building.

Subsequent to the Sale of Real Property to the State, on June 30, 2010, the City advanced payment to SCE in the amount of \$25,000 for the relocation of overhead transmission facilities.

On June 14, 2011, the CRA Board under CRA Resolution 2011-22 approved an additional payment to SCE in the amount of \$500,000 for SCE to design the relocation of their infrastructure. Once designed, SCE would prepare a construction estimate and the City would pay additional funds if the construction estimate exceeded the \$500,000 advancement. SCE informed the City that the construction estimate in fact did exceed the advancement and that an additional payment of \$82,000 was required to cover the estimated project costs. On April 26, 2012, a third project payment in the amount of \$82,000 was made to SCE.

The construction of the Mid-County Justice Center was completed in early 2015. Recently, the City received a letter from SCE dated October 1, 2018 informing the City that there is a difference between the estimated and actual cost for the project requiring the City to pay additional relocation expenditures. The total project cost is \$662,809.53 which includes costs in the amount of \$40,896.08 for the Income Tax Component of Contribution, which was not included in the initial construction estimates. To date the City has paid \$607,000, therefore a remaining project balance in the amount of \$96,705.61 exists.

The table below is a summary of transactions for this project:

Date	Description	Amount
June 30, 2010	Project Payment 1 (CRA Reso. 2009-03)	\$25,000.00
June 14, 2011	Project Payment 2 (CRA Reso. 2011-22)	\$500,000.00
April 26, 2012	Project Payment 3 (CRA Reso. 2011-22)	\$82,000.00
Total Payments Issued to SCE		\$607,000.00
Total Project Costs		\$662,809.53
Remaining Balance Owed to SCE		\$96,705.61

JUSTIFICATION:

As part of the Sale of Real Property (APN 541-146-003) to the State for the development of the Mid-County Justice Center, the City agreed to fund the relocation of overhead transmission facilities from the State's property to City-owned property immediately to the east. The relocation of the SCE infrastructure was completed as requested by the City.

FISCAL IMPACT:

The expenditure is currently part of the fiscal year 2019 approved budget and will be funded by Account No. 840-9500-490.93-15.

ALTERNATIVE:

Reject Resolution 2019-04 and provide direction to staff.

ATTACHMENTS:

1. Resolution 2019-04
2. CRA Resolution 2009-03
3. CRA Resolution 2011-22
4. SCE Final Project Invoice
5. SCE Project File #25 Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-04

RESOLUTION 2019-04**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING FINAL PAYMENT TO SOUTHERN CALIFORNIA EDISON IN THE AMOUNT OF \$96,705.61 FOR THE RELOCATION OF OVERHEAD TRANSMISSION FACILITIES RELATED TO THE MID-COUNTY JUSTICE CENTER**

WHEREAS, on September 8, 2009, the Community Redevelopment Agency (CRA) and City Council approved the Sale of Real Property (APN 541-146-003) ("Property") to the State of California for the development of the Mid-County Justice Center; and

WHEREAS, as part of the sale of the Property, the City of Banning ("City") agreed to fund the relocation of SCE's overhead transmission facilities from the Property to City-owned property immediately to the east; and

WHEREAS, City Council and the CRA approved three separate payments to SCE for the relocation of their infrastructure totaling an amount of \$607,000; and

WHEREAS, the project was completed in early 2015 for an amount of \$662,809.53 which includes costs in the amount of \$40,896.08 for the Income Tax Component of Contribution. The City received an invoice dated January 16, 2019 requesting the balance of the project costs be paid by the City in the amount of \$96,705.61; and

WHEREAS, the expenditure is part of the approved fiscal year 2019 budget and will be funded by Account No. 840-9500-490.93-15 (CAP Expend-Infrastructure/Street Improvements).

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

SECTION 1. The Banning City Council adopts Resolution 2019-04, approving final payment to Southern California Edison in the amount of \$96,705.61 for the relocation of overhead transmission facilities related to the Sale of Real Property (APN 541-146-003) to the State of California for the development of the Mid-County Justice Center.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the relocation of overhead transmission facilities.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-02 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

CRA Resolution 2009-03

CRA RESOLUTION NO. 2009-03

A RESOLUTION OF THE COMMUNITY REDEVELOPMENT (CRA) AGENCY OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING AN APPROPRIATION OF \$100,000 FROM THE 2007 CRA BOND PROCEEDS TO CRA FUND 855 TO COVER ANTICIPATED EXPENSES RELATED TO THE PROPOSED MID-COUNTY JUSTICE CENTER SITE LOCATED AT 311 EAST RAMSEY STREET

WHEREAS, on December 11, 2007, the Community Redevelopment Agency (CRA) Board approved the purchase of 7.68 acres of vacant land (311 E. Ramsey St.) located at the northeast corner of Ramsey Street and Martin Street from Richard Ehline with the intention of owning the land to improve the City's chances of securing the location for the proposed Mid-County courthouse complex; and

WHEREAS, throughout the past year, City staff has been working with the State of California as a continued effort to secure the site and prepare it for future development and part of these efforts include the completion of Project No. 2008-05, "Removal of an Underground Storage Tank and Appurtenances at 311 East Ramsey Street" and the current construction of Project No. 2006-02, "Storm Line 'D' Improvements on Ramsey Street, Martin Street and Williams Street"; and

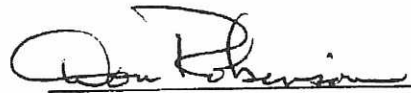
WHEREAS, on January 29, 2009, the Real Property Acquisition Agreement between the City of Banning and State of California was ratified and as part of the Agreement the City agreed to provide off-site public improvements; and

WHEREAS, staff requests that funds be appropriated and made available for these improvements which include the engineering design of street improvements and the installation of utilities estimated to amount to \$100,000.00.

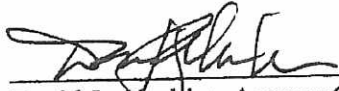
NOW, THEREFORE, BE IT RESOLVED by the Community Redevelopment Agency of the City of Banning, California, as follows:

Section I. Authorize an appropriation of \$100,000.00 from the 2007 CRA Bond Proceeds to Fund 855 and authorize the Director of Finance to make necessary budget adjustments related to these funds.

PASSED, APPROVED AND ADOPTED this 10th day of February, 2009.


Don Robinson, Chairman
Community Redevelopment Agency

APPROVED AS TO FORM AND
LEGAL CONTENT:



David J. Aleshire, Agency Counsel
Aleshire & Wynder, LLP

ATTEST:



Marie A. Calderon, Secretary

CERTIFICATION

I, MARIE A. CALDERON, Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2009-03 was duly adopted by the Agency Board at a regular meeting thereof held on the 10th day of February, 2009, by the following vote, to wit:

AYES:	Boardmembers Botts, Franklin, Hanna, Machisic, Chairman Robinson
NOES:	None
ABSTAIN:	None
ABSENT:	None



Marie A. Calderon, Secretary
Community Redevelopment Agency
City of Banning, California

ATTACHMENT 3

CRA Resolution 2011-22

CRA RESOLUTION NO. 2011-22**RESOLUTION OF THE COMMUNITY DEVELOPMENT AGENCY OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN ADVANCE PAYMENT TO SOUTHERN CALIFORNIA EDISON IN THE AMOUNT OF \$500,000.00 FOR THE RELOCATION OF OVERHEAD TRANSMISSION FACILITIES**

WHEREAS, on September 8, 2009, the Community Redevelopment Agency and City Council approved the Sale of Real Property (APN 541-146-003) to the State of California for the development of the Mid-County Justice Center; and

WHEREAS, the City agreed to provide off-site public improvements including the relocation of overhead transmission facilities from the State's property to City-owned property immediately to the East; and

WHEREAS, Southern California Edison (SCE) has reviewed the scope of work for this project and has agreed that upon receipt of an advance payment from the City of Banning in the amount of \$500,000.00, that SCE will design the relocation plans; and

WHEREAS, once the plans are complete, SCE will provide the City with a relocation cost estimate and the City will then be required to pay for the estimated cost prior to the commencement of work if the amount is greater than the \$500,000.00 advancement; and


WHEREAS, upon completion of the relocation work, the actual cost of the project will be calculated. If any additional funds are required, an invoice for the additional amount will be presented to the City for payment and if the funds collected are greater than the actual cost, SCE will refund any overpayment; and

WHEREAS, Community Redevelopment Agency funds are available in Account No. 855-9500-490.90-06 (Land Improvements) to fund the relocation of overhead transmission facilities.

NOW, THEREFORE, the Community Redevelopment Agency of the City of Banning does hereby resolve, determine and order as follows:

SECTION 1. The Community Redevelopment Agency Board hereby approves an advance payment to Southern California Edison in the amount of \$500,000.00 for the Relocation of Overhead Transmission Facilities from the State's property, future Mid-County Courthouse site, to City-owned property located immediately to the east.

PASSED, ADOPTED AND APPROVED this 14th day of June, 2011.


Don Robinson, Chairman
Community Redevelopment Agency

ATTEST:


Marie A. Calderon, Secretary

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


David J. Aleshire, Agency Counsel
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie Calderon, Agency Secretary of the Community Redevelopment Agency of the City of Banning, California, do hereby certify that the foregoing CRA Resolution No. 2011-22 was adopted by the Community Redevelopment Agency of the City of Banning at the regular meeting thereof held on the 14th day June of 2011, by the following vote, to wit:

AYES: Boardmembers Botts, Franklin, Hanna, Machisic, Chairman Robinson

NOES: None

ABSENT: None

ABSTAIN: None



Marie A. Calderon, Agency Secretary
Community Redevelopment Agency
City of Banning, California

ATTACHMENT 4

SCE Final Project Invoice

Invoice

City of Banning
99 East Ramsey Street
BANNING CA 92220


Invoice # 7500997954
Invoice Date 01/16/2019
Customer # 10260493
SCE Contact John Jenkins
Telephone # (866) 353-3437


ATTENTION: Art Vela

Description	Amount
Service Order TD470389	\$662,809.53
Final Billing - Transmission	
Deposit Received	-\$607,000.00
Subtotal	\$55,809.53
Income Tax Component of Contribution	\$40,896.08
Total Amount	\$96,705.61

Project#025 - Relocation of existing overhead transmissions poles to accomodate a new courthouse

Please detach and return payment stub with payment

Cut Here 

Payment Stub Please pay total amount now due  \$96,705.61

Customer Invoice 10260493 7500997954 Thank you for paying promptly Past due if not paid by **02/15/2019** Enter the amount you paid \$

Make check payable to Southern California Edison.
Please include Invoice # on the check.

City of Banning
99 East Ramsey Street
BANNING CA 92220

PO Box 800
Rosemead, CA
91771-0001



Cost Summary

CITY OF BANNING
99 EAST RAMSEY STREET
BANNING CA 92220

Sales Order # 255429
Sales Order Date 01/16/2019
Customer# 10260493
SCE Contact John Jenkins
Telephone # (866) 353-3437
Service Order # TD470389

ATTENTION: Art Vela

Description	Amount	Total
Labor:		
Labor Normal Time	\$110,263.95	
Labor Premium Time	\$37,582.41	
Total Labor:		\$147,846.36
Material:		
Material	\$141,490.79	
Total Material:		\$141,490.79
Contract:		
Contract Services	\$192,121.61	
Total Contract:		\$192,121.61
Other Expenses:		
Mileage Meals Lodging and Travel	\$2,070.00	
Total Other Expenses:		\$2,070.00
Allocated Costs:		
Department Allocations	\$75,819.62	
Service Allocations	\$8,172.34	
Administrative and General	\$77,920.59	
Pensions and Benefits	\$25,901.00	
Payroll Tax	\$10,171.83	
Total Allocated Costs:		\$197,985.38
Credits and Adjustments:		
Salvage Credit	-\$15,570.61	
Joint Pole Credit	-\$3,134.00	
Total Credits and Adjustments:		-\$18,704.61
Total Cost		\$ 662,809.53

ITEMIZED STATEMENT OF COST



Invoice #7500948106

City of Banning
 Work Order: TD470389 (Transmission)
 Project #025 - Relocation of existing overhead transmission poles to accommodate a new courthouse

Project Support		NT hours	PT hours	Total Cost	Explanation
Project Support Labor	Project Manager	140.50	5.50	\$9,075.09	
	Planner	363.25	5.00	\$26,381.48	
	Engineer	4.00		\$201.89	
	Construction/Material Coordinator	9.00	2.00	\$452.00	
	Technical Specialist	94.00		\$3,779.73	
	Real Properties Agent	26.00		\$1,072.89	
	Analyst	36.50		\$1,729.46	
Project Support Contract Work	Administrative Assistant	64.00		\$2,512.21	
	Total Project Support Labor	737.25	12.50	\$45,204.75	
	Technology Resource Center			\$24,030.87	Quality Control Inspector
	Utility Line Management Services			\$44,341.40	Analytical support provided to Project Managers
	Choice Workforce Solutions, LLC			\$5,639.86	Analytical support provided to Project Managers
Total Project Support Contract Work		-	-	\$74,012.13	
Project Support Total		-		\$119,216.88	

Material		Quantity	UM	Total Cost	Explanation
Material	Tubular steel poles - 75 foot	3	ea	\$74,254.84	
	Freight for tubular steel poles	1	ea	\$9,697.50	
	Tubular steel pole - 85 foot	1	ea	\$6,216.70	
	Tubular steel pole arms stitched	18	ea	\$18,932.76	
	Wood pole - 35 foot	2	ea	\$696.18	
	Pole line hardware and connectors	232	ea	\$2,445.46	
	Insulators and bushings	72	ea	\$9,012.45	
	Wire	5,685	ft	\$2,707.67	
	Lightweight steel poles - 75 foot	4	ea	\$17,300.68	Used for Temporary Shoofly
	B-items			\$226.55	
Material Total		-		\$141,490.79	

Construction		NT hours	PT hours	Total Cost	Explanation
Construction Labor	Supervisor	26.50	10.50	\$2,737.92	
	Lineman/Splicer	924.50	334.25	\$74,092.93	
	Groundmen	64.00	28.75	\$3,612.28	
	Operators	72.25	59.85	\$6,720.13	
	Troubleshooters	137.00	79.75	\$15,478.35	
Total Construction Labor		1,224.25	513.10	\$102,641.61	

ITEMIZED STATEMENT OF COST



Invoice #7500948106

City of Banning
 Work Order: TD470389 (Transmission)
 Project #025 - Relocation of existing overhead transmission poles to accommodate a new courthouse

Construction Contract Work	KSSC Inc	73,300.00	Installation of footings for 3 TSPs and restoration - December, 2013 and February, 2014
	Cunningham-Davis Corp	350.21	Welder, equipment and materials to weld nuts on base plates of poles - 3/21/14
	Arizona Pipe Line Company	4,220.00	Pole digging equipment and operator - February, 2014
	Herman Weissker Inc	2,242.00	Crew and equipment to dig 9 foot pole hole, 9 foot anchor, back fill and clean 3/6/12
	Bragg Investment Co Inc	9,421.90	Crane service - February, 2014
	Hill Crane Service Inc	1,601.00	Crane service - 12/28/12
	So Cal Elite Traffic Inc	26,075.87	Traffic control on 3/6/12 & 3/7/12 and between 2/3/14 and 2/25/14
	California Traffic Control	898.50	Traffic control for crane transportation on 12/28/12
	Total Construction Contract Work	\$118,109.48	
	Construction Total	\$220,751.09	

Allocated costs	Department Allocations	Total Cost	Explanation
	Service Allocations	\$75,819.62	
	Payroll Taxes	\$8,172.34	
	Pension & Benefits	\$10,171.83	
	Administrative and General Expenses	\$25,901.00	
		\$77,920.59	
Allocated cost Total		\$197,985.38	Allocations and overheads are applied as a percent of labor, material, and contract costs.

Other Charges		Total Price	Explanation
	Mileage, Meals, Lodging and Travel	\$2,070.00	
Other Total		\$2,070.00	

Other Credits		Total Price	Explanation
	Salvage Credit	(\$15,570.61)	Salvage for Shoo-fly Poles
	Joint Pole Credit	(\$3,134.00)	
Other Total		(\$18,704.61)	

Net Costs before ITCC	\$662,809.53
Income Tax Component of Contribution	\$40,896.08
Total costs including ITCC	\$703,705.61
Less Customer Advance	(\$607,000.00)
BALANCE DUE	\$96,705.61

ATTACHMENT 5

SCE Project File #25

Agreement



Judicial Council of California

ADMINISTRATIVE OFFICE OF THE COURTS

OFFICE OF COURT CONSTRUCTION AND MANAGEMENT

455 Golden Gate Avenue • San Francisco, California 94102-3688

Telephone 415-865-4900 • Fax 415-865-8885 • TDD 415-865-4272

RONALD M. GEORGE
Chief Justice of California
Chair of the Judicial Council

WILLIAM C. VICKREY
Administrative Director of the Courts

RONALD G. OVERHOLT
Chief Deputy Director

LEE WILLOUGHBY
*Acting Director, Office of Court
Construction and Management*

February 3, 2009

City of Banning
attn: Duane Burk, Public Works Director
99 East Ramsey Street
Banning, CA 92220

Re: Real Property Acquisition Agreement and Memorandum of Understanding Regarding
Planning and Design Controls on the New Riverside Mid-County Regional Courthouse Banning,
California

Dear Mr. Burk,

Enclosed are two fully executed originals of the above documents for your use.

Sincerely,

Sarah Sanchez
Sr. Administrative Coordinator
Real Estate Services

Enclosures

MEMORANDUM OF UNDERSTANDING
REGARDING PLANNING AND DESIGN CONTROLS ON THE
NEW RIVERSIDE MID-COUNTY REGION COURTHOUSE
BANNING, CALIFORNIA

THIS MEMORANDUM OF UNDERSTANDING ("**MOU**") is made and entered into on the ___ day of Feb. 2, 2009 ("**Effective Date**") by and between the City of Banning, a California municipal corporation ("**City**"), the Community Redevelopment Agency of the City of Banning, a public body corporate and politic (the "**CRA**") and the State of California acting by and through the Judicial Council of California, Administrative Office of the Courts ("**State Party**") (each a "**Party**" and collectively, the "**Parties**").

BACKGROUND AND PURPOSE OF THE MOU

A. The CRA has agreed to sell to the State Party and the State Party has agreed to purchase from the CRA a parcel of real property located in the City commonly known as 311 E. Ramsey Street along with certain improvements affixed thereto, and all privileges, entitlements, easements, and appurtenances pertaining to the land and any improvements located thereon (the "**Real Property**") pursuant to that certain Real Property Acquisition Agreement ("**PAA**") dated as of January 28, 2009, a copy of which is attached hereto as Exhibit "**A**."

B. The State Party is acquiring the Real Property with the intention of designing and constructing certain court facilities and related improvements thereon, including a building with an area of approximately 60,000 gross square feet ("**State Project**"), for use by the Superior Court of California, County of Riverside (collectively "**Court**") for judicial, court, administrative, office, and related purposes.

C. The Real Property is located within an area of the City designated for redevelopment pursuant to a redevelopment plan adopted in June 1978 and amended most recently in February, 2002 (the "**Plan**") which amendment was approved and adopted on February 26, 2002 by the City by Ordinance No. 1280 a copy of which was recorded on March 5, 2002 as part of document 2002-114161 in the Official Records of the County of Riverside pursuant to the California Community Redevelopment Law (Cal. Health & Safety Code §§ 33000 *et seq.*).

D. The PAA includes at section 6.12 as a condition of closing a requirement that the CRA obtain a written agreement by and between the City and the State Party regarding imposition and enforcement of planning and design controls on the Real Property and the State Project.

E. Because the CRA and City strongly desire to complete the purchase and sale of the Real Property to the State Party, the City is willing to provide the written agreement required by section 6.12 of the PAA.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. The City hereby agrees that it will not exercise at any time any rights it may have under the Plan or other document implementing the Plan to implement or impose any restrictions, controls, limitations or prohibitions on Buyer's use or development of the Real Property, construction of the State


Project, or maintenance and operation of the State Project including but not limited to those set forth in section 1 of Subpart I of Article IV (sections 425 through 429) and Article V (sections 500 through 522) of the Plan and so long as the State Party holds title to the Real Property, the City waives any and all rights it may have under section 800 or any other provision of the Plan or other document implementing the Plan to enforce against the State Party by litigation or any other means on its own behalf or on behalf of the CRA any such provision of the Plan or other document implementing the Plan.

2. The City further acknowledges and agrees that the State Party or other agency or department of the State of California is not subject to the City's general plan, zoning ordinance, building code or other municipal code provisions in its development and construction of the State Project or other facility owned by the State of California, and so long as the State of California holds title to the Real Property, the City waives forever any and all rights it may have to enforce against the State of California by litigation or any other means the general plan, zoning ordinance, building codes or other such municipal code provisions.


3. The AOC agrees that it shall consult with the CRA regarding design of the State Project, provided, however, that City and the CRA shall not have any right under the Plan, other document implementing the Plan, or otherwise, to impose any planning or design controls on the Real Property or the State Project or to impose any other restrictions on the use or development of the Real Property or the State Project.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the day and year first written above.

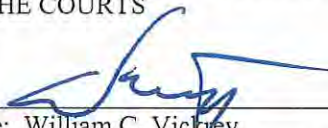
CITY OF BANNING, a California municipal corporation

By: 
 Printed Name: Brian S. Nakamura
 Title: City Manager
 Date: Jan 29, 2009

COMMUNITY REDEVELOPMENT AGENCY
 OF THE CITY OF BANNING, a body corporate and politic

By: 
 Printed Name: Brian Nakamura
 Title: Executive Director
 Date: Jan 29, 2009

THE STATE OF CALIFORNIA, acting by and through THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS

By: 
 Name: William C. Vickrey
 Title: Administrative Director of the Courts
 Dated: 2-2-09

APPROVED AS TO FORM:
 Administrative Office of the Courts,
 Office of the General Counsel

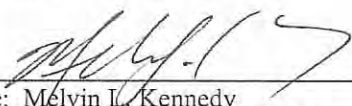
By: 
 Name: Melvin L. Kennedy
 Title: Managing Attorney, Real Estate Unit
 Dated: 01-29-2009

EXHIBIT “A”**Copy of Real Property Acquisition Agreement**

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

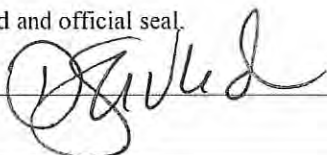
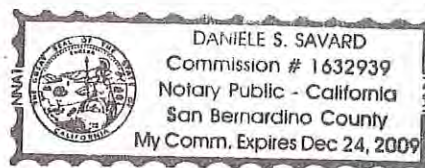
COUNTY OF RIVERSIDE

On 01-29-09 before me, Daniele S. Savard, Notary Public, personally appeared Brian Nakamura, 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

TITLE(S) _____

☐
☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

☐
☐

ATTORNEY-IN-FACT
TRUSTEE(S)

☐
☒

GUARDIAN/CONSERVATOR
OTHER city manager &
executive director

DESCRIPTION OF ATTACHED DOCUMENT

MOL

TITLE OR TYPE OF DOCUMENT

3

NUMBER OF PAGES

Agreement Date1/29/09

DATE OF DOCUMENT

NONE

SIGNER(S) OTHER THAN NAMED ABOVE

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

City of Banning
& community Redevelopment Agency



Judicial Council of California
Administrative Office of the Courts
Office of Court Construction and Management
455 Golden Gate Avenue, San Francisco, CA 94102-3688

Project: New Riverside Mid-County Region Courthouse
Location: 311 E. Ramsey Street, Banning California
Assessor Parcel No.: TBD
Title Order No.: No. 71016916 -X14

REAL PROPERTY ACQUISITION AGREEMENT

This **Real Property Acquisition Agreement** ("**Agreement**") is entered into by the undersigned parties as of January 28, 2009 (the "**Effective Date**"), and in consideration of the mutual covenants and agreements contained herein, and for good and valuable consideration, the undersigned parties agree to the following terms and conditions:

1. PARTIES.

1.1. Seller. The "**Seller**" hereunder is the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, public body corporate and politic.

1.2. Buyer. The "**Buyer**" hereunder is THE STATE OF CALIFORNIA, acting by and through THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS.

2. COMPOSITION OF AGREEMENT; DEFINED TERMS.

2.1. Composition of Agreement. This Agreement is comprised of, and includes, all of the following exhibits and/or addenda, each of which is incorporated into and forms a part of this Agreement for all purposes:

- Exhibit A — Map of Land
- Exhibit B — Legal Description of Land
- Exhibit C — Form of Grant Deed and Certificate of Acceptance
- Exhibit D — Location of Drainage Ditch to be Removed Pre-Closing
- Exhibit E — Form of Memorandum of Understanding by and between City of Banning, Seller and Buyer
- Exhibit F — Eliminated Parking
- Exhibit G — Off-Site Improvements
- Exhibit H — Location of UST and Hydraulic Lift Removed in August, 2008

2.2. Defined Terms. Capitalized terms used in this Agreement shall have the meanings ascribed to them herein.

3. DESCRIPTION OF PROPERTY; STATE PROJECT.

3.1. Description of Real Property. Seller agrees to sell, convey, and deliver to Buyer, and Buyer agrees to acquire and accept from Seller, all of Seller's right, title, and interest in and to that parcel of property in Banning, California which is approximately 4.86 acres situated at the northeast corner of Ramsey Street and Martin Street also known as 311 E. Ramsey Street (the "**Land**"), as more particularly depicted in Exhibit A ("**Map of Land**") and described in Exhibit B ("**Legal Description of Land**") along with any improvements affixed to the Land which have not been removed pursuant to the terms hereof ("**Improvements**"), and all privileges, entitlements, easements, and appurtenances pertaining to the Land and the Improvements ("**Appurtenances**"). The Land, Improvements, if any, and Appurtenances are referred to herein collectively as the "**Real Property**", subject to the terms and conditions set forth in this Agreement.

3.2. Description of State Project. Buyer is acquiring the Real Property with the intention of designing and constructing certain court facilities and related improvements thereon, including a building with an area of approximately 60,000 gross square feet ("**State Project**"), for use by the Superior Court of California, County of Riverside (collectively "**Court**") for judicial, court, administrative, office, and related purposes.

4. PURCHASE PRICE.

The "**Purchase Price**" of the Real Property is One Million Nine Thousand Three Hundred Eighty Dollars (\$1,009,380). The parties acknowledge that the Purchase Price and the other mutual covenants and agreements contained herein are adequate and sufficient consideration in support of this Agreement.

5. CLOSING DATE.

Subject to the terms and conditions set forth herein, the Parties shall consummate the Close of Escrow on or about June 30, 2009 ("**Closing Date**"). The Closing Date may be extended, at Buyer's option, by written notice to Seller, for a reasonable period of time if required to allow satisfaction of all necessary conditions and contingencies, subject to Buyer's further rights to terminate this Agreement if all such conditions have not then been satisfied.

6. BUYER CONTINGENCIES.

Buyer shall not be obligated to consummate the Close of Escrow unless and until each and all of the obligations, conditions precedent, and contingencies set forth in sections 6.1 through 6.12 (each a "**Buyer Contingency**," and collectively "**Buyer Contingencies**") are performed and satisfied within the applicable time periods specified herein. The Buyer Contingencies are for the sole benefit of Buyer and may only be waived or deemed satisfied in writing at Buyer's election and in Buyer's sole and absolute discretion.

6.1. Due Diligence Inspections.

6.1.1. Preliminary Report. Chicago Title Company ("**Title Company**") has delivered to Buyer a preliminary (title) report No. 71016916 -- X14, dated December 16, 2008 for the Real Property ("**Title Report**") issued by Title Company which is located at 700 South Flower Street, Los Angeles, CA, Attention: Mark Raskin, Phone: (213) 488-4383, Fax: (213) 629-3828, E-mail: mark.raskin@ctt.com, with copies of all underlying

recorded instruments of record shown as exceptions and described on the Title Report ("**Exception Documents**").

6.1.2. ALTA/ACSM Survey. As soon as reasonably practicable following the Effective Date, Buyer shall have the right to obtain, at its sole cost and expense, a certified survey of the Real Property ("**Survey**") prepared by a licensed land surveyor in accordance with the 1999 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, as adopted by the American Land Title Association, American Congress on Surveying and Mapping, and the National Society of Professional Surveyors.

6.1.3. Other Due Diligence Inspections. As soon as reasonably practicable following the Effective Date, Buyer shall have the right, at its sole cost and expense, to conduct any and all other investigations, inspections, and examinations relating to the condition of the Real Property and the suitability of the Real Property for Buyer's purposes, including but not limited to, assessment of environmental, soil, seismic, surface, and subsurface conditions for the presence of Hazardous Substances (as defined below); and performing architectural, engineering, development, and/or economic feasibility studies (collectively, "**Other Due Diligence Inspections**").

6.1.4. Access to Real Property and Records. To facilitate Buyer's due diligence inspections of the Real Property, Seller shall cooperate in good faith to provide Buyer and its agents, representatives, and consultants with access to the Real Property, and to any records pertaining to the Real Property in Seller's possession or control each upon not less than twenty-four (24) hours prior notice by Buyer to Seller.

6.1.5. Disapproved Conditions. Following Buyer's receipt and review of the Title Report, all of the Exception Documents, and the Survey, and Buyer's satisfactory completion of all Other Due Diligence Inspections, Buyer shall have the right, but not the obligation, to deliver a written notice to Seller ("**Buyer's Inspection Notice**") identifying Buyer's disapproval of (i) any title conditions reflected in the Title Report and/or Exception Documents; (ii) any title conditions or other matters shown on the Survey; and (iii) any other conditions or matters arising from the Other Due Diligence Inspections (collectively, "**Disapproved Conditions**").

6.1.6. Seller's Cure Notice. By no later than 5:00 p.m. of the fifteenth (15th) business day following Seller's receipt of Buyer's Inspection Notice, Seller shall deliver a written notice to Buyer ("**Seller's Cure Notice**"), identifying Seller's proposed cure, if any, of any of the Disapproved Conditions.

6.1.7. Due Diligence Deadline. By no later than 5:00 p.m. of the tenth (10th) business day following Buyer's receipt of Seller's Cure Notice ("**Due Diligence Deadline**") Buyer shall have the right, but not the obligation, to deliver to Seller a written notice approving and/or waiving Buyer's Contingency under this section 6.1 ("**Due Diligence Contingency Notice**"). Prior to the expiration of the Due Diligence Deadline, Buyer and Seller shall cooperate in good faith to resolve any issues or disagreements relating to the Disapproved Conditions. If Buyer does not deliver the Due Diligence Contingency Notice on or prior to the Due Diligence Deadline, Buyer shall be deemed to have disapproved of the condition of the Real Property, and Buyer shall have the right, but not the obligation, to terminate this Agreement pursuant to section 8.2.

6.2. Owner's Policy. By no later than three (3) business days prior to the Closing Date, Title Company shall be irrevocably and unconditionally committed to issue a CLTA Owner's Policy of Title Insurance – Extended Coverage ("**Owner's Policy**"), with liability coverage in the amount of the Purchase Price of the Real Property, and showing fee title to the Real Property vested in Buyer, free and clear of all liens, leases, taxes, assessments, reservations, easements of record or otherwise, and encumbrances, except for (i) Items 3, 5, and 6 of Title Report; and (ii) any Disapproved Conditions shown on the Title Report which Seller has expressly agreed to cure to the satisfaction of Buyer by a method other than removal (collectively, "**Permitted Exceptions**").

6.3. Accuracy of Representations and Warranties. As of the Close of Escrow, all of Seller's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

6.4. No Breach or Event of Default. As of the Close of Escrow, no uncured Event of Default by Seller, nor any Breach by Seller which could become an Event of Default with the passage of time, shall exist.

6.5. Seller Deliveries. Buyer will present its site acquisition application for the Real Property to the State Public Works Board ("**SPWB**") for approval at a duly noticed public meeting scheduled on February 13, 2009 ("**Meeting Date**") which will require submission of all required documents and agreements to the PWB by January 30, 2009 ("**Submission Date**"). No later than five (5) business days prior to the Meeting Date, Seller shall deliver, or cause to be delivered, to Escrow Holder the following ("**Seller Deliveries**"):

6.5.1. One (1) original of the Grant Deed, substantially in the same form as Exhibit C, duly executed by Seller and notarized. The executed Grant Deed will be needed by or before the Submission Date;

6.5.2. One (1) copy of Seller's resolution evidencing Seller's authorization to enter into, deliver, and perform under all of the documents and instruments necessary to effect the sale of the Real Property to Buyer in accordance with the terms of this Agreement. The resolution will be needed by or before the Submission Date; and

6.5.3. Any other documents, instruments, or items reasonably requested and deemed necessary by Escrow Holder to consummate the Close of Escrow in accordance with the terms of this Agreement.

6.6. SPWB Approval and Acceptance. The **SPWB** shall have (i) authorized Buyer's acquisition of the Real Property pursuant to the terms of this Agreement and the Real Property Acquisition Law set forth in Government Code sections 15850 to 15866; and (ii) executed the Certificate of Acceptance attached to the Grant Deed, or in such form and content as then required by applicable law. **This Agreement has no force and effect and is not binding on the State of California until and unless it is authorized by the SPWB at a duly noticed public meeting.**

6.7. Expiration of CEQA Statute of Limitation. With respect to the State Project, prior to approval of the SPWB for acquisition authorization, the statute of limitation period under the California Environmental Quality Act, as set forth at California Public Resources Code section 21000, et seq. ("**CEQA**"), shall have expired.

6.8. Termination of Easements. By no later than five (5) business days prior to the Closing Date, Seller shall, at its sole cost and expense cause to be removed and terminated all easements of record against the Real Property that Buyer and Seller have not otherwise specifically agreed in writing may remain.

6.9. Geotechnical and Physical. By no later than five (5) business days prior to the Closing Date, Seller shall, at its sole cost and expense:

6.9.1. Remove or cause to be removed from the Land any and all existing structures and abandoned infrastructure consisting principally of an existing concrete/asphalt pad, and section of fencing and existing sidewalks running along the north, west and south borders of the Land;

6.9.2. Remove or cause to be removed from the Land an existing 60 inch RCB culvert and construct and install a new 60 inch RCP culvert and one new catch basin all as generally shown on the drawing attached hereto as **Exhibit D**; and

6.9.3. Remove and replace existing fire hydrants as needed and in compliance with all applicable laws, and regulations including those of the State Fire Marshall, conduct a flow test of the existing fire main serving the Land to determine whether it is adequate to supply those hydrants and the fire sprinkler system to be installed as part of the State Project, and to upgrade the fire main, if necessary, to provide an adequate supply to the hydrants and sprinklers.

6.10. Utilities. The Parties agree that certain utilities will be needed to service the State Project:

- One 3-inch domestic water line;
- One 6-inch fire water line;
- One 2-inch medium pressure gas line;
- Electrical service of 2000 Amp at 480/277V, 3PH, 4 Wire; and
- One 6-inch sewer line.

By no later than five (5) business days prior to the Closing Date, Seller shall, at its sole cost and expense, take all steps necessary to (a) ensure that the utility services and hook-ups listed above are available at locations on the Land approved in advance by the Buyer, and (b) remove or cause to be removed any and all existing above and below grade utility runs and related infrastructure.

6.11. By no later than five (5) business days prior to the Closing Date, Seller have delivered to Buyer a Memorandum of Understanding by and between the Buyer, the City of Banning and Seller (the "**City**") duly authorized, approved and executed by the City in substantially the same form as attached hereto as **Exhibit E** wherein the City (a) agrees that it will not exercise any rights it may have under the Plan to implement or impose at any time any planning or design controls over the Real Property or the State Project or to impose any restrictions on the Buyer's use or development of the Real Property and (b) specifically waives forever its rights under Section 800 of the Plan to enforce by litigation or any other means against the Buyer on its own behalf or on behalf of the CRA any aspect of the Plan governing planning or design controls or any other restrictions on the use or development of the Real Property or the State Project.

6.12. Buyer Contingencies Notice. By no later than three (3) business days prior to the Closing Date, Buyer shall have delivered to Seller and Escrow Holder a written notice approving and/or waiving all of the Buyer Contingencies other than the Buyer Contingencies set forth in section 6.1, which shall be governed by the terms thereof ("**Buyer Contingencies Notice**").

7. SELLER CONTINGENCIES.

Seller shall not be obligated to consummate the Close of Escrow unless and until each and all of the obligations, conditions precedent, and contingencies set forth in sections 7.1 through 7.5 (each a "**Seller Contingency**," and collectively "**Seller Contingencies**") are performed within the time periods specified herein. The Seller Contingencies are for the sole benefit of Seller and may only be waived or deemed satisfied in writing at Seller's election and in Seller's sole and absolute discretion.

7.1. Due Diligence Contingency Notice. Buyer shall have timely delivered to Seller and Escrow Holder the Due Diligence Contingency Notice in accordance with section 6.1.7 above.

7.2. Buyer Contingencies Notice. Buyer shall have timely delivered to Seller and Escrow Holder the Buyer Contingencies Notice in accordance with section 6.12 above.

7.3. Accuracy of Representations and Warranties. As of the Close of Escrow, all of Buyer's representations and warranties set forth herein shall be true and accurate with the same force and effect as if remade by Seller in a separate certificate at the Close of Escrow.

7.4. No Breach or Event of Default. As of the Close of Escrow, no uncured Event of Default by Buyer, nor any Breach by Buyer which could become an Event of Default with the passage of time, shall exist.

7.5. Buyer Deliveries. At least three (3) business days prior to the Closing Date, Buyer shall have delivered to Escrow Holder the Purchase Price, along with all other documents, instruments, or items reasonably requested and deemed necessary by Escrow Holder to consummate the Close of Escrow in accordance with the terms of this Agreement ("**Buyer Deliveries**").

8. EVENT OF DEFAULT; TERMINATION; REMEDIES.

8.1. Termination for Event of Default. If Buyer or Seller breaches, defaults, or fails to perform any obligation, covenant, condition precedent, or contingency to be observed or performed by such party, including the failure or unsatisfactory completion of any Buyer Contingency, or Seller Contingency, as applicable (except for any of the Buyer Contingencies in sections 6.1, 6.2, 6.6, 6.7, and 6.12) ("**Breach**"), the party who is claiming that a Breach has occurred ("**Non-Defaulting Party**") shall provide written notice (the "**Default Notice**") to the other party ("**Defaulting Party**") identifying the Breach and a description of the facts and circumstances relating to such Breach. Upon receipt of the Default Notice, the Defaulting Party shall have ten (10) business days to cure the Breach described in the Default Notice and to provide evidence of such cure to the Non-Defaulting Party, provided, however, that if the breach or default occurs within ten (10) business days of the Closing Date, the Closing Date shall be automatically extended for the number of days necessary to allow a full ten (10) business day cure period. If the Defaulting Party does not provide evidence of the cure to the Non-Defaulting

Party within the ten (10) business day, or shorter, time period, as applicable, then the Defaulting Party shall be deemed to have committed an **"Event of Default"** hereunder, and the Non-Defaulting Party shall have the right, but not the obligation, to terminate this Agreement and cancel Escrow pursuant to the terms hereof. Upon the occurrence of an Event of Default, and provided that the Non-Defaulting Party has not also committed an Event of Default, the Non-Defaulting Party shall have the right, but not the obligation, to terminate this Agreement and cancel the Escrow by delivering written notice of termination and cancellation instructions to the Defaulting Party and Escrow Holder. If the Non-Defaulting Party exercises such right, this Agreement shall terminate, the Escrow shall be cancelled, and the Non-Defaulting Party shall have the right to pursue any and all remedies available at law or in equity.

8.2. No-Fault Termination. If (i) any of the Buyer Contingencies set forth in sections 6.1, 6.2, 6.6, 6.7, and 6.12 are not satisfied within the time periods set forth therein; or (ii) Buyer elects to terminate this Agreement pursuant to sections 12 or 13, as applicable, Buyer's sole remedy shall be to terminate this Agreement and cancel the Escrow by delivering written notice of termination and cancellation instructions to Seller and Escrow Holder. In the event of such termination and cancellation by Buyer, this Agreement shall terminate, the Escrow shall be cancelled, and the parties hereto shall have no further rights, obligations, or liabilities hereunder, except for any obligations that expressly survive such termination and cancellation pursuant to the terms herein.

8.3. Payment of Costs Upon Termination. Upon termination of this Agreement and cancellation of Escrow pursuant to section 8.1, the Defaulting Party shall pay any and all of Escrow Holder's cancellation fees and costs. Upon termination of this Agreement and cancellation of Escrow pursuant to section 8.2, Buyer and Seller shall equally share Escrow Holder's cancellation fees and costs. The obligations of the parties under this section 8.3 shall survive the termination of this Agreement and cancellation of Escrow.

8.4. Return of Sums and Documents. Upon termination of this Agreement and cancellation of Escrow pursuant to the terms hereof, Escrow Holder shall return any and all sums or documents deposited in Escrow to the parties who respectively deposited the same. The parties shall reasonably cooperate to execute any additional cancellation instructions required of Escrow Holder to effect the cancellation of Escrow pursuant to this section 8.

8.5. Rights and Remedies Cumulative. The rights and remedies of the parties in connection with this Agreement are cumulative, and the exercise by a party of one or more of its rights or remedies shall not preclude the exercise by it, at the same time or at a different time, of any other rights or remedies for the same Event of Default or other Event of Default. In addition to the rights and remedies specified herein, the parties shall have the right to pursue any and all other rights or remedies available at law or in equity, including, but not limited to, specific performance, declaratory relief, and/or damages.

9. ESCROW; BROKERS; CLOSING COSTS.

9.1. Opening of Escrow. As soon as reasonably practicable following the full execution of this Agreement and SPWB site acquisition approval, the parties shall cooperate in good faith to open escrow for the transaction contemplated hereunder ("**Escrow**") by depositing with Chicago Title Company, 700 South Flower Street, Los Angeles, CA, Attention: Mark Raskin, Phone: (213) 488-4383, Fax: (213) 629-3828, E-mail: mark.raskin@ctt.com ("**Escrow Holder**"), a copy of this Agreement fully executed by the parties. This Agreement shall constitute joint instructions to Escrow Holder; provided, however, that Buyer and Seller shall

execute such additional escrow instructions as may be reasonably requested by Escrow Holder so long as such additional instructions do not conflict with this Agreement. Escrow shall not be deemed "opened" until Escrow Holder confirms receipt of a fully executed copy of this Agreement.

9.2. Brokers. Buyer and Seller each represents and warrants to the other that it has had no dealings with any real estate broker or agent in connection with the sale contemplated by this Agreement except for Bill Bacon and Philip Woodford of CB Richard Ellis, Inc. representing the Buyer ("**Buyer's Broker**") and that they know of no other real estate broker or agent who is entitled to a commission or finder's fee in connection with this transaction. Each party shall indemnify, protect, defend, and hold harmless the other party against all claims, demands, losses, liabilities, lawsuits, judgments, and costs and expenses (including reasonable attorney fees) for any commission, finder's fee, or equivalent compensation alleged to be owing on account of the indemnifying party's dealings with any real estate broker or agent other than the Buyer's Broker or Seller's Broker, as the case may be. As compensation for its representation of Buyer, Seller shall pay to Buyer's Broker at the Close of Escrow as a Closing Cost a procuring brokerage fee in a total amount equal to One Hundred Nine Thousand Three Hundred Eighty Dollars (\$109,380) (the "**Broker's Commission**").

9.3. Close of Escrow. Provided that all of the Buyer Contingencies and Seller Contingencies have been satisfied and/or waived by the respective parties, the parties shall proceed to "close" Escrow as follows ("**Close of Escrow**"):

9.3.1. Seller's Authorization. Seller shall authorize and instruct Escrow Holder to cause the Grant Deed, substantially in the same form as Exhibit C, to be recorded in the Official Records of Riverside County, California, subject to any instructions and conditions of Seller which do not conflict with the terms of this Agreement.

9.3.2. Buyer's Authorization. Buyer shall authorize and instruct Escrow Holder to release the Purchase Price to Seller and Brokers' Commissions to Buyer's Broker subject to any instructions and conditions of Buyer which do not conflict with the terms of this Agreement.

9.3.3. Disbursement and Recordation. The Close of Escrow shall not be deemed consummated or "closed" unless and until the following have occurred:

9.3.3.1. Owner's Policy. Escrow Holder has confirmed that Title Company is irrevocably and unconditionally committed to issue the Owner's Policy, with liability coverage in the amount of the Purchase Price of the Real Property, and showing fee title to the Real Property vested in Buyer, free and clear of all liens and encumbrances, except for the Permitted Exceptions;

9.3.3.2. Recordation of Grant Deed. Escrow Holder has confirmed that Seller's conditions to the recordation of the Grant Deed have been satisfied, and that the Grant Deed has been recorded in the Official Records of Riverside County, California; and

9.3.3.3. Disbursement of Purchase Price. Escrow Holder has confirmed that Buyer's conditions to the disbursement of the Purchase Price have been satisfied, and that the Purchase Price, less Seller's share of Closing Costs, has been disbursed to, and received by, Seller in accordance with Seller's instructions.

9.4. Closing Costs. At the Close of Escrow, the costs and fees associated therewith ("**Closing Costs**") shall be allocated as follows: (i) Buyer and Seller shall each pay one-half of Escrow Holder's charges and fees, and for all overnight deliveries that it requests; (ii) Seller shall pay the premium for the CLTA coverage portion of the Owner's Policy and any title endorsements approved by Seller to cure any Disapproved Exceptions; (iii) if Buyer obtains an ALTA -- Extended Coverage policy, Buyer shall pay the cost of the premium for the ALTA -- Extended Coverage portion of the Owner's Policy; and (iv) Seller shall pay the Broker's Commission to Buyer's Brokers. The parties acknowledge that Buyer, as a governmental entity, is exempt from the payment of documentary transfer taxes and recording fees. Notwithstanding the foregoing, in accordance with the standard practice and policy of the State of California, Buyer shall not be obligated to pay for Buyer's share of the Closing Costs unless and until Buyer receives an acceptable Owner's Policy issued to Buyer, along with an invoice itemizing Buyer's share of Closing Costs.

10. REPRESENTATIONS, WARRANTIES, AND COVENANTS.

10.1. Seller's Representations and Warranties. Seller hereby makes the following representations and warranties to Buyer, all of which shall be true and accurate as of the execution of this Agreement and as of the Close of Escrow:

10.1.1. Seller is the sole owner of fee simple title to the Real Property, and Seller's conveyance and delivery of fee simple title to Buyer at the Close of Escrow shall be free of any and all liens or encumbrances, except for the Permitted Exceptions.

10.1.2. Seller is duly organized, validly existing, and in good standing under the laws of the State of California.

10.1.3. Seller's execution, delivery, or performance of this Agreement (including any related documents to be executed and delivered by Seller at the Close of Escrow):

10.1.3.1. Is duly authorized and approved such that this Agreement and related documents will constitute legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, and other principles relating to or limiting the right of contracting parties generally);

10.1.3.2. Does not and will not violate any provisions of any agreement which is binding upon Seller or any of Seller's assets;

10.1.3.3. Does not require any authorization, consent, approval, or other action of or filing or registration with any other governmental agency, except as expressly provided herein; and

10.1.3.4. Is not prohibited by any law, ordinance, or regulation.

10.1.4. To the best of Seller's knowledge:

10.1.4.1. There are no suits, actions, arbitrations, attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganizations, or other legal proceedings or inquiries pending or threatened against the Real Property or Seller which could adversely affect the value of the Real Property, Seller's interest therein, Seller's

ability to perform its obligations hereunder, or otherwise impose any liability upon any owner of the Real Property;

10.1.4.2. There are no uncorrected violations of any statutes, ordinances, regulations, or administrative or judicial orders or holdings which could adversely affect the Real Property, nor has Seller received any written notice of said violations from any governmental or quasi-governmental authority;

10.1.4.3. No Hazardous Substances are present in, on, or under the Real Property in violation of any Environmental Laws; and

10.1.4.4. Except for any matters of record, there are no other leases, rental agreements, or maintenance agreements with respect to the Real Property.

10.1.5. Seller has not received any written notice of any pending widening, modification, or realignment of any street or highway contiguous to the Real Property or any existing or proposed eminent domain proceeding that would result in a taking of all or any part of the Real Property.

10.1.6. Seller has not granted any preemptive or reversionary rights with respect to the Real Property, nor has Seller entered into any other agreements for the sale, lease, use, or occupancy of any portion of the Real Property by any third parties, which would otherwise impose an obligation upon Buyer or affect the marketability of title to the Real Property.

10.1.7. There are no encroachments of any improvements onto the Real Property, nor do any of the improvements on the Real Property encroach onto any neighboring land owned by a third party.

10.1.8. There are no actual or pending public improvements on the Real Property which would or could result in the imposition of any liens thereon, including, but not limited to, any public assessments or mechanics' liens.

10.1.9. No representation, warranty, or statement of Seller in this Agreement, or in any document, certificate, or schedule furnished or to be furnished to Buyer pursuant to this Agreement, contains any untrue statement of a material fact, or omits to state any material fact needed to ensure the accuracy of the representations, warranties, or statements contained therein.

10.1.10. Seller, in its capacity as the redevelopment agency, shall not exercise its power under Section 409 of the Plan or any other provision of the Plan or other document implementing the Plan to impose any planning or design controls on the Real Property or the State Project and shall not impose any restrictions, controls, limitations or prohibitions on Buyer's use or development of the Real Property, construction of the State Project or maintenance and operation of the State Project including but not limited to those set forth in section 1 of Subpart I of Article IV (Sections 425 through 429) and Article V (sections 500 through 522) of the Plan and hereby waives forever any and all rights to enforce against the Buyer by litigation or any other means any such restrictions, controls, limitations or prohibitions.

10.2. Buyer's Representations and Warranties. Buyer hereby makes the following representations and warranties to Seller, all of which shall be true and accurate as of the execution of this Agreement and as of the Close of Escrow:

10.2.1. The Administrative Office of the Courts is the staff agency to the Judicial Council of California, an entity established by the Constitution of the State, validly existing under the laws of the State.

10.2.2. Buyer's execution, delivery, or performance of this Agreement (including any related documents to be executed and delivered by Buyer at the Close of Escrow):

10.2.2.1. Is duly authorized and approved such that this Agreement and related documents will constitute legal, valid, and binding obligations of Buyer enforceable against Buyer in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium, and other principles relating to or limiting the right of contracting parties generally);

10.2.2.2. Does not and will not violate any provisions of any agreement which is binding upon Buyer or any of Buyer's assets;

10.2.2.3. Does not require any authorization, consent, approval, or other action of, or filing or registration with, any other governmental agency, except as expressly provided herein; and

10.2.2.4. Is not prohibited by any law, ordinance, or regulation.

10.2.3. No representation, warranty or statement of Buyer in this Agreement, or in any document, certificate, or schedule furnished or to be furnished to Seller pursuant to this Agreement, contains any untrue statement of a material fact or omits to state any material fact needed to ensure the accuracy of the representations, warranties, or statements contained therein.

10.3. No Merger. All express representations and warranties in this section 10 shall survive the Close of Escrow and the conveyance of record fee title to the Real Property to the Buyer, and shall not merge with the recordation of the Grant Deed.

10.4. Seller's Pre-Closing Covenants. Seller shall comply with the following covenants and requirements at all times from and after the Effective Date, and prior to the Close of Escrow or earlier termination of this Agreement and cancellation of Escrow:

10.4.1. Seller shall not grant, convey, or enter into any easement, lease, license, agreement, lien, encumbrance, or any other legal or beneficial interest in or to the Real Property, other than the Permitted Exceptions, without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed.

10.4.2. Seller shall not violate, nor allow the violation of, any law, ordinance, rule, or regulation affecting the Real Property.

10.4.3. Seller shall do or cause to be done, all things within its reasonable control to preserve intact and unimpaired any and all rights of way, easements, grants,

appurtenances, privileges, and licenses in favor or consisting of any portion of the Real Property, except as otherwise expressly provided herein.

10.4.4. Seller shall not take any action, or fail to take any action, that would result in any change, alteration, modification, addition to, or termination of any of the presently-existing general plan or zoning designation of the Real Property, without Buyer's prior written approval, and Seller shall immediately provide Buyer with a copy of any written materials received by Seller evidencing or relating to any proposal or attempt to effect any such change, alteration, modification, addition to, or termination other than those sought by Buyer.

10.4.5. Except as specifically provided in this Agreement, Seller shall (i) not alter the physical condition of the Real Property; (ii) maintain the Real Property in substantially the same condition as that which existed as of the Effective Date; and (iii) Seller shall deliver possession of the Real Property to Buyer at the Close of Escrow in no worse condition than that which existed at the expiration of the Due Diligence Deadline.

10.4.6. Seller shall promptly notify Buyer of any event or circumstance that could or would render any representation or warranty of Seller under this Agreement untrue or misleading, or of any covenant of Seller under this Agreement incapable or less likely of being performed; provided, however, that Seller's foregoing obligation to provide notice to Buyer shall in no way relieve Seller of any liability for a Breach by Seller of any of its representations, warranties or covenants under this Agreement.

10.4.7. Seller shall not record any covenants, conditions or restrictions against the Land which restricts the design or the development upon the Land, and to the extent that any covenants, conditions or restrictions are recorded against the Land, such covenants, conditions or restrictions shall exempt the Land from any design or development restrictions.

10.4.8. Seller shall not assist with the formation, vote for, or agree to any assessment districts or special tax districts which results in a special tax or assessment upon the Land.

10.5. Post-Closing Covenants.

10.5.1. Design. Buyer agrees to consult with Seller regarding design of the State Project, provided, however, that Seller shall not have any right under the Plan to impose any planning or design controls on the Land or the State Project.

10.5.2. Parking and Security. During all phases of Buyer's construction of the State Project, Seller shall, at its sole cost and expense, cause all on-street public parking on all streets abutting the Real Property to be restricted and made available only for construction related purposes, and after completion of the State Project, eliminate all on-street public parking at the locations shown on the drawing attached hereto as **Exhibit F**.

10.5.3. Off-Site Improvements. In coordination with Buyer's construction of the State Project, Seller shall construct or cause to be constructed all necessary off-site improvements including curbs, gutters, sidewalks, and roads appurtenant to the Land in conformance with the City of Banning Streetscape Landscape Guidelines dated April 10, 2006 a copy of which is attached hereto as **Exhibit G** by no later than thirty (30) days prior to completion of construction of the State Project.

11. INDEMNIFICATION AND DUTY TO DEFEND.

11.1. Defined Terms. For purposes of this Agreement, the following defined terms and definitions shall apply:

11.1.1. "Environmental Laws" means any present and future federal, state and local laws, statutes, ordinances, rules, regulations, and the like, as well as common law, which (i) relate to protection of human health or the environment, (ii) relate to Hazardous Substances, (iii) relate to liability for or costs of Remediation or prevention of Releases of Hazardous Substances, (iv) relate to liability for or costs of other actual or future danger to human health or the environment, (v) condition transfer of property upon a negative declaration, or other approval of a governmental authority of the environmental condition of the Real Property, (vi) require notification or disclosure of Releases of Hazardous Substances, or other environmental condition of the Real Property, to any governmental authority or other person or entity, whether or not in connection with transfer of title to or interest in property, (vii) imposes conditions or requirements in connection with permits or other authorization for lawful activity, (viii) relates to nuisance, trespass, or other causes of action related to the Real Property, and/or (ix) relate to wrongful death, personal injury, or property or other damage in connection with any physical condition or use of the Real Property, including but not limited to, the following laws, as they may be amended from time to time: Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. section 9601, et seq.; Federal Resource Conservation and Recovery Act, 42 U.S.C. section 6901, et seq.; Clean Water Act, 33 U.S.C. section 1251, et seq.; Toxic Substances Control Act, 15 U.S.C. section 2601, et seq.; Refuse Act, 33 U.S.C. section 407; Occupational Safety and Health Act, 29 U.S.C. section 651, et seq.; Clean Air Act, 42 U.S.C. section 7401, et seq.; California Hazardous Waste Control Act, California Health and Safety Code sections 25100, et seq.; Carpenter-Presley-Tanner Hazardous Substance Account Act Substance Account Act, California Health and Safety Code sections 25300, et seq.; Hazardous Substance Cleanup Bond Act of 1984, California Health and Safety Code sections 25385, et seq., and related statutes including sections 25356.1-25356.4 of the California Health and Safety Code; Porter-Cologne Water Quality Control Act, California Water Code sections 13000, et seq.; Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5, et seq.; California Health and Safety Code sections 25220, et seq., 25280, et seq., 25359.7; Code of Civil Procedure section 3483; and any similar federal, state, and/or local laws and ordinances and the regulations now or hereafter adopted, published, and/or promulgated pursuant thereto.

11.1.2. "Hazardous Substances" includes, but is not limited to, any and all substances (whether solid, liquid, or gas) defined, listed, or otherwise classified as pollutants, hazardous wastes, hazardous substances, hazardous materials, extremely hazardous wastes, or words of similar meaning or regulatory effect under any present or future Environmental Laws or that may have a negative impact on human health or the environment, including but not limited to petroleum and petroleum products, asbestos, and asbestos-containing materials ("ACM"), polychlorinated biphenyls ("PCBs"), lead, lead-based paints, radon, radioactive materials, flammables, and explosives.

11.1.3. "Indemnified Parties" includes the State of California, and each of its political subdivisions, and its branches, divisions, entities, agencies, departments, members, managers, employees, agents, affiliates, partners, attorneys, successors, and assigns.

11.1.4. "Losses" includes, but shall not be limited to, any and all claims, suits, liabilities (including but not limited to strict liabilities), administrative or judicial actions or

proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, fines, penalties, charges, fees, expenses, costs of assessing damages or losses, judgments, awards, amounts paid in settlement, foreseeable and unforeseeable consequential damages, litigation costs, attorneys' fees, engineers' fees, environmental consultants' fees, Remediation and investigation costs (including but not limited to costs for sampling, testing, and analysis of soil, water, air, building materials, and other materials and substances whether solid, liquid, or gas), of whatever kind or nature, and whether or not incurred in connection with any judicial or administrative proceedings.

11.1.5. "Release" includes, but is not limited to, any release, deposit, discharge, emission, leaking, leaching, spilling, seeping, migrating, injecting, pumping, pouring, emptying, escaping, dumping, disposing, presence, or other movement of Hazardous Substances.

11.1.6. "Remediation" includes, but is not limited, to any response, remedial, removal, or corrective action mandated by any Environmental Laws; any activity to cleanup, detoxify, decontaminate, contain or otherwise remediate any Hazardous Substance mandated by any Environmental Laws; any actions to prevent, cure or mitigate any Release of any Hazardous Substance mandated by any Environmental Laws; any action to comply with any Environmental Laws or with any permits issued pursuant thereto; any inspection, investigation, study, monitoring, assessment, audit, sampling, and testing, laboratory or other analysis, or evaluation relating to any Hazardous Substances mandated by any Environmental Laws. The term **"2008 Remediation"** means the Remediation undertaken in August, 2008 with respect to removal of 12,000 gallon underground storage tank and associated piping and dispensers, an in-ground hydraulic lift located on the Land as shown on the drawing attached hereto as **Exhibit H**.

11.1.7. "Storage Tanks" includes any underground or aboveground storage tanks, whether filled, empty, or partially filled with any substance.

11.2. Indemnification. Seller shall, and hereby does, indemnify, defend, and hold harmless Buyer and each of the Indemnified Parties from and against all Losses incurred, suffered by or claimed against any one or more of the Indemnified Parties, by reason of, arising out of or relating to the 2008 Remediation and any event which occurred prior to the Close of Escrow related to Seller's ownership, possession, operation, management, maintenance, and repair of, and/or responsibility for the Real Property, including, but not limited to, any Release of Hazardous Substances in, on, under, or near the Real Property, or a violation of any Environmental Laws relating to the Real Property, whether known or unknown, which may have occurred prior to the Close of Escrow. Seller shall, and hereby does, indemnify, defend, and hold harmless Buyer and each of the Indemnified Parties from and against any obligation to pay any fees, assessments, taxes or charges that might apply with respect to the transaction contemplated by the Agreement or development of the State Project including, but not limited to, any development impact or functionally similar fees or assessments, any TUMF, any fee, assessment or penalty related to an HCP or MSHCP, any fees or assessments imposed or required by the Banning Unified School District, or any penalties, late fees or interest arising out of late payment of any such amounts. Seller shall further, and hereby does, indemnify, defend, and hold harmless Buyer and each of the Indemnified Parties from and against all Losses incurred, suffered by or claimed against any one or more of the Indemnified Parties, by reason of, arising out of or relating to any court litigation or other action brought pursuant to any and all Sections of the Plan by any owner or owners of property subject to the Plan to enforce against Buyer any recorded provisions of the Plan or other documents entered into pursuant to the Plan which are expressly for the benefit of such owner or owners.

11.3. Duty to Defend; Attorneys Fees and Expenses. Upon written request by any Indemnified Party, Seller shall defend the Indemnified Parties for any claims that are within the scope of the indemnity obligation set forth in section 11.2 above (if requested by any of the Indemnified Parties, in the name of the Indemnified Parties) by attorneys and other professionals, including engineers and environmental consultants selected by the Seller, subject to the reasonable approval of the Indemnified Parties.

11.4. Survival. All rights of the Indemnified Parties and all obligations of Seller under this section 11 shall survive the Close of Escrow, recordation of the Grant Deed, and Seller's conveyance, and Buyer's acceptance, of record title to the Real Property.

12. DAMAGE OR DESTRUCTION PRIOR TO CLOSING.

The risk of physical loss to the Real Property shall be borne by Seller prior to the Close of Escrow and by Buyer thereafter. If the Real Property, or any portion thereof, is damaged or destroyed prior to the Close of Escrow from any cause whatsoever, whether an insured risk or not, and such damage or destruction materially interferes with Buyer's ability to construct the State Project (as determined in Buyer's sole and absolute discretion, subject to the concurrence of the SPWB), Buyer shall have the right, upon written notice to Seller within five (5) business days after the date Buyer receives notice of the loss from Seller, to terminate this Agreement and cancel Escrow in accordance with section 8.2.

13. CONDEMNATION PRIOR TO CLOSING.

If Seller receives written notice from any agency or authority having the power of eminent domain advising of an actual or intended condemnation of all or any portion of the Real Property ("**Condemnation Notice**"), Seller shall immediately advise Buyer of same in writing and deliver therewith a copy of the Condemnation Notice. Buyer shall have the option, upon written notice to Seller within five (5) business days after the date Buyer receives the Condemnation Notice, to terminate this Agreement and cancel Escrow in accordance with section 8.2.

14. MISCELLANEOUS.

14.1. Notices. All notices required to be given by either party will be made in writing and may be effected (i) by personal delivery, (ii) via reputable overnight courier service, (iii) by mail, registered or certified, postage prepaid with return receipt requested, or (iv) by facsimile transmission. Notices sent by courier or mail must be addressed to the parties at the addresses, and faxed notices must be sent to the parties at the facsimile numbers, appearing below in this section 14.1, but each party may change its designated address or facsimile number by giving written notice to the other party in accordance herewith. Notices delivered personally will be deemed communicated as of actual receipt; notices sent via overnight courier will be deemed communicated as of the date delivered by the courier; mailed notices will be deemed communicated as of the date of receipt or the fifth day after mailing, whichever ever occurs first; and faxed notices will be deemed communicated as of the time and date of the facsimile confirmation printout of the recipient. The parties' addresses, telephone numbers, and facsimile numbers are as follows (telephone numbers are provided for convenience only):

Seller: Community Redevelopment Agency of the City of Banning
 City Hall
 99 E. Ramsey Street
 Banning, CA 92220
 Attention: Brian Nakamura, City Manager
 Telephone: (951) 922-3101
 Facsimile: (951) 922-3112
 Email: bnakamura@Cl.Banning.ca.us

Buyer: Judicial Council of California
 Administrative Office of the Courts
 Office of Court Construction and Management
 Attn: Assistant Director, Real Estate
 455 Golden Gate Avenue
 San Francisco, CA 94102
 Telephone: 415-865-4040
 Facsimile: 415-865-8885
 E-mail: burt.hirschfeld@jud.ca.gov
 and

Judicial Council of California
 Administrative Office of the Courts
 Office of Court Construction and Management
 Attn: Director
 455 Golden Gate Avenue
 San Francisco, CA 94102
 Telephone: 916-263-1493
 Facsimile: 916-263-2342
 E-mail: lee.willoughby@jud.ca.gov

With a copy to: Judicial Council of California
 Administrative Office of the Courts
 Office of the General Counsel
 Attn: Managing Attorney, Real Estate Unit
 455 Golden Gate Avenue
 San Francisco, CA 94102
 Telephone: 415-865-4057
 Facsimile: 415-865-8885
 E-mail: melvin.kennedy@jud.ca.gov

14.2. Entire Agreement. This Agreement, and the Exhibits attached hereto, represent the final and entire agreement between the parties in connection with the terms and conditions of the purchase and sale of the Real Property, and this Agreement supersedes and replaces any and all prior and contemporaneous agreements, understandings, and communications between the parties, whether oral or written, with regard to the subject matter hereof. There are no oral or written agreements, representations, or inducements of any kind existing between the parties relating to this transaction which are not expressly set forth herein. This Agreement may not be modified except by a written agreement signed by both Buyer and Seller.

14.3. No Assignment; Binding Effect. Neither party may assign its rights under this Agreement without the prior written consent of the other party, which may be given or withheld in the sole and absolute discretion of the non-assigning party. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, legal representatives, administrators, successors-in-interest, and assigns.

14.4. Waiver. No waiver of any provision of this Agreement shall be valid unless in writing and signed by both parties hereto. No waiver by any party, at any time, of any breach of any provision of this Agreement shall be deemed a waiver of a breach of any other provision herein, or a consent to any subsequent breach of the same or another provision. If any action by any party shall require the consent or approval of another party, such consent or approval of such action on any one occasion shall not be deemed a consent to or approval of such action on any subsequent occasion or a consent to or approval of any other action.

14.5. Captions, Headings, Exhibits, and Recitals. The captions and section numbers appearing in this Agreement are inserted only as a matter of convenience and do not define, limit, construe, or describe the scope or intent of this Agreement. The recitals set forth in this Agreement, and each and all of the exhibits attached to this Agreement, are incorporated herein as if set forth in full in this Agreement.

14.6. Governing Law. This Agreement has been prepared, negotiated, and executed in, and shall be construed in accordance with, the laws of the State of California, without regard to conflict of law rules.

14.7. Time of the Essence. Time is of the essence with respect to all matters contained in this Agreement.

14.8. Date of Agreement. All references in this Agreement to "the date of this Agreement" or "the date hereof" shall be deemed to refer to the Effective Date.

14.9. Counting of Days. The time in which any act must be performed under this Agreement shall be computed by excluding the first day and including the last day, unless the last day is a non-business day (as defined below), in which case the last day of performance shall be the next business day (as defined below). The term "non-business day" shall mean any "holiday" as defined in Code of Civil Procedure section 7 and any "optional bank holiday" as defined in Code of Civil Procedure section 7.5. Accordingly, the term "business day" shall mean any day other than a non-business day.

14.10. Invalidity of any Provision. If any provision (or any portion of any provision) of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity, and enforceability of the remaining provisions (or the balance of such provision) shall not be affected thereby.

14.11. Drafting of Agreement. Buyer and Seller acknowledge that this Agreement has been negotiated at arm's length, that each party has been represented by independent counsel and that this Agreement has been drafted by both parties and no one party shall be construed as the draftsman.

14.12. No Third-Party Beneficiary Rights. This Agreement is entered into for the sole benefit of Buyer and Seller and no other parties are intended to be direct or incidental

beneficiaries of this Agreement and no third party shall have any right in, under, or to this Agreement, except as expressly provided herein.

14.13. Further Acts. The parties agree to execute such instruments and to perform such further acts as may be reasonably necessary to carry out the purposes and intent of this Agreement.

14.14. Non-Discrimination. Buyer and Seller shall comply with, and this Agreement is subject to, any and all laws prohibiting discrimination.

14.15. Conflict of Interest. No member, official, officer, or employee of the Buyer shall have any direct or indirect interest in this Agreement or the State Project, nor shall such parties participate in any decision relating to this Agreement or the State Project where such participation is prohibited by law.

14.16. Limitation on Liability. No member, official, officer, employee, or agent of the Buyer shall be personally liable for any default or breach by the Buyer under this Agreement.


14.17. Survival. All terms and conditions in this Agreement, which represent continuing obligations and duties of the parties and have not been satisfied prior to the Close of Escrow shall survive the Close of Escrow and transfer of fee title to the Real Property to the State, and shall continue to be binding on the respective obligated party in accordance with their terms.

14.18. Facsimile Signatures. Facsimile signatures shall not be accepted unless prior agreement is obtained in writing by both parties. If agreed that facsimile signatures are acceptable, they will be treated as original signatures; however, in no instance shall facsimile signatures be accepted on any document to be recorded; such documents shall bear original signatures.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

SELLER:

**COMMUNITY REDEVELOPMENT AGENCY
OF THE CITY OF BANNING, public body
corporate and politic**


By: 
Name: Brian Nakamura
Title: Executive Director
Dated: Jan 29, 2009

Approved as to Form and Legal Content:

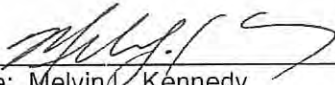

Agency Counsel

BUYER:

**THE STATE OF CALIFORNIA, acting by and through
THE JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS**

By: 
Name: William C. Vickrey
Title: Administrative Director of the Courts
Dated: 2-2-09

APPROVED AS TO FORM:
Administrative Office of the Courts,
Office of the General Counsel

By: 
Name: Melvin L. Kennedy
Title: Managing Attorney, Real Estate Unit
Dated: 01-29-2009

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA

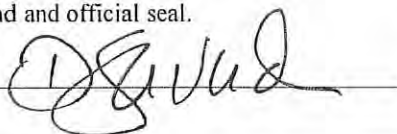
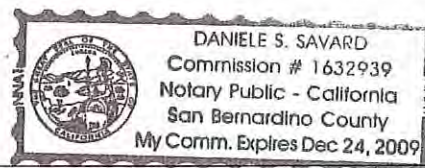
COUNTY OF RIVERSIDE

On 01-29-09 before me, Daniele S. Savard, Notary Public, personally appeared Brian Nakamura, 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

TITLE(S) _____

☐
☐

PARTNER(S) ☐ LIMITED
☐ GENERAL

☐
☐

ATTORNEY-IN-FACT
TRUSTEE(S)

☐
☒

GUARDIAN/CONSERVATOR
OTHER Executive Director

DESCRIPTION OF ATTACHED DOCUMENT

Real Property
Acquisition Agreement

TITLE OR TYPE OF DOCUMENT

19 + Exhibits

NUMBER OF PAGES

1/28/09

DATE OF DOCUMENT

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

Community Redevelopment
Agency of The City of Banning

None

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT A
MAP OF LAND

(SEE ATTACHED)

EXHIBIT A

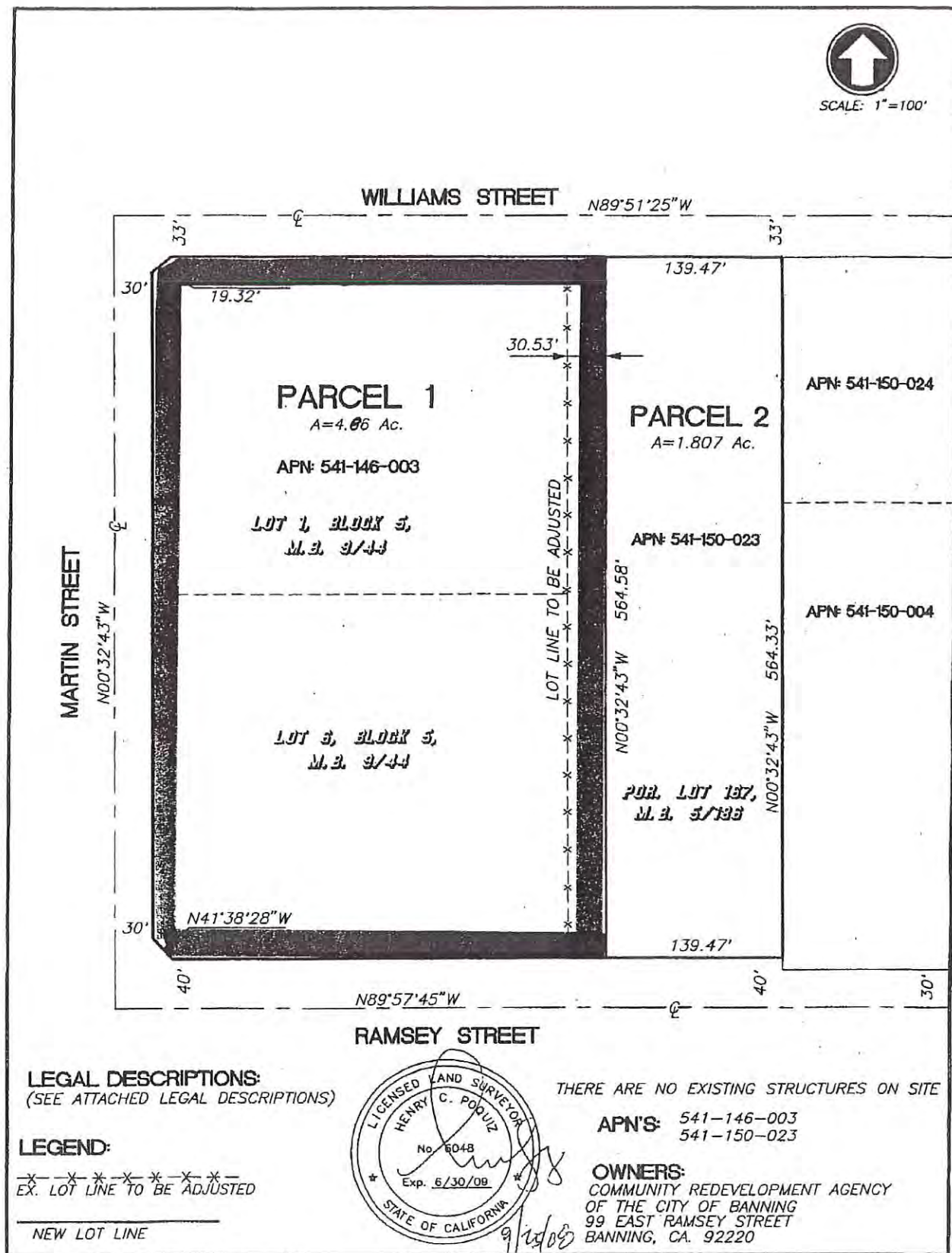


EXHIBIT B
LEGAL DESCRIPTION OF LAND

LOTS 1 AND 6 BLOCK 5 OF AMENDED MAP OF BANNING LAND COMPANY, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 44 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

TOGETHER WITH THE WESTERLY 30.53 FEET OF LOT 167 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THOSE PORTIONS THEREOF INCLUDED IN MARTIN STREET ON THE WEST, RAMSEY STREET ON THE SOUTH AND WILLIAMS STREET ON THE NORTH, AS SET FORTH IN THE LOT LINE ADJUSTMENT RECORDED SEPTEMBER 29, 2008 AS INSTRUMENT NO. 2008-528526, OFFICIAL RECORDS.

EXHIBIT C

FORM OF GRANT DEED AND CERTIFICATE OF ACCEPTANCE

(SEE ATTACHED)

WHEN RECORDED MAIL TO:

Judicial Council of California
 Administrative Office of the Courts
 Office of Court Construction and Management
 455 Golden Gate Avenue e
 San Francisco, CA 94102
 Attn: Director

OFFICIAL STATE BUSINESS – EXEMPT FROM RECORDING
 FEES PURSUANT TO GOV'T. CODE SECTION 27383 AND
 DOCUMENTARY TRANSFER TAX PURSUANT TO REVENUE
 AND TAXATION CODE SECTION 11922.

SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT DEED

Agency: Judicial Council of California,
 Administrative Office of the Courts
 Project: New Riverside Mid-County Region Courthouse
 Project Parcel: AOC: 33-G4, DGS:10523

Community Redevelopment Agency of the City of Banning, a public body corporate and politic

hereby GRANTS to THE STATE OF CALIFORNIA, acting by and through THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS, the following described real property situated in the State of California, County of Riverside, City of Banning, described as follows:

See Exhibit "A"
 consisting of one (1) page attached hereto
 and by this reference made a part hereof.

COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body corporate and politic

By: _____
 Name: Brian Nakamura
 Its: Executive Director
 Dated: _____

EXHIBIT "A"

LEGAL DESCRIPTION FOR THE LAND

LOTS 1 AND 6 BLOCK 5 OF AMENDED MAP OF BANNING LAND COMPANY, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS SHOWN BY MAP ON FILE IN BOOK 9, PAGE 44 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA

TOGETHER WITH THE WESTERLY 30.53 FEET OF LOT 167 OF BANNING COLONY LANDS, AS SHOWN BY MAP ON FILE IN BOOK 3 PAGE 149 OF MAPS, RECORDS OF SAN DIEGO COUNTY, CALIFORNIA AND A COPY THEREOF ON FILE IN BOOK 5, PAGE 186 OF MAPS, RECORDS OF RIVERSIDE COUNTY, CALIFORNIA.

EXCEPTING THEREFROM THOSE PORTIONS THEREOF INCLUDED IN MARTIN STREET ON THE WEST, RAMSEY STREET ON THE SOUTH AND WILLIAMS STREET ON THE NORTH, AS SET FORTH IN THE LOT LINE ADJUSTMENT RECORDED SEPTEMBER 29, 2008 AS INSTRUMENT NO. 2008-528526, OFFICIAL RECORDS.

CERTIFICATE OF ACCEPTANCE

Agency: JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS

Project:

DGS Parcel:

Assessor's Parcel No.:

This is to certify that, pursuant to sections 15853, 27281 and 70301 et seq. of the California Government Code, the interest in real property conveyed by the Grant Deed dated _____ from the COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING, a public body corporate and politic, to THE STATE OF CALIFORNIA, acting by and through THE JUDICIAL COUNCIL OF CALIFORNIA, ADMINISTRATIVE OFFICE OF THE COURTS, is hereby accepted by the undersigned officer on behalf of the State Public Works Board pursuant to authority conferred by resolution of said Board duly adopted on _____ and the Grantee consents to the recordation thereof by its duly authorized officer.

Note to Recorder: *If this certificate is for a correction deed, all corrections and/or changes to the previously recorded deed must be reviewed and accepted by the State prior to recording a correction deed. All correction deeds require a new Certificate of Acceptance dated subsequent to recordation of the original deed or the most recent correction deed, if any.*

Accepted

STATE OF CALIFORNIA
STATE PUBLIC WORKS BOARD

By: _____
Jerry Leong
Assistant Administrative Secretary

Dated: _____

Consent

THE JUDICIAL COUNCIL OF CALIFORNIA,
ADMINISTRATIVE OFFICE OF THE COURTS

By: _____
William C. Vickrey
Administrative Director of the Courts

Dated: _____

Approved as to form:
ADMINISTRATIVE OFFICE OF THE COURTS
OFFICE OF THE GENERAL COUNSEL

By: _____
Melvin L. Kennedy
Managing Attorney, Real Estate Unit

Dated: _____

Approved

DIRECTOR, DEPARTMENT OF GENERAL SERVICES

By: _____
Michael Butler, Assistant Chief
Real Property Services Section

Dated: _____

EXHIBIT D

LOCATION OF DRAINAGE DITCH TO BE REMOVED PRE-CLOSING

(SEE ATTACHED)

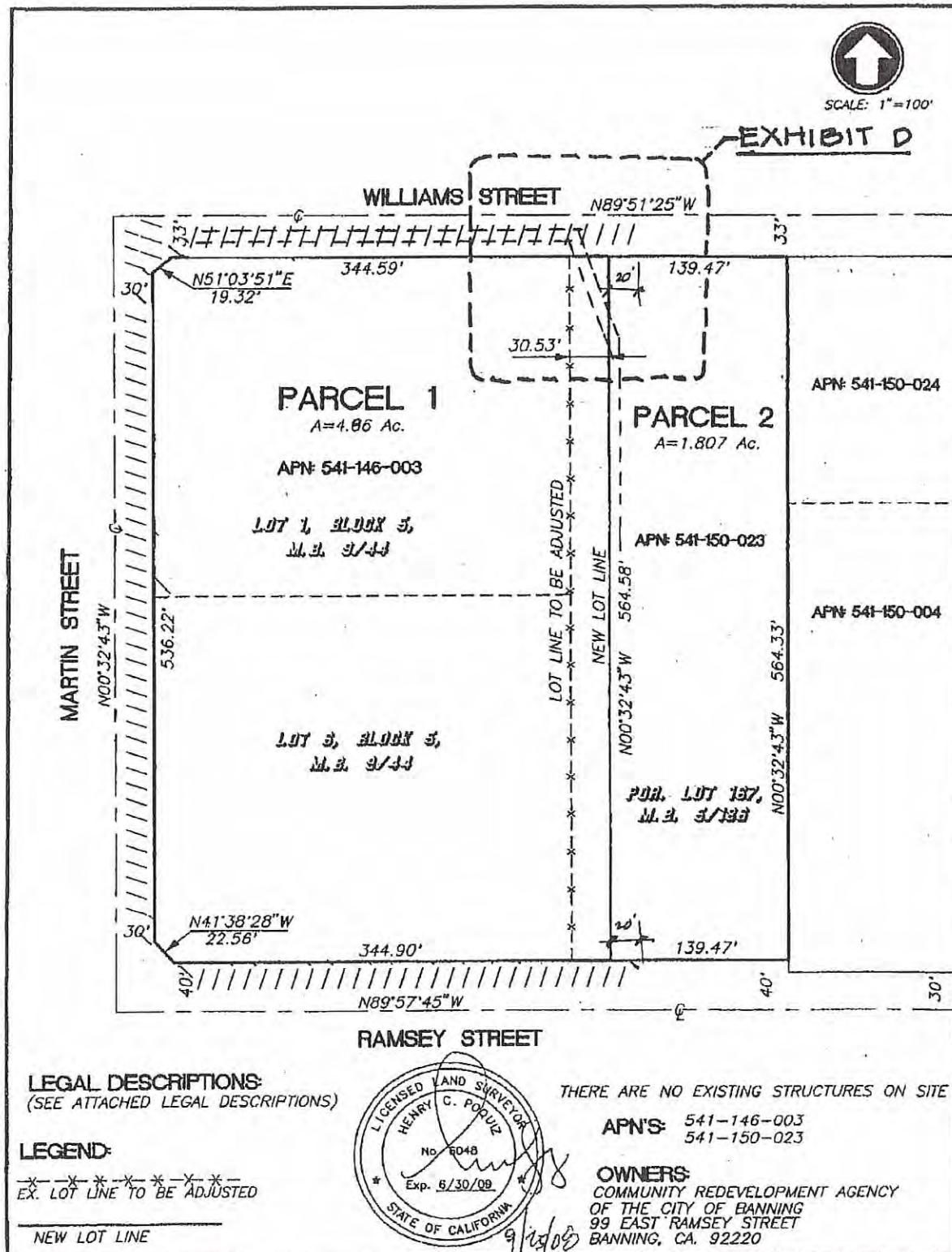


EXHIBIT D
Detail

Dennisie
03-025
2341.7

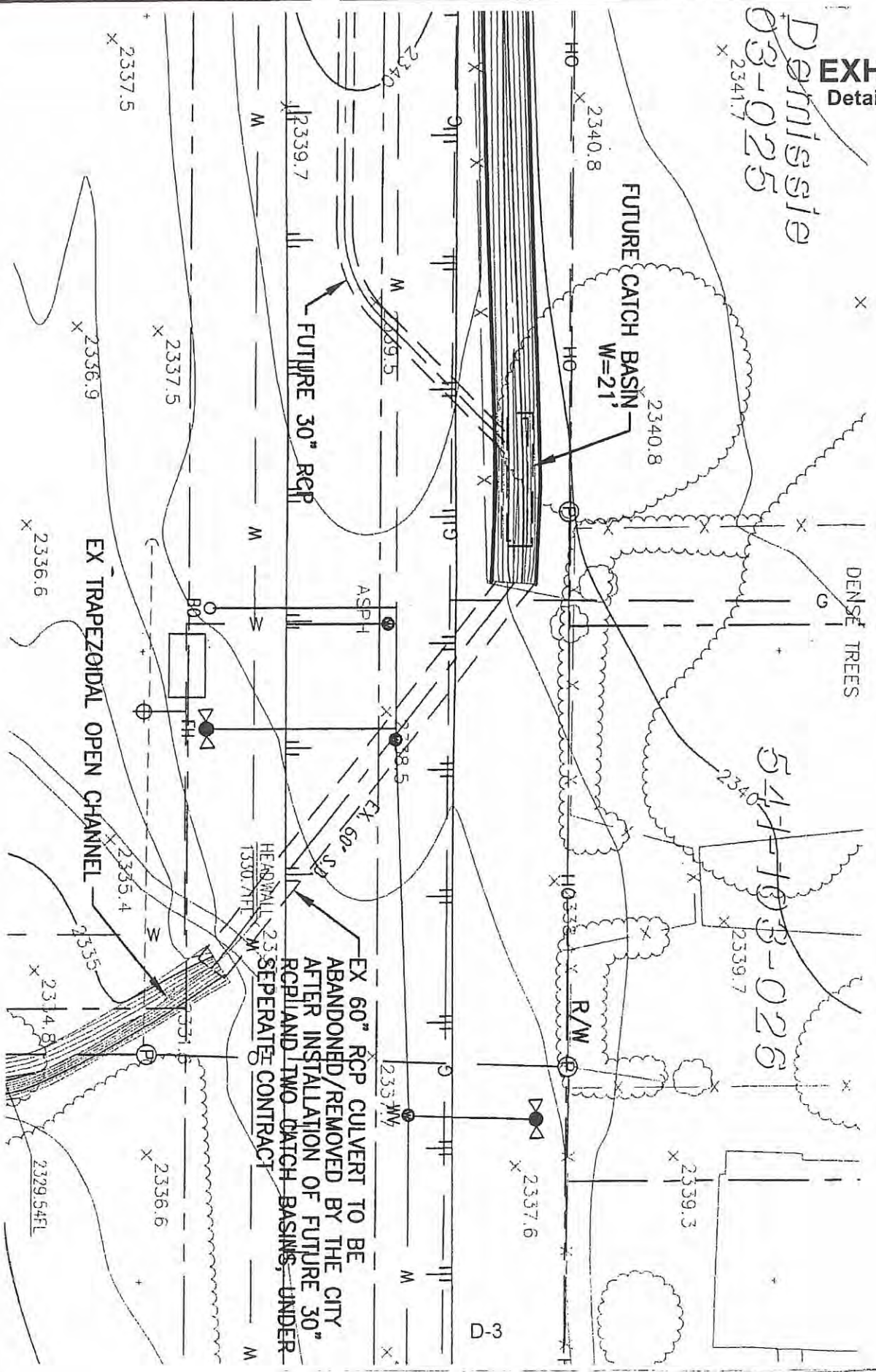


EXHIBIT E

FORM OF MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN CITY OF BANNING, SELLER AND BUYER

(SEE ATTACHED)

FORM OF MEMORANDUM OF UNDERSTANDING
REGARDING PLANNING AND DESIGN CONTROLS ON THE
NEW RIVERSIDE MID-COUNTY REGION COURTHOUSE
BANNING, CALIFORNIA

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into on the ____ day of _____, 2009 ("Effective Date") by and between the City of Banning, a California municipal corporation ("City"), the Community Redevelopment Agency of the City of Banning, a public body corporate and politic (the "CRA") and the State of California acting by and through the Judicial Council of California, Administrative Office of the Courts ("State Party") (each a "Party" and collectively, the "Parties").

BACKGROUND AND PURPOSE OF THE MOU

A. The CRA has agreed to sell to the State Party and the State Party has agreed to purchase from the CRA a parcel of real property located in the City commonly known as 311 E. Ramsey Street along with certain improvements affixed thereto, and all privileges, entitlements, easements, and appurtenances pertaining to the land and any improvements located thereon (the "Real Property") pursuant to that certain Real Property Acquisition Agreement ("PAA") dated as of January __, 2009, a copy of which is attached hereto as Exhibit "A."

B. The State Party is acquiring the Real Property with the intention of designing and constructing certain court facilities and related improvements thereon, including a building with an area of approximately 60,000 gross square feet ("State Project"), for use by the Superior Court of California, County of Riverside (collectively "Court") for judicial, court, administrative, office, and related purposes.

C. The Real Property is located within an area of the City designated for redevelopment pursuant to a redevelopment plan adopted in June 1978 and amended most recently in February, 2002 (the "Plan") which amendment was approved and adopted on February 26, 2002 by the City by Ordinance No. 1280 a copy of which was recorded on March 5, 2002 as part of document 2002-114161 in the Official Records of the County of Riverside pursuant to the California Community Redevelopment Law (Cal. Health & Safety Code §§ 33000 *et seq.*).

D. The PAA includes at section 6.12 as a condition of closing a requirement that the CRA obtain a written agreement by and between the City and the State Party regarding imposition and enforcement of planning and design controls on the Real Property and the State Project.

E. Because the CRA and City strongly desire to complete the purchase and sale of the Real Property to the State Party, the City is willing to provide the written agreement required by section 6.12 of the PAA.

NOW, THEREFORE, for good and valuable consideration, the Parties agree as follows:

AGREEMENT

1. The City hereby agrees that it will not exercise at any time any rights it may have under the Plan or other document implementing the Plan to implement or impose any restrictions, controls, limitations or prohibitions on Buyer's use or development of the Real Property, construction of the State

Project, or maintenance and operation of the State Project including but not limited to those set forth in section 1 of Subpart I of Article IV (sections 425 through 429) and Article V (sections 500 through 522) of the Plan and so long as the State Party holds title to the Real Property, the City waives any and all rights it may have under section 800 or any other provision of the Plan or other document implementing the Plan to enforce against the State Party by litigation or any other means on its own behalf or on behalf of the CRA any such provision of the Plan or other document implementing the Plan.

2. The City further acknowledges and agrees that the State Party or other agency or department of the State of California is not subject to the City's general plan, zoning ordinance, building code or other municipal code provisions in its development and construction of the State Project or other facility owned by the State of California, and so long as the State of California holds title to the Real Property, the City waives forever any and all rights it may have to enforce against the State of California by litigation or any other means the general plan, zoning ordinance, building codes or other such municipal code provisions.

3. The AOC agrees that it shall consult with the CRA regarding design of the State Project, provided, however, that City and the CRA shall not have any right under the Plan, other document implementing the Plan, or otherwise, to impose any planning or design controls on the Real Property or the State Project or to impose any other restrictions on the use or development of the Real Property or the State Project.

IN WITNESS WHEREOF, the Parties hereto have executed this MOU as of the day and year first written above.

CITY OF BANNING, a California municipal corporation

By: _____
 Printed Name: _____
 Title: _____
 Date: _____

COMMUNITY REDEVELOPMENT AGENCY
 OF THE CITY OF BANNING, a body corporate
 and politic

By: _____
 Printed Name: Brian Nakamura
 Title: Executive Director
 Date: _____

THE STATE OF CALIFORNIA, acting by and
 through THE JUDICIAL COUNCIL OF
 CALIFORNIA, ADMINISTRATIVE OFFICE
 OF THE COURTS

By: _____
 Name: William C. Vickrey
 Title: Administrative Director of the Courts
 Dated: _____

APPROVED AS TO FORM:
 Administrative Office of the Courts,
 Office of the General Counsel

By: _____
 Name: Melvin L. Kennedy
 Title: Managing Attorney, Real Estate Unit
 Dated: _____

EXHIBIT "A"

Copy of Real Property Acquisition Agreement

EXHIBIT F
ELIMINATED PARKING

(SEE ATTACHED)

EXHIBIT "F"

///// No Parking /////



SCALE: 1"=100'

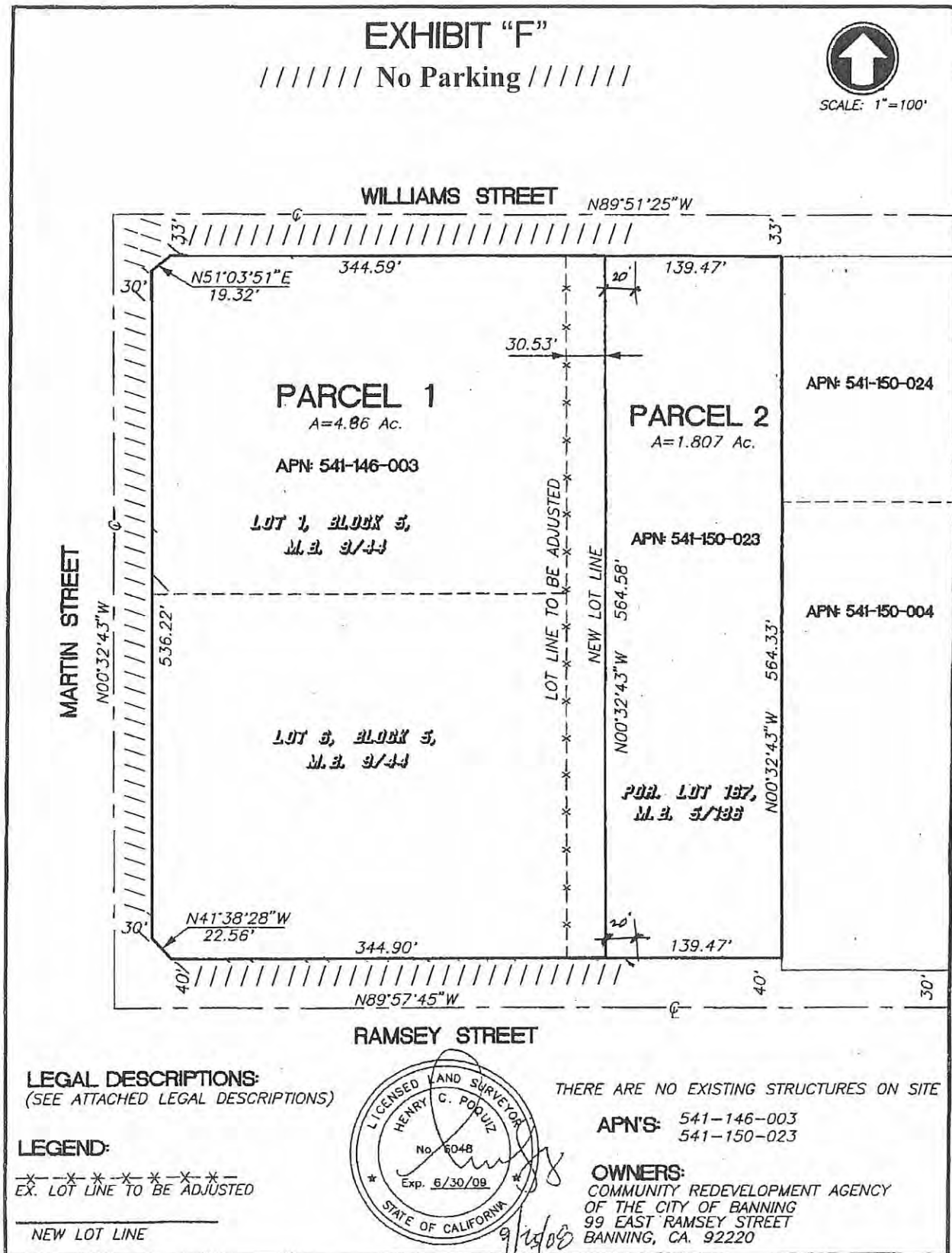


EXHIBIT G
OFF-SITE IMPROVEMENTS

(SEE ATTACHED)

CITY OF BANNING**STREETSCAPE
LANDSCAPE GUIDELINES**

Prepared by:

RHA LANDSCAPE ARCHITECTS & PLANNERS INC.
6216 Brockton Avenue, Suite 212, Riverside, CA 92506
951-781-1930 Fax 951-686-8091

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SECTION ONE LANDSCAPE DESIGN

A: Purpose of the guidelines:

- The intent of the design guidelines is to provide standards which are pedestrian friendly, provide a quality of materials and site furnishings, enables the display of art and generally enhances the street experience.
- Provide guidelines which will assure uniformity of theme, materials and site features.
- Define design standards for the design and development or renovation of:
 - Downtown
 - Commercial
 - Residential
- Provide a standard plant list for median and parkway landscape development.
- Provide a standard list of site furnishings and amenities.

B: Design standards:

B-1. DOWNTOWN AREA

Parkway / Streetscape

- Street design shall incorporate intersection enhancements including the following:
 - Conner bump-outs
 - Accent paving in intersections
 - Enhanced paving at corners and key locations,
 - 45 degree or parallel parking
 - Mid-block crosswalks
 - Bus stop pull-ins with accent paving
 - Benches
 - Street furnishings
 - Median plantings
 - Art work
 - Bollards
 - Enhanced alleyways
- Trees, shrubs and groundcovers shall be selected from the City master plant list.

- The project tree composition shall provide a 50% evergreen / 50% deciduous mix. Trees shall be placed at the interface of edge of two buildings. Trees within the downtown shall have a high branching habit. Trees which are planted in ground level planter areas shall be standard form 36" box size minimum. Trees placed in pots shall be 24" box minimum. Potted trees have a grown habit which will allow their canopies to be maintained to prevent interference with tree business signage.
 - Canopy trees in the street level planters in the downtown area shall be selected from the following list:
 - Ulmas parvifloa,
 - Koelreuteria piniculata,
 - Koelreuteria bippinnata,
 - Ginko biloba,
 - Arbutus x marina or,
 - Magnolia g. 'D.D. Blanchard'
 - Accent trees shall be placed to denote intersections, alley entries or mid-block crosswalks. Accent trees in the street level planters in the downtown area shall be selected from the following list:
 - Chionanthus retusus, or,
 - Pyrus calleryana,
 - Trees placed in pots in the downtown area shall be selected from the following list:
 - Arbutus unedo or
 - Lagerstromia x fauriei hybrids
 - Shrub and groundcover shall be designed in a manner to provide a tiered or multi-level of shrub and groundcover planting. The shrub and groundcover planting shall consist of the following levels:
 - Foreground planting (shrubs growing up to 18" high)
 - Mid-ground planting (shrubs growing up to 3' high)
 - Background planting (shrubs growing to 5' high)
 - Foreground plants shall be installed at a triangular spacing of 6" to 12" oc. Mid-ground plants shall be installed at a spacing of 24" oc to 36' oc. Background shrubs shall be placed at 36" oc to 4' oc. Foreground plants shall be 1 gallon size minimum, mid-ground and background plants shall be 5 gallon size or larger.
 - Planting design within the downtown area shall utilize a formal theme. Planting compositions shall encourage the use of clipped hedges.
 - Trees shown in the hardscape area in front of store fronts may be installed in large pots or in tree grates. When tree grates are used tree guards shall also be installed.
- **Bus stop**
- Bus stop shelter areas shall have a shelter, seating, trash receptacles and pottery (where feasible).

- **Site furnishings:**
 - Benches, pottery and trash receptacles shall be placed at key locations such as intersection corners and mid-block locations.
- **Art Work:**
 - Within the downtown area spaces shall be provided for art to be displayed at the mid point of medians, at intersection corners where adequate space is available and within pocket parks in the downtown area. Art Displays shall be in areas of high visibility but not be a distraction to traffic. Art displays shall be well lit by ground mounted uplights.
- **Electrical:**
 - Electrical outlets shall be placed at the base of street trees for the seasonal lighting of street trees in the downtown area. Outlets shall be lockable and secure from vandalism and weather and not be visually obtrusive.
- **Lighting:**
 - Lighting in the downtown area shall be 14' high BF13C/20-ACA/2-2EA25 pole, double cross arm and fixtures from Antique Street Lamps with a green color and finish. An electrical outlet shall be provided at the base of each pole. In addition to street lights ornamental banner poles shall be provided at intersections, mid-block locations, where pocket parks occur and other locations as determined by the city. Banner poles shall be 20' high BF13C/20 poles with banner support arms.
 - Accent trees at the median noses, corners or mid-block crossing shall be up-lit.
- **Hardscape and Flatwork Standards:**
 - Intersection crosswalks: Crosswalk ribbons shall be 2' wide stamped colored (Davis colors 'Western Gold') concrete with a row lock brick stamp. The crosswalk path shall be medium broom finish with a scorelines forming a 3' x 3' grid pattern; the concrete shall be colored with Davis Color, 'Flagstone Brown'.
 - Mid-Block crosswalks: Crosswalk ribbons shall be 2' wide stamped colored (Davis colors 'Western Gold') concrete with a row lock brick stamp. The crosswalk path shall be medium broom finish with a scorelines forming a 3' x 3' grid pattern; the concrete shall be colored with Davis Color, 'Flagstone Brown'.
 - Sidewalks shall be natural gray concrete with scorelines set to form a 3' x 3' or 5' x 5' grid.

- Corner accent flatwork: Hardscape at intersection corners shall be colored concrete (Davis Color, 'Eastern Tan') with scorelines forming a 5' x 5' grid pattern.
- Paver Accents: At key locations as shown on the plan Achor-stone Uni-décor pavers 'red-brown' shall be installed.
- **Pottery**
 - Pottery for trees shall be placed on the sidewalk a minimum of 30" from the curb between parking stalls. Pottery shall also be placed adjacent to corners and mid-block crossings or near the entrance to alley ways. Pots which are placed at these accent points shall be planted with trailing flowering shrubs and flowering perennials.
- **Drains**
 - Drains shall be provided for pottery. A catch basin shall be provided beneath the pot with a drain line which daylights at the face of curb. Where merchant buildings have roof drains which empty onto the sidewalk a drain inlet and drain line shall be provided. The drain line shall be placed beneath the walk and daylight at the face of curb.
- **Merchant Storefront Architecture**
 - Merchants are encouraged to maintain or restore existing buildings to the building original architectural style in accordance with the City's requirements and guidelines. Elements such as awnings, lighting, potted plants, benches or other site furnishings are encouraged.
 - Should a merchant desire to provide tables for customer dining he shall contact the City to obtain approval to do so in accordance with the City's requirements and guidelines.

Median

- Hardscape within the median shall be interlocking pavers set on a concrete sub-base. Paving stones shall be Acker-stone Uni-décor pavers 'Red-brown'.
- At the ends of the median 24" box Lagerstromia x fauriei hybrids shall be placed, in the balance of the median 24" box Quercus ilex, Quercus Virginia, Quercus suber or Cinnamomum camphora shall be used. The Lagerstromia trees shall be placed in a formal double row at the median ends. The evergreen canopy trees shall be placed in informal groupings of two or three trees.
- Red carpet roses shall be placed beneath the Lagerstromia trees. Where art work is placed low groundcover as defined by the plan shall be used. With the planting area adjacent to and beneath the

- evergreen trees a combination of groundcover in the foreground and medium shrubs to form a 3' high hedge as defined by the plan.
- Art elements shall be placed in the median near mid-block crosswalks. Art work shall lighted by ground mounted up or flood lights.
- Electrical outlets shall be provided in the median at a ration of one outlet per every two trees.

Alleyways

- At key locations as shown on the plan Achor-stone Uni-décor pavers 'Red-brown' shall be installed.
- Paving within the alley shall be either ac paving or natural gray concrete with a 3' x 3' grind pattern of scorelines.
- Lighting in the alleyway shall be provided by wall mounted fixtures.
- Bollards shall be placed at the entry of pedestrian alleys. Bollards shall be BOL/W42/14/BFCA by Antique Street Lamps.
- Alley ways shall provide rear entry access to shops. Alleys shall also provide a connection to parking at the back of shops and pocket parks.

Pocket Parks

- Hardscape in pocket parks shall be colored concrete with scorelines in a grid pattern. Colored concrete shall be Davis Color, 'Eastern Tan'.
- Lighting shall be 20' high BF13C/20-ACA/2-2EA25 pole, double cross arm and fixtures from Antique Street Lamps with a green color and finish. An electrical outlet shall be provided at the base of each pole. Lights shall be sufficient to provide a safe nighttime environment and discourage inappropriate behavior.
- Bollards shall be placed at the park entry points. Bollards shall be BOL/W42/14/BFCA by Antique Street Lamps.
- Benches shall be located in a manner to encourage conversation and passive interaction in the park. Benches shall have a middle arm rest.
- Tables shall be located in parks. Combinations of tables with game board surfaces and eating surfaces shall be provided.
- The focal point of the pocket park shall be an art display area. Fountains and water features are discouraged in the pocket parks.
- The pocket park shall be linked to the downtown district streetscape. Park design elements shall be arranged to assure visibility from the street.
- Where existing business are set at a zero lot line configuration and it is not possible to increase the landscape area colored concrete accent paving shall be placed.

Downtown Area Amenities Schedule

Item	Model	Manufacturer	Color/ Finish
Street Lights	BF13C/20-ACA/2- *2EA25 pole, double cross arm and fixture	Antique Street Lamps	Green
Up Lights			
Bollards	BOL/W42/14/BFCA		
Benches	93	Du Mor, Inc.	
Tables			
Trash Receptacles	Receptacle 84	Du Mor, Inc.	
Bike Racks	1814-50	Performance Atheletics	
Crosswalk Lines	Match existing		
Accent Paving crosswalks		Davis colors	Flagstone brown
Accent Paving		Davis Colors	Baja Red
Intersection		Davis Colors	Eastern Tan
Wall Caps	Match Existing		Brick
Wall Finish	Match Existing		Stucco
Tree guards	M5	Ironsmith	
Tree Grates	M6016	Ironsmith	
Pottery	QR-TN4836P (48") QR-TN2422P (24")	Quickcrete	
Median Hardscape		Davis Colors	Baja Red, stamped herring bone pattern

B-2: COMMERCIAL AREA**Parkway / Streetscape**

- Street design shall incorporate intersection enhancements including the following:
 - Accent paving in intersections
 - Enhanced paving at corners and key locations,
 - 45 degree or parallel parking
 - Bus stop pull-ins with accent paving
 - Benches
 - Street furnishings
 - Median plantings
 - Art work
 - Bollards
 - Enhanced alleyways
- Plant materials shall be selected from the City master plant list.
- The project tree composition shall provide a 50% evergreen / 50% deciduous mix. Trees shall be placed at the interface of edge of

two buildings. Trees within the commercial area shall have a high branching habit. Trees which are planted in ground level planter areas shall be standard form 36" box size minimum. Trees placed in pots shall be 24" box minimum.

- Canopy trees in the street level planters in the downtown area shall be selected from the following list:
 - Ulmas parvifloa,
 - Koelreuteria piniculata,
 - Koelreuteria bippinnata,
 - Arbutus x marina or,
 - Magnolia g. 'D.D. Blanchard'
 - Accent trees shall be placed to denote intersections, alley entries or mid-block crosswalks. Accent trees in the street level planters in the downtown area shall be selected from the following list:
 - Chionanthus retusus,
 - Malus 'Paririe Fire' or,
 - Pyrus calleryana,
 - Shrub and groundcover shall be designed in a manner to provide a tiered or multi-level of shrub and groundcover planting. The shrub and groundcover planting shall consist of the following levels:
 - Foreground planting (shrubs growing up to 18" high)
 - Mid-ground planting (shrubs growing up to 3' high)
 - Background planting (shrubs growing to 5' high)
 - Foreground plants shall be installed at a triangular spacing of 6" to 12" oc. Mid-ground plants shall be installed at a spacing of 24" oc to 36' oc. Background shrubs shall be placed at 36" oc to 4' oc. Foreground plants shall be 1 gallon size minimum, mid-ground and background plants shall be 5 gallon size or larger.
 - Planting design within the commercial area shall utilize a blend of shrub rows and informal shrub and groundcover mass plantings. Hedges of a minimum 30" in height shall screen parking lots.
- **Site furnishings:**
 - Use, placement and spacing of site amenities

- **Art Work:**
 - Within the commercial area spaces shall be provided for art to be displayed at the mid point of medians. Art Displays shall be in areas of high visibility but not be a distraction to traffic. Art displays shall be well lit by ground mounted uplights.
- **Electrical:**
 - Electrical outlets shall be placed at the base of street trees for the seasonal lighting of street trees in the downtown area. Outlets shall be lockable and secure from vandalism and weather and not be visually obtrusive.
- **Lighting:**
 - Lighting in the downtown area shall be 32' high 28H30 LR1 ATC102/2 CR-3 pole, double cross arm and fixtures from Antique Street Lamps with a green color and finish. An electrical outlet shall be provided at the base of each pole. In addition to street lights ornamental banner poles shall be provided at intersections, mid-block locations, where pocket parks occur and other locations as determined by the City.
- **Hardscape and Flatwork Standards:**
 - Intersection crosswalks: Crosswalk ribbons shall be 2' wide stamped colored (Davis colors 'Western Gold') concrete with a row lock brick stamp. The crosswalk path shall be medium broom finish with scorelines forming a 3' x 3' grid pattern; the concrete shall be colored with Davis Color, 'Flagstone Brown'.
 - Mid-Block crosswalks: Crosswalk ribbons shall be 2' wide stamped colored (Davis colors 'Western Gold') concrete with a row lock brick stamp. The crosswalk path shall be medium broom finish with scorelines forming a 3' x 3' grid pattern; the concrete shall be colored with Davis Color, 'Flagstone Brown'.
 - Sidewalks shall be natural gray concrete with scorelines set to form a 3' x 3' grid.
 - Where existing business are set at a zero lot line configuration and it is not possible to increase the landscape area, colored concrete accent paving shall be placed.
 - Corner accent flatwork: Hardscape at intersection corners shall be colored concrete (Davis Color, 'Eastern Tan') with scorelines forming a 5' x 5' grid pattern.
- **Drains**
 - Drains shall be provided for pottery. A catch basin shall be provided beneath the pot with a drain line which daylights at the

face of curb. Where merchant buildings have roof drains which empty onto the sidewalk a drain inlet and drain line shall be provided. The drain line shall be placed beneath the walk and daylight at the face of curb.

Median

- Median noses shall have a cobblestone hardscape. In the non-planted landscape areas a crushed stone groundcover 2" thick shall be placed using Stabilizer. As shown on the plan cobble shall be placed at accent locations in the crushed stone.
- At the ends of the median 24" box Lagerstromia x fauriei hybrids or Malus 'Parie Fire' or Chionathus retusa in informal groupings shall be used. In the balance of the median mix of 24" box Quercus ilex or Quercus Virginia or Quercus suber or Cinnamomum camphora and Olea euraea 'Swan Hill' shall be used. The evergreen canopy trees shall be placed in informal groupings of two or three trees.
- Informal mass groupings of shrubs and groundcovers as stipulated by the plan shall be placed in the median.
- Art elements shall be placed in the median at focal points or near the center of the median.
- Electrical outlets shall be provided in the median at a ration of one outlet per every four trees.

Commercial Area

Item	Model	Manufacturer	Color/ Finish
Street Lights	SAL 30-64250B	Kim Lighting	
Up Lights	LTV 730	Kim Lighting	Bronze housing
Bollards	BOL/W42/14/BFCA		
Benches	93	Du Mor, Inc.	
Tables			
Trash Receptacles	Receptacle 84	Du Mor, Inc.	
Bike Racks	1814-50	Performance Athletics	
Crosswalk Lines	Match existing		
Accent Paving crosswalks		Davis colors	Flagstone brown
Accent Paving		Davis Colors	Baja Red
Intersection		Davis Colors	Eastern Tan
Median Hardscape		Davis Colors	Baja Red, stamped herring bone pattern
Median Inert G.C.			Desert Gold ¼" minus

B-3: RESIDENTIAL AREA**Parkway / Streetscape**

- Street design shall incorporate intersection enhancements including the following:
 - Street furnishings
 - Median plantings
 - Plant materials shall be selected from the City master plant list.
 - The project tree composition shall provide a 50% evergreen / 50% deciduous mix. Trees shall be placed at the interface of edge of two buildings. Trees within the downtown shall have a high branching habit.
 - Canopy trees in the parkway planters in the residential area shall be medium canopy tree selected from the standard list.
 - Accent trees shall be placed to denote intersections. Accent trees shall be small flowering trees selected from the standard plant list.
 - Shrub and groundcover shall be designed in a manner to provide a tiered or multi-level of shrub and groundcover planting. The shrub and groundcover planting shall consist of the following levels:
 - Foreground planting (shrubs growing up to 18" high)
 - Mid-ground planting (shrubs growing up to 3' high)
 - Background planting (shrubs growing to 5' high)
 - Foreground plants shall be installed at a triangular spacing of 6" to 12" oc. Mid-ground plants shall be installed at a spacing of 24" oc to 36' oc. Background shrubs shall be placed at 36" oc to 4' oc. Foreground plants shall be 1 gallon size minimum, mid-ground and background plants shall be 5 gallon size or larger.
 - Planting design within the commercial area shall utilize a blend of shrub rows and informal shrub and groundcover mass plantings. Hedges of a minimum 30" in height shall screen parking lots.
- **Site furnishings:**
 - A bench and trash receptacle shall be installed as bus stops and at corners.
 - **Lighting:**
 - Lighting in residential areas shall be 32' high 28H30 LR1 ATC102/2 CR-3 pole, double crossarm and fixtures from Antique Street Lamps with a green color and finish. An electrical outlet shall be provided at the base of each pole. In addition to street lights ornamental banner poles shall be provided at intersections, mid-

block locations, where pocket parks occur and other locations as determined by the City.

- **Hardscape and Flatwork Standards:**
 - Walks shall be natural gray concrete with a medium broom finish constructed per City standards.
- **Drains**
 - Drains shall be provided for pottery. A catch basin shall be provided beneath the pot with a drainline which daylights at the face of curb. Where merchant buildings have roof drains which empty onto the sidewalk a drain inlet and drainline shall be provided. The drainline shall be placed beneath the walk and daylight at the face of curb.

Median

- Median noses shall have a cobblestone hardscape. In the non-planted landscape areas a crushed stone groundcover 2" thick shall be placed using Stabilizer. As shown on the plan cobble shall be placed at accent locations in the crushed stone.
- At the ends of the median place 24" box use small to medium flowering trees in informal groupings. In the balance of the median a mix of 24" box medium canopy trees shall be used. The evergreen canopy trees shall be placed in informal groupings of two or three trees.
- Informal mass groupings of shrubs and groundcovers as stipulated by the plan shall be placed in the median.

Residential Area

Item	Model	Manufacturer	Color/ Finish
Street Lights	32' high 28H30 LR1 ATC102/2 CR-3 pole	Antique Street Lamps	Green
Trash Receptacles	Receptacle 84	Du Mor, Inc.	
Bike Racks	1814-50	Performance Athletics	
Crosswalk Lines	Painted		
Accent Paving		Davis Colors	Baja Red
Intersection		Davis Colors	Eastern Tan
Pottery	QR-TN4836P (48") QR-TN2422P (24")	Quickcrete	
Median Hardscape		Davis Colors	Baja Red, stamped herring bone pattern
Median Inert G.C.			

SECTION TWO TYPICAL PLANS

The typical plans provided have been developed to serve as a guide to give design direction and clarification when plans are prepared for a segment of the streetscape within a given area of the City. The typical plans present solutions for a variety of possible design conditions and are not a design of any particular street segment. When plans are developed for a specific street segment the design intent illustrated by the typical plans shall be incorporated as they are applicable to the site being design and or constructed.

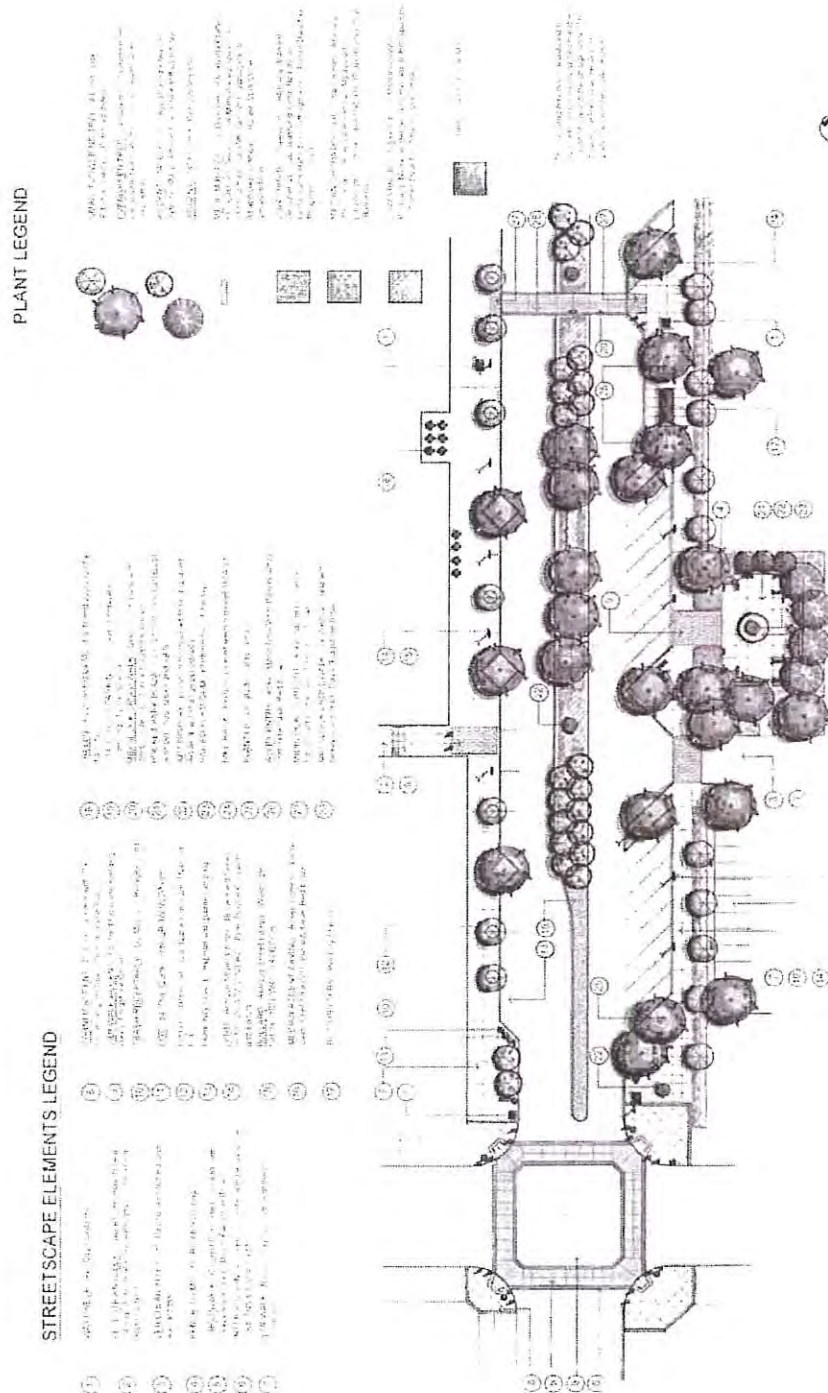
When drawings are developed for a specific project such drawings shall include the following:

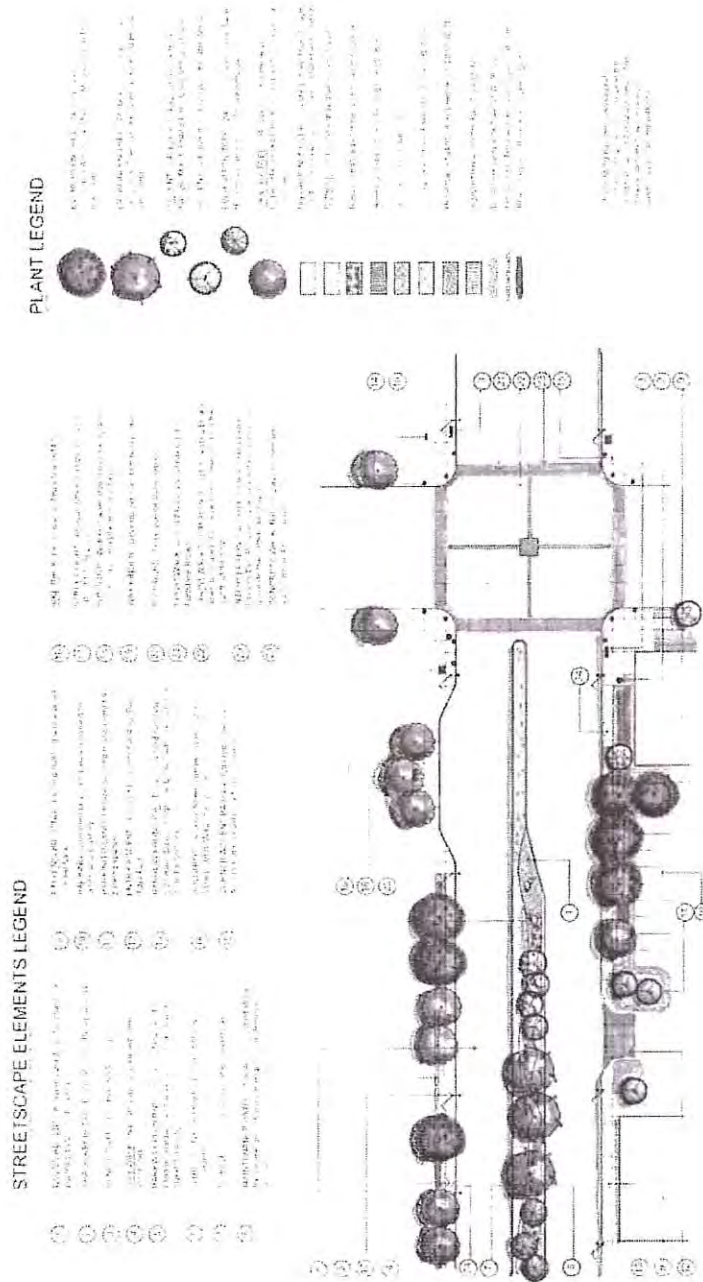
A conceptual / preliminary plan: The conceptual / preliminary plan shall include the following applicable items:

- Placement of site furnishings
- Light placement and banner pole locations
- Hardscape treatments
- Pottery placement
- Tree, shrub and groundcover placement
- Possible Art Work locations
- Mid-block crosswalks
- Intersection treatments
- A plant list
- A materials list

A construction drawings / documents shall be prepared on City title block and include the following plans: Placement of site furnishings.

- Title sheet including a location map, sheet index, project information and owner information
- Construction Plan(s)
- Construction details
- Irrigation plan(s)
- Irrigation details
- Planting plan(s)
- Planting details
- Pressure loss calculations
- Watering time estimates
- Specifications
- Opinion of probable construction costs





TYPICAL
COMMERCIAL AREA
EXISTING

STREETSCAPE
GUIDELINES

CITY OF BANNING



SECTION THREE STANDARD PLANT LIST

Tree List 1**(Contact Staff for copy of list)**

Shrub List 1**(Contact Staff for copy of list)**

Groundcover List 1**(Contact Staff for copy of list)**

SECTION FOUR IRRIGATION GUIDELINES

CITY OF BANNING STREETSCAPE IRRIGATION GUIDELINES

Purpose:

- Provide:
 - Uniformity of purpose and materials.
 - Guide for design and installation
 - Consistent standards
- Define irrigated areas:
 - Median
 - Turf
 - Shrub planters
 - Tree wells
 - Potted plants
- Provide standard irrigation list

Design Criteria

Medians:

- Within the medians a point-to-point low volume irrigation system using drip emitters or bubblers shall be used.
- Valves must be designed from 5-20 GPM in order for accurate flow meter readings to occur. Pipe runs shall not exceed 500 lf.
- All emitters shall be Rainbird or Salco self cleaning emitter
- Emitters where special lengths are required must be installed with the flexible nipples
- Trees must be placed on a separate valve from shrubs and groundcovers by hydrozones. All shrubs shall have one (1) emitter and all trees shall have three (3) emitters
- Irrigation will be design to provide adequate coverage for the planting design.
- All lateral piping shall be below grade schedule 40 PVC installed with 12" min. cover
- Locate Backflow devices in softscape areas. Enclosures shall be painted green and screened with shrubs
- Sleeves shall be schedule 80 PVC with 36" minimum cover
- Irrigation mainline shall be schedule 40 PVC or class 315 PVC with 18" minimum cover
- Controller enclosures should be stainless steel and screened with plant material.

Parkway irrigation:

- The use of low volume irrigation in parkways. Low volume irrigation in parkway shall comply with the standards.
- Valves must be designed from 5-20 GPM in order for accurate flow meter readings to occur. Pipe runs shall not exceed 500 lf.
- All emitters shall be Rainbird or Salco self cleaning emitter
- Emitters where special lengths are required must be installed with the flexible nipples
- Trees must be placed on a separate valve from shrubs and groundcovers by hydrozones. All shrubs shall have one (1) emitter and all trees shall have three (3) emitters
- Irrigation will be design to provide adequate coverage for the planting design.
- All spray and rotor heads must comply with City standard specifications and are subject to City approval for type of use and placement
- All turf pop-ups must be 6" in height
- All spray heads and rotors must be 12" in height for planter areas, slopes and bottom of detention basins and channels
- All parkways, entries, parks, basins, channels and other open space areas must receive head-to-head irrigation coverage
- Irrigation lines must be separated from top and bottom of slopes and all other areas where elevation changes exceed manufacturer's factory installed check valve.
- All lateral piping shall be below grade schedule 40 PVC installed with 12" min. cover
- Locate Backflow devices in softscape areas. Enclosures shall be painted green and screened with shrubs
- Sleeves shall be schedule 80 PVC with 36" minimum cover
- Irrigation mainline shall be schedule 40 PVC or class 315 PVC with 18" minimum cover
- Controller enclosures should be stainless steel and screened with plant material.

Tree Wells:

- Tree wells shall be irrigated by either multi-outlet emitters or bubblers

Potted Plants:

- Potted trees and plants shall be irrigated by either multi-outlet emitters or bubblers

STANDARD IRRIGATION LIST

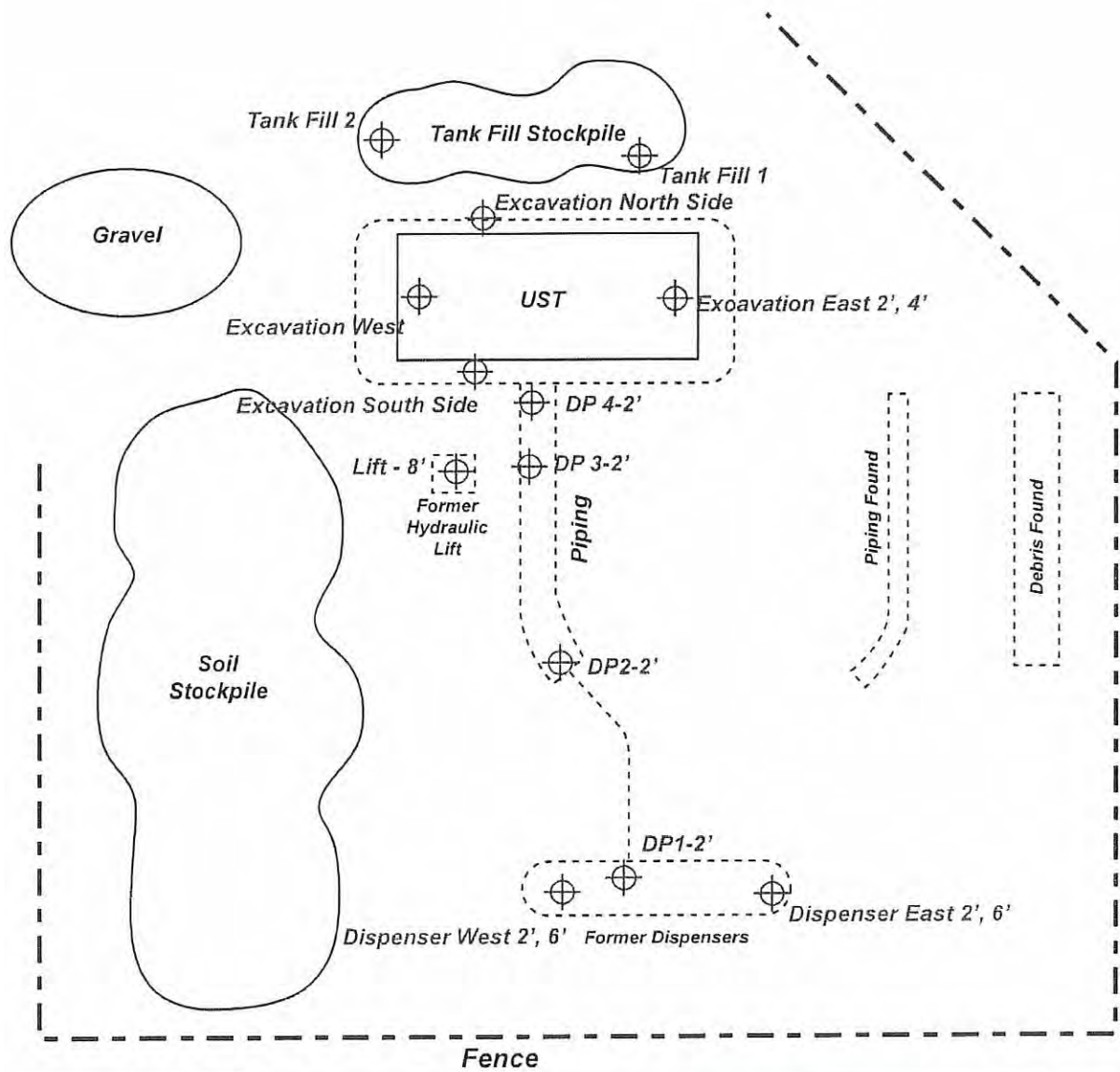
EQUIPMENT	MANUFACTURER	MODEL NUMBER / NOTE
Controller – Single Unit / Single Site	IRRITROL	SD-Series-Mod With WeatherTRAK
Controller – Single Unit / Single Site	CALSENSE	ET-2000-# of stations – R-G-RB-RR
Controller – Multiple Units / Single Site	CALSENSE	ET-2000 – Call Rep for spec.
Controller Enclosure	CALSENSE	SSE-R
ET Gage	CALSENSE	ETGE
Rain Bucket	CALSENSE	RB-1
Back Flow 2" & Under	FEBCO	825YA
Back Flow 2 1/2" +	FEBCO	825Y
Basket Strainer	HAYWARD	80-mesh filtration
Flow Meter	CALSENSE	FM-size (see catalog for size)
Master Valve	SUPERIOR	3300 – Normally Open
Control Valve	RAINBIRD	PESB
Drip Valve Assembly	RAINBIRD	XCZ-100-COM
Quick Couplers	RAINBIRD	33 DLRC
Turf Spray Heads	RAINBIRD	1806-SAM-PRS
Shrub Heads	RAINBIRD	1812-SAM-PRS
Slope Rotors	RAINBIRD	3500 Series
Small Radius Rotors	RAINBIRD	5500 Series
Low Volume Head	RAINBIRD	PC Emission Devices on PFR/FRA Risers or Salco Self Cleaning Emitters
Swing Joints	RAINBIRD / HUNTER	
Mainline 2" or under		Schedule 40 PVC – 18" min. cover
Mainline 2 1/2" +		Class 315 – 24" min. cover
Fittings for 2 1/2" or smaller		Schedule 80
Fittings for Mainline 3" or Larger	LEEMCO	Ductile Iron Fittings with joint restraints
Lateral Lines		Schedule 40 – 12" min. cover
Glue		Gray
Primer		Purple
MV & FM Conduit		Schedule 80 Gray 2" dia.
Control Wire		UL Approved – Single wire -Cooper
Valve Boxes	RAINBIRD / CARSEN	
Drip Equipment	RAINBIRD/BOWSMITH	
Valve Tags	CHRISTY'S	

EXHIBIT H

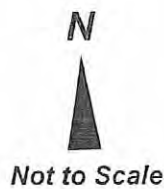
LOCATION OF UST AND HYDRAULIC LIFT REMOVED IN AUGUST, 2008

(SEE ATTACHED)

EXHIBIT H



Ramsey Street



UST & Lift Removal		
Site Plan		
Date 08/08	311 E. Ramsey, Banning, CA	Figure
Project No. 105897	EARTH TECH	2

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: February 12, 2019

SUBJECT: Resolution 2019-15, Authorizing the City Manager to enter into a Software Services Agreement with OpenGov for Cloud-based Financial and Budget Software Solutions and Services

RECOMMENDED ACTION:

Staff recommends the City Council adopt Resolution 2019-15, authorizing the City Manager to enter into a software services agreement with OpenGov, Inc. for cloud-based financial and budgeting subscription solutions.

BACKGROUND:

The City of Banning has not updated enterprise software or various cloud-based solutions, particularly in the area needed for financial and budgeting purposes. In addition to evaluating replacement of the current Naviline Enterprise software, numerous cloud-based companies (OpenGov, Socrata, MySidewalk, Achieve It, Envisio, Bang the Table, Polco, SeeClickFix) are providing solutions such as: interactive Strategic Planning, access to open data sources from outside agencies, financial transparency, customer service requests, and the creation of budget book documents.

Following discussions and demonstrations from OpenGov, it is recommended that the City purchase software to address the following needs:

1. Allow creation of the budget by user departments, outside of Naviline, to be imported back into Naviline when completed.
2. Ease of creation of the budget document and display the budget online with easy to use graphs, charts and data.
3. Provide a partnership with Superion/Naviline to allow the display of internal Naviline data.
4. Allow for citizen engagement.

About OpenGov and software

OpenGov is the leader in cloud-based tools built for local government. OpenGov complete solution is the only platform that provides capabilities for every critical part of our City functions. The OpenGov Cloud is also the only platform that is powerful enough to help transform the organization, while providing ease of use for all users.

Currently, OpenGov has partnered with over 1,800 governments, including dozens locally like Redding, Thousand Oaks, Diamond Bar, Palm Desert, Westminster, Santa Monica, Anaheim, Irvine, San Diego, Palm Springs, Riverside County and many others.

Finally, OpenGov has provided a detailed project plan to ensure a smooth rollout and support while we launch their tools. Their team will provide multiple resources and take a hand-holding, phased approach to delivery of the platform.

OpenGov platform will provide the following software components:

- **Budgeting and Planning:** The OpenGov platform will provide an end-to-end budget development solution that will remarkably modernize and streamline the City's current process. The Budgeting and Planning tools will allow the City departments and budget staff to reduce manual and clerical efforts during the budgeting process, provide a central collaborative location to develop budget numbers and evaluate scenarios, project workforce and personnel costs, and ultimately provide the publication of the budget document. This part of the OpenGov Cloud will provide the greatest efficiencies to City staff and provide powerful analytical capability to allow us to be forward thinking in our future strategy for the City.
- **Citizen Engagement:** The OpenGov platform will allow us to effectively communicate our Strategic Plan to the public, provide transparency to the community and build trust with the residents of Banning. Additionally, the OpenGov platform will provide the ability for the City to poll and survey community members in an online format for wide-reaching feedback. This will provide City Councilmembers and Management the ability to understand feedback on our strategic plan and priorities from the entirety of the community.
- **Performance Management and Strategic Planning:** The OpenGov platform will enable the City to track our Strategic Plan internally in easy to use dashboards, while providing administration and department heads the ability to see executive views of City performance. OpenGov uniquely ties together the City's financial and non-financial data from across the City's current systems in a single source of truth. OpenGov will provide internal efficiencies and streamline information sharing tied to a Strategic Plan, which will increase data-driven decisions making.

JUSTIFICATION:

A top five strategic goal of the City Council, adopted March 2017, is to use technology to assist employees and promote transparency. OpenGov solutions will help to accomplish this goal.

FISCAL IMPACT:

The agreement is for a 5-year term with annual cost of \$45,000. The first year cost also includes an implementation fee of \$15,000, which includes set-up and interface with Naviline. The cost of the agreement will be shared between the General Fund and Enterprise Funds.

OPTIONS:

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

ATTACHMENTS:

1. Resolution 2019-15
2. OpenGov Software Services Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-15

RESOLUTION 2019-15**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A SOFTWARE SERVICES AGREEMENT WITH OPENGOV, INC. OF REDWOOD CITY, CALIFORNIA FOR CLOUD-BASED FINANCIAL AND BUDGET SOFTWARE SOLUTIONS AND SERVICES**

WHEREAS, the City has outdated financial software with limited capabilities for budgeting and reporting; and

WHEREAS, the City Council has established an organization priority to use technology to assist employees in preparing budget documents and to promote transparency; and

WHEREAS, OpenGov, Inc. offers a subscription solution that will interface with the City's Naviline Enterprise Resource Planning software, which will assist employees and promote budget document preparation and transparency of the City's financial data; and

WHEREAS, on January 14, 2019, the Budget and Finance Committee received a demonstration of OpenGov solutions and unanimously recommended City Council approval of the annual subscription.

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

SECTION 1. The Banning City Council adopts Resolution 2019-15, approving the Software Services Agreement with OpenGov, Inc. in the amount of \$45,000 annually with a one-time \$15,000 deployment fee.

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 the Software Services Agreement with OpenGov, Inc. of Redwood City, CA.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-15, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

OpenGov Professional Services Agreement



OpenGov Inc. 955 Charter Street
Redwood City, CA 94063
United States

Created On: 2/6/2019
Order From Expiration: 2/15/2019
Subscription Start Date: 2/12/2019
Subscription End Date: 2/11/2024

Prepared By: Neal Block
Email: nblock@opengov.com
Contract Term: 5 Years

Customer Information			
Customer:	City of Banning, CA	Contact Name:	Doug Schulze
Bill To/Ship To:	PO Box 998	Email:	dschulze@ci.banning.ca.us
	Banning, CA 92220	Phone:	951-922-3105
	United States	Billing Contact:	Doug Schulze
		Email:	dschulze@ci.banning.ca.us
			951-922-3105
Order Details			
Billing Frequency: Annual		Description: See Billing Table Below	
Payment Terms: Net Thirty (30) Days			

SOFTWARE SERVICES:

Product / Service	Start Date	End Date	Annual Term	Annual Fee
The OpenGov Cloud	2/12/2019	2/11/2024	5	\$45,000.00
Annual Subscription Total:				\$45,000.00

PROFESSIONAL SERVICES:

Product / Service	Description
OpenGov Deployment — One Time Fee <i>OpenGov Cloud</i>	Product configuration and setup, training, and ongoing support to help organizations deploy and adopt the OpenGov solutions described above (See SOW attached).
Professional Services Total:	
	\$15,000.00

Billing Table:

Billing Date	Amount Due
February 12, 2019	\$60,000.00
February 12, 2020	\$45,000.00
February 12, 2021	\$45,000.00
February 12, 2022	\$45,000.00
February 12, 2023	\$45,000.00

Order Form Legal Terms

Welcome to OpenGov! Thanks for using our Software Services. This Order Form is entered into between OpenGov, Inc., with its principal place of business at 955 Charter Street, Redwood City, 94063 ("OpenGov"), and you, the entity identified above ("Customer"), as of the Subscription Start Date. This Order Form includes and incorporates the OpenGov Software Services Agreement attached and the Statement of Work ("SOW") attached and incorporated herein. The Order Form, Software Services Agreement and SOW shall hereafter be referred to as the "Agreement". Unless otherwise specified above, fees for the Software Services and Professional Services shall be due and payable, in advance, on the Subscription Start Date. By signing this Agreement, Customer acknowledges that it has reviewed, and agrees to be legally bound by, the Agreement.

City of Banning, CA

Signature:

Name:

Title:

Date:

OpenGov, Inc.

Signature:

Name:

Title:

Date:

Statement of Work

City of Banning, CA

OpenGov Cloud Implementation

Created By Sally Steel-Ginis
SOW Creation Date 01/22/19

CONFIDENTIAL

1. Objective

1.1. Summary

This Statement of Work ("SOW") identifies services that OpenGov, Inc. ("OpenGov") will perform for City of Banning, CA ("Customer"). This SOW is subject to, and hereby incorporates by reference, the terms and conditions contained in the Software Subscription Agreement (the "Agreement") to which it is attached between Customer and OpenGov.

OpenGov will enable and support the Customer to deliver on the Scope of Work outlined below. The objective of this Statement of Work (SOW) is to define the scope, activities, roles and responsibilities, and timeline necessary to successfully execute this deployment project. This project aims to implement the OpenGov Cloud for the Customer to enable effective and accountable governing. This SOW defines the scope and deliverables for a successful implementation of the full OpenGov Cloud.

2. Scope

2.1. Project Scope

The project scope includes the following services and deliverables. Any items not specifically included in scope will be considered out of scope.

OpenGov will provide Professional Services to implement the full OpenGov Cloud solution, which includes the Budget and Planning, Citizen Engagement, and Operational Performance solutions.

2.2. Deliverables

Standard Citizen Engagement Deployment Package - Prepaid	
Product Setup	<ul style="list-style-type: none"> • 1 customer-specific chart of accounts • 4 Public Facing Standard Reports (Annual, Budget to Actuals, Balance Sheet, and Transactions) • 1 Public Facing Non-financial report • Up to 10 years of data • Standard saved views • 2 story conceptualizing sessions • Transparency portal • 2 Stories
Training	<ul style="list-style-type: none"> • Administrator Training • Up to 3 training sessions for department heads/analysts/leadership • PR support for public launch

Prepaid Hours	72
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Standard Operational Performance Deployment Package - Prepaid	
Product Setup	<ul style="list-style-type: none"> • 1 customer-specific chart of accounts • 4 Standard Reports (Annual, Budget to Actuals, Balance Sheet, and Transactions) • 1 Non-financial report • Up to 10 years of data • Standard saved views • 2 KPI conceptualizing sessions • 4 strategic initiatives dashboards with Government Expert guidance • 2 KPI tiles per initiative (and corresponding reports) • Up to 8 datasets
Training	<ul style="list-style-type: none"> • Administrator Training • Up to 3 training sessions for department heads/analysts/leadership • PR support for local press (if applicable)
Prepaid Hours	72

Standard Budgeting & Planning Deployment Package	
Budget Builder - Prepaid	
Product Setup	<ul style="list-style-type: none"> • 1 customer-specific chart of accounts • Enable Budget Builder module • 1 budget milestones report • 1 budget to actuals report
Training	<ul style="list-style-type: none"> • Administrator Training • Training to departments • Training to council and/or agency management, etc.
Project Scope	<ul style="list-style-type: none"> • Project support to "Budget Kick-off" • Project continues until Adopted Budget (includes Budget Development and Budget Approval). • Weekly/bi-weekly calls

	<ul style="list-style-type: none"> Submitted proposal review Budget milestone data support Budget end user assistance Training and presentation prep Proposal creation assistance
Prepaid Hours	110
Standard Workforce Planning Deployment - Prepaid	
Product Setup	<ul style="list-style-type: none"> Initial configuration based on customer provided documentation and cost elements Data formatting and loading 1 authorized position list report 1 total compensation detail report
Training	<ul style="list-style-type: none"> Administrator training on maintenance and scenario building
Project Scope	<ul style="list-style-type: none"> Ongoing assistance up to Customer's Budget Kick Off
Prepaid Hours	60

Custom Integrations Deployment	
Product Setup	<p>OpenGov will design, extract, map, and validate ONE system.</p> <ul style="list-style-type: none"> OpenGov will integrate with the following system: <ul style="list-style-type: none"> Central Square Naviline OpenGov will integrate the following datasets: <ul style="list-style-type: none"> Financial Transactions data, past 10 years Budget data, past 10 years OpenGov will engage in the following integration activities: <ul style="list-style-type: none"> Financial Data <ul style="list-style-type: none"> Configuration and mapping of COA-linked financial data Validation against COA data (if COA-linked) Ongoing monitoring with error notification

2.3. Assumptions

- The concept of Prepaid Hours means that the Customer is purchasing a package with a set number of Professional Service hours to achieve the outlined deliverables. The hours are based on OpenGov's best estimate given reasonable assumptions outlined in section 4.2, Project Responsibilities. These hours should be adequate to achieve the deliverables, however if they are not, the Customer will need to purchase additional hours.
- Hours estimated above are for deployment of outlined deliverables. Any additional hours may be utilized for additional professional services activities dictated by the customer. Should the Customer run out of hours and additional Professional Service activities are needed, the Customer will need to purchase additional hours.
- Functionalities mentioned above in the Integration deliverables section are linked to Chart of Accounts established in OpenGov.
- OpenGov will perform the validation for data accuracy for the Integration.
- OpenGov will require assistance from the customer to understand source system specific customizations and configurations when building the data extract.

3. Schedule

OpenGov will schedule resources for this project upon signature of this SOW. Unless specifically noted, the OpenGov assigned project manager (as identified below or such alternate designated by OpenGov, the "OpenGov Project Manager") will work with Customer to develop the project schedule for all requested deliverables under this SOW. OpenGov reserves the right to adjust the schedule based on the availability of OpenGov resources and the deliverables provided by Customer.

4. Project Organization

4.1. Project Team

OpenGov

OpenGov will assign a Project Manager (the "OpenGov Project Manager") upon execution of the SOW. The OpenGov Project Manager will coordinate any additional resources needed from OpenGov.

Customer

Customer will assign a project manager (the "Customer Project Manager") and technical resource prior to project kick-off. The Customer Project Manager will be the primary contact person at Customer and will coordinate all Customer resources needed to complete the project. It is anticipated that the areas of need will be in Finance, Data Gathering, and the IT department.

4.2. Project Responsibilities

The project responsibilities for each organization are outlined below:

OpenGov

1. Manage delivery of in-scope items in coordination with Customer.
2. Make available deliverables to Customer project team for review and verification.
3. Provide relevant technical details and documentation for data requirements for Customer's environment.
4. Keep Customer Project Manager informed of project progress and communicate any issues relating to the project in a timely manner.
5. Establish documentation and procedural standards for the project.
6. Review and administer project change control, as described in Section 5, Change Control Procedures.
7. Ensure that all meetings and training sessions are attended by OpenGov personnel, as scheduled.
8. Budget Builder files are exported as .xlsx. OpenGov may assist in formatting that file, but cannot convert files to any other file types

Customer

1. Make available a representative to serve as the primary contact for OpenGov Project Manager to coordinate project activities.
2. Make available appropriate representatives with the authority to review and approve deliverables produced during the project.
3. Make available appropriate Subject Matter Experts (SME) to support the project needs, test integrations and provide Customer environment specific technical details.
4. Setup firewall rules to allow incoming requests from OpenGov's proxy over HTTP/HTTPS to Customer systems.
5. Communicate any issues relating to the project to OpenGov Project Manager in a timely manner.
6. Provide acceptance of deliverables and Project in a timely manner.
7. If Integration services are purchased, Customer will be responsible for making any configuration changes or modifications to Financial System (ERP) to support integration and make available access for integration to OpenGov software. The Customer will be responsible for ensuring that the versions of Financial System (ERP) running on all environments remain the same across all environments.
8. Customer will be responsible for any infrastructure required to access OpenGov, and will maintain relevant non-OpenGov software licenses and infrastructure needed for this project i.e. accounting system licenses. Please note, OpenGov software is optimized for Google Chrome.
9. The Customer will be responsible for ensuring that all meetings and training sessions are attended by personnel, as scheduled.

4.3. Implementation Methodology

OpenGov uses an iterative methodology, with a focus on rapid implementation of a configured system. This methodology requires a degree of focus from the Customer and collaboration between both parties to complete work products in a timely manner.



1. Initiate Phase

- a. **Key Activities:** Discovery, Design Sessions, Solution Document Review
- b. **Key Work Products:** Data Inventory, Functional Model Build, Solution Document
- c. **Summary:** The Initiate Phase is the first step of the implementation project. The purpose of this phase is to define the success criteria of the project, make design decisions based on the functional model build, and begin gathering data that needs to be loaded into the OpenGov platform. At the end of the Phase, a Solution Document will be created that outlines how the solutions will be implemented.

2. Configure Phase

- a. **Key Activities:** Application and Solution Configuration, Data Load
- b. **Key Work Products:** Peer Review
- c. **Summary:** The Configure Phase consists of application configuration, and solution configuration as defined in the Solution Document. OpenGov will also load the data gathered in the Initiate Phase from the Customer to use for unit testing purposes. The Phase ends with a Peer Review done by an OpenGov Subject Matter Expert to confirm that the solution follows OpenGov best practices.

3. Validate Phase

- a. **Key Activities:** User Acceptance Testing, Data Confirmation
- b. **Key Work Products:** Test Scripts, Test Acceptance
- c. **Summary:** The Validate Phase starts with a review of the entire solution with the Customer project team to confirm that all project elements have been implemented. Once that process has completed, the Customer will execute test scripts and validate that data is being represented accurately in the solution. If any issues are found, they will be logged and the OpenGov team will assess the issue and resolve as needed. The Phase ends with the Acceptance of test results by the Customer.

4. Deploy Phase

- a. **Key Activities:** Administrator Training, Go Live Support, Transition to Customer Success Manager and Technical Support
- b. **Key Work Products:** Project Documentation, Project Acceptance
- c. **Summary:** The purpose of the Deploy phase is to complete the Admin Training process, provide Go Live Support, and begin Transition activities to close the project. Post Go Live Support is technical assistance with the project team and issue resolution for the solution during the two week period after Go Live. Once this period has passed, the Project team will begin working on transition activities to the Customer, the CSM, and the Customer Technical Support Function. The Project closes upon the acceptance of the project and a brief survey to provide feedback about the experience.

5. Change Control Procedures

No amendments, changes or other modifications to this SOW will be effective without a written project change order, in the form attached hereto as Appendix 1 (a "Project Change Order"). The Project Change Order will describe the change, the rationale for the change, and specify any change in the charges, estimated schedule, or other terms. The terms of a mutually agreed upon Project Change Order will prevail over those of this SOW or any previous Project Change Orders. Such Project Change Order may require additional charges, which will be set forth in the Project Change Order.

6. Fees and Expenses

6.1. Fees and Payment Terms

All fees and expenses will be paid in accordance with the Order Form to which this SOW is attached. For any Project Change Orders or for any new Professional Services, fees will be mutually agreed upon provided that any hourly fees shall be based on OpenGov's then-current, applicable hourly rate. OpenGov's Standard Professional Services rate for 2019 is \$185/hour.

6.2. Travel Expenses

All rates and fees are exclusive of work-related travel, living and other expenses. Customer will be billed for actual expenses as incurred.

Project Change Order

Requested by:

Reason for Change
Scope of Change
Project Impact (Schedule and Cost)

Approvals	
OpenGov	Customer
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

OPENGOV SOFTWARE SERVICES AGREEMENT

This Software Services Agreement (this “**Agreement**”) is entered into by OpenGov, Inc., a Delaware corporation with a principal place of business at 955 Charter Street, Redwood City, California 94063 (“**OpenGov**”) and the customer listed on the signature block below (“**Customer**”), as of the date of last signature below (the “**Effective Date**”). This Agreement sets forth the terms under which Customer will be permitted to use OpenGov’s hosted software services.

1. DEFINITIONS

“**Customer Data**” means data that is provided by Customer to OpenGov pursuant to this Agreement (for example, by email or through Customer’s software systems of record). Customer Data shall not include any confidential personally identifiable information.

“**Documentation**” means the documentation for the Software Services at the Customer Resource Center page found at <https://opengov.zendesk.com>.

“**Feedback**” means suggestions, comments, improvements, ideas, or other feedback or materials regarding the Software Services provided by Customer to OpenGov, including feedback provided through online developer community forums.

“**Initial Term**” means the initial license term specified in number of years on the Order Form, commencing on the Effective Date.

“**Intellectual Property Rights**” means all intellectual property rights including all past, present, and future rights associated with works of authorship, including exclusive exploitation rights, copyrights, and moral rights, trademark and trade name rights and similar rights, trade secret rights, patent rights, and any other proprietary rights in intellectual property of every kind and nature.

“**Order Form**” means OpenGov’s Software Services order form that: (a) specifies the Software Services provided by OpenGov; (b) references this Agreement; and (c) is signed by authorized representatives of both parties.

“**Renewal Term**” means each additional renewal period, which shall be for a period of equal duration as the Initial Term, for which this Agreement is extended pursuant to Section 7.2.

2. SOFTWARE SERVICES, SUPPORT AND PROFESSIONAL SERVICES

2.1 **Software Services.** Subject to the terms and conditions of this Agreement, OpenGov will use commercially reasonable efforts to perform the software services identified in the applicable Order Form entered into by OpenGov and Customer with the general features and functionality set forth at <https://opengov.com/> (“**Software Services**”). OpenGov will undertake commercially reasonable efforts to make the Software Services available as specified in Exhibit A, attached and incorporated herein.

2.2 **Support.** Customer support is available by email to support@opengov.com or by using the chat messaging functionality of the Software Services, both of which are available during OpenGov’s standard business hours. Customer may report issues any time. However, OpenGov will address issues during business hours.

2.3 Professional Services.

(a) If OpenGov or its authorized independent contractors provides professional services to Customer, such as implementation services, then these professional services will be described in a statement of work (“**SOW**”) agreed to by the parties (the “**Professional Services**”). OpenGov shall not subcontract the work specified in the SOW without receiving Customer’s prior written consent, which consent shall not unreasonably be withheld. For Professional Services performed on a time and materials basis, any pre-paid Professional Services Fees must be utilized within one (1) year from the Effective Date. Any unused pre-paid Professional Services Fees shall be forfeited.

(b) Unless the SOW provides otherwise, all reasonable travel expenses, pre-approved by Customer and incurred by OpenGov in performing the professional services will be reimbursed by Customer. Travel expenses include cost of coach airfare travel round trip from the individual's location to Customer's location, reasonable hotel accommodations, ground transportation and meals.

(c) OpenGov shall procure and maintain for the duration of this Agreement, insurance at the amounts set forth in the certificate of insurance, attached and incorporated herein as Exhibit B.

3. RESTRICTIONS AND RESPONSIBILITIES

3.1 Restrictions. Customer may not use the Software Services in any manner or for any purpose other than as expressly permitted by the Agreement. Customer's use of the Software Services is for its use only and not for use by any other third party government. Customer shall not, and shall not permit or enable any third party to: (a) use or access any of the Software Services to build a competitive product or service; (b) modify, disassemble, decompile, reverse engineer or otherwise make any derivative use of the Software Services (except to the extent applicable laws specifically prohibit such restriction); (c) sell, license, rent, lease, assign, distribute, display, host, disclose, outsource or otherwise commercially exploit the copy, rent, lease, distribute, assign, sell, or otherwise commercially exploit the Software Services; (d) perform or disclose any benchmarking or performance testing of the Software Services; (e) remove any proprietary notices included with the Software Services; (f) use the Software Services in violation of applicable law; or (g) transfer any confidential personally identifiable information to OpenGov or the Software Services platform.

3.2 Responsibilities. Customer shall be responsible for obtaining and maintaining computers and third party software systems of record (such as Customer's ERP systems) needed to connect to, access or otherwise use the Software Services. Customer also shall be responsible for: (a) ensuring that such equipment is compatible with the Software Services, (b) maintaining the security of such equipment, user accounts, passwords and files, and (c) all uses of Customer user accounts by any party other than OpenGov.

4. INTELLECTUAL PROPERTY RIGHTS; LICENSE GRANTS; ACCESS TO CUSTOMER DATA

4.1 Software Services. OpenGov retains all right, title, and interest in the Software Services and all Intellectual Property Rights in the Software Services. The look and feel of the Software Services, including any custom fonts, graphics and button icons, are the property of OpenGov and Customer may not copy, imitate, or use them, in whole or in part, without OpenGov's prior written consent. Subject to Customer's obligations under this Agreement, OpenGov hereby grants to Customer a non-exclusive, royalty-free license during the Term to use the Software Services.

4.2 Customer Data. Customer retains all right, title, and interest in the Customer Data and all Intellectual Property Rights therein. Customer hereby grants to OpenGov a non-exclusive, royalty-free license to, and permit its partners to, use, store, edit and reformat the Customer Data, and to use Customer Data for purposes of sales, marketing, business development, product enhancement, customer service, or for analyzing such data and publicly disclosing such analysis ("**Insights**"), provided that in all such uses Customer Data is rendered anonymous such that Customer is no longer identifiable.

4.3 Access to Customer Data. Customer may download the Customer Data from the Software Services at any time during the Term, other than during routine software maintenance periods. OpenGov has no obligation to return Customer Data to Customer. Upon termination, OpenGov shall delete Customer Data as specified in Section 7.4 below.

4.4 Feedback. Customer hereby grants to OpenGov a non-exclusive, royalty-free, irrevocable, perpetual, worldwide license to use and incorporate into the Software Services and Documentation Customer's Feedback. OpenGov will exclusively own any improvements or modifications to the Software Services and Documentation based on or derived from any of Customer's Feedback including all Intellectual Property Rights in and to the improvements and modifications.

5. CONFIDENTIALITY

5.1 Each party (the “**Receiving Party**”) agrees not to disclose any Confidential Information of the other party (the “**Disclosing Party**”) without the Disclosing Party’s prior written consent, except as provided below. The Receiving Party further agrees: (a) to use and disclose the Confidential Information only in connection with this Agreement; and (b) to protect such Confidential Information using the measures that Receiving Party employs with respect to its own Confidential Information of a similar nature, but in no event with less than reasonable care. Notwithstanding the above, the Receiving Party may disclose Confidential Information to the extent required by law or court order, provided that prior written notice of such required disclosure and an opportunity to oppose or limit disclosure is given to the Disclosing Party.

5.2 “**Confidential Information**” means all confidential business, technical, and financial information of the disclosing party that is marked as “Confidential” or an equivalent designation or that should reasonably be understood to be confidential given the nature of the information and/or the circumstances surrounding the disclosure (including the terms of the applicable Software Agreement). OpenGov’s Confidential Information includes, without limitation, the software underlying the Software Services and all Documentation. Subject to Section 5.3 below, Customer Confidential Information shall include Customer Data. Each party shall implement and maintain reasonable security measures to protect Confidential Information of the other party in its possession.

5.3 Notwithstanding the foregoing, “Confidential Information” does not include: (a) “**Public Data**,” which is data that the Customer has previously released to the public, would be required to release to the public, upon request, according to applicable federal, state, or local public records laws, or Customer requests OpenGov make available to the public in conjunction with the Software Services. Confidential Information does not include (b) information that has become publicly known through no breach by the receiving party; (c) information that was rightfully received by the Receiving Party from a third party without restriction on use or disclosure; or (d) information independently developed by the Receiving Party without access to the Disclosing Party’s Confidential Information. Receiving Party may disclose Disclosing Party’s Confidential Information, without violating the obligations of this Agreement, to the extent such disclosure is required by a valid subpoena, order of a court or other governmental body having jurisdiction, *provided that* Receiving Party gives the Disclosing Party reasonable prior written notice of such disclosure and makes a reasonable effort to obtain, or to assist Disclosing Party in obtaining, a protective order preventing or limiting the disclosure and/or requiring that the Confidential Information so disclosed be used only for the purposes for which the law or regulation required, or for which the order was issued.

6. PAYMENT OF FEES

6.1 Fees; Invoicing; Payment; Expenses.

(a) Fees. The fees for the Software Services for the Initial Term and any Renewal Term (“**Software Services Fees**”) and the fees for Professional Services (“**Professional Services Fees**”) are set forth in the applicable Order Form. Software Services Fees and Professional Services Fees shall hereafter be referred to as “**Fees**”.

(b) Inflation Adjustment. OpenGov shall increase the Fees payable for the Software Services during any Renewal Term by 4% each year of the Renewal Term.

(c) Invoicing and Payment. OpenGov will invoice the Customer according to the Billing Frequency listed on the Order Form. Customer shall pay all invoices according to the Payment Terms listed on the Order Form.

(d) Travel Expenses. Unless the SOW provides otherwise, OpenGov will invoice Customer for pre-approved travel expenses incurred in connection with each SOW as they are incurred. Customer shall pay all such valid invoices within thirty (30) days of receipt of invoice. Each invoice shall include receipts for the travel expenses listed on the invoice.

6.2 Credit Card Customers. If applicable, Customer will provide OpenGov with valid credit card information and promptly notify OpenGov of any changes necessary to charge the credit card at billing@opengov.com. Please update your credit card information when necessary. The provision of credit card information to OpenGov authorizes OpenGov to charge the credit card for all applicable Fees plus a 3% credit card processing fee. OpenGov processes

credit card payments through a secure third party processing partner and does not take receipt of credit card information itself.

6.3 **Taxes.** All Fees under this Agreement are exclusive of any applicable sales, value-added, use or other taxes ("**Sales Taxes**"). Customer is solely responsible for any and all Sales Taxes, not including taxes based solely on OpenGov's net income. If any Sales Taxes related to the Fees under this Agreement are found at any time to be payable, the amount may be billed by OpenGov to, and shall be paid by, Customer. If Customer fails to pay any Sales Taxes, then Customer will be liable for any related penalties or interest, and will indemnify OpenGov for any liability or expense incurred in connection with such Sales Taxes. In the event Customer or the transactions contemplated by the Agreement are exempt from Sales Taxes, Customer agrees to provide OpenGov, as evidence of such tax exempt status, proper exemption certificates or other documentation acceptable to OpenGov.

7. TERM & TERMINATION

7.1 **Term.** If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement immediately upon notice. Additionally, Customer may terminate this Agreement, upon providing at least ninety (90) days notice prior to the annual anniversary date of the Agreement ("**Anniversary Date**") upon the occurrence of an Event of Nonappropriation as defined below. An "**Event of Nonappropriation**" occurs when prior to each Anniversary Date: a) Customer uses all efforts that are lawful and within Customer's official power, to secure the appropriate funds for the next year's Fees, including indicating the Software Services serve an essential purpose to Customer; and b) Customer has not acquired, used or issued a proposal for similar products or services during this period or has not hired any third party or allowed its own employees to use other services in place of the Software Services. Customer shall permit OpenGov to assist with the efforts in a) above, including providing OpenGov with direct access to Customer's applicable appropriations team.

7.2 **Renewal.** Unless either party terminates this Agreement in writing no less than thirty (30) days before the end of the Initial Term, this Agreement shall renew for up to five (5) successive periods, each which shall be equal to one (1) year (the "**Renewal Term**" and together with the Initial Term, the "**Term**").

7.3 **Termination.** If either party materially breaches any term of this Agreement and fails to cure such breach within thirty (30) days after notice by the non-breaching party (ten (10) days in the case of non-payment), the non-breaching party may terminate this Agreement.

7.4 Effect of Termination.

(a) **In General.** Upon termination or expiration of this Agreement: (a) Customer shall pay in full for all Software Services and Professional Services performed up to and including the effective date of termination, (b) all Software Services provided to Customer hereunder shall immediately terminate; and (c) each party shall return to the other party or, at the other party's option, destroy all Confidential Information of the other party in its possession.

(b) **Deletion of Customer Data.** If Customer requests deletion of its Customer Data in writing prior to the date of termination or expiration of this Agreement, then OpenGov will permanently and irrevocably delete Customer Data, excluding any Insights, stored by its cloud hosting provider within ten (10) days of the date of termination or expiration of this Agreement. Such request must be addressed to "OpenGov Vice President, Customer Success" at OpenGov's address for notice described at Section 10.

7.5 **Survival.** The following sections of this Agreement shall survive termination: Section 5 (Confidentiality), Section 6 (Payment of Fees), Section 7.4(b) (Deletion of Customer Data), Section 8.3 (Warranty Disclaimer), Section 9 (Limitation of Liability) and Section 10 (Miscellaneous).

8. REPRESENTATIONS AND WARRANTIES; DISCLAIMER

8.1 By OpenGov.

(a) **General Warranty.** OpenGov represents and warrants that: (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) the Professional Services, if any, will be performed in a professional and workmanlike manner in accordance with the related statement of work and generally prevailing industry standards. For any breach of the Professional Services warranty, Customer's exclusive remedy and OpenGov's

entire liability will be the re-performance of the applicable services. If OpenGov is unable to re-perform all such work as warranted, Customer will be entitled to recover all fees paid to OpenGov for the deficient work. Customer must make any claim under the foregoing warranty to OpenGov in writing within ninety (90) days of performance of such work in order to receive such warranty remedies.

(b) Software Services Warranty. OpenGov further represents and warrants that for a period of ninety (90) days from the completion of the Professional Services specified in the SOW, the Software Services will perform in all material respects in accordance with the Documentation. The foregoing warranty does not apply to any Software Services that have been used in a manner other than as set forth in the Documentation and authorized under this Agreement. OpenGov does not warrant that the Software Services will be uninterrupted or error-free. Any claim submitted under this Section 8.1(b) must be submitted in writing to OpenGov during the Term. OpenGov's entire liability for any breach of the foregoing warranty is to repair or replace any nonconforming Software Services so that the affected portion of the Software Services operates as warranted or, if OpenGov is unable to do so, terminate the license for such Software Services and refund the pre-paid, unused portion of the Fee for such Software Services.

8.2 By Customer. Customer represents and warrants that (i) it has all right and authority necessary to enter into and perform this Agreement; and (ii) OpenGov's use of the Customer Data pursuant to this Agreement will not infringe, violate or misappropriate the Intellectual Property Rights of any third party.

8.3 Disclaimer. OPENGOV DOES NOT WARRANT THAT THE SOFTWARE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SOFTWARE SERVICES. EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE SERVICES ARE PROVIDED "AS IS" AND OPENGOV DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.4 Indemnity. OpenGov will shall indemnify and hold Customer, its elected and appointed officials, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) to the extent arising out of or in connection with a third party claim alleging that the Software Services infringes a copyright, patent (U.S. only), or a trademark of, or has caused harm to the rights of, a third party. If the Software Services becomes, or in OpenGov's opinion is likely to become, the subject of an infringement claim, OpenGov may, at its option and expense, either (a) procure for Customer the right to continue using the Software Services, (b) replace or modify the Software Services so that it becomes non-infringing, or (c) terminate the licenses granted hereunder and give Customer a pro-rata refund for any pre-paid, unused fees paid by Customer. Notwithstanding the foregoing, OpenGov will have no obligation under this Section or otherwise with respect to any infringement claim based upon (i) any use of the Software Services not in accordance with this Agreement or for purposes not intended by OpenGov, (ii) any use of the Software Services in combination with other products, equipment, software, or data not supplied by OpenGov, (iii) any use of any release of the Software Services other than the most current release made available to Customer, or (iv) any modification of the Software Services by any person other than OpenGov or its authorized agents or subcontractors. Customer shall (a) promptly give notice of a claim to OpenGov; (b) give OpenGov sole control of the defense and settlement of the claim (provided that OpenGov may not settle such claim unless such settlement unconditionally releases Customer and OpenGov of all liability and, does not adversely affect OpenGov's business or the Software Service); (c) provide to OpenGov all available information and reasonable assistance; and (d) not compromise or settle such third-party claim. THE FOREGOING IS OPENGOV'S SOLE OBLIGATION AND CUSTOMER EXCLUSIVE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INDEMNIFICATION.

9. LIMITATION OF LIABILITY

9.1 By Type. NEITHER PARTY, NOR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES, SHALL BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; OR (C) FOR

ANY MATTER BEYOND SUCH PARTY'S REASONABLE CONTROL, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

9.2 By Amount. IN NO EVENT SHALL EITHER PARTY'S AGGREGATE, CUMULATIVE LIABILITY FOR ANY CLAIMS ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER TO OPENGOV (OR, IN THE CASE OF CUSTOMER, PAYABLE) FOR THE SOFTWARE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY.

9.3 Limitation of Liability Exclusions. The limitations of liability set forth in Sections 9.1 and 9.2 above do not apply to, and each party accepts liability to the other for: (a) claims based on either party's intentional breach of its obligations set forth in Section 5 (Confidentiality), (b) claim arising out of personal injury, fraud or willful misconduct by either party and (c) either party's unauthorized use, distribution, or disclosure of the other party's intellectual property.

9.4 No Limitation of Liability by Law. Because some jurisdictions do not allow liability or damages to be limited to the extent set forth above, some of the above limitations may not apply to Customer.

10. MISCELLANEOUS

10.1 Logo Use. Upon receiving Customer's prior written consent, OpenGov shall have the right to use and display Customer's logos and trade names for marketing and promotional purposes in connection with OpenGov's website and marketing materials, subject to Customer's trademark usage guidelines provided to OpenGov.

10.2 Notice. Ordinary day-to-day operational communications may be conducted by email, live chat or telephone communications. However, for notices required by the Agreement (in Sections where the word "notice" appears) the parties must communicate more formally in a writing given by personal delivery, by pre-paid first-class mail or by overnight courier to the address specified in the most recent Order Form (or such other address as may be specified in writing in accordance with this Section).

10.3 Anti-corruption. OpenGov has not offered or provided any bribe, kickback, illegal or improper payment, gift, or thing of value to any Customer personnel in connection with the Agreement, other than reasonable gifts and entertainment provided Customer in the ordinary course of business. If OpenGov become aware of any violation of the above restriction then OpenGov shall promptly notify Customer.

10.4 Injunctive Relief. The parties acknowledge that any breach of the confidentiality provisions or the unauthorized use of a party's intellectual property may result in serious and irreparable injury to the aggrieved party for which damages may not adequately compensate the aggrieved party. The parties agree, therefore, that, in addition to any other remedy that the aggrieved party may have, it shall be entitled to seek equitable injunctive relief without being required to post a bond or other surety or to prove either actual damages or that damages would be an inadequate remedy.

10.5 Force Majeure. Neither party shall be held responsible or liable for any losses arising out of any delay or failure in performance of any part of this Agreement, other than payment obligations, due to any act of god, act of governmental authority, or due to war, riot, labor difficulty, failure of performance by any third-party service, utilities, or equipment provider, or any other cause beyond the reasonable control of the party delayed or prevented from performing ("**Force Majeure Event**"). In the event Customer is unable to use the Software Services during a Force Majeure Event, the Term of the Agreement shall be extended at no additional expense to Customer, for the duration of such Force Majeure Event.

10.6 Severability; Waiver. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. Any express waiver or failure to exercise promptly any right under this Agreement will not create a continuing waiver or any expectation of non-enforcement. There are no third-party beneficiaries to this Agreement.

10.7 Assignment. Except as set forth in this Section, neither party shall assign, delegate, or otherwise transfer this Agreement or any of its rights or obligations to a third party without the other party's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed. Either party may assign, without such consent but upon written notice, its rights and obligations under this Agreement to: (i) its corporate affiliate; or (ii) any entity that acquires all or substantially all of its capital stock or its assets related to this Agreement, through purchase,

merger, consolidation, or otherwise. Any other attempted assignment shall be void. This Agreement shall inure to the benefit of and bind each party's permitted assigns and successors.

10.8 Independent Contractors. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party has any authority of any kind to bind the other party in any respect.

10.9 Attorneys' Fees. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

10.10 Governing Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California without regard to its conflict of laws provisions. Exclusive jurisdiction for litigation of any dispute, controversy or claim arising out of or in connection with this Agreement shall be only in the Federal or State court with competent jurisdiction located in Riverside County, California, and the parties hereby submit to the personal jurisdiction and venue therein.

10.11 Complete Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications, and other understandings relating to the subject matter of this Agreement. No modification of this Agreement will be binding, unless in writing and signed by an authorized representative of each party.

Signatures

Customer: **City of Banning**

OPENGov, Inc.

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

SOFTWARE SERVICE LEVELS

1. Uptime Commitment

The Quarterly Uptime Percentage for the Software Service will be ninety-nine (99%) (the “**Uptime Commitment**”). Subject to the exclusions described in Subsection 2 below, “**Quarterly Uptime Percentage**” is calculated by subtracting from 100% the percentage of 1-minute periods during any quarterly billing cycle (i.e., 3 calendar months) in which the Software Services (are) Unavailable out of the total number of minutes in that quarterly billing cycle. “**Unavailable**” and “**Unavailability**” mean that, in any 1-minute period, all connection requests received by the Software Services failed to process (each a “**Failed Connection**”); provided, however, that no Failed Connection will be counted as a part of more than one such 1-minute period (e.g. a Failed Connection will not be counted for the period 12:00:00-12:00:59 and the period 12:00:30-12:01:29). The Quarterly Uptime Percentage will be measured based on the industry standard monitoring tools OpenGov uses.

2. Exclusions from Quarterly Uptime Percentage

Notwithstanding anything to the contrary in this exhibit, any Software Service Unavailability issues resulting from any of the following will be excluded from calculation of Quarterly Uptime Percentage:

- 2.1 Regularly scheduled maintenance of the Software Service that is communicated by OpenGov at least twenty-four (24) hours in advance via the Support Portal. (OpenGov typically schedules such regularly scheduled maintenance twice per month);
- 2.2 any issues with a third-party service to which Customer subscribes (e.g. Budget Book by Workiva);
- 2.3 any problems not caused by OpenGov that result from (a) computing or networking hardware, (b) other equipment or software under Customer’s control, (c) the Internet, or (d) other issues with electronic communications;
- 2.4 OpenGov’s suspension or termination of the Software Service in accordance with the Agreement and/or its associated Order Form;
- 2.5 the Software Service is experiencing an unforeseeable amount of user requests from Customer;
- 2.6 software that has been subject to unauthorized modification by Customer;
- 2.7 negligent or intentional misuse of the Software Service by Customer; or
- 2.8 “Beta” or “limited availability” products, features and functions identified as such by OpenGov.

Customer may elect to use certain billable OpenGov Professional Software Services to resolve issues associated with the excluded areas listed in this Subsection 2. Such Professional Software Services may require Customer to complete a network assessment, and/or give OpenGov access to Customer’s network, in order to diagnose the issue.

3. Process

Customer shall notify OpenGov of any Unavailability via the Support Portal. Customer shall provide such notification within thirty (30) days of the Unavailability event. In the event OpenGov provides to its customer Unavailability reports, it shall make available such report to Customer. If Customer is unable to use the Software Services during an Unavailability event, the Term of the Agreement shall be extended at no additional expense to Customer, for the duration of such Unavailability event. In the event that the Customer is unable to use the Software Services due to OpenGov’s failure to maintain ninety-nine percent (99%) uptime during any given quarter, the Customer may exercise the right to terminate the agreement with a thirty (30) day notice to OpenGov from the end of such quarter.

**EXHIBIT B
INSURANCE**



CERTIFICATE OF LIABILITY INSURANCE

410

DATE (MM/DD/YYYY)
2/1/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER Woodruff-Sawyer & Co. 50 California Street, Floor 12 San Francisco CA 94111		CONTACT NAME: Tami Huntsman PHONE (A/C, No, Ext): 415.489.1435 E-MAIL ADDRESS: thuntsman@woodruffssawyer.com FAX (A/C, No):	
INSURED OpenGov, Inc. 955 Charter St. Redwood City CA 94063		OPENINC-02	
		INSURER(S) AFFORDING COVERAGE	
		INSURER A: Travelers Prop Casualty Co of America	
		INSURER B: Travelers Indemnity Company of CT	
		INSURER C: North American Capacity Insurance Company	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES

CERTIFICATE NUMBER: 640115194

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input checked="" type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			ZLP81N04497	9/21/2018	9/21/2019	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 10,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			BA4L014160	9/21/2018	9/21/2019	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> DED <input checked="" type="checkbox"/> RETENTION \$ 0			CUP4L020768	9/21/2018	9/21/2019	EACH OCCURRENCE \$ 4,000,000 AGGREGATE \$ 4,000,000 \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below		Y/N	N/A			PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
C	Errors & Omissions/Cyber Retroactive Date 9/22/2012			C4LPE040432CYBER2018	9/21/2018	9/21/2019	Per Claim Limit 3,000,000 Aggregate Limit 3,000,000 Deductible 25,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

RE: All Operations of the Named Insured

City of Banning is additional insured to General Liability and Automobile Liability. Umbrella Liability coverage is provided on a following form

CERTIFICATE HOLDER

CANCELLATION

City of Banning, CA
PO BOX 998
Banning CA 92220

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

Jane Fred

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.
TECHNOLOGY XTEND ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

GENERAL DESCRIPTION OF COVERAGE - This endorsement broadens coverage. However, coverage for any injury, damage or medical expenses described in any of the provisions of this endorsement may be excluded or limited by another endorsement to this Coverage Part, and these coverage broadening provisions do not apply to the extent that coverage is excluded or limited by such an endorsement. The following listing is a general coverage description only. Limitations and exclusions may apply to these coverages. Read all the provisions of this endorsement and the rest of your policy carefully to determine rights, duties, and what is and is not covered.

- | | |
|---|---|
| <p>A. Reasonable Force Property Damage - Exception To Expected Or Intended Injury Exclusion</p> <p>B. Non-Owned Watercraft Less Than 75 Feet</p> <p>C. Aircraft Chartered With Pilot</p> <p>D. Damage To Premises Rented To You</p> <p>E. Increased Supplementary Payments</p> <p>F. Who Is An Insured - Employees And Volunteer Workers - First Aid</p> <p>G. Who Is An Insured - Employees - Supervisory Positions</p> <p>H. Who Is An Insured - Newly Acquired Or Formed Organizations</p> <p>I. Blanket Additional Insured - Owners, Managers Or Lessors Of Premises</p> | <p>J. Blanket Additional Insured - Lessors Of Leased Equipment</p> <p>K. Blanket Additional Insured - Persons Or Organizations For Your Ongoing Operations As Required By Written Contract Or Agreement</p> <p>L. Blanket Additional Insured - Broad Form Vendors</p> <p>M. Who Is An Insured - Unnamed Subsidiaries</p> <p>N. Who Is An Insured - Liability For Conduct Of Unnamed Partnerships Or Joint Ventures</p> <p>O. Medical Payments - Increased limits</p> <p>P. Contractual Liability - Railroads</p> <p>Q. Knowledge And Notice Of Occurrence Or Offense</p> <p>R. Unintentional Omission</p> <p>S. Blanket Waiver Of Subrogation</p> |
|---|---|

PROVISIONS

A. REASONABLE FORCE PROPERTY DAMAGE - EXCEPTION TO EXPECTED OR INTENDED INJURY EXCLUSION

The following replaces Exclusion a., **Expected Or Intended Injury**, in Paragraph 2., of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

- a. Expected Or Intended Injury Or Damage**
 "Bodily injury" or "property dam-

age" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" or "property damage" resulting from the use of reasonable force to protect any person or property.

B. NON-OWNED WATERCRAFT LESS THAN 75 FEET

The following replaces Paragraph (2) of Exclusion g., **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

(2) A watercraft you do not own that is:

- (a) Less than 75 feet long; and
- (b) Not being used to carry any person or property for a charge.

C. AIRCRAFT CHARTERED WITH PILOT

The following is added to Exclusion **g**, **Aircraft, Auto Or Watercraft**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

This exclusion does not apply to an aircraft that is:

- (a) Chartered with a pilot to any insured;
- (b) Not owned by any insured; and
- (c) Not being used to carry any person or property for a charge.

D. DAMAGE TO PREMISES RENTED TO YOU

1. The first paragraph of the exceptions in Exclusion **j**, **Damage To Property**, in Paragraph 2. of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY** is deleted.

2. The following replaces the last paragraph of Paragraph 2., **Exclusions**, of **SECTION I - COVERAGES - COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY**:

Exclusions **c**, **g** and **h**, and Paragraphs (1), (3) and (4) of Exclusion **j**, do not apply to "premises damage". Exclusion **f**.(1)(a) does not apply to "premises damage" caused by fire unless Exclusion **f**. of Section I - Coverage **A** - Bodily Injury And Property Damage Liability is replaced by another endorsement to this Coverage Part that has Exclusion - All Pollution Injury Or Damage or Total Pollution Exclusion in its title. A separate limit of insurance applies to "premises damage" as described in Paragraph 6. of Section III - Limits Of Insurance.

3. The following replaces Paragraph 6. of **SECTION III - LIMITS OF INSURANCE**:

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "premises damage" to any one premises.

The Damage To Premises Rented To You Limit will be:

- a. The amount shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part; or
- b. \$300,000 if no amount is shown for the Damage To Premises Rented To You Limit on the Declarations of this Coverage Part.

4. The following replaces Paragraph **a**. of the definition of "insured contract" in the **DEFINITIONS** Section:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for "premises damage" is not an "insured contract";

5. The following is added to the **DEFINITIONS** Section:

"Premises damage" means "property damage" to:

- a. Any premises while rented to you or temporarily occupied by you with permission of the owner; or
- b. The contents of any premises while such premises is rented to you, if you rent such premises for a period of seven or fewer consecutive days.

6. The following replaces Paragraph 4.b.(1)(b) of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

- (b) That is insurance for "premises damage"; or

7. Paragraph 4.b.(1)(c) of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS** is deleted.

E. INCREASED SUPPLEMENTARY PAYMENTS

1. The following replaces Paragraph 1.b. of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES**:

- b. Up to \$2,500 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.

2. The following replaces Paragraph 1.d. of **SUPPLEMENTARY PAYMENTS - COVERAGES A AND B of SECTION I - COVERAGES**:

- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense

of the claim or "suit", including actual loss of earnings up to \$500 a day because of time off from work.

F. WHO IS AN INSURED - EMPLOYEES AND VOLUNTEER WORKERS - FIRST AID

1. The following is added to the definition of "occurrence" in the **DEFINITIONS** Section:

Unless you are in the business or occupation of providing professional health care services, "occurrence" also means an act or omission committed by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor, in providing or failing to provide first aid or "Good Samaritan services" to a person.

2. The following is added to Paragraph 2.a.(1) of **SECTION II - WHO IS AN INSURED**:

Unless you are in the business or occupation of providing professional health care services, Paragraphs (1)(a), (b), (c) and (d) above do not apply to "bodily injury" arising out of providing or failing to provide first aid or "Good Samaritan services" by any of your "employees" or "volunteer workers", other than an employed or volunteer doctor. Any of your "employees" or "volunteer workers" providing or failing to provide first aid or "Good Samaritan services" during their work hours for you will be deemed to be acting within the scope of their employment by you or performing duties related to the conduct of your business.

3. The following is added to Paragraph 5. of **SECTION III - LIMITS OF INSURANCE**:

For the purposes of determining the applicable Each Occurrence Limit, all related acts or omissions committed by any of your "employees" or "volunteer workers" in providing or failing to provide first aid or "Good Samaritan services" to any one person will be deemed to be one "occurrence".

4. The following is added to the **DEFINITIONS** Section:

"Good Samaritan services" means any emergency medical services for which no compensation is demanded or received.

G. WHO IS AN INSURED - EMPLOYEES - SUPERVISORY POSITIONS

The following is added to Paragraph 2.a.(1) of **SECTION II - WHO IS AN INSURED**:

Paragraphs (1)(a), (b) and (c) above do not apply to "bodily injury" or "personal injury" to a co-"employee" in the course of the co-"employee's" employment by you arising out of work by any of your "employees" who hold a supervisory position.

H. WHO IS AN INSURED - NEWLY ACQUIRED OR FORMED ORGANIZATIONS

The following replaces Paragraph 4. of **SECTION II - WHO IS AN INSURED** of the Commercial General Liability Coverage Form, and Paragraph 3. of **SECTION II - WHO IS AN INSURED** of the Global Companion Commercial General Liability Coverage Form, to the extent such coverage forms are part of your policy:

Any organization you newly acquire or form, other than a partnership or joint venture, of which you are the sole owner or in which you maintain the majority ownership interest, will qualify as a Named Insured if there is no other insurance which provides similar coverage to that organization. However:

- a. Coverage under this provision is afforded only:
 - (1) Until the 180th day after you acquire or form the organization or the end of the policy period, whichever is earlier, if you do not report such organization in writing to us within 180 days after you acquire or form it; or
 - (2) Until the end of the policy period, when that date is later than 180 days after you acquire or form such organization, if you report such organization in writing to us within 180 days after you acquire or form it, and we agree in writing that it will continue to be a Named Insured until the end of the policy period;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal injury" or "advertising injury" arising out of an offense committed before you acquired or formed the organization.

I. BLANKET ADDITIONAL INSURED - OWNERS, MANAGERS OR LESSORS OF PREMISES

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a premises owner, manager or lessor is an insured, but only with respect to liability arising out of the ownership, maintenance or use of that part of any premises leased to you.

The insurance provided to such premises owner, manager or lessor does not apply to:

- a. Any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after you cease to be a tenant in that premises; or
- b. Structural alterations, new construction or demolition operations performed by or on behalf of such premises owner, manager or lessor.

J. BLANKET ADDITIONAL INSURED - LESSORS OF LEASED EQUIPMENT

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is an equipment lessor is an insured, but only with respect to liability for "bodily injury", "property damage", "personal injury" or "advertising injury" caused, in whole or in part, by your acts or omissions in the maintenance, operation or use by you of equipment leased to you by such equipment lessor.

The insurance provided to such equipment lessor does not apply to any "bodily injury" or "property damage" caused by an "occurrence" that takes place, or "personal injury" or "advertising injury" caused by an offense that is committed, after the equipment lease expires.

K. BLANKET ADDITIONAL INSURED - PERSONS OR ORGANIZATIONS FOR YOUR ONGOING OPERATIONS AS REQUIRED BY WRITTEN CONTRACT OR AGREEMENT

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is not otherwise an insured under this Coverage Part and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed

and executed that contract or agreement; and

- b. Is caused, in whole or in part, by your acts or omissions in the performance of your ongoing operations to which that contract or agreement applies or the acts or omissions of any person or organization performing such operations on your behalf.

The limits of insurance provided to such insured will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.

L. BLANKET ADDITIONAL INSURED - BROAD FORM VENDORS

The following is added to **SECTION II - WHO IS AN INSURED:**

Any person or organization that is a vendor and that you have agreed in a written contract or agreement to include as an additional insured on this Coverage Part is an insured, but only with respect to liability for "bodily injury" or "property damage" that:

- a. Is caused by an "occurrence" that takes place after you have signed and executed that contract or agreement; and
- b. Arises out of "your products" which are distributed or sold in the regular course of such vendor's business.

The insurance provided to such vendor is subject to the following provisions:

- a. The limits of insurance provided to such vendor will be the limits which you agreed to provide in the written contract or agreement, or the limits shown in the Declarations, whichever are less.
- b. The insurance provided to such vendor does not apply to:
 - (1) Any express warranty not authorized by you;
 - (2) Any change in "your products" made by such vendor;
 - (3) Repackaging, unless unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;
 - (4) Any failure to make such inspections, adjustments, tests or servicing as vendors agree to perform or normally undertake to perform in the regular course of business, in connection with the distribution or sale of "your products";

(5) Demonstration, installation, servicing or repair operations, except such operations performed at such vendor's premises in connection with the sale of "your products"; or

(6) "Your products" which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or on behalf of such vendor.

Coverage under this provision does not apply to:

- a. Any person or organization from whom you have acquired "your products", or any ingredient, part or container entering into, accompanying or containing such products; or
- b. Any vendor for which coverage as an additional insured specifically is scheduled by endorsement.

M. WHO IS AN INSURED - UNNAMED SUBSIDIARIES

The following is added to **SECTION II - WHO IS AN INSURED**:

Any of your subsidiaries, other than a partnership or joint venture, that is not shown as a Named Insured in the Declarations is a Named Insured if:

- a. You maintain an ownership interest of more than 50% in such subsidiary on the first day of the policy period; and
- b. Such subsidiary is not an insured under similar other insurance.

No such subsidiary is an insured for "bodily injury" or "property damage" that occurred, or "personal injury" or "advertising injury" caused by an offense committed:

- a. Before you maintained an ownership interest of more than 50% in such subsidiary; or
- b. After the date, if any, during the policy period that you no longer maintain an ownership interest of more than 50% in such subsidiary.

N. WHO IS AN INSURED - LIABILITY FOR CONDUCT OF UNNAMED PARTNERSHIPS OR JOINT VENTURES

The following replaces the last paragraph of **SECTION II - WHO IS AN INSURED**:

No person or organization is an insured with respect to the conduct of any cur-

rent or past partnership or joint venture that is not shown as a Named Insured in the Declarations. This paragraph does not apply to any such partnership or joint venture that otherwise qualifies as an insured under **Section II - Who Is An Insured**.

O. MEDICAL PAYMENTS - INCREASED LIMITS

The following replaces Paragraph 7. of **SECTION III - LIMITS OF INSURANCE**:

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person, and will be the higher of:

(a) \$10,000; or

(b) The amount shown on the Declarations of this Coverage Part for Medical Expense Limit.

P. CONTRACTUAL LIABILITY - RAILROADS

1. The following replaces Paragraph c. of the definition of "insured contract" in the **DEFINITIONS** Section:

c. Any easement or license agreement;

2. Paragraph f.(1) of the definition of "insured contract" in the **DEFINITIONS** Section is deleted.

Q. KNOWLEDGE AND NOTICE OF OCCURRENCE OR OFFENSE

The following is added to Paragraph 2., **Duties In The Event of Occurrence, Offense, Claim or Suit**, of **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**:

e. The following provisions apply to Paragraph a. above, but only for the purposes of the insurance provided under this Coverage Part to you or any insured listed in Paragraph 1. or 2. of **Section II - Who Is An Insured**:

(1) Notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known to you (if you are an individual), any of your partners or members who is an individual (if you are a partnership or joint venture), any of your managers who is an individual (if you are a limited liability company), any of your trustees who is an individual (if you are a trust), any of your "executive officers" or directors (if you are an organization other than a partnership, joint venture, limited liability company or trust) or any "employee" author-

ized by you to give notice of an "occurrence" or offense.

- (2) If you are a partnership, joint venture, limited liability company or trust, and none of your partners, joint venture members, managers or trustees are individuals, notice to us of such "occurrence" or offense must be given as soon as practicable only after the "occurrence" or offense is known by:

(a) Any individual who is:

- (i) A partner or member of any partnership or joint venture;
- (ii) A manager of any limited liability company;
- (iii) A trustee of any trust; or
- (iv) An executive officer or director of any other organization;

that is your partner, joint venture member, manager or trustee; or

- (b) Any "employee" authorized by such partnership, joint venture, limited liability company, trust or other organization to give notice of an "occurrence" or offense.

- (3) Notice to us of such "occurrence" or offense will be deemed to be given as soon as practicable if it is given in good faith as soon as practicable to your workers' compensation insurer. This applies only if you subsequently give notice to us of the "occurrence" or offense as soon as practicable after any of the persons described in Paragraphs e. (1) or (2) above discovers that the "occurrence" or offense may result in sums to which the insurance provided under this Coverage Part may apply.

However, if this policy includes an endorsement that provides limited coverage for "bodily injury" or "property damage" or pollution costs arising out of a discharge, release or escape of "pollutants" which contains a requirement that the discharge, release or escape of "pollutants" must be reported to us within a specific number of days after its abrupt commencement, this Paragraph e. does not affect that requirement.

R. UNINTENTIONAL OMISSION

The following is added to Paragraph 6., **Representations, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

The unintentional omission of, or unintentional error in, any information provided by you which we relied upon in issuing this policy will not prejudice your rights under this insurance. However, this provision does not affect our right to collect additional premium or to exercise our rights of cancellation or nonrenewal in accordance with applicable insurance laws or regulations.

S. BLANKET WAIVER OF SUBROGATION

The following is added to Paragraph 8., **Transfer Of Rights Of Recovery Against Others To Us, of SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS:**

If the insured has agreed in a contract or agreement to waive that insured's right of recovery against any person or organization, we waive our right of recovery against such person or organization, but only for payments we make because of:

- a. "Bodily injury" or "property damage" caused by an "occurrence" that takes place; or
- b. "Personal injury" or "advertising injury" caused by an offense that is committed;

subsequent to the execution of the contract or agreement.



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Jason Smith, Electric Operations Manager
Tom Miller, Electric Utility Director

MEETING DATE: February 12, 2019

SUBJECT: Resolution 2019-16, Authorizing the Electric Utility Heavy Duty Trucks and Equipment Replacement Program and the Purchase of two Heavy Duty Trucks.

RECOMMENDED ACTION:

Adopt Resolution 2019-16 which includes:

1. Authorizing the Electric Utility Heavy Duty Trucks and Equipment Replacement Program and
2. Authorizing the Purchase of two trucks; a Line Crew Bucket Truck and Service Bucket Truck, not to exceed \$460,000 including tax, title and license.

GOAL STATEMENT:

To implement an expedited replacement and upgrade program for the Electric Utility's heavy duty trucks and equipment inventory. This includes efficiently rotating the fully depreciated and worn-out equipment in a safely planned schedule while enabling the Electric Utility to initiate and maintain an industry standard FERC asset depreciation model. The Electric Utility staff will operate and maintain a fleet of aerial, digging, and material handling trucks and equipment to include appropriate routine inspections, maintenance, and repair. This program will be operated within the California Air Resource Board's clean air requirements.

The first two trucks to be replaced are both fully depreciated and have become costly for the department to keep in service due to the current absence of any replacement program.

COMMITTEE RECOMMENDATION:

Both Staff and the Budget and Finance Committee recommend moving ahead with this purchasing program.

BACKGROUND:

Banning Electric Utility is a retail electrical energy distribution provider and load serving entity serving 13,000 end-use customers with 15 miles of overhead and underground sub-transmission, six (6) distribution substations, and 129 miles of overhead and underground distribution lines and a host of special equipment and appurtenances requiring a full complement of aerial, digging, and material handling devices.

The Electric Utility has a field staff of four (4) power line technician supervisors, seven (7) journeymen power line technicians, two (2) electric service workers, one (1) substation technician, one (1) meter technician and three (3) service planners to equip with trucks, equipment, and material handling equipment to maintain continuity of service for our customers.

The Electric Utility does not currently have a program in place to meet the requirements of the SCAQMD as well as ensure safety while operating heavy duty trucks and equipment. In addition, without a program it is more difficult to be efficient due to the age and condition of our current fleet.

JUSTIFICATION:

The utility has acknowledged the need for a more efficient asset management program that maximizes the optimal use of all equipment and materials. The Electric Utility Heavy Duty Trucks and Equipment Replacement Program meets this need and will allow us to achieve these goals while facilitating long term cost savings procedures and practices.

FISCAL IMPACT:

\$460,000 is available in the C.I.P. fund and will be appropriated to account 673-7000-473.90-52 for the purpose of replacing and upgrading various electric utility vehicles and equipment.

The Electric Utility recognizes appropriate FERC depreciation practices, including the funding of an equipment replacement program for the purpose of timely replacement of the departments' aerial, digging, and material handling trucks and equipment.

OPTIONS:

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

ATTACHMENTS:

1. Resolution 2019-16
2. Versalift 60 ft. Aerial Lift Bucket Truck specs and quote.
Altec 40 ft. Aerial Lift Service Bucket truck specs and quote.
Versalift 40 ft. Aerial Lift Service Bucket Truck specs and quote.

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-16

RESOLUTION 2019-16

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AUTHORIZING THE ELECTRIC UTILITY HEAVY DUTY TRUCKS AND EQUIPMENT REPLACEMENT PROGRAM AND THE PURCHASE OF TWO HEAVY DUTY TRUCKS.

WHEREAS, the Electric Utility is a retail electric energy distribution provider serving 13,000 end user customers and requiring a full complement of aerial, digging and material handling devices; and

WHEREAS, the Electric Utility does not currently have a program in place to meet the requirements of the SCAQMD as well as ensure safety while operating heavy duty trucks and equipment; and

WHEREAS, Electric Utility staff requests that the Electric Utility Heavy Duty Trucks and Equipment Program be approved along with the purchase of the first two bucket trucks needing replacement; and

WHEREAS, funding for this program and the purchase of the trucks and equipment is available in the Electric Utility CIP fund; and

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

SECTION 1. The Banning City Council adopts Resolution 2019-16 authorizing the Electric Utility Heavy Duty Trucks and Equipment Program.

SECTION 2: The Banning City Council authorizes the purchase of a Line Crew Bucket Truck and a Service Bucket truck not to exceed \$460,000 including tax, title and license.

SECTION 3. The City Manager or the Electric Utility Director, is authorized to complete these transactions.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-16 was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 12th day of February 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning

ATTACHMENT 2

Versalift 60 ft. Aerial Lift Bucket Truck specs and quote

Altec 40 ft. Aerial Lift Service Bucket truck specs and quote

Versalift 40 ft. Aerial Lift Service Bucket Truck specs and quote



Sourcewell Contract #: 012418-ALT

Date: 1/18/2019

Quoted for: City of Banning**Customer Contact:****Phone: / Email:****Quoted by:** Mark Baldwin**Phone:** (909) 282-6280 / **Email:** mark.baldwin@altec.com**Altec Account Manager:** Mark Baldwin**REFERENCE ALTEC MODEL**

AT37G	Articulating Telescopic Aerial Device (Insulated)	\$102,639
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(A.) SOURCEWELL OPTIONS ON CONTRACT (Unit)

1	AT37G-US40	40' Boom Height (AT40-G) MUST quote ISO boom option	\$2,192
2	AT37G-ISO	ISO boom - MUST QUOTE for 40' boom height (n/a on base model)	\$3,858
3	AT37G-HYBRID	JEMS Hybrid Solution	\$30,259
4			

(A1.) SOURCEWELL OPTIONS ON CONTRACT (General)

1	SPOT3	FOUR (4) POINT STROBE SYSTEM (LED)	\$561
2			
3			
4			
5			
6			
7			
8			
SOURCEWELL OPTIONS TOTAL:			\$139,509

(B.) OPEN MARKET ITEMS (Customer Requested)

1	UNIT	DEMO Unit Sale Deduction	-\$53,509
2	UNIT & HYDRAULIC ACC		
3	BODY		
4	BODY & CHASSIS ACC		
5	ELECTRICAL		
6	FINISHING		
7	CHASSIS		
8	OTHER		
OPEN MARKET OPTIONS TOTAL:			-\$53,509

SUB-TOTAL FOR UNIT/BODY/CHASSIS: \$86,000**Estimated Taxes (@7.75%) \$6,665****Delivery To Customer \$4,464****TOTAL FOR UNIT/BODY/CHASSIS: \$97,129****(C.) ADDITIONAL ITEMS (Items are not included in total above)**

1			
2			
3			
4			

Pricing valid for 45 days

NOTES**PAINT COLOR:** White to match chassis, unless otherwise specified**WARRANTY:** Standard Altec Warranty for Aerials and Derricks - One (1) year parts warranty One (1) year labor warranty Ninety (90) days warranty for travel charges (Mobile Service) Limited Lifetime Structural Warranty. Chassis to include standard warranty, per the manufacturer.**TO ORDER:** To order, please contact the Altec Account Manager listed above.**CHASSIS:** Per Altec Commercial Standard**DELIVERY:** No later than 330 days ARO, FOB Customer Location**TERMS:** Net 30 days**BEST VALUE:** Altec boasts the following "Best Value" features: Altec ISO Grip Controls for Extra Protection, Only Lifetime Warranty on Structural Components in Industry, Largest Service Network in Industry (Domestic and Overseas), Altec SENTRY Web/CD Based Training, Dedicated/Direct Gov't Sales Manager, In-Service Training with Every Order.**TRADE-IN:** Equipment trades must be received in operational condition (as initial inspection) and DOT compliant at the time of pick-up. Failure to comply with these requirements, may result in customer bill-back repairs.**BUILD LOCATION:** Creedmoor, NC

AT40 DRAFT.xlsx



Quote Number: 273534 - 2
Altec, Inc.

January 17, 2019
Our 90th Year

Ship To:

ALTEC INDUSTRIES PLANT 777 WESTERN FINAL
ASSEMBLY
DIXON FINAL ASSY
1450 N 1ST ST
DIXON, CA 95620-0000
US

Bill To:

ALTEC INDUSTRIES PLANT 777 WESTERN FINAL
ASSEMBLY
DIXON FINAL ASSY
1450 N 1ST ST
DIXON, CA 95620-0000
US

Attn:
Phone: 707-678-0800
Email:

Altec Sales Order: 3160736
Altec Quotation Number: 273534 - 2
Run Number: 1015136
Account Manager:
Technical Sales Rep: Dan Brown
Reference WO: -
Customer Inspection:
Line Set Date: 05/16/2016

X7 Discrete Job: 36343180
X7 Configured Item: 970150000-3014965
Quantity: 1
X4 Discrete Job: 36354325
X4 Configured Item: 970149508-3014959
System Engineer: Marc Canevari
Structural Engineer: Adam S Green

<u>Item</u>	<u>Description</u>	<u>Qty</u>
	<u>Unit</u>	
1.	ALTEC Model AT40-G telescopic articulating Aerial device with ISO-Boom.	1
2.	AT40G Unit Model	1
3.	Post style pedestal mounting	1
4.	Poly Hydraulic Reservoir, Pedestal Mounted, 7 Gallon (Includes Sight Gauge)	1
5.	Single One-Man End-Mounted Platform With 180 Degree Rotator, 24 X 30 X 42. Platform is rated at 400 pounds. Control panel on platform dashboard provides controls for auxiliary functions. Includes emergency stop (push-pull) switch and rocker switches, which operate platform leveling, platform rotation, tools, and battery selector (for fiber-optic controls system). Composite fiberglass platform mounting bracket. (AT40G)	1
6.	Platform Leveling At Lower Controls. AT40-G	1
7.	Two (2) Platform Steps	1
8.	Soft nylon reinforced vinyl platform cover for a 24 x 30 inch platform	1
9.	Platform liner for a 24 x 30 x 42 inch platform	1
10.	4-Function Single Handle Fiber-Optic Controller.	1
11.	Engine Start/Stop at the upper controls actuated through the Fiber-Optic controls system with Secondary Stowage System (AT40G)	1
12.	Manual lowering valve located at the boomtip. For use in emergency situations to allow the operator to lower the boom to the ground	1



Quote Number: 273534 - 2
Altec, Inc.

<u>Item</u>	<u>Description</u>	<u>Qty</u>
13.	Powder coat unit Altec White.	1
14.	HYBRID READY UNIT: For personnel, single platform machines. Unit will be manufactured with all the necessary components including modules and controls to interface to a hybrid system.	1
<u>Unit and Hydraulic Acc.</u>		
15.	AT JEMS (Jobsite Energy Management System)	1
16.	AT JEMS Tailshelf Mounting Option: The complete Jobsite Energy Management System is located in a purpose-built tailshelf, leaving the bed area open.	1
17.	Top Charger - AT JEMS	1
18.	AT JEMS Inverter Option: A 110 VAC output, 3000 Watt pure sine inverter, powered by the hybrid batteries and includes one weatherproof GFCI duplex outlet. By powering the inverter with the hybrid batteries, the chassis batteries are not at risk of depletion and can replace the need for additional chassis batteries.	1
<u>Sales Text: outlet to be flush mounted on curbside tailshelf skirt</u> <u>Last Updated By: Dan R Brown on 17-JUL-2015 10:37</u>		
19.	Additional DC/DC Converters - AT JEMS	1
20.	AT JEMS Cab Comfort System: Provides Heat and Air Conditioning to the cab when the engine is off. The system provides up to 13,000 BTU's of cooling and 7,000 BTU's of heating capacity. A thermostat control is mounted inside the cab, the condenser and fan are located behind the cab, and a compressor/evaporator is located inside the extended cab. NOTE: In standard cab configurations, the center seat is removed and an optional center console is available to utilize the space.	1
<u>Sales Text: Zero RPM ILO standard</u> <u>Last Updated By: Dan R Brown on 07-JAN-2015 10:32</u>		
21.	HVI-22 Hydraulic Oil (Standard).	9
22.	Standard Pump For PTO	1
23.	Hot shift PTO for automatic transmission	1
<u>Body</u>		
24.	108 Inch Universal Small Aerial Body for a 60 Inch CA Chassis to Meet the Following Specifications:	1
A.	Basic body fabricated from A40 grade 100% zinc alloy coated steel	
B.	All doors are full, double paneled, self-sealed with built-in drainage.	
C.	Electro-zinc plated, steel hinge rods extend full length of door.	
D.	Door hinges are zinc alloy material attached with rivets	
E.	All doors contain stainless steel, flush mounted, paddle activated rotary style latches with two-stage locking, including keyed locks and adjustable strikers.	
F.	Heavy-gauge welded steel frame construction with smooth galvaneal floor.	
G.	All edges are either rolled or folded for strength and safety	
H.	Door header drip rail at top for maximum weather protection.	
I.	Neoprene or rolled fenders on wheel fender panels.	
J.	Steel treated for improved primer bond and rust resistance.	

We Wish To Thank You For Giving Us The Pleasure
And Opportunity of Serving You
UTILITY EQUIPMENT AND BODIES SINCE 1929



<u>Item</u>	<u>Description</u>	<u>Qty</u>
K.	Automotive underseal applied to body.	
L.	Automotive type non-porous door seals fastened to the door facing.	
M.	108 Inch Body Length	
N.	40 Inch Body Height (Standard)	
O.	94 Inch Body Width (Standard)	
P.	20 Inch Body Compartment Depth (Standard)	
Q.	Body Color - White (Standard)	
R.	Finish Paint Body At Body Manufacturer (Standard)	
S.	8 Inch Body Cross-members (Standard)	
T.	No Treadplate On Compartment Tops	
U.	6 Inch tall wood tailboard installed at the rear of body cargo area	
V.	No Compartment Lighting Supplied by the Body Manufacturer	
W.	Stainless Steel Rotary Paddle Latch With Lock (Standard)	
X.	Master Body Locking System (Standard)	
Y.	No Chock Holders In Line Body Fender Panel Required (Standard)	
Z.	Gas Shock Type Rigid Door Holders For Vertical Doors (Standard)	
AA.	Chains On Horizontal Doors	
AB.	Hotstick shelf extending full length of body on curbside.	
AC.	Drop-Down Hot Stick Door For One (1) Shelf (Right Side)	
AD.	Two (2) Hot Stick Brackets	
AE.	1st Vertical Street Side (LH) - Two (2) Adjustable Shelf With Removable Dividers On 4 Inch Centers	
AF.	1st Horizontal Street Side (LH) - One (1) Fixed Shelf With Removable Dividers On 8 Inch Centers	
AG.	Rear Vertical Street Side (LH) - Six (6) Adjustable Locking Swivel Hooks	
AH.	1st Vertical Curb Side (RH) - Seven (7) Adjustable Locking Swivel Hooks, Louvered Panel Installed in Cargo Wall	
AI.	1st Horizontal Curb Side (RH) - Vacant	
AJ.	Rear Vertical Curb Side (RH) - Two (2) Adjustable Shelf With Removable Dividers On 4 Centers	
AK.	Aluminum Rock Guards Installed at Bottom	
AL.	No Tailshelf Supplied by the Body Manufacturer	

Body and Chassis Accessories

25.	ICC Underride Protection	1
26.	Combination 2 Ball (10,000 LB MGTW) And Pintle Hitch (16,000 LB MGTW)	1
27.	Set Of Eye Bolts for Trailer Safety Chain, installed one each side of towing device mount.	1
28.	Rear Torsion Bar Installed On Chassis	1
29.	Appropriate counterweight added for stability.	1
30.	Platform Rest, Rigid with Rubber Tube	1
31.	Boom Rest for a Telescopic Unit	1
32.	Mud Flaps With Altec Logo (Pair)	1
33.	Wheel Chocks, Rubber, 9.75" L x 7.75" W x 5.00" H, with 4" L Metal Hairpin Style Handle (Pair)	1
34.	U-Shaped Grab Handle	1



Quote Number: 273534 - 2
Altec, Inc.

<u>Item</u>	<u>Description</u>	<u>Qty</u>
35.	Small Grab Handle Installed At Rear	1
36.	Slope Indicator Assembly For Machine Without Outriggers	1
37.	Safety Harness And 4.5' Lanyard (Fits Medium To Xlarge) Includes Pouch and Placards	1
38.	5 LB Fire Extinguisher With Light Duty Bracket, Installed (In Cab or Inside Compartment Only)	1
39.	Triangular Reflector Kit, Installed	1
40.	Vinyl manual pouch for storage of all operator and parts manuals	1
<u>Electrical Accessories</u>		
41.	Lights and reflectors in accordance with FMVSS #108 lighting package. (Complete LED, including LED reverse lights)	1
42.	Altec Standard Amber LED Strobe Light with Brush Guard	1
<u>Sales Text: post mounted on the Streetside front of the body, visible above the chassis cab.</u> <u>Last Updated By: Dan R Brown on 07-JAN-2015 10:32</u>		
43.	6-Way Trailer Receptacle (Pin Type) Installed At Rear	1
44.	Ford Upfitter Switches (Supplied With Chassis)	1
45.	Power Distribution Module Is A Compact Self-Contained Electronic System That Provides A Standardized Interface With The Chassis Electrical System. (Includes Operator's Manual)	1
46.	PTO Indicator Light Installed In Cab	1
<u>Finishing Details</u>		
47.	Powder Coat Unit Altec White	1
48.	Finish Paint Body Accessories Above Body Floor Altec White	1
49.	Altec Standard; Components mounted below frame rail shall be coated black by Altec. i.e. step bumpers, steps, frame extension, pintle hook mount, dock bumper mounts, D-rings, receiver tubes, accessory mounts, light brackets, under-ride protection, etc. Components mounted to under side of body shall be coated black by Altec. i.e. Wheel chock holders, mud flap brackets, pad carriers, boxes, lighting brackets, steps, and ladders.	1
50.	Apply Non-Skid Coating to all walking surfaces	1
51.	English Safety And Instructional Decals	1
52.	Vehicle Height Placard - Installed In Cab	1
53.	Altec Greenfleet Decals, Hybrid Decal Kit	1
54.	Placard, HVI-22 Hydraulic Oil	1
55.	Dielectric test unit according to ANSI requirements.	1



Quote Number: 273534 - 2
Altec, Inc.

<u>Item</u>	<u>Description</u>	<u>Qty</u>
56.	Stability test unit according to ANSI requirements.	1
57.	Non-Focus Factory Build	1
58.	Inbound Freight	1
59.	FA Unit Designator - AT40G Aerial Device	1
60.	Stock Unit	1
<u>Chassis</u>		
61.	Chassis	1
62.	Altec Supplied Chassis	1
63.	2015 Model Year	1
64.	Ford F550	1
65.	4x4	1
66.	60 Clear CA (Round To Next Whole Number)	1
67.	Regular Cab	1
68.	Ford 6.7L Power Stroke Diesel	1
69.	Ford Torqshift 6-Speed (6R140) Automatic Transmission (w/PTO Provision)	1
70.	GVWR 18,000 LBS	1
71.	7,000 LBS Front GAWR	1
72.	13,660 LBS Rear GAWR	1
73.	Hydraulic Brakes	1
74.	Ford E/F250-550 Single Horizontal Right Side Exhaust	1
75.	98R - Operator Commanded Regeneration (OCR)	1
76.	No Idle Engine Shut-Down Required	1
77.	Clean Idle Certification	1
78.	Cruise Control	1
79.	Block Heater	1
80.	Snow Plow Package	1
<u>Additional Pricing</u>		
81.	Standard Altec Warranty: One (1) year parts warranty, one (1) year labor warranty, ninety (90) days warranty for travel charges, limited lifetime structural warranty	1



Quote Number: 273534 - 2
Altec, Inc.

Altec Industries, Inc.

BY _____
Dan Brown , Technical Sales Representative

Price: \$86,000
Estimated Tax (7.75%): \$6,665
Delivery: \$4,464
TOTAL: \$97,129

Item Number

Unselected Items Description

New Selected Items Description

Item Number

970001041-	Stock Unit	
		Created By: Dan R Brown on 13-JAN-2015 12:16
970005359-	Platform Cover, 24" X 30" Soft	
		Created By: Dan R Brown on 03-AUG-2015 09:22
970005363-	Platform Liner, 24" X 30" X 42"	
		Created By: Dan R Brown on 03-AUG-2015 09:22
970647501-	Additional DC/DC Converters - AT JEMS	
		Created By: Dan R Brown on 18-SEP-2015 08:27

Notes:

- 1 Altec Standard Warranty:
 - One (1) year parts warranty.
 - One (1) year labor warranty.
 - Ninety (90) days warranty for travel charges.

Warranty on structural integrity of the following major components is to be warranted for so long as the initial purchaser owns the product: Booms, boom articulation links, hydraulic cylinder structures, outrigger weldments, pedestals, subbases and turntables.

Altec is to supply a self-directed, computer based training (CBT) program. This program will provide basic instruction in the safe operation of this aerial device. This program will also include and explain ANSI and OSHA requirements related to the proper use and operation of this unit.

Altec offers its standard limited warranty with the Altec supplied components which make up the Altec Unit and its installation, but expressly disclaims any and all warranties, liabilities, and responsibilities, including any implied warranties of fitness for a particular purpose and merchantability, for any customer supplied parts
- 2 Altec designs and manufactures to applicable Federal Motor Vehicle Safety and DOT standards Altec takes pride in offering solutions that provide a safer work environment for our customers. In an effort to focus on safety, we would encourage you to consider the following items:
 - Outrigger pads (When Applicable)
 - Fall Protection System
 - Fire extinguisher/DOT kit
 - Platform Liner (When Applicable)
 - Altec Sentry Training
 - Wheel Chocks

The aforementioned equipment can be offered in our new equipment quotations. If you find that any of

We Wish To Thank You For Giving Us The Pleasure
And Opportunity of Serving You
UTILITY EQUIPMENT AND BODIES SINCE 1929



these items have not been listed as priced options in the body of your quotation and are required by your company, we would encourage you to contact your Altec Account Manager and have an updated quotation developed for you. These options must be listed as individual options in the body of the quotation for them to be supplied by Altec.

Unless otherwise noted, all measurements used in this quote are based on a 40 inch (1016mm) chassis frame height and standard cab height for standard configurations.

Changes made to this order may affect whether or not this vehicle is subject to F.E.T. A review will be made at the time of invoicing and any applicable F.E.T. will be added to the invoice amount.

Price does not reflect any local, state or Federal Excise Taxes (F.E.T). The quote also does not reflect any local title or licensing fees. All appropriate taxes will be added to the final price in accordance with regulations in effect at time of invoicing.

Interest charge of 1/2% per month to be added for late payment.

Delivery: 270-300 days after receipt of order PROVIDING:

A. Order is received within 14 days from the date of the quote. If initial timeframe expires, please contact your Altec representative for an updated delivery commitment.

B. Chassis is received a minimum of sixty (60) days before scheduled delivery.

C. Customer approval drawings are returned by requested date.

D. Customer supplied accessories are received by date necessary for compliance with scheduled delivery.

E. Customer expectations are accurately captured prior to releasing the order. Unexpected additions or changes made at a customer inspection will delay the delivery of the vehicle.

Altec reserves the right to change suppliers in order to meet customer delivery requirements, unless specifically identified, by the customer, during the quote and or ordering process.

Trade-in offer is contingent upon equipment being maintained to DOT (Department of Transportation) operating and safety standards. This will include, but not limited to tires, lights, brakes, glass, etc. If a trade-in is not maintained to DOT standards, additional transportation expenses will apply and could be invoiced separately.

All equipment, i.e., jibs, winches, pintle hooks, trailer connectors, etc., are to remain with the vehicle unless otherwise agreed upon in writing by both parties. Altec Industries reserves the right to re-negotiate its trade-in offer if these conditions are not met.

Customer may exercise the option to rescind this agreement in writing within sixty (60) days after receipt of purchase order. After that time Altec Industries will expect receipt of trade-in vehicle upon delivery of new equipment as part of the terms of the purchase order.

Titles for trade-in equipment should be given to the appropriate Altec Sales associate or forwarded to Altec Nueco at address 1730 Vanderbilt Road, Birmingham, AL 35234.

After the initial warranty period, Altec Industries, Inc. offers mobile service units, in-shop service and same day parts shipments on most parts from service locations nationwide at an additional competitive labor and parts rate. Call 877-GO-ALTEC for all of your Parts and Service needs.

Please email Altec Capital at finance@altec.com or call 888-408-8148 for a lease quote today.



CITY OF BANNING CITY COUNCIL REPORT

TO: City Council

FROM: Douglas Schulze, City Manager

PREPARED BY: Tom Miller, Electric Utility Director

MEETING DATE: February 12, 2019

SUBJECT: Resolution 2019-17, Banning Electric Utility - Resource Study

RECOMMENDED ACTION:

Adoption of the City of Banning City Council Resolution 2019-17 approving a task order engaging Black and Veatch Corporation to complete a resource study not to exceed \$50,000.

GOAL:

The purpose of the study is to determine the feasibility of owning local generation to mitigate vulnerabilities in current power resource plans. Further, to understand the economic impact of a bio-waste to energy project and the cost per kWh produced by such a project.

BACKGROUND:

Banning Electric Utility is a member of Southern California Public Power Authority (SCPPA) and is eligible to participate in a variety of programs and services. Staff is requesting City Council action directing staff to prepare a task order authorizing SCPPA to engage Black and Veatch Corporation (BV) to complete a resource study for Banning Electric Utility as discussed in BV's Proposal No. 285984. Included in the proposal is specific consideration for bio-waste generation. Staff has reached out to Impact Bioenergy, Shoreline, WA, to participate in the resource study. Impact Bioenergy specializes in bio-waste to energy generation.

JUSTIFICATION:

Banning Electric Utility purchases 100% of its power supply resources and schedules the energy to be delivered to its interconnection provided by Southern California Edison at their 115kV to 33kV step-down Banning Substation. From time to time the CAISO market place experiences price volatility, (or) the transmission system experiences delivery constraints, (or) the transmission delivery losses become extreme, (or) the potential failure of the SCE Banning Substation, Banning Electric Utility does not have any local generation to serve essential services such as health care, water pumping, waste water treatment, or traffic control to name a few. There is a certain amount of vulnerability inherent to our current power supply practices. This study will assist staff in evaluating potential solutions to current power resource practices.

FISCAL IMPACT:

The cost of the study will be expensed as a matter of normal operations in the electric fund, generation and transmission, consulting services budget.

OPTIONS:

1. Approve as recommended.
2. Approve with modifications.
3. Do not approve and provide alternate direction.
4. Do not approve.

ATTACHMENTS:

1. Resolution 2019-17
 Exhibit A. Black and Veatch Inc. Proposal No. 285984
 Letter dated December 3, 2018, Impact Bioenergy
 Itron, Inc. Table 2: System Peak Forecast Data (MW)

Approved by:



Douglas Schulze, ICMA-CM
 City Manager

ATTACHMENT 1

Resolution 2019-17

RESOLUTION 2019-17

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DIRECTING STAFF TO COMPLETE A TASK ORDER WITH THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY ENGAGING BLACK AND VEATCH CORPORATION TO COMPLETE A RESOURCE PLAN FOR BANNING ELECTRIC UTILITY.

WHEREAS, the City of Banning owns and operates a retail electrical energy distribution system which serves load to end-use customers in an assigned area of service; and,

WHEREAS, it is the goal of the electric utility to ensure efficient and effective power resource planning; and,

WHEREAS, City Council has adopted a 10-year load forecast for power resource planning; and,

WHEREAS, Banning Electric Utility is a member of the Southern California Public Power Authority (SCPPA) with all rights to their programs and services; and,

WHEREAS, on the behalf of Banning Electric Utility, SCPPA will engage the services of Black and Veatch Corporation to provide resource planning services evaluating current power resources, the feasibility of utility-owned generation including bio-waste to energy, and other potential power resource opportunities; and,

WHEREAS, Banning Electric Utility and Black and Veatch Corporation have mutually agreed upon certain deliverables as described in B&V's Proposal No. 285984.

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

SECTION 1. Adopt Resolution 2019-17 directing staff to complete a task order with SCPPA in order to engage the services of Black and Veatch Corporation not to exceed \$50,000.

SECTION 2. Authorize the supplemental appropriation and expenditure to the electric fund, generation and transmission, consulting services budget.

SECTION 3. Direct the electric utility director to report the findings and recommendations of Resource Study to City Council for their review, discussion, and consideration.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-17, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

Exhibit “A”

January 24, 2018

Tom Miller
Electric Utility Director
City of Banning
176 E. Lincoln St.
Banning, CA 92220

B&V Proposal No. 285984

Subject: Resource Study

Dear Mr. Miller:

Black & Veatch is pleased to submit this proposal to the City of Banning (City) for support in the Resource Study. We understand the City is seeking a study that compares multiple local renewable energy and distributed energy options that would be feasible for the area. We propose to conduct the study in two tasks: (1) a technology screening-level comparison of the costs and performance of each technology, and (2) combinations of technologies needed to meet a desired load and their associated cost.

Black & Veatch has been active in the renewable energy market for over 35 years and has successfully executed thousands of projects in all major renewable technology categories. Clients across several market sectors, including energy, water, telecommunications, finance and government, have relied on the unbiased approach and proven expertise of Black & Veatch professionals for a diverse range of renewable energy and sustainability solutions. This broad range of experience leaves Black & Veatch uniquely positioned to provide services to clients from strategic planning and project development support to project implementation, grid connection and asset management. A number of cutting-edge and successfully delivered renewable energy assignments, ranging from small distributed generation installations to large utility-scale applications, have led to Black & Veatch's strong and trusted reputation.

Black & Veatch has developed the capability to capture and leverage lessons learned from clients across business sectors and geographies. More than 250 Black & Veatch professionals have experience with renewables projects, spanning all technologies (wind, solar thermal, solar photovoltaics, biomass, hydro, geothermal, landfill gas, marine, and others). Renewable energy technology experts reside in approximately a dozen execution centers across the United States and other countries, with the leadership for our renewables planning practice based in San Francisco. Individuals within and across these platforms are in regular communication with one another to gain and share insights in a particular technology or service area, enabling Black & Veatch to address individual client needs with industry best practices.



As a full-service consulting, engineering and construction company, Black & Veatch draws on our extensive experience supporting clients with planning, development, design, and construction of a variety of power generation projects and present current market-

based estimates, representative of the latest technology and competitive offerings in the market today. Black & Veatch will utilize our industry knowledge and experience to inform the resource study for the City.

Scope of Work

TASK 1 – TECHNOLOGY ASSESSMENT

1.1 Project Management

1.1.1 Kick Off Meeting

Two Black & Veatch team members will participate in an initial 1-hour kickoff meeting via web conference call with the City. During the kickoff meeting, our project team will discuss and clarify the project objectives, based on the intent of the study. This will include discussion of such items as:

- Overview of the study process and methodology
- Confirm technology options to evaluate and factors to incorporate
- City load
- Coordination with Impact Bioenergy
- Project schedule milestones

Deliverables. Kick off meeting agenda, meeting minutes including action items and resolutions.

1.1.2 Bi-Weekly Meeting and Progress Reporting

Black & Veatch will conduct bi-weekly phone conferences, of an expected 30-minutes duration, to review current project status, review open Action Items, and work towards resolving ongoing issues. The meetings will be attended by key project team members from the Black & Veatch project team.

Deliverables. Bi-Weekly progress reports including schedule updates.

1.2 Technology Assessment

Black & Veatch will provide a written request for relevant project data to be provided by the City prior to the kick-off meeting so that our project team can start reviewing the data to prepare for the meeting. Black & Veatch will review the existing development documents.

The following documents are expected to be initially provided by the City for Black & Veatch reference

- Current and forecast load
- Contracted resources
- City owned sites/land available for development
- City's cost of capital

Black & Veatch will work with the City to finalize a list of technologies and sizing to be considered for the study. The proposed list of the technologies is:

- Ground-mount Solar (Single Axis Tracking) – 10 MW
- Wind – 10 MW
- Bioenergy (Impact Bioenergy technology/Biomass Solution)
- Natural Gas Microturbines – 10 MW
- Stationary Solid Oxide Fuel Cells – 1 MW (or unit size close to 1 MW)
- Battery Storage – 1 MW/4 MWh system

For each of the technologies, Black & Veatch will estimate performance (hourly capacity factor/8760) assuming siting within the City of Banning, capital cost, fuel cost and O&M. These costs will be used to calculate levelized cost of energy (LCOE).

It is assumed that performance and cost for the bioenergy option will be provided by Impact Bioenergy.

In addition to the LCOE, Black & Veatch will develop a technology matrix (qualitative comparison) to compare the various technologies. The matrix could include factors such as:

- Emissions
- Local job creation
- Potential revenue streams (e.g. tipping fees)
- Fuel availability (current and future)
- Eligibility for California's Clean Energy Act and other state goals

Tipping fees for biomass resources will be estimated using public information such as fees charged by local sanitation district and landfills. Natural gas prices (for microgrid and fuel cells) will be estimated using current market prices. Industry forecasts will be used to estimate future costs.

Black & Veatch will also perform a high-level review of the land available for development to inform the technical potential for solar and wind estimate.

Deliverables. PowerPoint detailing the analysis and results from Task 1.

TASK 2 – ENERGY PORTFOLIO MODELING

This task will develop 3 to 4 combinations of technologies that can reasonably meet a particular load profile specified by the City (modeling will be completed for one scenario only).

Black & Veatch will work with the City to select a load scenario to be served by the local generation. Example load scenarios include:

- Base load for the City
- Expected load growth (the local generation would be used to serve future load growth not served by existing contracts)

- Resiliency scenario – load that should be covered in microgrid configuration in case of disturbance or outage of the Southern California Edison (SCE) feeder.

The City will also specify what planning year the portfolio is intended to address. HOMER modeling software will be used to conduct the analysis. Cost and performance characteristics from Task 1 will be used for the analysis.

Deliverables. PowerPoint detailing the analysis and results from Task 2.

TASK 3 – BUY OR BUILD

Black & Veatch will also provide a comparison of the expected LCOE of a build scenario where the City owns and operates the projects vs. contracting through a power purchase agreement (PPA). We will comment on the potential risks and uncertainties related to each option.

Deliverables. PowerPoint summarizing the analysis from Task 3.

Project Team

A well thought out and organized project team creates a foundation to successfully execute any project. Black & Veatch develops project teams that are flexible to individual project needs, yet sufficiently organized and thoroughly capable to ensure we provide our clients with consistent, quality deliverables.

Key Team Professional's Experience Summaries

We have provided brief experience summaries for each of our proposed professionals below.

Michael Fisher | Project Manager

Michael Fisher is a project manager responsible for managing projects in the Power Services business line of Black & Veatch. With over 20 years of technical and commercial experience, Mr. Fisher has significant experience with a variety of power plant technologies and industrial facilities, including wind, solar photovoltaic, solar thermal, hydro, landfill gas, biomass, both supercritical and drum-style steam units firing coal and natural gas, simple-cycle combustion turbines, combined-cycle combustion turbines, and reciprocating engines.

Mon Hong | Study Lead and Economic Analyst

Ms. Hong is an experienced project manager who has successfully managed consulting projects in the areas of microgrids, distributed energy resources (DER), distribution system impact, renewable energy resource and economic assessment, renewable energy certificate (REC) price analysis, renewable energy market potential, power market analysis, integrated resource planning, and transmission feasibility studies. Ms. Hong is also leading the analytical framework for assessing the economic and business case approach for battery energy systems (BES) for both utility-scale and customer-sited solutions. She has managed a number of technical analyses of distributed generation and microgrids, often forging new and innovative approaches.

Ms. Hong has also conducted numerous studies related to renewable energy potential and financial analysis of renewable energy projects, including DG, microgrids, distributed generation, wind, solar, biomass, hydro and landfill gas. She has experience with integrated resource planning and project due diligence.

Jagmeet Khangura | Renewable Energy and Microgrid Specialist

Jagmeet Khangura currently supports the Distributed Generation/Microgrid Program at Black & Veatch's. Her experience includes resource assessments, technical feasibility analysis and integration of microgrids and renewable energy resources. She has evaluated renewable installations and microgrids at commercial building, industrial facilities, as well as the utility distribution system. Prior to joining the Microgrid group, Jagmeet was a Renewable Energy Consultant in Consulting Engineering Services / Renewable Services within Black & Veatch's global energy business. She was active in many renewable energy projects, including resource assessments, feasibility studies, due diligence (technical and economic analysis) of specific technologies, optimization of solar plant design, and economic analyses of renewable energy projects.

Jim Easterly | Biomass Technology Lead

Jim Easterly is a lead engineer with 40 years of professional experience in the renewable energy and environmental field, including 34 years of consulting and project management experience in the biomass energy field providing a range of services. This includes project manager for bioenergy feasibility studies and conceptual engineering, technology evaluations, and biomass resource assessments, as well as evaluation of conventional and advanced biomass conversion technologies. Easterly's biomass consulting experience includes evaluations of technical, environmental, economic, employment, market, and policy issues with respect to a variety of applications, including thermal applications, electric power, combined heat and power, gasification, co-firing, as well as biomass-derived liquid fuel production.

Commercial Terms

CONTRACT TERMS & CONDITIONS

Black & Veatch proposes to perform the scope of work outlined in this proposal under the terms and conditions of the **Professional Services Agreement between Southern California Public Power Authority and Black & Veatch Corporation dated April 28, 2014, with extension through April 28, 2020.**

PRICING

Black & Veatch will provide the services defined in this proposal on a fixed (lump sum) fee basis of \$46,994.

Black & Veatch's proposal is valid for 60 days from the submittal date.

SCHEDULE

This proposal assumes the following schedule, with the scope of services completed no later than December 31, 2019.

Task 1

- Draft delivered 4 weeks after contract approval
- One week assumed for City review and comment
- Final delivered to City one week from receipt of comments (end of week 6)

Task 2 and 3

- Draft delivered 8 weeks after contract approval
- One week assumed for City review and comment
- Final delivered to City one week from receipt of comments (end of week 10)

We appreciate the opportunity to demonstrate our capabilities, and we look forward to working together with the City of Banning on this important project. If you have any questions or require any additional information, please contact Michael Fisher (Tel: 720-834-4225, email: FisherMA@bv.com) or Ajay Kasarabada (Tel: 913-458-9837, email: KasarabadaAN@bv.com).

Very truly yours,
BLACK & VEATCH CORPORATION

Jason Abiecunas
Associate Vice President

**IMPACT BIOENERGY**1001 NW 167TH St.

Shoreline, WA 98177

www.impactbioenergy.comjan.a@impactbioenergy.com

C: 206.250.3242

December 3, 2018

Mr. Doug Schulze, ICMA-CM
 City Manager
 City of Banning
 99 E. Ramsey Street
 Banning, CA 92220
 951.922.3104

RE: FEASIBILITY STUDY FOR A 10-15 MW BANNING DOMICLED ENERGY FACILITY

Dear Doug,

Thank you for your interest in our bioenergy systems technology. From our conversation with you and Tom Miller, the city's Electric Utility Director on November 15, 2018, we understand you are interested in a feasibility study of our distributed energy technology and its power generation. Although all of your power is generated outside city limits and up to 90% of it is sourced from renewable power, we understand you may have an interest in having your own power generation capability inside the city limits.

We are pleased to prepare a feasibility study of our distributed energy technology and its power generation potential. As you know, we generate renewable natural gas through a biodigester fueled by organic waste. The natural gas can be used for electricity generation, combined heat and power, tri-generation (CHP plus cooling), fuel cells, and energy storage. Our systems are designed for urban settings to co-locate at or near food waste sources (i.e., restaurants, campuses, food service facilities), and the resulting power customers you now service with your current energy portfolio. The concept design for Bainbridge Island showed alternative configurations between 2,000 and 6,800 tons per year of recycling capacity, with electrical generating capacity between 0.07 MW and 2.8 MW. The biogas generated was presented as potentially delivering combined heat and power, or renewable natural gas (CNG) vehicle fueling with a gas upgrading technology.

Our systems alone have the flexibility to run continuous or only during peak hours using short term gas storage. Achieving power generation of 10 to 15 MW would require a mixed fuel and power generation approach. As we mentioned, we are working with Bloom Energy to locate microgrid sites for joint projects that would run off our renewable natural gas (possibly up to 3 MWs) and supplemented with pipeline natural gas. A combined system could generate up to 10 to 15 MWs. More conventional natural gas turbine power generation can be presented simultaneously with evaluation and comparison. If you desire, wind and solar generation can be considered.

To properly evaluate the feasibility of power generation potential and reliability, we would bring in an energy consultant of your choosing and incorporate the findings in the report. We will also touch on resiliency, sustainability, carbon footprint and GHG reduction, and incentive programs including California's Self Generation Incentive Program and Bioenergy Feed-In Tariff Program.

Proposed Approach, Schedule, and Deliverables

1. **Initial Scoping and Layout:** evaluate site locations and organic waste sources (food waste, etc.) as the fuel to size the bioenergy facility.
2. **Conceptual Facility Plan:** This will be the predesign of the facility including dimensions, capacity, mass balance, liquid balance, odor control, and electrical integration. The plan will specifically address the six key factors for success (site location, feedstock, optimal energy applications, organic product markets, ownership, and operation).
3. **Power Generation Options and Capacity Analysis:** This part to be completed by an Energy Consultant.
4. **Conceptual Operations Plan:** This will address the labor, consumables, value streams, expenses, and overall economic modeling to show pro forma and well as contingencies for under or over performance.
5. **Technical Memo and Presentation of Findings:** Summary of the above in a presentable format with executive summary, recommendations and action plan.
 - a. Schedule: January 1 through May 31, 2019 with a presentation to City Council in May 2019.
 - b. Deliverables are one Technical Memo, presentation to city council and various email correspondence as necessary.

Level of Effort and Budget

If you find this approach acceptable, we will work with you to jointly propose the Level of Effort and Budget with an Energy Consultant in January.

Thanks for considering us and for the opportunity to work with you on this exciting project. Please send comments so we can plan accordingly.

Sincerely,
Impact Bioenergy Inc.

Jan Allen, P.E., CMQ/OE
President

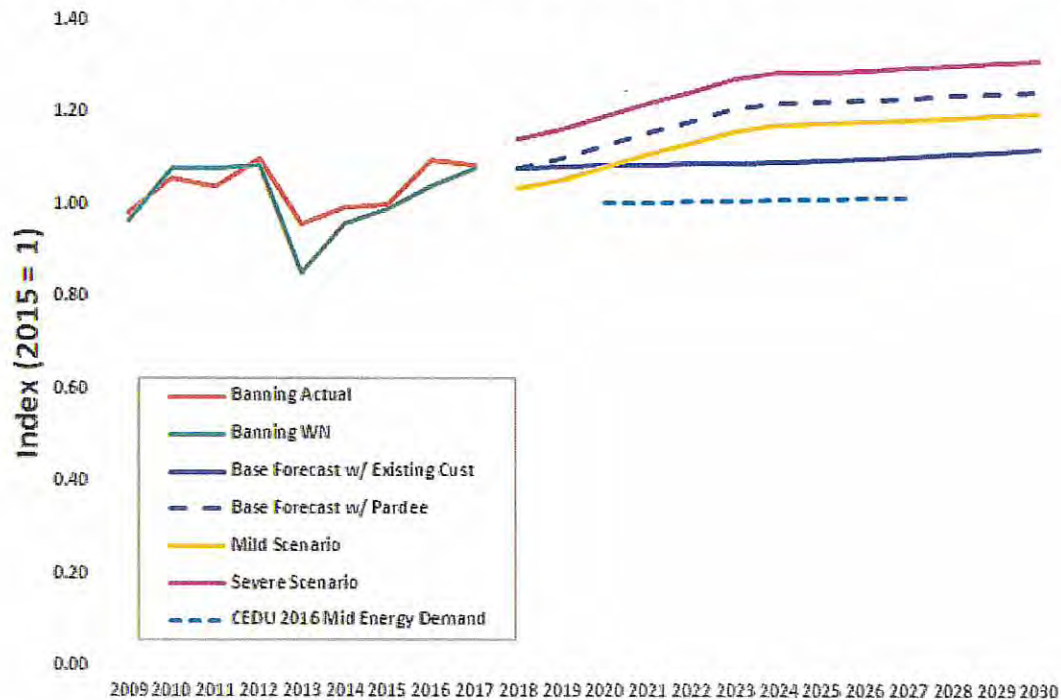
cc: Michael Smith
Craig Husa

Table 2: System Peak Forecasts Data (MW)

Year	Base (Existing Customers)	Base + Pardee	Mild + Pardee	Severe + Pardee
2018	46.01	46.07	44.13	48.76
2019	46.23	46.94	45.00	49.64
2020	46.31	48.13	46.18	50.84
2021	46.36	49.29	47.34	52.00
2022	46.41	50.44	48.48	53.16
2023	46.46	51.52	49.55	54.25
2024	46.60	52.11	50.14	54.85
2025	46.74	52.23	50.25	54.98
2026	46.87	52.35	50.35	55.11
2027	47.07	52.52	50.52	55.31
2028	47.30	52.73	50.72	55.53
2029	47.58	52.99	50.96	55.82
2030	47.75	53.15	51.11	55.99

Itron also researched the peak forecast for Southern California Edison developed by the CEC and indexed the data to the 2015 actual values for a comparison. Figure 13 shows this comparison. Source: <https://efiling.energy.ca.gov/getdocument.aspx?tn=215275>

Figure 13: Banning Peak Forecast vs CEC SCE Peak Forecast





CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: February 1, 2019

SUBJECT: Resolution 2019-21, Draft Employment Agreement for Community Development Director Adam Rush

RECOMMENDED ACTION:

Authorize City Manager to enter into an Employment Agreement with Adam Rush for Community Development Director services.

BACKGROUND:

A nation-wide recruitment process was completed during November and December. A review panel selected four candidates to participate in an interview process. Three candidates participated in the interview process on Thursday, January 10, 2019. Interview panelists included members of the Planning Commission, City Council, City Management Team, and two planning professionals from neighboring jurisdictions.

Mr. Adam Rush was selected as the top choice following the interview process and he has accepted the position contingent upon successful negotiation of an employment agreement. Mr. Rush is an experienced planning profession with a Master of Arts Degree in American Politics/Public Policy. He is currently the Director of Planning for CASC Engineering and Consulting, Inc.

The Draft Employment Agreement was developed using the salary and benefits previously approved for Department Directors by Resolution 2017-101. The only benefit offered that is not established by Resolution 2017-101 is Severance (Section 4.0). Severance pay is included in employment agreements approved for other Department Directors and the City Manager.

Highlights of the employment agreement that may be of interest to the City Council include the following:

- Agreement is for a period of 3 years and may be extended unilaterally by the City;
- Annual salary is \$134,875.40, which is Step 10 of the establish range for the position;
- Severance pay equivalent to six months' salary & benefits paid if employee is terminated without cause;
- All other benefits are established by Resolution 2017-101 for Directors.

JUSTIFICATION:

The Community Development Director position is a critical position for the City. The draft employment agreement is consistent with previously established salary and benefits for the position.

FISCAL IMPACT:

This position has been budgeted and the employment agreement is consistent with established budget expenditures.

OPTIONS:

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

ATTACHMENTS:

1. Resolution 2019-21
2. Draft Employment Agreement
3. Application and Resume-Adam Rush

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-21

RESOLUTION 2019-21**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING A COMMUNITY DEVELOPMENT
DIRECTOR EMPLOYMENT AGREEMENT**

WHEREAS, following a nationwide recruitment, the City Manager selected Adam Rush for the permanent position of Community Development Director; 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 February 12, 2019, the Council considered a Community Development Director Employment Agreement between the City of Banning and Adam Rush.

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

SECTION 1. The City Council approves the Community Development Director Employment Agreement between the City of Banning and Adam Rush, attached hereto as Exhibit A, effective March 4, 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 12th day of February, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-21, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Draft Employment Agreement

CITY OF BANNING

COMMUNITY DEVELOPMENT DIRECTOR EMPLOYMENT AGREEMENT

This COMMUNITY DEVELOPMENT DIRECTOR EMPLOYMENT AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into and made effective the ____ day of February, 2019, by and between the CITY OF BANNING, a general law city and municipal corporation (hereinafter referred to as the "CITY") and ADAM RUSH, an individual (hereinafter referred to as "EMPLOYEE"), who is qualified to serve as Community Development Director. 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 Department Directors and other subordinate appointive offices and employees; and

WHEREAS, the duties of the Community Development Director are set forth in Exhibit "A" to this AGREEMENT; and

WHEREAS, the CITY requires the services of a Community Development Director; and

WHEREAS, based on EMPLOYEE's executive and administrative qualifications and ability, the City Manager desires to appoint EMPLOYEE to serve as the Community Development Director for the CITY; and

WHEREAS, the Parties agree that EMPLOYEE has the necessary qualifications and experience to perform as the Community Development Director for the CITY; and

WHEREAS, EMPLOYEE desires to perform and assume responsibility for the provision of Community Development Director services to the CITY and the Community Development Department; and

WHEREAS, the Parties wish to establish the terms and conditions of EMPLOYEE's provision of Community Development Director professional services to the CITY 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 Community Development Director 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 Community Development Director 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 Community Development Director 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 Community Development Director 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 Community Development Director 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 Community Development Director.

1.5 Employment Status. Upon appointment to the Community Development Director position, EMPLOYEE shall serve at the will and pleasure of the City Manager and understands that by accepting the Community Development Director 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.

1.6 Exemption from Personnel System. BMC §2.68.020(E) expressly exempts the Community Development Director 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 D192, Step 10 which at the time of executing this agreement is annually One Hundred Thirty Four Thousand Eight Hundred-Seventy-Five Dollars and Forty Cents (\$134,875.40) 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 Step 10 of the range. It is understood that annual Step adjustments will be approved based upon satisfactory performance evaluations. Any other 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 established by City Council resolution.

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, March 04, 2019, In the event EMPLOYEE commences services on a date other than Monday, March 04, 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 Monday, March 1, 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 Community Development Director 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. Nothing herein shall be construed to create a property interest, where one does not exist by rule of law in the position of Community Development Director. Notwithstanding this Section 3.4, upon appointment to the Community Development Director 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 be entitled to severance pay, as the result of the termination of this AGREEMENT, 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 Community Development Director (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 Community Development Director, 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 Community Development Director 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 and attendance of at least two annual professional development conferences. The CITY understands that EMPLOYEE is a current member of the American Planning Association (APA) and the American Institute of Certified Planners (AICP), in good standing. 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 Community Development Director 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.

(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 2.0% at 62 formula with three year final compensation period. In the event of any conflict between this Agreement and the CITY's CalPERS contract or the applicable laws and regulations, the latter shall prevail.

(b) Employee Contribution. EMPLOYEE shall be responsible for the full member contribution for EMPLOYEE's CalPERS retirement plan. There shall be no employer paid member contributions.

6.5 Automobile. EMPLOYEE shall receive 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.

6.11 Eyewear/Eyecare Reimbursement. EMPLOYEE shall be entitled to reimbursement for expenses incurred and paid by EMPLOYEE and/or dependents in obtaining prescription eyewear or medical care from a licensed Optician, Optometrist or Ophthalmologist. Such amount is limited to a total for all expenses of 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.

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.

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:

Adam Rush
[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 City Manager, 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

EMPLOYEE

Adam Rush

ATTACHMENT 3

Application and Resume

Adam Rush

EMPLOYMENT APPLICATION



CITY OF BANNING
99 E. Ramsey Street
Banning, California 92220

Rush, Adam
2018-00005 COMMUNITY DEVELOPMENT DIRECTOR

Received: 11/7/18 10:29 PM

For Official Use Only:

QUAL: _____

DNQ: _____

☐ Experience

☐ Training

☐ Other: _____

PERSONAL INFORMATION

POSITION TITLE: COMMUNITY DEVELOPMENT DIRECTOR		EXAM ID#: 2018-00005
NAME: (Last, First, Middle) Rush, Adam		SOCIAL SECURITY NUMBER: N/A
ADDRESS: (Street, City, State, Zip Code) [REDACTED] Eastvale, California 92880		EMAIL ADDRESS: [REDACTED]
HOME PHONE: [REDACTED]	ALTERNATE PHONE: [REDACTED]	NOTIFICATION PREFERENCE: Email
DRIVER'S LICENSE: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DRIVER'S LICENSE: State: CA Number: [REDACTED]	LEGAL RIGHT TO WORK IN THE UNITED STATES? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

PREFERENCES

MINIMUM COMPENSATION: \$145,000.00 per year	ARE YOU WILLING TO RELOCATE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> Maybe
SHIFTS YOU WILL ACCEPT: Day, Evening, Night, Rotating, Weekends, On Call (as needed)	

EDUCATION

DATES: From: 6/2007 To: 5/2009	SCHOOL NAME: Riverside County Management Excellence Academy	
LOCATION: (City, State) Riverside, California	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Certification
MAJOR: Vocational	UNITS COMPLETED: N/A - Quarter	
DATES: From: 4/2003 To: 5/2005	SCHOOL NAME: Claremont Graduate University	
LOCATION: (City, State) Claremont, California	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Master's
MAJOR: American Politics/Public Policy	UNITS COMPLETED: 36 - Semester	
DATES: From: 8/1999 To: 5/2003	SCHOOL NAME: Claremont McKenna College	
LOCATION: (City, State) Claremont, California	DID YOU GRADUATE? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	DEGREE RECEIVED: Bachelor's
MAJOR: Government/Philosophy	UNITS COMPLETED: 128 - Semester	

WORK EXPERIENCE

DATES: From: 9/2013 To: Present	EMPLOYER: CASC Engineering and Consulting, Inc.	POSITION TITLE: Director of Planning
ADDRESS: (Street, City, State, Zip Code) 1470 East Cooley Drive, Colton, California, 92324		COMPANY URL: www.cascinc.com
PHONE NUMBER: [REDACTED]	SUPERVISOR: Rick J. Sidor, PE - CEO and President	MAY WE CONTACT THIS EMPLOYER? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
HOURS PER WEEK: 55		

DUTIES:

Responsible for dozens of land use and economic development progress throughout southern California. Manage seven employees, including entry-level staff to senior managers, and direct new business development operations. This includes relationships with business owners, developers, commercial and industrial brokers, medical development professionals, and investors. CASC provides expert project management, economic development consulting, environmental support services, professional land planning and design, landscape architecture, ArcGIS and database management for municipal clients. The Director of Planning position includes extensive knowledge and experience with state planning law and federal regulations. Experienced of state and federal environmental law, the UBC and CBC, new solar regulations, and code enforcement regulations and logistics. A deep understanding of accounting, financing, budget, departmental revenues, and long-range planning efforts. Having developed several General Plan Updates, managed General Plan and Specific Plan Amendments, development code updates, preparation and administration of grants, and continual and increasing supervisory responsibilities.

REASON FOR LEAVING:

Not Applicable

DATES:

From: 6/2010 To: 12/2018

EMPLOYER:City of
Eastvale**POSITION TITLE:**

Member of City Council

ADDRESS: (Street, City, State, Zip Code)

12393 Limonite Avenue Suite 910, Eastvale, California, 91752

COMPANY URL:

www.eastvaleca.gov

PHONE NUMBER:

951-361-0900

SUPERVISOR:

N/A

MAY WE CONTACT THIS EMPLOYER?☒ Yes ☐ No**HOURS PER WEEK:**

25

DUTIES:

Provided policy direction to City Manager and staff related to a balance municipal budget, General Plan Updates and implementation of the City's economic development vision. Collaborated with dozens of developers and property interests to bring two Amazon logistic facilities, a new COSTCO, medical office, restaurants, and job created businesses. Presided over the City's Municipal Code and a General Plan Update. A continually balanced municipal budget, growth in staff and economic planning.

REASON FOR LEAVING:

I am currently in my second, 4-year term, as a Member of the Eastvale City Council. I served as Mayor, from 2010 - 2012, and have been on City Council since 2010. My term will end on December 12, 2018.

DATES:

From: 11/2003 To: 9/2013

EMPLOYER:County of
Riverside
Transportation
and Land
Management
Agency (TLMA)**POSITION TITLE:**

Principal Planner

ADDRESS: (Street, City, State, Zip Code)

4080 Leron Street, 12th Floor, Riverside, California, 92501

COMPANY URL:

www.rctlma.org/planning

PHONE NUMBER:

[REDACTED]

SUPERVISOR:Frank Coyle -
Deputy
Director**MAY WE CONTACT THIS EMPLOYER?**☒ Yes ☐ No**HOURS PER WEEK:**

45

DUTIES:

Responsible for managing a multi-faceted division of community development planning and economic development. Supervised 27 employees and contract staff during the height of the California housing market. Oversaw hundreds of commercial and industrial development projects and large value economic investments western Riverside County. Formed key relationships with stakeholders, municipal partners, and elected officials. Collaborated with the County Economic Development Agency, managed the County's Business Track process, developed strategic development plans within blighted communities under the County Redevelopment Authority and utilized the County's CDBG program, and acted as the County's liaison to the solar community in the development of development agreements, tax sharing agreements, and new business opportunities. Drafted hundreds of environmental clearance documents, served as the Project Manager for development projects proposing thousands of residential units and square feet of commercial/industrial. Permitted and conferred on hundreds of Code Enforcement cases, including legal testimony, participated in depositions on the County's behalf, and collaborated daily with the Building Official on permit issuance associated with grading, residential and commercial construction plans, to park plans, second units, solar permits, and accessory structures, just to name a few.

REASON FOR LEAVING:

Recruited into the private sector to rehabilitate the Land Use Planning, Economic Development, and Environmental Planning Division of my current employer. Started with one, half-time employee in 2013 and currently employ a staff of eight FTE positions.

DATES:

From: 1/2008 To: 4/2013

EMPLOYER:Mt. San
Jacinto
Community
College**POSITION TITLE:**

Adjunct Faculty - Political Science Department

ADDRESS: (Street, City, State, Zip Code)

27447 Enterprise Circle West, Temecula, California, 92590

COMPANY URL:

www.msjc.edu

PHONE NUMBER:

[REDACTED]

SUPERVISOR:Dr. Stacey
Searl-Chapin -
Department
Chair - Menifee**MAY WE CONTACT THIS EMPLOYER?**☒ Yes ☐ No**HOURS PER WEEK:**

9

DUTIES:

I demonstrate a high level of experience in Public Policy, Public Administrative Budget Analysis, Econometrics and Government Tariff and Tax policy. I have a Masters of Arts degree from Claremont Graduate University, which included a Masters Research project that created a multiple regression model to study the correlation of electoral triggers, i.e. Economy, Development, Infrastructure, Parks and Recreation, Taxes, and local development projects on the outcome of voter turnout in local elections. I consistently participate in webinars, discussion forums, conferences, and training sessions for the American Political Science Association (APSA), American Planning Association (APA), Southwest Political Science Association, the League of California Cities, California Supervisors Association of Counties, and the National Counties and Cities Health Organization (NACCHO). Academic Experience. As a member of the Adjunct Faculty, I have completed over 550 instructional hours in both intro-level courses (Political Science 101) and advance courses (Political Science 104). My instructional style is modern and complementary to the technological age that students are raised and educated within along with traditional instructional and curriculum management strategies that encompass my education and work experiences. The position of Associate Instructor has allowed for experience in the preparation of curriculum materials that exceeds current standards established both by the State of California and the College. As an Associate Instructor, I have an opportunity to integrate with various backgrounds and cultures within and outside of the classroom. This experience proves vital in a variety of challenges.

REASON FOR LEAVING:

Enrollment decreases within the community college system.

DATES:

From: 5/2011 To: 8/2012

EMPLOYER:

Central Texas
College

POSITION TITLE:

Adjunct Faculty

ADDRESS: (Street, City, State, Zip Code)

Bldg 1331, Camp Pendleton North, CA 92055, Oceanside, California,
92055

COMPANY URL:

<http://www.ctcd.edu/locations/other-us-locations/camp-pendleton/>

PHONE NUMBER:

[REDACTED]

SUPERVISOR:

Irene
Williams -
Department
Secretary

MAY WE CONTACT THIS EMPLOYER?

☒ Yes ☐ No

HOURS PER WEEK:

15

DUTIES:

As part of the CTC Adjunct Faculty, I provided instruction on a vast array of Political Science topics, including but not limited to the Bill of Rights, Constitutional Law, Democratic Systems, Comparative Government, and many more. My classes included remote instruction to over 175 Marines from Camp Pendleton - deployed around the globe - while also pursuing their General Education (GE) requirements. The course complied with all standards set forth through the California Department of Education and the curriculum standards provided therein.

REASON FOR LEAVING:

Temporary Teaching Assignment Only

CERTIFICATES AND LICENSES**TYPE:**

Association of Certified Planners (AICP)

LICENSE NUMBER:

027688

ISSUING AGENCY:

American Planning Association

Skills**OFFICE SKILLS:**

Typing: 70
Data Entry: 0

OTHER SKILLS:

Political Science Instruction - Expert - 6 years and 3 months
Certified Land Use Planner - Expert - 15 years and 2 months
Municipal Finance Software - Intermediate - 15 years and 2 months
Building Codes - Intermediate - 15 years and 2 months

LANGUAGE(S):

English - ☒ Speak ☒ Read ☒ Write
Spanish - ☒ Speak ☐ Read ☐ Write

ADDITIONAL INFORMATION**Volunteer Experience**

- Eastvale Incorporation Committee, Fundraising and Education Subcommittee Chair (2007 - 2010)
- Faces of Grace United Methodist Church, Volunteer (2006 - 2009)
- Vantage Point Church, Volunteer (2009 - Present)
- Vantage Point Church, Planning Committee Member (2016 - 2018)
- Bithiah's House Group Home for Foster Children, Board Member (2016 - 2018)
- Therapy Dogs International (2005 - 2009)
- Part Time College Instructor at Mt. San Jacinto Community College, Political Science Track (650+ hours of instruction, 2008 - 2014)
- Mayor for the City of Eastvale (2010 - 2011)
- Member of City Council (2010 - Present)
- Member of the Eastvale Chamber of Commerce (2010 - Present)
- Active community volunteer - Eastvale, CA (2007 - Present)
- American Political Science Association Member (APSA) (2004-2012)
- Pomona Boys and Girls Club, 1999 - 2003
- Christmas in April, non-profit event for The Habitat for Humanity Chapter of Los Angeles (1999-2002)

REFERENCES		
REFERENCE TYPE: Professional	NAME: Steve Weiss	POSITION: Planning Manager, City of Colton, CA
ADDRESS: (Street, City, State, Zip Code) 650 N. La Cadena Drive, Colton, California 92324		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Andrew Kotyuk	POSITION: Chair, Metrolink, Member of City Council for the City of San Jacinto, CA
ADDRESS: (Street, City, State, Zip Code) 595 S. San Jacinto Avenue, San Jacinto, California 92583		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Personal	NAME: Matthew Straite	POSITION: Director of Environmental Planning, MIG, Inc.
ADDRESS: (Street, City, State, Zip Code) 815 SW 2nd Avenue, Suite 200, Portland, Oregon 97204		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Personal	NAME: Ric Welch	POSITION: Director of Parks and Recreation (Ret.)
ADDRESS: (Street, City, State, Zip Code) 13820 Schleisman Road, Eastvale, California 92880		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Harris Koeing	POSITION: President & CEO of San Antonio Hospital
ADDRESS: (Street, City, State, Zip Code) 999 San Bernardino Road, Upland, California 91786		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]
REFERENCE TYPE: Professional	NAME: Robert Moran	POSITION: Riverside County Economic Development Manager
ADDRESS: (Street, City, State, Zip Code) 3403 10th Street, Suite 500, Riverside, California 92501		
EMAIL ADDRESS: [REDACTED]		PHONE NUMBER: [REDACTED]

Agency-Wide Questions

1. **Do you have any relatives working here?**
No
2. **Where did you first hear about this opportunity?**
Bulletin
3. **Would you like to be addressed by a different name? If yes, please provide the name you would like to be addressed by.**
Adam B. Rush

Job Specific Supplemental Questions

1. **Do you have a Bachelor's degree?**
Yes
 2. **How many years of experience do you have in planning and development?**
More than 15 years
 3. **How many years of experience do you have in management and/or supervision?**
More than 10 years
 4. **A letter of interest and a resume must be submitted with the application in order to be considered. I have submitted the required documents with my application.**
Yes
-

The following terms were accepted by the applicant upon submitting the online application:

By clicking on the 'Accept & Submit' button, I hereby certify that every statement I have made in this application is true and complete to the best of my knowledge. I understand that any false or incomplete answer may be grounds for not employing me or for dismissing me after I begin work. I understand that I will have to produce documentation verifying identity and employment eligibility in the U.S. I understand that I may be required to verify any and all information given on this application. I understand that this completed application is the property of the City of Banning and will not be returned. I understand that the agency may contact prior employers and other references. I understand that I must notify the Human Resources Division of any changes in my name, address, or phone number.

This application was submitted by Adam Rush on 11/7/18 10:29 PM

Signature _____

Date _____

ADAM B. RUSH, AICP

RESUME OF QUALIFICATIONS

[REDACTED]
Eastvale, CA 92880

Phone [REDACTED]
[REDACTED]

1. Richard (Ric) Welch, Former JCSD Parks Director
[REDACTED]
2. Harris F. Koenig, President & CEO of San Antonio Hospital
[REDACTED]
3. Robert Moran, Economic Development Manager
[REDACTED]
4. Andrew Kotyuk, Metrolink Chair
[REDACTED]
5. Steven Weiss, AICP, Planning Manager for the City of Colton
[REDACTED]
6. Matthew Straite, Contract Planner for M.I.G.
[REDACTED]

Dear City of Eastvale Human Resources,

It's my absolute pleasure to recommend Adam B. Rush, AICP for Economic Development Manager with the City of Eastvale.

I had the opportunity to work with Mr. Rush, in his capacity as a member of the Eastvale City Council. Mr. Rush has shown to be a leader in public service and offers his knowledge and expertise within our community of Elected Officials.

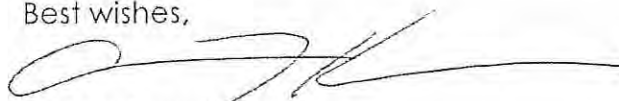
I thoroughly enjoy my time working with Mr. Rush, and came to know him as a truly valuable asset and knowledgeable economic development, bringing with him a long list of contacts and key stakeholders within commercial, industrial, and retail industries. Mr. Rush is proved to become a dependable asset and understands the balance between job-creation and land use development. Beyond that, Mr. Rush is an impressive economic and land use profession, who consistency provides results.

Along with his knowledge and expertise, Mr. Rush has always been an absolute joy to work with. He is a true team player, and always manages to foster positive discussions and bring the best out of other employees.

Without a doubt, I confidently recommend Mr. Rush to join your team at the City of Eastvale. As a dedicated and knowledgeable employee and valued manager, I know that he will be a beneficial addition to your organization.

Please feel free to contact me at [REDACTED] or [REDACTED] should you like to discuss Mr. Rush's qualifications and experience further. I'd be happy to expand on my recommendation.

Best wishes,



Mr. Andrew Kotyuk

Council Member, City of San Jacinto

Dear City of Eastvale Human Resources,

It's my absolute pleasure to recommend Adam B. Rush, AICP for Economic Development Manager with the City of Eastvale.

I had the opportunity to work with Mr. Rush, in his capacity as a Principal Planner for Riverside County Planning Department for several years as colleagues at the County of Riverside.

Mr. Rush and I worked on a wide variety of projects, including large-scale development projects, including residential, commercial, and master planned communities. Mr. Rush brings knowledge of economic development, planning, and zoning expertise, along with a unique ability to lead complex projects to fruition.

Along with his knowledge and expertise, Mr. Rush has always been an absolute joy to work with. He is a true team player, and always manages to foster positive discussions and bring the best out of other employees. He has an easy demeanor that makes others want to follow his lead, and a natural confidence that makes essential to a team.

Without a doubt, I confidently recommend Mr. Rush to join your team at the City of Eastvale. As a dedicated and knowledgeable employee and valued manager, I know that he will be a beneficial addition to your organization.

Please feel free to contact me at [REDACTED] should you like to discuss Mr. Rush's qualifications and experience further. I'd be happy to expand on my recommendation.

Best wishes,

Mr. Matthew Straite



Dear City of Eastvale Human Resources,

It's my absolute pleasure to recommend Adam B. Rush, AICP for Economic Development Manager for the City of Eastvale.

I had the opportunity to work with Mr. Rush, in his capacity as Director of Planning for CASC Engineering and Consulting, Inc.

I thoroughly enjoyed my time working with Mr. Rush on Riverside County's Highway 74 Corridor Community Revitalization Plan, and came to know him as a truly valuable asset and knowledgeable with a wide spectrum of development opportunities. Mr. Rush proved to become a dependable asset to Riverside County's development team and understands the balance between job-creation/business retention. Beyond that, Mr. Rush is an impressive leader who provides results.

Mr. Rush brings knowledge of economic development, planning, and zoning expertise, along with a unique ability to lead complex projects to fruition.

Without a doubt, I confidently recommend Mr. Rush to join your team at the City of Eastvale. As a dedicated and knowledgeable employee and valued manager, I know that he will be the "right fit" for your organization.

Please feel free to contact me at [REDACTED] should you like to discuss Mr. Rush's qualifications and experience further. I'd be happy to expand on my recommendation.

Best wishes,

Mr. Steven Weiss, AICP

Browse...

Upload

Remove x (/myapa/details/delete/?image_delete=true)

Profile Status: Visible only to other members

Membership ID: 196301

Primary Chapter: CAIE

Membership Expires: 09/30/2019

[Edit Profile](/myapa/profile/sharing/)

AICP Membership Expires: 09/30/2019

AICP Certification #: 027688

AICP Start Date: 06/30/2015

AICP Paid Through Date: 09/30/2019

Badges



(<https://www.apacalifornia.org/>)

- ✓ Membership
- ✓ Profile
- ✓ Account Settings
- ✓ My CM
- ✓

Adam B. Rush, AICP-

Eastvale, CA 92880

November 7, 2018

City of Banning
Attn: Human Resources Department
99 East Ramsey Street
Banning, CA
Ph: 951-922-3105

Subject: Cover Letter for City of Banning – Community Development Director

Dear City of Banning Management & Human Resources Department,

Thank you for your consideration and the opportunity to apply for the position of Community Development Director with the City of Banning. My capabilities, talents, experience, and expertise are derived from the past 15-years of land use, environmental and economic development planning within the municipal and private sectors; specifically, within the County of Riverside. This experience also represents my strong relationships with key stakeholders, public officials, and several JPA's throughout Riverside County.

Enclosed within, I am pleased to present my qualifications for the position of Community Development Director with the City of Banning. As an experienced urban planner and environmental professional, I bring a wealth of business relationships and knowledge in managing a large public sector department, combined with over five years of private sector experience in new business development, relationship building, and efficient staffing and budgetary decision-making. In addition, I am an AICP certified planner, having managed hundreds of entitlement projects in my career. This experience includes the preparation of CEQA and NEPA environmental clearance documents prepared on behalf of several Southern California Municipal Agencies and private development projects. My career began in the public sector in 2003, leaving Riverside County in 2013 as a Principal Planner to become a private sector department head. I now serve as the Director of Planning for CASC Engineering and Consulting, Inc, with offices across southern California, including our headquarters in Colton. I rehabilitate the Planning Department from \$250,000 to over \$1.3 million in annual revenue. Both organizations provided an opportunity to prepare long-range economic development plans, collaborate on large projects, generating substantial sales and property tax revenues, and coordinate daily with public works, code enforcement, and building officials across southern California. In addition, I served as the first Mayor for the City of Eastvale, which incorporated as a new City in 2010. Serving as Mayor allowed me to set policy direction for a wide variety of municipal operations, including Code Enforcement, Planning, Public Works, and Budget Administration.

Thank you again for your interest and I look forward to the possibility of working for the City of Banning. If you have any further comments or questions, I may be reached at [REDACTED] or via email at [REDACTED]

Best regards,





Adam Rush, AICP

Eastvale, CA 92880

ADAM B. RUSH, AICP

RESUME OF QUALIFICATIONS


Eastvale, CA 92880 

OBJECTIVE: Seeking an opportunity as the Community Development Director for the City of Banning.

SUMMARY OF QUALIFICATIONS:

- **Community Planning and Economic Development Professional, Public Sector:** Ten years serving as a Professional Land Planner and Economic Development professional with the Riverside County Transportation and Land Management Agency (TLMA) – Planning Department. Seven of these ten years serving as a supervising planner with increasing management, staff, and budgetary responsibilities. Five years as a Principal Planner and Division Manager for the western portion of Riverside County (approximately 2,500 square miles, which included the City of Banning). The position of Principal Planner included the implementation of County-wide General Plans, EIR, Land Use, and Economic Development policies, programs, and procedures. These elements ranged from individual budget development, to long-range planning, to the management of economic development, land use, building, and code enforcement projects. As well as, drafting and implementation of County General Plan Updates, Development Code redrafting, and Business Licensing permits and procedures. This position also required daily interaction with elected officials, city managers, and serving as staff liaison to both the Planning Commission and County Board of Directors.
- **Personnel Administration and Staff Supervision:** Ten years of human resources and personnel supervision having managed up to 27-staff members, in charge of public sector departments and currently serving as a private sector Department Head. Familiar with a municipal financial structure and the public sector employment system. In charge of staff hiring and also staff reductions. Understand human resources responsibilities, such as FMLA, reporting for sick and vacation time, presentation of Departmental Budgets to Administrative Staff and Elected Officials, as well as long-term executive management responsibilities. Currently manage a private sector Department with gross revenues exceeding \$1.3 million annually. Also serve as an elected official, with experience and knowledge of municipal budgets and financing, administrative of major contracts, and public procurements.
- **Finance Administration:** Fifteen years of managing departmental budgets, organizing, recruiting, and managing staff. Oversight and policy direction of both municipal and private sector budgets, including City and County budget administration. Familiar with, and utilized, various permit and accounting software programs typical to a community development department (e.g., E-LMS, LMS-PLUS, Deltek, and Oracle-based software). Private sector budget management of multi-million-dollar projects. Increased the financial health of private sector departmental budgets, starting at \$250,000/yr. to over \$1.3 million/yr. in under five years (2013 – 2018). Managed a Community Development Planning Budget (2007 – 2013).

ADAM B. RUSH, AICP
DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

Responsible for development and approval of the City of Eastvale Annual Budget, which currently exceeds \$21 million for FY 18/19.

- **Community Development and Urban Planning:**

Throughout 15-years in the land use planning industry, several projects have presented themselves as controversial while comparably exceeding the expectations of the customer, being public or private. Specifically, this provides substantial experience in managing difficult projects, such as the revitalization of first-generation shopping centers, large and complex master plans (valued in the hundreds of millions) where political and influential elements are frequent. In addition, there is specialized experience with downtown specific plans and redevelopment plans; collaboration with higher education institutions, such as Mt. San Jacinto College, Norco College, and Central Texas College (satellite campus in Camp Pendleton). Proficient in the Surface Mining and Reclamation Act (SMARA), including the statutes and regulations. Experienced in the land use and environmental management of several Surface Mining Permit (SMP) applications and Reclamation Plans (RCL). Experience with surface mining operations, SMARA, and their associated reclamation plans includes the following: The Banning Legacy mine owned by Robertson's Redi-Mix, Granite Construction mines located in Indio, CA and Robertson's Mines located in Corona. In addition, assistance was provided in the Granite construction proposal for *Liberty Quarry*, located in unincorporated portions of Temecula. As a Principal Planner, management was provided over implementation and interpretation of the County of Riverside's Mineral Resources Zones (MR-Z); including working with Riverside County Counsel on revisions and updates to the same Mineral Resource zones, realigning them with the Department of Conservation – Division of Mine Reclamation's SMARA regulations.

- Previously managed multi-level staff, including associate planners and economic development specialist. Created several infill redevelopment and revitalization projects through collaborative "public-private partnerships". Created new affordable high density (including, but not limited to age-restricted) developments through tax-increment and bond sale financing. Recently completed the environmental and project management for a struggling golf course development with upgraded housing diversity, including a 435-unit market rate apartment complex that reduced the golf course from an 18-hole to 9-hole course while providing much needed housing for a growing population. Highly experienced, and can provided several examples, of collaborating with challenging property owners, in both code enforcement and development cases. Experienced in the management of multi-family housing, including both for rent and for sale apartment/condo communities, affordable housing (working with National CORE on several new communities), and the development of higher density development within older, and more rural communities (facing the issue of "gentrification" and problematic edge conditions on several projects). Initiated development of a 160-acre downtown specific plan (www.lealspecificplan.com) within the City of Eastvale, creating the first downtown development within this newly incorporated City. Intimately familiar with Riverside County, having over 15 years of community development and environmental planning experience directly in this County. Also, having previously been contracted by the City of Banning for Land Use and Environmental Planning Services, knowledge

ADAM B. RUSH, AICP
DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

of the stakeholders, key players, constituents, elected officials, and your customers is extremely high. Also, having been part of a City-Manager, five-member Council, government there is significant knowledge, experience and understanding of local government, which is supported by a Master of Arts in Government, with an emphasis in local government.

- **Code Enforcement, Public Works, and Building Code:**

Integrated with a wide variety of code enforcement projects throughout a 15-year career. Processing, managing, and achieving compliance for cases including illegal land use and other major violations of the zoning code (including unpermitted mining operations and inconsistent reclamation plans). Very familiar with the development, implementation, and interpretation of development codes, zoning codes, and sign ordinances (including outdoor advertising display, aka "billboards"). Experienced with legacy land uses, including aging shopping centers, including resident complaints over excessive rubbish, operating hours, dilapidated construction, and unmaintained or deceased landscaping. Highly experienced with the administration and implementation of building codes, public works, and paving projects, implemented a 5-year Capital Improvement Plan, and experienced in the procurement of transportation funding, including local sales tax measures, development impact fees, local transportation funds (LTF), congestion management air quality funds, and state allocation transportation improvement program (TIP) funding, to name a few funding options. Implemented and familiar with a variety of Business Registration and Licensing programs; including management of multiple projects through the building permit plan check process (e.g., construction drawings, mass, rough, and precise grading permits, model home permits, wall, fencing, and landscaping plans, miscellaneous, electrical, and solar permits). Understand and participated in the procurement and delivery of public infrastructure projects requiring the following approvals: PAED, PS&E, PEAR, and PEIS processes through Caltrans Local Assistance, State, Federal, and Local transportation improvement projects.

- **RDA and Economic Development:** Frequent participant at the International Conference of Shopping Centers (ICSC) and other economic conferences, such as the *UCR Economic Summit*, *SCAG Annual Economic Forecast*, the *Randall Lewis Seminars*, and bi-annual economic summits sponsored by NAOIP and the BIA. Experience also incorporates the managed Economic Development activities and land use planning for several redevelopment area, (e.g., the Chandler Avenue CDBG area in; the City of Eastvale, Lakeland Village, and Riverside County's Winchester, Lakeview/Nuevo, Bermuda Dunes, and Temescal Valley Redevelopment Areas (prior to RDA dissolution). Understand and coordinated RDA Successor Agency responsibilities in the wake of RDA elimination. Currently implementing land use and economic responsibilities under a new Infrastructure Financing District (IFD) for the Salton Sea Authority. Coordinated economic development activities for western Riverside County, in consultation with the Riverside County Economic Development Agency (EDA). Also managed the **County's Fast Track Business Program**, where new businesses, exceeding sales tax revenue and job creation thresholds, can anticipate a 90-day entitlement period and a 60-day review of construction plans (pending environmental approval and applicable state and federal laws). Developed

ADAM B. RUSH, AICP
DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

thousands of square feet of medical office, commercial centers, and job-creating industrial bases, such as two Amazon logistics centers, a COSTCO, Michelin tires, and San Antonio Medical Center, just to name a few.

- **Growth Experience:** Led the City of Eastvale from an unincorporated community, in Riverside County, to the 17th best place to live in the United States, according to Money Magazine (<http://time.com/money/collection/2018-best-places-to-live/5361466/eastvale-california/>). Served on the City of Eastvale's Incorporation Committee as the Subcommittee Chair of Education and Fundraising, served as the City's first Mayor (2010 – 2011), and guided the City to prosperity with a financially stable and balanced budget despite a loss of 33% of our General Fund Budget from 2011 – 2017 (for a total loss of over \$19 million in general fund revenues). Rebuilt a private sector planning division, from one half-time employee to eight Full-Time Employees in less than five years and annual revenues over \$1.3 million.
- **Other Experience:** Broad spectrum land use and environmental planning expertise, including expert knowledge of Habitat Conservation Plans (HCP) and Natural Community Conservation Plans (NCCP). Currently hold an American Institute of Certified Planners (AICP) certification in 2016 and hold expertise in the preparation of CEQA and NEPA Environmental Clearance Documents, as well as the preparation of a wide spectrum of Technical Reports and Studies, such as Air Quality, Greenhouse Gas Analysis, Noise, Traffic, Geotechnical Phase I ESA, Photometric and Glint/Glare studies. Familiar with implementation of Comprehensive Airport Land Use Plans (CLUP) and overall knowledge of the CEQA and NEPA implementation and public notification processes and technical environmental studies. Intimate knowledge of the City of Banning and the greater County of Riverside, including the key players and stakeholders, from City Managers, to the Board of Supervisors (including all incoming candidates), to Municipal Officials, to a diverse group of developers, from publicly traded commercial and industrial builders (e.g., Goodman, First Industrial, Summit Development) to small business owners, as well as several merchant builders such as Brookfield, Lennar, DR Horton, Pulte, Stratham, Meritage, William Lyon, to name a few.

PROFESSIONAL EXPERIENCE:

Director of Planning

CASC Engineering and Consulting, Inc. **September 13, 2003 – Present**

Hired to rehabilitate the CASC Planning Department from its decline during the Great Recession of 2008. CASC is a California certified Small Business Enterprise (SBE) with offices in Glendora, Irvine, Colton, and Palm Desert. In 2013, the division had only one, half-time, Senior Project Manager. The Department now employs eight full-time employees and deep bench of on-call staff. In 2013, the Department reported an annual revenue of less than \$250,000 and recently reported annual review of over \$800,000 for 2017, more than tripling departmental revenues in less than four years. The firm currently provides on-call contract planning and environmental support services, as well as in-house staff augmentation services, to over a dozen municipal partners.

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Duties: Responsible for dozens of land use and economic development projects throughout southern California. Manage seven employees, including entry-level staff to senior project managers and direct new business development operations. This includes relationships with business owners, developers, commercial and industrial brokers, medical development professionals, and investors. CASC provides expert project management, economic development consulting, environmental support services, professional land planning and design, landscape architecture, ArcGIS and database management for municipal clients. The Director of Planning position includes extensive knowledge and experience with state planning law and federal regulations. Also, experienced in state and federal environmental law, the UBC and CBC, new solar regulations, code enforcement regulations and manage staffing resources. A deep understanding of accounting, financing, budget, departmental revenues, and long-range planning efforts. Having developed several General Plan Updates, managed General Plan and Specific Plan Amendments, development code updates, preparation and administration of grants, and continual and increasing supervisory responsibilities.

Professional Land Use Planning/Division Manager (Principal Planner)

County of Riverside TLMA – Planning, CA. **November 13, 2003 – September 11, 2013**

Hired in 2003, as an entry-level Planner I and promoted to a Principal Planner in the shortest term in County history. Served as a Principal Planner/Division Manager from 2007 – 2013 and managed all the land use and economic development projects for the western County. Oversight of industrial, residential, and commercial retail development projects. Managed RDA zones of benefit and developed long-range strategic plans. Provided expert environmental planning support services in the form of CEQA and NEPA clearance documents. As a Principal Planner, the duties included administration of the County's Community Development Block Grant Program; review and approval of all Staff Reports drafted for Public Hearings (i.e., Planning Director, Planning Commission, and Board of Supervisors Public Hearings). Review and approve environmental public notification documents. Interviewed and selected professional and administrative staff, which included performance evaluations and disciplinary actions. Conferred with project applicants and developers, including representatives of residential, commercial, and industrial development, including their property owners and technical consultants. Worked in combination with the Department of Economic Development to promote revenue generating development, execute and bring new development interest to the County, through implementation of the County's overall vision.

Duties: Responsible for managing a multi-faceted division of community development planning and economic development. Supervised 27 employees and contract staff during the height of the California housing market. Oversaw hundreds of commercial and industrial development projects and large value economic investments western Riverside County. Formed key relationships with stakeholders, municipal partners, and elected officials. Collaborated with the County Economic Development Agency, managed the County's Business Fast Track process, developed strategic development plans within blighted communities under the County Redevelopment Authority and utilizing the County's CDBG program and served as the County's liaison to the solar community in the negotiation of development agreements, tax sharing agreements, and new business opportunities. Drafted

ADAM B. RUSH, AICP
DIRECTOR OF COMMUNITY AND ECONOMIC DEVELOPMENT

hundreds of environmental clearance documents, served as the Project Manager for development projects proposing thousands of residential units and square feet of commercial/industrial. Permitted and conferred on hundreds of Code Enforcement cases, including legal testimony, participated in depositions on the County's behalf, and collaborated daily with the Building Official on permit issuance associated with grading, residential and commercial construction plans, to park plans, second units, solar permits, and accessory structures, to name a few.

OTHER WORK EXPERIENCE:

Mayor and Council Member of the City of Eastvale, Eastvale, CA (2010 – 2018)

The City of Eastvale was incorporated on October 1, 2010 as an independent local government agency, governed by a five-member elected City Council. The City of Eastvale serves 64,613 residents and encompasses 13.1 square-miles in western Riverside County. The City's total budget is adopted at \$21,200,250 with General Fund appropriations at \$19,532,364. The 18/19 Fiscal Year (F.Y.) surplus budget was accomplished through adding to recurring revenue with additional sales tax and vehicle license fee (VLF) revenue, while taking an incremental approach to adding staffing and public services. Elected in June of 2010, and serving as Mayor until end of 2011 (elected to City Council through December of 2018), the City was presented with many financial challenges early on in our incorporation. The loss of our VLF funds, in 2011, created an immediate drop in General Fund revenues of approximately 33%, which resulted in a loss of over \$19 million in slightly over six years. Guidance and strong fiscal management were necessary to keep the City afloat. The City added nearly 20,000 residents since incorporation began, along with a diverse economic portfolio, which was recognized by Money Magazine as the 17th best City in the country.

Duties: Provided policy direction to City Manager and staff related to a balanced municipal budget, General Plan Updates and implementation of the City's economic development vision. Collaborated with dozens of developers and property interests to bring two Amazon logistic facilities, a new COSTCO, medical office, restaurants, and job created businesses. Promote and collaborate with local chambers of commerce to creating *business-to-business* sales tax revenue. Presided over the City's Municipal Code and a General Plan Update. A continually balanced municipal budget, growth in staff and economic planning.

Grant Writer, California Consulting, Inc., El Segundo, CA (2015 – 2017)

California Consulting provides municipal grant writing and management services to over 300 municipal and education clients. Grants to provide supplemental funding opportunities for economic development opportunities. California Consulting is the State's largest and most effective grant writing company. California Consulting has secured over \$152 million in State and Federal competitive grants for our clients including more than 850 awarded grant applications.

Duties: Served as a Senior Project Manager presiding over a dozen clients as a Senior Grant Writer, Grant Administrator, and Project Specialist. Specifically focused on Federal Economic Development Grants, Community Development Block Grants (CDBG), Stormwater, Clean Water, and Water Recycling Grants for several Municipalities and Special Districts; such as Twentynine Palms, Coachella, Sativa Water District, Palmdale, LADWP, Cal State Los Angeles, City of Glendora, to name a few and procuring over a half million dollars in grant funding.

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PROFESSIONAL INVOLVEMENT:

- American Planning Association (APA)
- American Institute of Certified Planners (AICP)
- Eastvale Chamber of Commerce
- Association of Environmental Professionals (AEP)
- Building Industry Association of Southern California (BIASC)
- National Planning Conference (2019) Reviewer/Critic
- AEP CEQA Juror (2015)
- American Public Transit Association (APTA) – Environmental Review Subcommittee
- Riverside County Transportation Commission (RCTC)
- Western Riverside Council of Governments (WRCOG)
- Southern California Railroad Association (SCRRA), a.k.a. Metrolink
- Riverside Conservation Agency (RCA) – *Former Member*
- Southern California Association of Governments (SCAG) – *Former Member*

EDUCATION:

- **Master's Degree** in American Politics and Public Policy, Claremont Graduate University, Claremont, CA. 2005.
- **Bachelor of Arts Degree** in Government, Claremont McKenna College (CMC), Claremont, CA. 2003.
- **Bachelor of Arts Degree** in Political Philosophy, Claremont McKenna College (CMC), Claremont, CA. 2003.
- **Riverside County Management Excellence Academy**, Riverside, CA. 2008.
- **American Institute of Certified Planners** (AICP), Chicago, CA. 2016 – Present

VOLUNTEER EXPERIENCE:

- Eastvale Incorporation Committee, Fundraising and Education Subcommittee Chair (2007 – 2010)
- Faces of Grace United Methodist Church, Volunteer (2006 – 2009)
- Vantage Point Church, Volunteer (2009 – Present)
- Vantage Point Church, Planning Committee Member (2016 – 2018)
- Bithiah's House Group Home for Foster Children, Board Member (2016 – 2018)
- Therapy Dogs International (2005 – 2009)
- Part Time College Instructor at Mt. San Jacinto Community College, Political Science Track (650+ hours of instruction, 2008 – 2014)
- Mayor for the City of Eastvale (2010 – 2011)
- Member of City Council (2010 – Present)
- Member of the Eastvale Chamber of Commerce (2010 – Present)
- Active community volunteer – Eastvale, CA (2007 – Present)
- American Political Science Association Member (APSA) (2004-2012)
- Pomona Boys and Girls Club, 1999 – 2003
- Christmas in April, non-profit event for The Habitat for Humanity Chapter of Los Angeles (1999-2002)

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Technology Skills:

- Land Management Permitting Systems (e.g., E-LMS, LMS, Plus)
- Financial Management Software (Deltek)
- Financial Accounting Software (Oracle-based *Oasis*)
- ArcMap GIS, Metadata, and Geodatabases
- Microsoft Project Management/Microsoft Office Suite
- Microsoft Publisher
- Adobe Illustrator
- Adobe InDesign
- Regional Water Quality Control Board SMARTS system
- Municipal Building, Plumbing, and Electronic Codes



**CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT**

TO: BANNING UTILITY AUTHORITY

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works/City Engineer
Luis Cardenas, Senior Civil Engineer

MEETING DATE: February 12, 2019

SUBJECT: Adopt Resolution 2019-02 UA, Approving an Amendment to the Professional Services Contract for the Design of Well C-8 with Hazen and Sawyer of Palm Desert, CA in the Amount of \$42,087

RECOMMENDATION:

The Banning Utility Authority adopt Resolution 2019-02 UA:

1. Approving an Amendment to the Agreement with Hazen and Sawyer of Palm Desert, CA for Design and Inspection Services for the City of Banning Well C-8, Project No. 2018-02W in the amount of \$42,087.
2. Authorizing the City Manager or his designee to execute the Amendment to the Agreement with Hazen and Sawyer and to make necessary budget adjustments, appropriations and transfers.

BACKGROUND:

The need for a new municipal production well in the near future was identified in the Integrated Master Plan, and designated as Well C-8. The City advertised a Request for Proposals (RFP) for design and inspection services, and subsequently awarded a contract to the highest-rated firm, Hazen and Sawyer, on September 10, 2018.

Hazen and Sawyer's initial task was to review available data and assess the feasibility of locating a new municipal well in the Cabazon Storage Unit, with a primary focus on available water resources. As a result of a detailed review of available information, it

was determined that the Cabazon Storage Unit would not be a viable location for additional wells, considering that Well NP-1, also in the Cabazon Storage Unit, is planned to be equipped in 2019 and reclaimed water from the Wastewater Treatment Plant, which is currently percolated into the Cabazon Storage Unit, will eventually be diverted for recharge of the Banning Storage Unit, rather than being percolated into the Cabazon Storage Unit. A detailed summary of the findings is included as Attachment 2.

The need for an additional production well still remains, therefore, staff looked at some potential well sites overlying the Banning Storage Unit and the Beaumont Basin. Hazen and Sawyer met with City staff to discuss the additional sites to be evaluated and submitted a proposal to complete a Well Siting Study. The proposal is included as Attachment 3.

One option that staff is interested in having evaluated is the re-equipping of Well M-9, near Wilson Street and Highland Home Road. Although it would likely have a lower capacity than a brand new well, this option would save time and money by eliminating the site acquisition, drilling, and environmental compliance tasks. Staff is currently preparing bid specifications for the rehabilitation and testing of Well M-9, to be brought to the Utility Authority at a later meeting for consideration.

JUSTIFICATION:

With expected population growth, and the associated increase in water demands, the City needs to supplement its existing production facilities to offer reliable service to all customers. Consultant services are necessary due to the highly technical and specialized nature of well siting and design.

The initial task of the existing contract was completed and found the Cabazon Storage Unit to be in decline and unable to support an additional municipal well. Additional funds are needed to amend the contract for the completion of a Well Siting Study that will ensure Well C-8 is located in a viable location before proceeding with the full design.

FISCAL IMPACT:

The original agreement with Hazen and Sawyer was for an amount “not-to-exceed” \$696,296. To date the City has spent a total of \$12,119, which represents the costs to complete the initial feasibility analysis of siting Well C-8 over the Cabazon Storage Unit.

The contract amendment will be funded through the Water Capital Facilities Fund, account 661-6300-471.90-78 Planning/Design-Capital. The contract amendment will be for \$42,087 and will increase the total contract to a “not-to-exceed” amount of \$738,383.


ALTERNATIVE:

Do not approve Resolution 2019-02 UA. Without the development of new production wells it may be challenging to meet future peak demands with the expected population growth.

ATTACHMENTS:

1. Resolution 2019-02 UA
2. Cabazon Storage Unit – Technical Memorandum
3. Hazen and Sawyer Amendment #1 Proposal

Approved by:

A handwritten signature in black ink, appearing to be 'DS', is written over a horizontal line.

Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-02 UA

RESOLUTION 2019-02 UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AMENDMENT OF PROFESSIONAL SERVICES CONTRACT FOR DESIGN SERVICES OF BANNING WELL C-8 TO HAZEN AND SAWYER OF PALM DESERT, CALIFORNIA IN THE AMOUNT OF \$42,087

WHEREAS, the need for a new municipal production well in the near future was identified in the City of Banning ("City") Integrated Master Plan (identified as Well C-8) and therefore the City advertised a Request for Proposals (RFP) for design and inspection services for construction of new production well and subsequently awarded a contract to the highest-rated firm, Hazen and Sawyer, on September 10, 2018; and

WHEREAS, the Cabazon Storage Unit was determined by Hazen and Sawyer's licensed hydrogeologist to have inadequate water resources to support an additional municipal well in the near future and considered this option as a poor-long term capital investment; and

WHEREAS, to supplement existing production facilities in order to meet future demands, the City wishes to construct an additional municipal well; and

WHEREAS, the City has an existing contract with Hazen and Sawyer; and

WHEREAS, a proposal was submitted by Hazen and Sawyer to perform additional well siting work and upon the evaluation of the scope and price by City staff it was found to be reasonable; and

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

SECTION 1. That the Amendment to the Contract for the design and inspection services of Banning Well C-8 is hereby awarded to Hazen and Sawyer of Palm Desert, California, in the amount of \$42,087 for a contract "not-to-exceed" \$738,383.

SECTION 2. That the City Manager or his designee is authorized to make all necessary budget adjustments, appropriations and transfers.

SECTION 4. That the City Manager is authorized to execute the Amendment to the Contract with Hazen Sawyer, of Palm Desert, California.

PASSED, APPROVED AND ADOPTED this 12th day of February, 2019.

Arthur L. Welch, Chairman
Banning Utility Authority

ATTEST:

Daryl Betancur, Deputy Secretary
Banning Utility Authority

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

Kevin G. Ennis, Authority Counsel
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl Betancur, Deputy Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution 2019-02 UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 12th day of February, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur,
Deputy Secretary
Banning Utility Authority
City of Banning, California

ATTACHMENT 2

Cabazon Storage Unit – Technical Memorandum



Hazen and Sawyer
36923 Cook Street
Palm Desert, CA 92211

January 11, 2019

Mr. Luis Cardenas, PE
Senior Civil Engineer
Water and Wastewater
City of Banning
99 E. Ramsey Street
Banning, CA 92220

**Re: Summary Technical Memorandum
Feasibility of Siting a New Water Supply Well within the Cabazon Storage Unit**

Dear Mr. Cardenas:

The City of Banning is seeking to install a new municipal water supply well (Well C-8) on a property adjacent to Roosevelt Williams Park (also known as Pass Valley Park) in the northeast portion of the City of Banning, California (see Figure 1). It was brought to Hazen's attention at the October 3, 2018 project kick-off meeting that the hydrologic storage unit that the proposed well site is located within is showing signs of overdraft conditions and that a new water supply well may not be feasible in that area. As such, it was requested that Hazen review readily available hydrologic data and reports for the storage unit and make recommendations regarding the feasibility of installing a new water well within the storage unit. This technical memorandum summarizes results and recommendations of the hydrologic assessment.

Study Area Description

General Description

The City of Banning encompasses an area of approximately 23 square miles and is located within the San Gorgonio Pass area of northwestern Riverside County, approximately 80 miles east of Los Angeles and 20 miles west of Palm Springs. The City is situated at an elevation of approximately 2,300 feet above mean sea level (amsl) between the San Bernardino Mountains to the north and the San Jacinto Mountains to the south. The area is characterized by semi-arid badlands, alluvial plains, benches, and canyon watersheds (USGS, 2006¹). Surface water drains from the mountain areas through a series of canyons and drainages located along the mountain fronts (primarily from the San Bernardino Mountains) to the lowland areas of San Gorgonio Pass.

¹ United States Geological Survey, 2006. Geology, Ground-Water Hydrology, Geochemistry, and Ground-Water Simulation of the Beaumont and Banning Storage Units, San Gorgonio Pass Area, Riverside County, California. Scientific Investigations Report 2006-5026. 2006.

Precipitation

Long-term annual precipitation is based on data collected from Cabazon Station No. 25 located approximately 4.5 miles east of the proposed well site, in the community of Cabazon and situated at the approximate center of the Cabazon storage unit (see Figure 1). Annual precipitation over the period of record from 1957 to 2017 ranges from a minimum of 1.8 inches in 2007 to a maximum of 28.6 inches in 1993 (see Figure 2). Mean annual precipitation over the period of record is 12.3 inches (see Figure 2).

The severity and extent of periods of above- and below-normal precipitation can be observed from the plot of the cumulative summation of departures of annual precipitation from mean annual precipitation as shown on Figure 2. These data indicate several cycles of precipitation over the period of record from 1961 to 2017 (see Figure 2) as summarized in the table below. Of note is the extended period of below normal precipitation from 1998 to present as this is indicative of the prolonged drought conditions experienced in this area and is contributive to groundwater level decline.

**Precipitation Cycles within the Cabazon Storage Unit
Cabazon Station No. 25**

Time Period	Precipitation Cycle
1961 – 1983	Prolonged period of above normal precipitation.
1984 – 1990	Below normal precipitation.
1991 – 1998	Above normal precipitation.
1999 – 2017	Prolonged period of below normal precipitation.

General Hydrogeologic Setting

Roosevelt Williams Park is located within the San Gorgonio Pass subbasin of the Coachella Groundwater Basin, within San Gorgonio Pass (see Figure 1). The San Gorgonio Pass subbasin is bounded by the San Bernardino Mountains to the north, the Indio subbasin to the east, the San Jacinto Mountains to the south, and a surface drainage divide between the Colorado River and South Coast Hydrologic Study Areas to the west (DWR, 2004²). The subbasin is further divided into eight hydrologic storage units based upon groundwater elevation patterns and mapped and/or inferred faults, including the Beaumont, Banning, Cabazon, Calimesa, San Timoteo, South Beaumont, Banning Bench, and Singleton storage units (USGS, 2006). The proposed well site is located within the Cabazon storage unit (see Figure 1).

Alluvial sediments in this area include younger (Holocene age) and older (Pleistocene age) alluvium overlying the Upper and Lower San Timoteo Formation (Pliocene and Pleistocene age). The younger alluvium occurs primarily within tributaries to the subbasin, above the groundwater table, and is a source of recharge to the subbasin through infiltration of runoff. The older alluvium consists of varying amounts of poorly-sorted gravel, sand, silt, and clay, and yields moderate amounts of water to wells (DWR, 2004).

² California Department of Water Resources, 2004. California's Groundwater Bulletin 118 – Coachella Valley Groundwater Basin – San Gorgonio Pass Subbasin. February 27, 2004.

The San Timoteo Formation consists of partly consolidated and poorly-sorted sandstone interbedded within cobbles, gravel, silt, and clay (DWR, 2004). These formations dip beneath the older alluvium, may extend in depth from approximately 300 to more than 2,000 feet below ground surface (bgs), and have been known to yield appreciable quantities of groundwater to wells. The older alluvium and upper San Timoteo Formation are referred to as the upper aquifer within the area, while the lower San Timoteo Formation is referred to as the lower aquifer (USGS, 2006).

The basement complex is composed of igneous and metamorphic rocks of pre-Tertiary age similar in composition to those mountain ranges at the margins of the subbasin (i.e., the San Bernardino and San Jacinto Mountain ranges; USGS, 2006).

The San Gorgonio subbasin is located within the San Andreas Fault system, and as such, is structurally complex and heavily faulted. The dominant geologic structure within the area is the Banning Fault, a right-lateral strike-slip fault of late-Miocene age (USGS, 2006). The San Gorgonio Pass Fault Zone consists of a series of Quaternary-age reverse, thrust, and tear faults extending from the Calimesa to Whitewater areas (USGS, 2006). This fault zone exhibits a distinctive zig-zag geometry formed by L-shaped fault patterns, including the Banning, Central Banning, and Eastern Banning Barrier Faults (USGS, 2006). These faults have no surface expression and have been delineated based on differences in groundwater elevations and effects observed during aquifer pumping tests. They are known to function as groundwater barriers and thus form several of the area's storage unit boundaries (USGS, 2006).

Groundwater Occurrence

Groundwater within the Cabazon storage unit generally flows from west to east toward the Indio subbasin and typically occurs at depths greater than 500 feet bgs. Historical groundwater elevations for selected wells in the vicinity of the proposed well site are shown on Figure 3. Those wells include USGS monitoring wells 03S/01E-03J001 and 03S/01E-11F003, City of Banning Well NP-1 (i.e., 03S/01E-14A001), and City of Banning Well C-6 (i.e., 03S/01E-10N001), the locations of which are shown on Figure 1. Water levels measured in these wells over the period of record from 1996 to 2018 suggest significant groundwater level decline on the order of approximately 4 to 6 feet per year (see Figure 3).

It was requested at the October 3, 2018 project kick-off meeting that Hazen consult with the USGS regarding the possible presence of an east-west trending groundwater barrier (as suggested by Figure 5 of USGS 2006) in the vicinity of the well site that could affect groundwater flow and water quality. It should be noted that there is not yet any published information supporting the presence of this suspected groundwater barrier. However, groundwater elevations in monitoring well 03J001 located approximately 0.5 miles northeast of the proposed well site are almost identical to those reported at monitoring well 11F003 located approximately 0.85 miles southeast of the proposed well site, and City of Banning Well NP-1 located approximately 1.5 miles to the southeast of the proposed well site, and have remained so for the entire period of record (see Figure 3). This suggests that no east-west trending groundwater barrier is present in this portion of the storage unit as tentatively suggested by USGS, 2006. This conclusion is based on limited available information and would require further investigation to confirm.

Groundwater Production

Figure 4 shows estimated annual groundwater production within the Cabazon storage unit based on data obtained from the City of Banning 2010 Urban Water Management Plan (Geoscience, 2010³) and San Gorgonio Pass Water Agency annual reports (San Gorgonio Pass Water Agency, 2018⁴). Based on the period of record from 1996 to 2016, annual production from the Cabazon storage unit increased dramatically from 129 acre-feet in 1996 and peaked at 1,749 acre-ft in 2002 (see Figure 4). Since that time, annual production within the storage unit has generally been declining. It should be noted that actual production may differ somewhat from that reported by San Gorgonio Pass Water Agency as some producers within the storage unit do not report actual production.

Conclusions and Recommendations

Based on the findings of this feasibility assessment, the following conclusions have been reached:

- The Cabazon storage unit is in a period of below normal precipitation that began in 1998 and continues through the present.
- Annual groundwater production from the Cabazon storage unit increased dramatically from 129 acre-feet in 1996, peaked at 1,749 acre-ft in 2002, and has since been in decline.
- Groundwater elevations within the western portion of the Cabazon storage unit have declined by as much as 4 to 6 feet per year since the late 1990s, and continue to decline, coincident with the onset of the current period of extended drought beginning in 1998.
- Based solely on groundwater elevation data for the four (4) wells mentioned herein, there is no evidence that a significant east-west trending groundwater barrier exists in the vicinity of the proposed well site.

Based upon the results of this feasibility assessment, it is recommended not to proceed with municipal well construction within the Cabazon storage unit as it is likely that groundwater extractions from this storage unit are, or soon will be, exceeding the amount of recharge. Additional groundwater extraction from a new well, in addition to renewed pumping from existing well NP-1, along with continued drought conditions will likely accelerate groundwater level decline within this portion of the storage unit. Without additional groundwater recharge to Cabazon basin, a new well in this area would be increasingly costly to operate and could be considered a poor long-term capital investment.

As discussed at the December 10, 2018 project progress meeting with City personnel, a study to identify and assess alternate sites for Well C-8 within the Beaumont and Banning storage units has been proposed and is currently under consideration.

³ GEOSCIENCE Support Services, Inc., 2011. City of Banning Urban Water Management Plan. Prepared for: City of Banning. July 22, 2011.

⁴ San Gorgonio Pass Water Agency, 2018. Annual Report on Water Conditions – Reporting Period 2016. Prepared by: San Gorgonio Pass Water Agency. January 2018.

Hazen

Mr. Luis Cardenas, PE
January 11, 2014

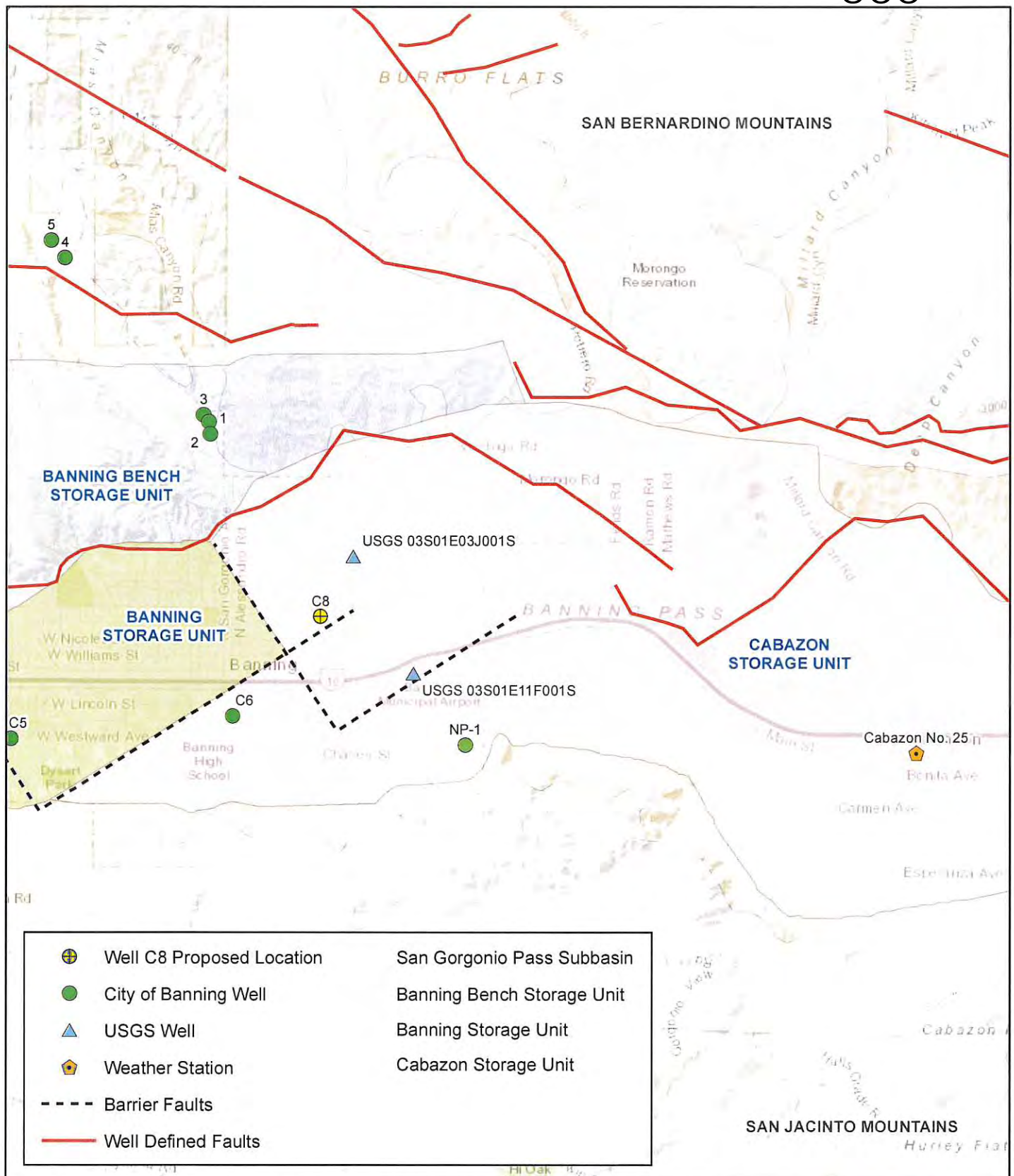
Sincerely,



Russell John Kyle, PG, CHG
Senior Associate

Enclosure

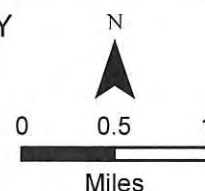




GENERAL PROJECT LOCATION

PRELIMINARY

FEASIBILITY OF SITING A NEW WATER SUPPLY
WELL WITHIN THE CABAZON STORAGE UNIT
CITY OF BANNING
BANNING, CALIFORNIA
JANUARY 2019

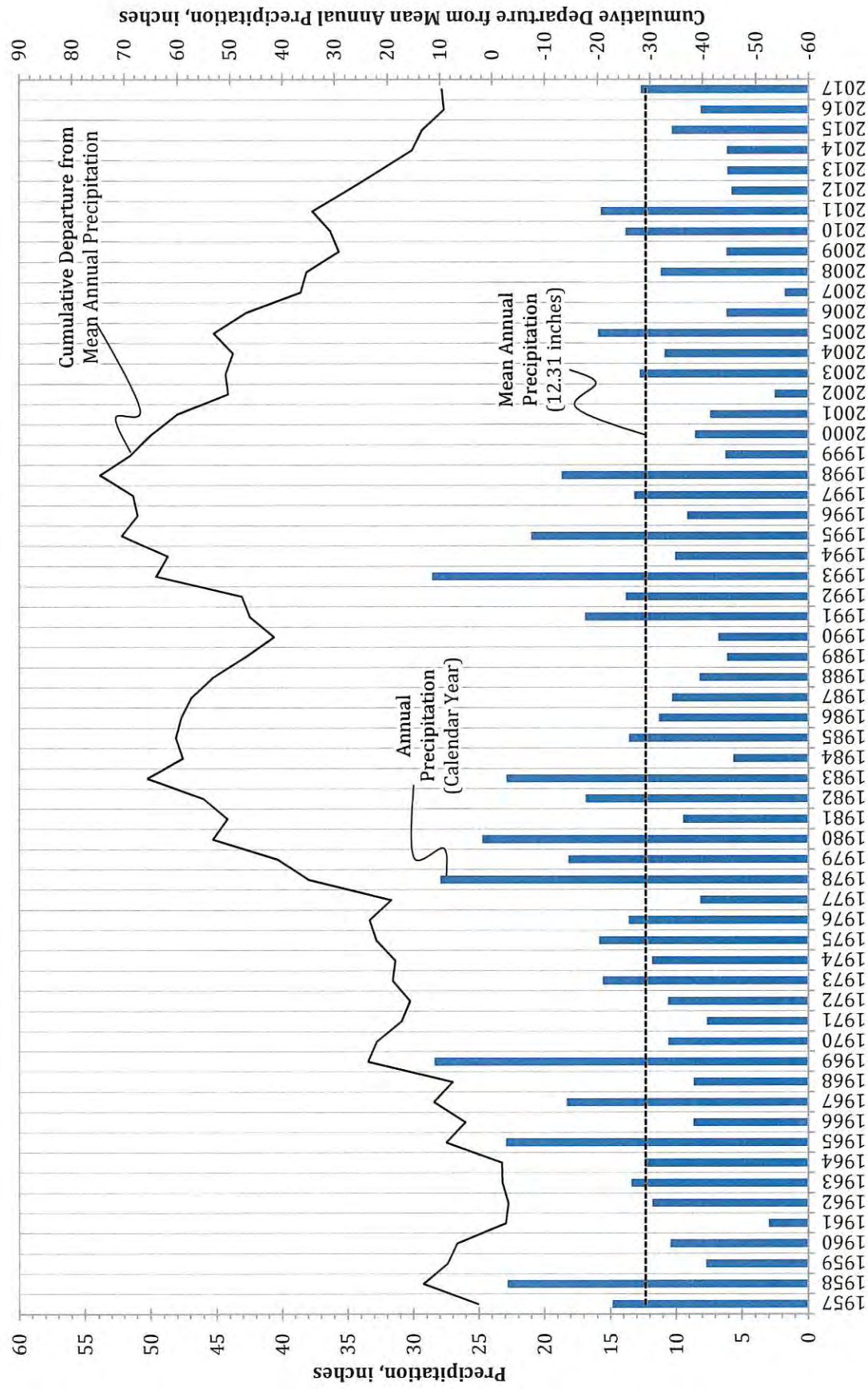


Hazen

PROJECT NO.
20062-001

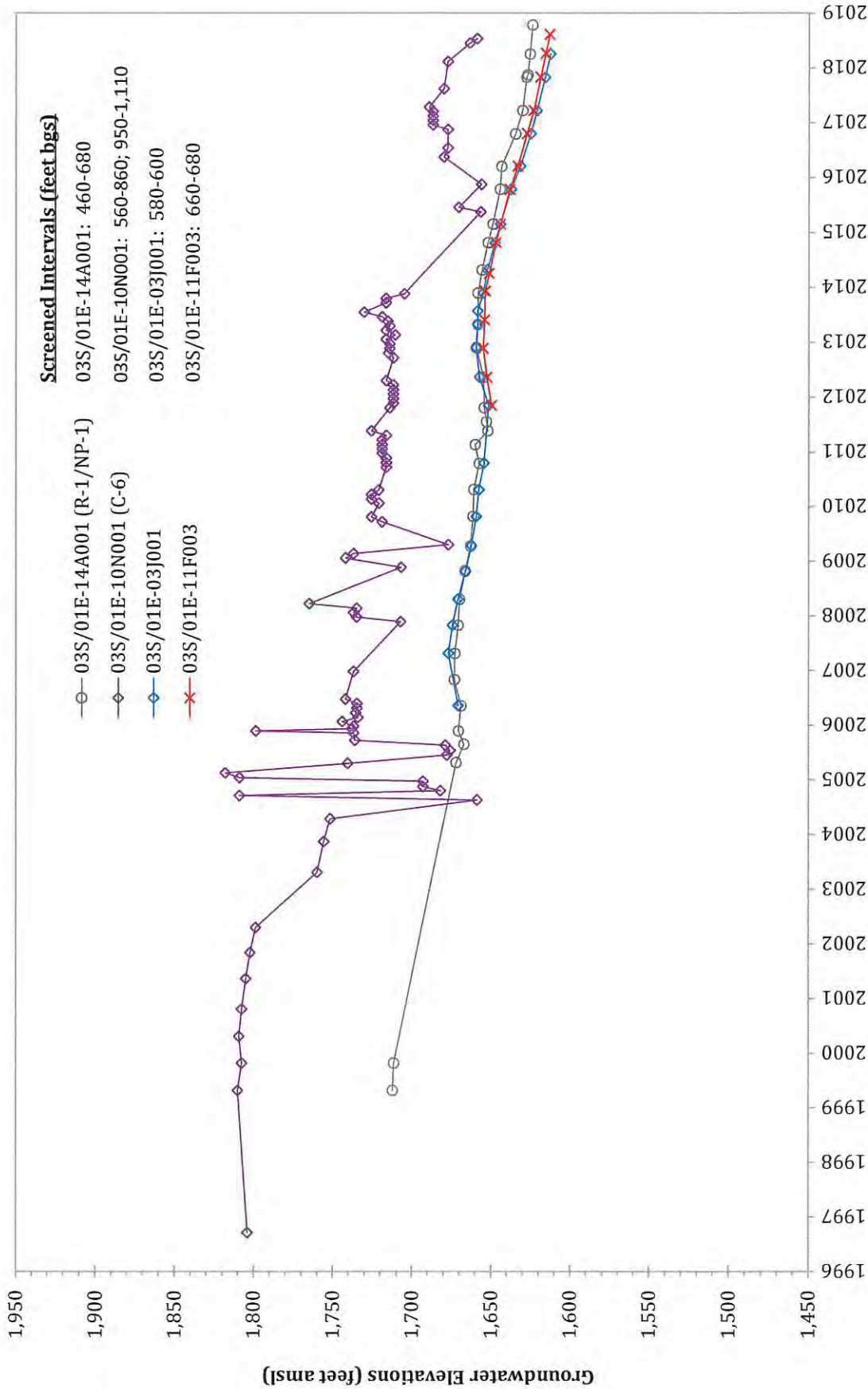
FIGURE
1

Annual Precipitation and Cumulative Departure from Mean Annual Precipitation
Cabazon Station No. 25 (1957-2017)



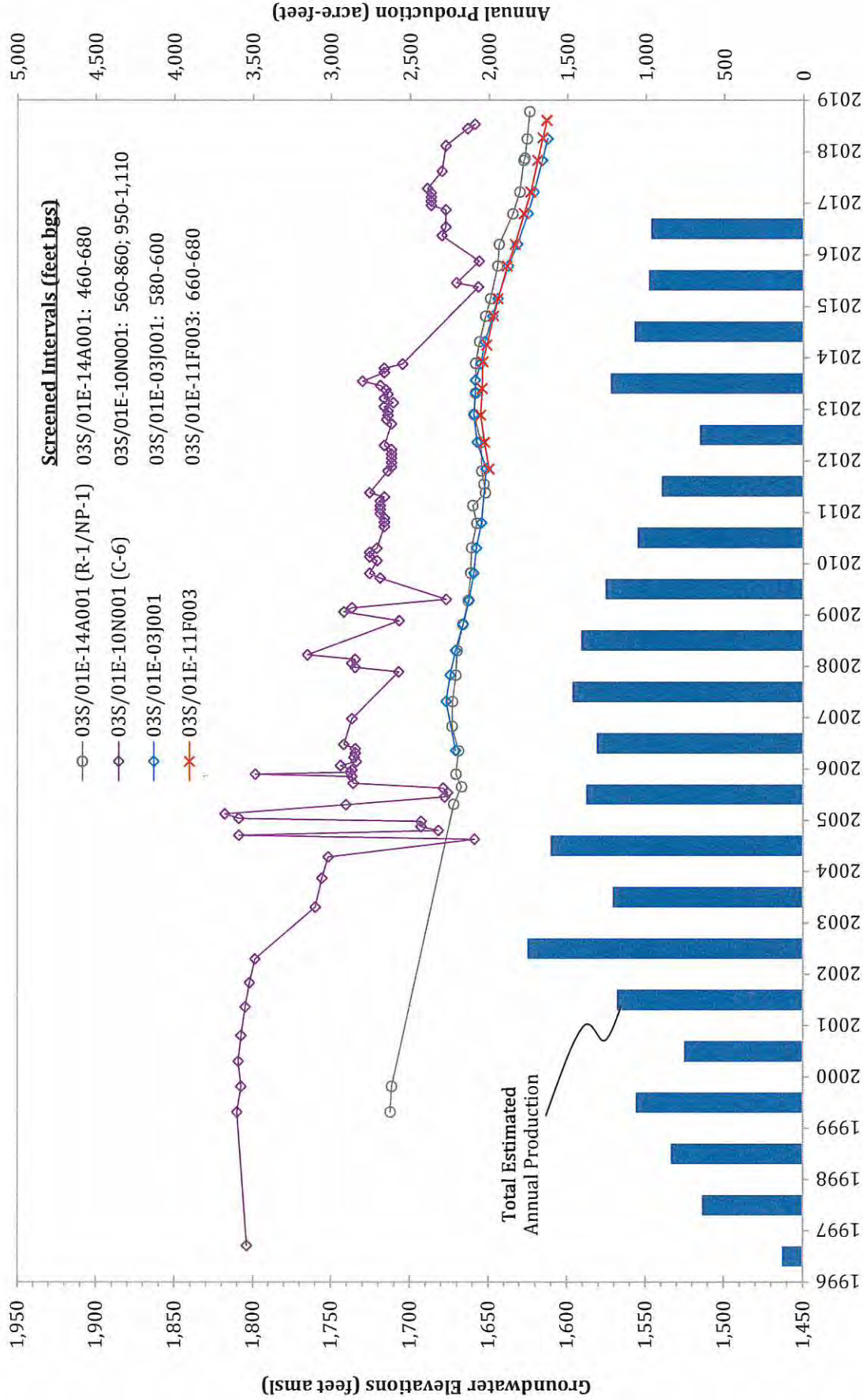
Source: Riverside County Flood Control and Water Conservation District (2018).

Historical Groundwater Elevations Cabazon Storage Unit



Source: California Department of Water Resources (2018) and City of Banning (2018).

Historical Groundwater Production and Elevations Cabazon Storage Unit



Source: California Department of Water Resources (2018), City of Banning (2018), and San Geronio Pass Water Agency (2018).

ATTACHMENT 3

Hazen and Sawyer Amendment #1 Proposal



Hazen and Sawyer
36-923 Cook Street, Suite 101
Palm Desert, CA 92111 • 442.227.4980

January 3, 2019

Mr. Luis Cardenas
Senior Civil Engineer
City of Banning
99 E. Ramsey Street
Banning, CA 92220

**Re: Geohydrologic and Engineering Services for the Well C-8, Project no. 2018-02W
Amendment No. 1 – Well Siting Study**

Dear Mr. Cardenas:

Hazen and Sawyer is pleased to provide the City of Banning with the enclosed proposal for Amendment No. 1 – Well Siting Study to the Geohydrologic and Engineering Services for Well C-8, Project No. 2018-02W. We have developed the attached scope of work and estimated fee.

1. Task Order No. 1 Scope of Work

Hazen's approach to the project will be to evaluate the preselected properties identified in our meeting on December 10, 2018. Our scope of work is shown in the Appendix A.

2. Proposed Fee Estimate

Hazen has prepared a fee estimate, shown in Appendix B.

Please do not hesitate to call us at (442) 227-4988 or by email at SRogers@hazenandsawyer.com should you have additional questions or need clarification with our proposal.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Scott Rogers".

Scott Rogers, PE
Project Manager

A handwritten signature in blue ink, appearing to read "Marc Solomon".

Marc Solomon, PE
Vice President

Appendix A
City of Banning
Geohydrologic and Engineering Design Services for the Well C-8,
Project No. 2018-02W
Amendment No. 1 – Well Siting Study
Scope of Services

The initial evaluation of the chosen location of Well C-8 has determined that the Cabazon Storage Basin may not support an additional well due to declining historical water levels and limited safe yield. Therefore, the apparent best option is to relocate the well to another basin that will support the additional withdrawal and supply needed by the City. Hazen proposes to provide the following tasks to evaluate the alternate sites identified during our December 10, 2018 meeting and provide a technical memorandum with recommendations. Additionally, we have included a task to perform a condition assessment for existing Well M-9 and evaluate the feasibility of placing this well back in service.

Task 13.1 Project Management and Meetings

Hazen will provide the necessary progress report for the additional work for Task 13. Additionally, we will meet with the City after delivery of the study to review, discuss and select the chosen site of the well.

Deliverable: Progress Summary, Meeting Agenda, Meeting Minutes

Task 13.2 Quality Control

Each deliverable will be reviewed for quality control in accordance with Hazen's Quality Assurance and Quality Control manual prior to submittal to the City.

Task 13.3 Hydrogeologic Evaluation

Hazen will review the three sites as chosen by City staff based on available City owned properties. These sites include 1) the northern portion of Replifier Park, 2) the site of existing Well M-9, and 3) a portion of the planned Atwell residential development. Hazen will acquire and review readily available hydrogeologic data, reports, published literature, and models within the vicinity of the alternate well locations, including location of facilities, details of well construction for nearby active, inactive, and destroyed/abandoned wells (City or otherwise), static and pumping groundwater levels, instantaneous pumping rates, specific capacity data, historical plant efficiency tests, and existing well pump curves. Historical groundwater quality data will be obtained from the California Division of Drinking Water online database. The location and details of sites of environmental concern will be queried from the California State Water Resources Control Board GeoTracker database. The location of petroleum and/or hazardous liquid pipelines will be obtained from the National Pipeline Mapping System (NPMS) online database. It is assumed that the City will provide information pertaining to City wells (active, inactive,

and destroyed), well capacity, site maps, and any pertinent GIS and/or CAD files for the groundwater wells, distribution system, and property boundaries.

The purpose of this evaluation is to provide a hydrogeological and logistical evaluation that identifies those production well sites that have the highest probability of success in meeting the City's goal for a new production well. The proposed sites will be further assessed in terms of site-specific criteria, including permitting and regulatory requirements, available work area, site access, the presence of overhead and underground utilities, availability of electrical power, proximity to a suitable construction water source, proximity to facilities for discharge of well development and testing water, noise constraints, and impacts to the public. Key criteria to be considered include the following:

- Aquifer Production Potential
- Well Interference
- Groundwater Quality
- Construction Feasibility
- Setback Requirements
- Proximity to Transmission Mains
- Site Access and Area
- Property Ownership
- Public Impacts
- Control Zone Requirements

Hazen personnel will visit each potential well site to investigate construction feasibility, including available work area, site access, the presence of overhead and underground utilities, proximity to a suitable construction water source, proximity to facilities for discharge of well development and testing water, regulatory setbacks, and noise constraints.

Task 13.4 Well Condition Assessment (Well M-9)

Hazen will collect and review readily available information for existing Well M-9 to evaluate the current condition and feasibility of placing the well back in service. It is assumed that this information will include the following:

- Well Driller's Logs
- Historical Static and Pumping Water Levels
- Historical Instantaneous Pumping Rates
- Aquifer Pumping Test Data
- Current and Historical Downhole Video Surveys
- Raw Water Quality

Task 13.5 Well Site Evaluation

Our team will evaluate all the three sites for layout of the buildings and piping, distribution improvements and provide schematic layout to the City for consideration.

Task 13.6 Draft Technical Memorandum

Hazen will prepare a summary technical memorandum presenting the results of the well siting study, including preliminary design criteria, site layouts, necessary infrastructure improvements, and conclusions for next steps. Hazen will submit an electronic copy (i.e., PDF) of the site assessment and

recommendations at the 100% DRAFT stage for review and comment and will meet with the City to present results and discuss comments thereto.

Deliverable: Draft Technical Memorandum in electronic format.

Task 13.7 Final Technical Memorandum

Following our meeting with the City, Hazen will finalize the memorandum with the final selected site and will submit an electronic copy of the FINAL site assessment in addition to final electronic copy in PDF.

Deliverable: Final technical memorandum in electronic and hard copy formats.

Appendix B

Fee Estimate

Fee Proposal
City of Banning
Geohydrologic and Engineering Design Services for the City of Banning Well C-8, Project No. 2018-02W, Amendment 1
January 3, 2019

Task	Hourly Rate	VP/QC	SA	CHG	SPE	PE	INSP	GE	AE	TECH	Total Hours	Labor Cost
Task 13 - Well Siting Study (Amendment 1)												
Task 13.1 Project Management and Meetings		0.5	12	8	4			4			29	\$ 5,405
Task 13.2 QA/QC			16								16	\$ 3,520
Task 13.3 Hydrogeological Evaluation		0.5		40				12			53	\$ 9,025
Task 13.4 Condition Assessment Well M-9				24				8			32	\$ 5,440
Task 13.5 Site Layout Evaluation			4		16				40		60	\$ 8,240
Task 13.6 Draft Siting Study Technical Memorandum		0.5		24				16			41	\$ 6,565
Task 13.7 Final Siting Study Technical Memorandum		0.5		12				6			19	\$ 3,095
Labor Total		2	32	108	20	0	0	46	40	0	248	\$ 41,290
Expenses												
					Reproduction					Units	Unit Cost	Total \$
					Reproduction					1,500	\$ 0.10	\$ 150
					Mileage					40	\$ 3.00	\$ 120
					Field Supplies					600	\$ 0.545	\$ 327
										200	\$ 1.000	\$ 200
Other Direct Costs Subtotal												\$ 797
Grand Total (Labor + ODCs)												\$ 42,087