

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

May 14, 2019
4:00 p.m.

Banning Civic Center
Council Chamber
99 E. Ramsey Street

I. CALL TO ORDER

Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

- A. Opportunity for Public to address closed session items.
- B. Convene closed session.

II. CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: *Southern California Edison Company v. RRM Properties, Ltd., et al. (Riverside County Superior Court)*
Case No. RIC 1813789
2. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: *City of Banning and People of the State of California v. Go Green Calming Solutions, et al.*
Case No. RIC 1806731
3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION
Pursuant to paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: *Williams v. City of Banning*
DFEH Case No. 201805-02183508

III. ADJOURNMENT

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsive, fair treatment to all and is the pride of its citizens

NOTICE: Pursuant to Government Code § 54954.3(a), the only public comment that will be permitted during this Special Meeting is that pertaining to items appearing on this special meeting agenda. Any member of the public may address this meeting of the Mayor and Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

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]

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

May 14, 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, and a joint meeting of the City Council and the Banning Utility Authority.

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

I. CALL TO ORDER

- Invocation – Elder Ralph Bobik – Church of Jesus Christ of Latter Day Saints
- Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

II. AGENDA APPROVAL

III. PRESENTATION

1. Introduction of New Battalion Chief, Bill Otterman **ORAL**
2. Proclamation for former Mayor/Councilmember Don Smith **ORAL**

IV. REPORT ON CLOSED SESSION

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

PUBLIC COMMENTS – *On Items Not on the Agenda*

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

CORRESPONDENCE:

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

APPOINTMENTS:**VI. CONSENT ITEMS**

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

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

• **Mayor to Open Consent Items for Public Comments**

1. Approval of Special Meeting – 4/23/2019 Minutes (Closed Session) 13
2. Approval of Special Meeting – 4/23/2019 Minutes (Workshop) 16
3. Receive and File Contracts Approved Under the City Manager’s Signature Authority for the Month of April 2019. 19
4. Adopt Resolution Supporting Balanced Energy Solutions and the Maintaining of Local Control of Energy Solutions. 22
(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends the City Council adopt a Resolution of the City Council of the City of Banning, California supporting Balanced Energy Solutions and maintaining local control of energy solutions.

5. Adopt Ordinance No. 1541, An Ordinance of the City Council of the City of Banning, California, Approving the Zone Change from General Commercial (GC) to Business Park (BP) and to the Business Park Zoning District for property located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1589 West Lincoln Street and Vacant Parcels to the East (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045). ***(Second reading and adoption)***
(Staff Report – Adam Rush, Community Development Director)..... 29
Recommendation: Staff recommends that the City Council waive further reading and adopt Ordinance No. 1541, An Ordinance of the City Council of the City of Banning, California, Approving the Zone Change from General Commercial (GC) to Business Park (BP) and to the Business Park Zoning District for property located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1589 West Lincoln Street and Vacant Parcels to the East (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045
6. Adopt Resolution No. 2019-13, Approving and Authorizing the City Manager to Execute an Improvement and Credit/Reimbursement Agreement with Pardee Homes, Inc. for the Transportation Uniform Mitigation Fee Program Related to Improvements Along Highland Springs Avenue.....42
(Staff Report Art vela, Director of Public Works/City Engineer)
Recommendation: That the City Council Adopt Resolution No. 2019-13, approving and authorizing the City Manager to execute an Improvement and Credit/Reimbursement Agreement (Credit Agreement) with Pardee

Homes, Inc. for the Transportation Uniform Mitigation Fee (TUMF) program related to improvements along Highland Springs Avenue.

7. Adopt Resolution, Declaring Opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 Unless Amended to Remove the Proposed Statewide Water Tax87
(*Staff Report – Art Vela, Public Works Director/City Engineer*)
Recommendation: Staff recommends that the City Council adopt Resolution, declaring its opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 unless amended to remove the proposed statewide water tax.

8. Adopt Resolution, Requesting Approval of Stipulation for Entry of Interlocutory Judgement Between Southern California Edison Company and City of Banning in Connection with Southern California Edison Company v. RRM Properties, LTD., et al. (Riverside County Superior Court Case No. RIC 1813789) 94
(*Staff Report – Art Vela, Director of Public Works/City Engineer*)
Recommendation(s): 1) That the City Council approve the stipulation for Interlocutory Judgement between the City of Banning and Southern California Edison Company; and 2) Authorize the City Manager to execute the stipulation for Interlocutory Judgement in the form substantially attached as Attachment No.1 hereto.

VII. PUBLIC HEARINGS

1. Cedar Hills Apartments (The Project), Ordinance No. 1543, Adopting Zone Change No. No. 18-3503, City Council Resolution No. 2019-____, Adopting a Mitigated Negative Declaration and Mitigation Monitoring Report and Approving General Plan Amendment No. 18-2504, and Design Review No. 18-7001 for the Proposed Development of a 96-Unit Apartment Facility and Associated Infrastructure on 7.08 Acres of Land Within the Low Density Residential (LDR) Land Use District (APN:534-283-011 and 534-283-014). 113
(*Staff Report – Adam Rush, Community Development Director*)
Recommendation(s): Staff recommends that the City Council: 1) Adopt Resolution No. 2019-____, Adopting a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Environmental Assessment No. 18-1508); and approve General Plan Amendment No. 17-2504, Design Review No. 18-7001 for the Cedar Hills Apartment Project; and 2) Introduce, as read by title only, Ordinance No. 1543, an Ordinance of the City Council of the City of Banning, California, approving Zone Change No. 18-3503 to amend the Zoning Map, Title 17 of the Banning Municipal Code for two lots totaling 7.08 acres located south of East Hoffer Street and West of North Hathaway Street, from Low Density Residential (LDR) to High Density Residential (HDR).

Mayor asks the City Clerk to read the title of Ordinance 1543

“Ordinance No. 1543, An Ordinance of the City Council of the City of Banning, California, approving Zone Change No. 18-3503 to amend the Zoning Map, Title 17 of the Banning Municipal Code for two lots totaling 7.08 acres located south of East Hoffer Street and West of North Hathaway Street, from Low Density Residential (LDR) to High Density Residential (HDR). (First reading and Introduction).”

Motion: **I move to waive further reading of Ordinance No. 1543**
(Requires a majority vote of the Council)

Motion: **I move that Ordinance No. 1543 pass its first reading**

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORT OF OFFICERS

1. Ordinance No. 1545, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance) of the Banning Municipal Code to specify the Use of Different Consumer Price Indexes Commencing Fiscal Years 2019 and 2020 to Address Cost of Living Adjustments for the Mining Tax and Making a Determination Pursuant to CEQA.....280
(Staff Report – Douglas Schulze, City Manager)

Recommendation (s): Staff recommends that the City Council, 1) Adopt a Categorical Exemption for Ordinance No. 1545; and 2) Introduce, as read by title only, Ordinance No. 1545, an Ordinance of the City Council of the City of Banning, California, amending Subsection “D” of Section 3.18.030 (Mining Tax on Excavation and Processing) of the Banning Municipal Code to specify the use of different Consumer Price Indexes commencing fiscal years 2019 and 2020 to address cost of living adjustments for the mining tax and making a determination pursuant to CEQA.

Mayor asks the City Clerk to read the title of Ordinance 1545

“Ordinance 1545, an Ordinance of the City of Banning, California, Amending Subsection “D” of Section 3.18.030 (Mining Tax on Excavation and Processing) of Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and

Finance) of the Banning Municipal Code to specify the use of different Consumer Price Indexes commencing fiscal years 2019 and 2020 to address cost of living adjustments for the Mining Tax and making a determination pursuant to CEQA.”
(First reading and Introduction)

Motion: I move to waive further reading of Ordinance 1545
 (Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1545 pass its first reading

2. Adopt Urgency Ordinance No. 1546, An Urgency Ordinance of the City of Banning, California, Regarding Small Wireless Facilities in the Public Right-of-Way, Amending the Banning Municipal Code Regarding the Same, and Declaring the Urgency and Immediate effectiveness of the Ordinance, and Approving California Environmental Quality Act Exemptions; and Approving a Resolution Adopting a Citywide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities in the City, Including Public Rights-of-Way.....313
(Staff Report – Art Vela, Public Works Director/City Engineer)

Recommendation (s): Staff recommends that that City Council; 1) Adopt Urgency Ordinance 1546; an Urgency Ordinance of the City of Banning, California, regulating small wireless facilities Citywide, amending the Banning Municipal Code, making environmental findings, and declaring the Urgency thereof; and 2) Adopt Resolution No. 2019-____, a Resolution of the City Council of the City of Banning, California, adopting a Citywide policy regarding permitting requirements and development standards for small wireless facilities.

Mayor asks the City Clerk to read the title of Ordinance 1546

“Urgency Ordinance 1546, an Urgency Ordinance of the City of Banning, California, Regarding Small Wireless Facilities in the Public Right-of-Way, Amending the Banning Municipal Code Regarding the Same and Declaring the Urgency and Immediate Effectiveness of the Ordinance and Approving California Environmental Quality Act Exemptions, and Approving a Resolution Adopting a Citywide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities in the City, Including Public Rights-of-Way. (First reading and Introduction).

Motion: I move to waive further reading and adopt Urgency Ordinance 1546
 (Requires a majority vote of the Council)

Motion: I move that Urgency Ordinance No. 1546 be adopted on first reading

3. Revision and Update of Electric Utility Rule #10- Adjustments for Customer Billing..... 355
(Staff Report – Tom Miller, Electric Utility Director)

Recommendation: Staff recommends discussion and possible action to replace and revise Electric Rule #10 – Disputed or Erroneous Bills, adopted by the City Council on June 26, 1975 by Resolution No. 1975-23.

4. Adopt Resolution Amending the Classification and Compensation Plan to Delete the Position of Community Services Director, Create a New Position of Parks and Recreation Director, and Approving a Job Description for the Parks and Recreation Director (attached) 361
(Staff Report – Douglas Schulze, City Manager)

Recommendation: That the City Council adopt a Resolution amending the classification and compensation plan to delete the position of Community Services Director, create a new position of Parks and Recreation Director, and approving a job description for the Parks and Recreation Director (attached).

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

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

IX. REPORTS OF OFFICERS

1. Adopt Resolution of the Banning Utility Authority, Approving a Professional Services Agreement in the Amount of \$102,464 with U. S. Geological Survey for the Continued Implementation of a Stream Flow Monitoring Program Related to the San Gorgonio Flume377
(Staff Report – Art Vela, Director of Public Works/City Engineer)

Recommendation(s): Staff recommends that the Banning Utility Authority Adopt Resolution 2019-____ UA: 1) Approving a Professional Services Agreement with U.S. Geological Survey for the continued implementation of a stream flow monitoring program related to the San Gorgonio Flume in an amount not to exceed \$102,464; 2) Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement; and 3) Authorizing the City Manager to execute the Professional Services Agreement with U.S. Geological Survey.

2. Adopt Resolution of the Banning Utility Authority, Awarding a Professional Services Agreement to Woodward & Curran of Los Angeles, California for Grant Application Preparation Services for the Proposition 1, Round 1, Integrated Water Management Implementation Grant Program in the Amount of \$86,230 393
(Staff Report – Art Vela, Director of Public Works/City Engineer)

Recommendation(s): Staff recommends that the Banning Utility Authority Adopt Resolution 2019____UA: 1) Awarding a Professional Services Agreement to Woodward & Curran of Los Angeles, CA for the preparation of the Proposition 1, Round 1, Integrated Regional Water Management Implementation Grant application in the amount of \$86,230; 2) Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the completion of the Grant application; and 3) Authorizing the City Manager or his designee to execute a Professional Services Agreement with Woodward & Curran in the amount of \$86,230.

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

X. DISCUSSION ITEM

None

BANNING UTILITY AUTHORITY (BUA) – Next Meeting, May 28, 2019, 5:00 p.m.

XI. ITEMS FOR FUTURE AGENDAS

1. Mills Act Update
2. Website Redesign
3. Street Naming Policy to Honor Land Owners
4. Contingency Plan for Residents During Emergencies
5. Honor Banning High School Senior Aliyah Amis
6. Empty Lots Clean Up
7. Opportunity Zone

XII. ADJOURNMENT

NOTICE: Any member of the public may address this meeting of the Mayor and City Council on any item appearing on the agenda by approaching the microphone in the Council Chambers and asking to be recognized, either before the item about which the member desires to speak is called, or at any time during consideration of the item. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public.

Any member of the public may address this meeting of the Mayor and Council on any item which does not appear on the agenda, but is of interest to the general public and is an item upon which the Mayor and Council may act. A five-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor. No member of the public shall be permitted to “share” his/her five minutes with any other member of the public. The Mayor and Council will in most instances refer items of discussion, which do not appear on the agenda to staff for appropriate action or direct that the item be placed on a future agenda of the Mayor and Council. However, no other action shall be taken, nor discussion held by the Mayor and Council on any item, which does not appear on the agenda, unless the action is otherwise authorized in accordance with the provisions of subdivision (b) of Section 54954.2 of the Government Code.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact the City Clerk’s Office (951)-922-3102. **Notification 48 hours prior to the meeting** will enable the City to make reasonable arrangements to ensure accessibility to this meeting. [28 CFR 35.02-35.104 ADA Title II]

Pursuant to amended Government Code Section 54957.5(b) staff reports and other public records related to open session agenda items are available at City Hall, 99 E. Ramsey St., at the office of the City Clerk during regular business hours, Monday through Friday, 8 a.m. to 5 p.m.

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/23/2019
SPECIAL MEETING- CLOSED SESSION

COUNCIL/BOARD MEMBERS PRESENT: Councilmember Happe
(arrived at 3:02 p.m.)
Councilmember Peterson
Councilmember Wallace
Mayor Pro Tem Andrade
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Doug Schulze, City Manager
Kevin Ennis, City Attorney
Daryl A. Betancur, Deputy City Clerk
Ted Shove, Economic Development Manager

I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Welch on April 23, 2019 at 3:01 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

II. CLOSED SESSION

Mayor Welch opened the closed session items for public comments.

There were no public comments.

1. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** pursuant to Government Code Section 54956.8:
Property description: APN: 532-130-011 & 012, located in the general vicinity of adjacent and south of the Banning Airport, adjacent and west of the Morongo Reservation [Southern California Gas Company]
City Negotiator: Ted Shove, Economic Development Manager
Negotiating Parties: Southern California Gas Companies;
Under Negotiation: Potential Sale of Property. **Direction provided to City Negotiator.**
2. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** pursuant to Government Code Section 54956.8:
Property description: APN: 531-100-003, -043, 537-261-043, 537-100-027, -028, -029, -044, located in the vicinity of Ramsey Street and Highland Home

Road

City Negotiator: Ted Shove, Economic Development Manager

Negotiating Parties: Khan Property and Holdings, LLC

Under Negotiation: Potential Acquisition of Property. **Direction provided to City Negotiator.**

3. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS** pursuant to Government Code Section 54956.8:
Property description: APN: 532-130-011, 532-180-034 & -035, located in the general vicinity of adjacent and south of the Banning Airport, adjacent and west of the Morongo Reservation.
City Negotiator: Ted Shove, Economic Development Manager
Negotiating Parties: Truck Terminal Properties
Under Negotiation: Potential Sale of Property. **Direction provided to City Negotiator.**

The meeting convened to closed session at 3:01 p.m. and reconvened to open session at 4:02 p.m.

III. ADJOURNMENT

By consensus, the meeting adjourned at 4:02 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

The entire discussion of this meeting and related documents can be found by visiting the following website:

<https://banninglive.viebit.com/player.php?hash=OCCnkafsJqLQ>

or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/23/2019
SPECIAL MEETING- WORKSHOP

COUNCIL/BOARD MEMBERS PRESENT: Councilmember Happe
Councilmember Peterson
Councilmember Wallace
Mayor Pro Tem Andrade
Mayor Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Doug Schulze, City Manager
Kevin Ennis, City Attorney
Daryl A. Betancur, Deputy City Clerk
Tom Miller, Electric Utility Director
Carla Young, Management Analyst
Heidi Meraz, Community Services Director
Art Vela, Public Works Director
Adam Rush, Community Development Director
Suzanne Cook, Deputy Finance Director
Ted Shove, Economic Development Manager
Laurie Sampson, Executive Secretary

I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Welch on April 23, 2019 at 4:02 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

II. WORKSHOP

City Council Goals and Priorities 4

City Manager Douglas Schulze presented the staff report stating that this was a follow up to the Strategic Planning Session the City Council had held on February 28, and that information resulting from the previous meeting and previous strategic planning sessions needed to be categorized into general results or goals, in short what we are trying to do tonight was to try to decide on what things we are trying to accomplish at a high level, which include the following: a diverse economy, safe city, good governance, high quality of life and reliable infrastructure.

City Manager Douglas Schulze explained in specific detail the concept of the charts provided; he stated that he hoped to have a conversation about these items. He addressed questions from the Council related to: type of incentives for developers, completed tasks and the Downtown Master Plan, decommissioning of the airport facility, code enforcement issues and personnel, parks and parks facility maintenance including lighting and security concerns. There were questions related to homelessness with Mr. Schulze stating that staff was coordinating a homeless summit.

Further, Mr. Schulze stated that he wanted to ascertain what priorities this Council had in mind for staff to focus on for the next two years.

City Manager Douglas Schulze asked the Council to step off the dais and vote on the top five priorities in each of the result areas by placing color codes on the chart.

III. PUBLIC COMMENTS – Opportunity for the public to address items on the agenda.

There were no public comments.

ACTION:

There was no action taken. However, direction was provided to staff.

IV. ADJOURNMENT

By consensus, the meeting adjourned at 4:54 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

The entire discussion of this meeting and related documents can be found by visiting the following website: <https://banninglive.viebit.com/player.php?hash=OCCnkafsJqLQ> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Laurie Sampson, Executive Assistant

MEETING DATE: May 14, 2019

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

RECOMMENDED ACTION:

Receive and file contracts approved under the City Manager's signature authority for the month of April 2019.

BACKGROUND:

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

ATTACHMENTS:

1. List of Contracts Approved by the 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					
Approval	Vendor Name	Description of Item/Service	Contact Award Total	Department/Division	Comments
4/18/2019	Water systems Optimization	Water Loss Control Gap Assessment	\$ 15,000.00	Public Works - Water	C00514



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Laurie Sampson, Executive Assistant

MEETING DATE: May 14, 2019

SUBJECT: Resolution to Support Balanced Energy Solutions and the Maintaining of Local Control of Energy Solutions.

RECOMMENDED ACTION:

It is recommended the City Council adopt a resolution that supports balance and control of energy solutions.

BACKGROUND:

In an effort to reduce the State's carbon footprint, the State legislature and energy agencies have been pursuing ambitious goals for statewide carbon neutrality, defined as removing as much carbon dioxide as it emits. Last year, Governor Brown signed Senate Bill 100, which mandates relying entirely on zero-emission energy sources for its electricity by the year 2045. As a leader in climate policy, California has made great strides to combat climate change but many policies occur at the State level without granting local governments the freedom and flexibility to achieve the State's goals while taking into account the needs of each community.

JUSTIFICATION:

While the City of Banning believes in pursuing efficient and environmentally-friendly alternative energy sources, a 2018 analysis conducted by Navigant Consulting found that a push to eliminate natural gas from homes would cost an average family \$7,200 to switch their homes to all electricity and \$388 / year more in energy bills, all while 80% of Californians oppose prohibiting the use of gas appliances (California Natural Gas Poll - Consumer Survey of 3000 California Voters, 2018). In consideration of the Banning residents and businesses that would be affected by the bills enacted at the State legislature, staff is recommending that the City Council adopts this resolution in support

of balanced energy solutions, such as renewable natural gas, in addition to zero-emission energy sources, as well as maintaining local control of energy solutions. By diversifying the variety of energy sources, it creates a more resilient community and offers affordable and flexible options to Banning residents.

FISCAL IMPACT:

None

OPTIONS:

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

ATTACHMENTS:

1. Resolution

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019

RESOLUTION 2019-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING SUPPORTING BALANCED ENERGY SOLUTIONS AND MAINTAINING LOCAL CONTROL OF ENERGY SOLUTIONS

Whereas, California's energy policies are critical to reducing greenhouse gas emissions and reducing the impact of climate change on our citizens; and

Whereas, the state legislature and state agencies are increasingly proposing new legislation and regulations eliminating choice of energy by mandating technologies to power buildings and public and private fleets, including transit and long-haul trucking, as a strategy to achieve the state's climate goals; and

Whereas, clean, affordable and reliable energy is crucial to the material health, safety and well-being of the City of Banning residents, particularly the most vulnerable, who live on fixed incomes, including the elderly and working families who are struggling financially; and

Whereas, the need for clean, affordable and reliable energy to attract and retain local businesses, create jobs and spur economic development is vital to our city's success in a highly competitive and increasingly regional and global marketplace; and

Whereas, the City of Banning, its residents and businesses value local control and the right to choose the policies and investments that most affordably and efficiently enable them to comply with state requirements; and

Whereas, building and vehicle technology mandates eliminate local control and customer choice, suppress innovation, reduce reliability and unnecessarily increase costs for the City of Banning residents and businesses; and

Whereas, the City understands that relying on a single energy delivery system unnecessarily increases vulnerabilities to natural and man-made disasters, and that a diversity of energy delivery systems and resources contribute to greater reliability and community resilience; and

Whereas, the City of Banning understands the need to mitigate the impacts of climate change and is committed to doing its part to help the state achieve its climate goals, but requires the flexibility to do so in a manner that best serves the needs of its residents and businesses.

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

That the City supports balanced energy solutions that provide it with the decision-making authority and resources needed to achieve the state's climate goals and

supports proposed state legislation and regulation that retains local control by allowing all technologies and energy resources that can power buildings and fuel vehicles, and also meet or exceed emissions reductions regulations.

PASSED, APPROVED AND ADOPTED this 14th day of May, 2019.

Arthur L. Welch, Mayor
City of Banning, California

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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

Kevin G. Ennis
City Attorney

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2019-____ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam Rush, Community Development Director

MEETING DATE: May 14, 2019

SUBJECT: Adopt Ordinance No. 1541, An Ordinance of the City Council of the City of Banning, California, Approving the Zone Change from General Commercial (GC) to Business Park (BP) and to the Business Park Zoning District for Property Located at 1897 West Lincoln Street, 1589 West Lincoln Street and Vacant Parcels to the East (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045. (*Second reading and adoption*)

RECOMMENDED ACTION:

Staff recommends that the City Council waive further reading and adopt Ordinance No. 1541, an Ordinance of the City Council of the City of Banning, California, approving the Zone Change from General Commercial (GC) to Business Park (BP) and to the Business Park Zoning District for property located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1589 West Lincoln Street and Vacant Parcels to the East (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045).

PROJECT/APPLICANT INFORMATION:

Project Applicant: David J. Hidalgo
David Hidalgo Architects, Inc.
316 South First Avenue
Arcadia, CA 91733

Property Owner: DJL Properties, LLC
2034 North Peck Road
South El Monte, CA 91733

Project Location: North side of Lincoln Street at 1897 West Lincoln Street, 1661 West Lincoln Street, 1617 West Lincoln Street and 1589 West

Lincoln Street, between 22nd Street and 8th Street including 6 vacant parcels to the west

APN Information: 538-230-014, 538-220-002, 538-220-003, 538-220-004,
540-180-041, 540-180-042, 540-180-043, 540-180-044 &
540-180-045

FISCAL IMPACT

Issuance of grading, building, and other permits will result in additional revenues for the City. Development of the property would result in an increase of approximately 50 jobs within the City, an increase in property values and associated increases in property taxes.

OPTIONS:

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

ATTACHMENTS:

1. Ordinance No. 1541
2. Proof of Publication

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

(Ordinance No. 1541)

ORDINANCE NO. 1541

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE NO. 18-3501 TO AMEND THE ZONING CLASSIFICATION FOR REAL PROPERTY LOCATED ON THE NORTH SIDE OF LINCOLN STREET, EAST OF 22ND STREET AT 1897 WEST LINCOLN STREET, 1661 WEST LINCOLN STREET, 1589 WEST LINCOLN STREET AND VACANT PARCELS TO THE EAST (APNS: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044, & 540-180-045) FROM GENERAL COMMERCIAL (GC) TO BUSINESS PARK (BP) IN CONFORMANCE WITH GENERAL PLAN AMENDMENT 18-2501, AND MAKING FINDINGS PURSUANT TO CEQA

WHEREAS, an application for General Plan Amendment 18-2501, Zone Change No. 18-3501, and Design Review 18-7001 for the proposed Lawrence Equipment Expansion to permit the development of a proposed approximately 146,890 square foot light manufacturing and warehouse building (the "Project") has been duly filed by:

Project Applicant:	David Hidalgo Architects, Inc.
Owner:	DJL Properties, LLC
Authorized Agent:	David J. Hidalgo
Project Sponsor:	Lawrence Equipment.
Project Location:	Noted Above
APN Numbers:	538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045 419-140-059
Lot Area:	19.69 acres

WHEREAS, in accordance with Banning Municipal Code Section 17.116.030, on January 16, 2019, the Planning Commission held a duly public noticed hearing to consider the General Plan Amendment No. 18-2501, Zone Change No. 18-3501, and Design Review 18-7001, and adopted Resolution No. 2019-01 by a 5-0-0 vote, recommending that the City Council approve General Plan Amendment No. 18-2501, Zone Change No. 18-3501, and Design Review 18-7001;

WHEREAS, in accordance with Government Code Section 65856 and Banning Municipal Code Section 17.68.020.B., on February 15, 2019, the City gave public notice by advertisement in the Record Gazette Newspaper, of a public hearing before the City Council, for the City of Banning, concerning the Project, which included the General Plan Amendment 18-2501, Zone Change 18-3501, Design Review 18-7001, and Environmental Assessment 18-1501 (a Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP));

WHEREAS, pursuant to Banning Municipal Code Section 17.116.040 and Government Code Sections 65853 and 65857, the City Council is authorized to approve, modify, or disapprove the Planning Commission's recommendation on Zone Change No. 18-3501; and

WHEREAS, pursuant to Banning Municipal Code Section 17.64.060 and Government Code Sections 65356, the City Council is authorized to approve, modify, or disapprove the Planning Commission's recommendation on General Plan Amendment 18-2501; and

WHEREAS, in accordance with Banning Municipal Code Section 17.116.040 and Government Code Section 65856, at this public hearing on April 23, 2019, the City Council considered and heard public comments on the General Plan Amendment 18-2501, Zone Change 18-3501, Design Review 18-7001, and MND and MMRP for the Project.

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

SECTION 1. California Environmental Quality Act Findings.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Community Development Director as provided in the Staff Report dated April 23, 2019, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

- A. Pursuant to the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000 *et seq.*), the State Guidelines (14 Cal. Code Regs. § 15000 *et seq.*), and the City's Local Guidelines, City staff prepared an Initial Study of the potential environmental effects of the approval of the Project as described in the Initial Study. Based upon the findings contained in that Study, City staff determined that, with the incorporation of mitigation measures, there was no substantial evidence that the Project could have a significant effect on the environment and a Mitigated Negative Declaration (MND) was prepared in full compliance with the requirements of CEQA, including the minor revisions incorporated thereto.
- B. Thereafter, City staff provided public notice of the public comment period and of the intent to adopt the MND as required by law. The public comment period commenced on January 4, 2019, and was extended to expire on February 17, 2019, pursuant to a revised Notice of Availability (NOA) that was published by the

City on January 11, 2019. Copies of the documents have been available for public review and inspection at City Hall, 99 E. Ramsey Street, Banning, California 92220, and the Banning Public Library, 21 West Nicolet Street, Banning, California 92220. The City received comments during the public review period.

- C. On January 16, 2019, the Planning Commission conducted a duly noticed public hearing to consider the Project and the MND, reviewed the staff report, accepted and considered public testimony. After due consideration, the Planning Commission found that agencies and interested members of the public were afforded ample notice and opportunity to comment on the MND and the Project and approved Resolution No. 2019-01 recommending that City Council adopt the MND, adopt the MMRP for the Project, and approve the proposed General Plan Amendment 18-2501, Zone Change No. 18-3501, and Design Review 18-7001.
- D. On April 23, 2019, the City Council conducted a duly noticed public hearing, which was continued from the February 26th, to March 12th, and then again to the April 9th City Council Meeting in which the City Council considered the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP), which provides the CEQA and environmental clearance for General Plan Amendment 18-2501, Zone Change No. 18-3501, and Design Review 18-7001. The City Council has reviewed the staff report, accepted and considered public testimony. Based upon the evidence presented at the hearing, including the staff report and oral testimony, the City Council, by separate Resolution No. 2019-03, adopted the MND and a MMRP for the proposed General Plan Amendment 18-2501, Zone Change No. 18-3501, and Design Review 18-7001.
- E. All actions taken by City have been duly taken in accordance with all applicable legal requirements, including the California Environmental Quality Act (Cal. Pub. Res. Code, § 21000 et seq.) ("CEQA"), and all other requirements for notice, public hearings, findings, votes and other procedural matters.
- F. The custodian of records for the Mitigated Negative Declaration (MND) and Mitigation Monitoring and Reporting Program (MMRP), and all other materials that constitute the record of proceedings upon which the City Council's decision was based, including, without limitation, the staff reports, all of the materials that comprise and support the MND and all of the materials that support the staff reports, is the Community Development Department – Planning Division, for the City of Banning. Those documents are available for public review during normal business hours at Banning City Hall, 99 East Ramsey Street, Banning, California 92220.

SECTION 2. Findings for Approval of Zone Change No. 18-3501.

Pursuant to Banning Municipal Code Section 17.116, the City Council makes the following findings pertaining to Zone Change No. 18-3501:

Finding No. 1: The proposed Zone Change No. 18-3501 is consistent with the goals and policies of the General Plan.

Finding of Fact: Upon City Council approval of the requested Zone Change, the site's zoning designation will be changed to Business Park (BP). The proposed development is consistent with uses permitted within the Business Park Land Use Designation in the General Plan Land Use Element.

The Project is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The zoning classification of Business Park (BP) allows light industrial manufacturing and office/warehouse buildings also, ancillary restaurants and retail uses, professional offices and club stores.

Finding No. 2: The proposed Zone Change No. 18-3501 is internally consistent with the Zoning Ordinance.

Finding of Fact: The proposed Zone Change is not anticipated to result in exceeding, either cumulatively or individually, any applicable level of service standards. Pursuant to the Project's Conditions of Approval, the proposed Project will be constructed in conformance with City standards and specifications.

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

Finding of Fact:

1. Review Period: That the City has provided the public review period for the Draft Mitigated Negative Declaration for the 20-day duration required under CEQA Guidelines Sections 15087 and 15105. The City then extended the public review period to February 17, 2019 pursuant to a revised Notice of Availability (NOA), published on January 11, 2019 in accordance with CEQA Guidelines Sections 15072 and 15073.
2. Compliance with Law: That the draft Mitigated Negative Declaration, Final Mitigated Negative Declaration and the associated Mitigation Monitoring Reporting Program were prepared, processed, and noticed in accordance with the California Environmental Quality Act (Public Resources Code Section 21000 et seq.), the CEQA Guidelines (14 California Code of Regulations Section 15000 et seq.) and the local CEQA Guidelines and Thresholds of Significance adopted by the City of Banning.

3. Independent Judgment: That the Final MND and MMRP adopted by the City Council by adoption of City Council Resolution No. 2019-03 reflect the independent judgment and analysis of the City.

SECTION 3: City Council Action

Based on the foregoing, the City Council hereby approves Zone Change No. 18-3501, amending the Zoning Map from General Commercial (GC) to Business Park (BP) for property located on the north side of Lincoln Street, east of 22nd Street at 1897 West Lincoln Street, 1661 West Lincoln Street, 1589 West Lincoln Street and vacant parcels to the east also known as (APNs: 538-230-014, 538-220-002, 538-220-003, 538-220-004, 540-180-041, 540-180-042, 540-180-043, 540-180-044 & 540-180-045).

SECTION 4. Publication, Effective Date.

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceeding of the City Council at which time the same is passed and adopted. This ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED AND ADOPTED this 23rd day of April, 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 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 Ordinance No. 1541 was duly adopted at a regular meeting of the City Council of the City of Banning held on the _____ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

(Proof of Publication)

Century Group Newspapers:
Fontana Herald News, Record Gazette,
Highland Community News,
Yucaipa/Calimesa News Mirror,
Redlands Community News

Phone:

Fax:

www.centurygroup.com

SONJA DE LA FUENTE LEGAL ADS
 CITY OF BANNING LEGALS/Accounts Payable
 P.O. BOX 998
 BANNING, CA 92220
 (951)922-3117

Class Liner Ad #00165080 Summary:

Slug Line: 165080 Ordinance 1542

Net Cost \$102.20

Prepaid Amount \$0.00

Amount Due \$102.20

Order Detail:

Publication	Run Dates
4015 Banning Record Gazette	5/10/19 - 5/10/19

CITY OF BANNING
 ORDINANCE NO. 1542
 AN ORDINANCE OF THE
 CITY COUNCIL OF THE
 CITY OF BANNING, CALI-
 FORNIA, AMENDING
 CHAPTER 17.53 OF TITLE
 17 OF THE BANNING MU-
 NICIPAL CODE TO RE-
 DUCE THE SEPARATION
 REQUIREMENTS BE-
 TWEEN COMMERCIAL
 CANNABIS CULTIVATION,
 MANUFACTURING AND
 TESTING LABORATORY
 USES AND RESIDEN-
 TIAL ZONED PROP-
 ERTY AND AMENDING
 THE DEFINITION OF CAN-

OPY SPACE AND MAKING
A DETERMINATION PUR-
SUANT TO CEQA.

Ordinance No. 1542 was in-
troduced at a regular meet-
ing of the Banning City
Council on April 9, 2019 for
first reading and introduc-
tion and subsequently ap-
proved and adopted on
second reading at a regular
meeting of the Banning City
Council on April 23, 2019,
by the following vote to wit:

AYES: Happe, Peterson,
Wallace, Andrade & Welch

NOES: None

ABSTAIN: None

ABSENT: None

Effective Date: May 22,
2019

This summary is posted in
accordance with GC Sec-
tion 36933 (c) (1). A certi-
fied copy of the full text of
Ordinance No. 1542 is
available upon request in
the Office of the City Clerk,
located at 99 E. Ramsey
Street, Banning, California,
during regular business
hours of 8:00 a.m. through
5:30 p.m. Monday through
Friday.

By: _____

Daryl A. Betancur, MPA,
MMC

Deputy City Clerk

Dated: May 7, 2019

Published in

The Record Gazette

No. 165080

05/10/2019

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works

MEETING DATE: May 14, 2019

SUBJECT: Adopt Resolution 2019-13, Approving and Authorizing the City Manager to Execute an Improvement and Credit/Reimbursement Agreement with Pardee Homes Inc. for the Transportation Uniform Mitigation Fee Program Related to Improvements along Highland Springs Avenue

RECOMMENDED ACTION:

Staff recommends that the City Council adopt Resolution 2019-13, approving and authorizing the City Manager to execute an Improvement and Credit/Reimbursement Agreement (Credit Agreement) with Pardee Homes Inc. for the Transportation Uniform Mitigation Fee (TUMF) Program related to Improvements along Highland Springs Avenue.

BACKGROUND:

Western Riverside Council of Government (WRCOG) has developed and administers the TUMF program, a regional fee program designed to provide transportation infrastructure that mitigates the impact of new growth in western Riverside County. Each of WRCOG's members, including the City of Banning (City), participate in the TUMF program through an adopted ordinance, collects fees from new development and remits the fees to WRCOG.

As the program administrator, WRCOG allocates TUMF funds to a variety of agencies, including the Riverside County Transportation Commission (RCTC), Riverside Transit Agency (RTA), Western Riverside Regional Conservation Authority (RCA) and western Riverside cities and Riverside County areas through applicable TUMF Zones. The City is located within the Pass Zone. Eligible projects funded by TUMF revenues are those that have been identified as being part of the Regional System of Highway Arterials (also

known as the “TUMF Network”) in the TUMF Nexus Study. Typically, each TUMF Zone receives 45.7% of TUMF revenues collected within their respective zone. The remainder of the funds is distributed to RTA (3.13%), RCTC (45.7%), RCA (1.47%) and WRCOG (4%).

Pardee Homes Inc. (Pardee) has asked the City of Banning (City) for entitlement and permits for the development of the Butterfield Specific Plan, a 1,543 acre master planned multi-use community inclusive of 4,862 residential units, schools and commercial uses. The Butterfield Specific Plan is located in the northwestern corner of the City bounded by Highland Springs Avenue to the west and Wilson Street to the south. As a condition to the City's approval of the Butterfield Specific Plan, Pardee is required to construct various street and transportation improvements at Pardee's sole costs. As part of those conditions, Pardee is required to improve Highland Springs Avenue fronting the entire project. Pardee has agreed to sign a TUMF Credit Agreement for these improvements.

JUSTIFICATION:

The TUMF program allows member agencies to enter into Credit Agreements as a means to allow developer's costs for a TUMF project (e.g. planning, engineering, right-of-way acquisition and construction costs) to offset against a developer's obligation to pay the TUMF.

Credit agreements provide for a timely delivery of TUMF improvements and ensures that projects are delivered as if the project was constructed under the direction and authority of the City. Additionally, a credit agreement allows for 100% of a project's TUMF revenues to be utilized on a project in the City, as opposed to the typical allocation of funds described herein.

FISCAL IMPACT:

There is no direct fiscal impact to the City. Funding for the Highland Springs Avenue improvements will come from TUMF revenues. The TUMF program has a maximum TUMF share of \$5,128,000 for this project.

ALTERNATIVE:

Do not approve Resolution 2019-13. If not approved staff will collect and remit 100% of TUMF revenues to WRCOG, whom will allocate TUMF funding pursuant to the program's administrative plan.

ATTACHMENTS:

1. Resolution 2019-13
2. Improvement and Credit/Reimbursement Agreement
3. Project Exhibits

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-13)

RESOLUTION 2019-13

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN IMPROVEMENT AND CREDIT/REIMBURSEMENT AGREEMENT WITH PARDEE HOMES INC. FOR THE TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM RELATED TO IMPROVEMENTS ALONG HIGHLAND SPRINGS AVENUE

WHEREAS, Western Riverside Council of Government (“WRCOG”) has developed and administers the Transportation Uniform Mitigation Fee (“TUMF”) program, a regional fee program designed to provide transportation infrastructure that mitigates the impact of new growth in western Riverside County; and

WHEREAS, the City of Banning (City) approved Ordinance No. 1514 approving the participation in the TUMF program and adopting the new TUMF schedule pursuant to the 2016 TUMF Nexus Study; and

WHEREAS, Pardee Homes Inc. (Pardee) has asked the (City) for entitlement and permits for the development of the Butterfield Specific Plan, a 1,543 acre master planned multi-use community inclusive of 4,862 residential units, schools and commercial uses; and

WHEREAS, as a condition to the City's approval of the Butterfield Specific Plan, Pardee is required to construct various street and transportation improvements at Pardee's sole costs including improvements along Highland Springs Avenue fronting the project site from Wilson Street to Oak Valley Parkway; and

WHEREAS, TUMF program allows member agencies to enter into Improvement and Credit/Reimbursement Agreements as a means to allow developer's costs for a TUMF project (e.g. planning, engineering, right-of-way acquisition and construction costs) to offset against a developer's obligation to pay the TUMF; and

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

SECTION 1. Adopts Resolution 2019-13, approving and authorizing the City Manager to execute an Improvement and Credit/Reimbursement Agreement with Pardee Homes Inc. for the TUMF Program related to Improvements along Highland Springs Avenue.

SECTION 2. The City Clerk is authorized to certify 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 14th day of May, 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

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CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-13 was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 14th of May, 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning
Banning, California

ATTACHMENT 2

(TUMF Credit/Reimbursement Agreement)

**IMPROVEMENT AND CREDIT / REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

This **IMPROVEMENT AND CREDIT AGREEMENT** (“Agreement”) is entered into this ____ day of _____, 2019, (the “Effective Date”) by and between the CITY OF BANNING, a California municipal corporation (“AGENCY”), and PARDEE HOMES, a California corporation, with its principal place of business at 1250 Corona Pointe Court, Suite 600, Corona, California 92879 (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, Developer owns approximately 1,522 acres of real property located within the AGENCY of Banning, California, which is more specifically described in the legal description set forth in Exhibit “A”, attached hereto and incorporated herein by this reference (“Property”);

WHEREAS, Developer has requested from AGENCY-certain entitlements and/or permits for the construction of improvements on the Property, which are more particularly described as a master-planned community consisting of schools, commercial uses and 4,862 residential units ranging from multi-family units to single-family detached units, among other things (“Project”);

WHEREAS, the AGENCY is a member agency of the Western Riverside Council of Governments (“WRCOG”), a joint powers agency comprised of the County of Riverside and 18 cities located in Western Riverside County. WRCOG is the administrator for the Transportation Uniform Mitigation Fee (“TUMF”) Program;

WHEREAS, as part of the TUMF Program, the AGENCY has adopted “Transportation Uniform Mitigation Fee Nexus Study: 2016 Update” (“2016 Nexus Study”)

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

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

WHEREAS, the TUMF Improvements have been designated as having Regional or Zonal Significance as further described in the 2016 Nexus Study and the 5 year Transportation Improvement Program as may be amended;

WHEREAS, AGENCY and Developer now desire to enter into this Agreement for the following purposes: (1) to provide for the timely delivery of the TUMF Improvements, (2) to

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

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

TERMS

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

2.0 Construction of TUMF Improvements. Developer shall construct or have constructed at its own cost, expense, and liability certain street and transportation system improvements generally described as the Highland Springs Avenue Road (Wilson Street to Oak Valley Parkway) Improvements, and as shown more specifically on the plans, profiles, and specifications which have been or will be prepared by or on behalf of Developer and approved by AGENCY, and which are incorporated herein by this reference ("TUMF Improvements"). Construction of the TUMF Improvements shall include any transitions and/or other incidental work deemed necessary for drainage or public safety. Developer shall be responsible for the replacement, relocation, or removal of any component of any existing public or private improvement in conflict with the construction or installation of the TUMF Improvements. Such replacement, relocation, or removal shall be performed to the complete satisfaction of AGENCY and the owner of such improvement. Developer further promises and agrees to provide all equipment, tools, materials, labor, tests, design work, and engineering services necessary to fully and adequately complete the TUMF Improvements.

2.1 Pre-approval of Plans and Specifications. Developer is prohibited from commencing work on any portion of the TUMF Improvements until all plans and specifications for the TUMF Improvements have been submitted to and approved by AGENCY. Approval by AGENCY shall not relieve Developer from ensuring that all TUMF Improvements conform with all other requirements and standards set forth in this Agreement.

2.2 Permits and Notices. Prior to commencing any work, Developer shall, at its sole cost, expense, and liability, obtain all necessary permits and licenses and give all necessary and incidental notices required for the lawful construction of the TUMF Improvements and performance of Developer's obligations under this Agreement. Developer shall conduct the work in full compliance with the regulations, rules, and other requirements contained in any permit or license issued to Developer.

2.3 Public Works Requirements. In order to insure that the TUMF Improvements will be constructed as if they had been constructed under the direction and supervision, or under the authority of, AGENCY, Developer shall comply with all of the following requirements with respect to the construction of the TUMF Improvements:

(a) Developer shall obtain bids for the construction of the TUMF Improvements, in conformance with the standard procedures and requirements of AGENCY with respect to its public works projects, or in a manner which is approved by the Public Works Department.

(b) The contract or contracts for the construction of the TUMF Improvements shall be awarded to the responsible bidder(s) submitting the lowest responsive bid(s) for the construction of the TUMF Improvements.

(c) Developer shall require, and the specifications and bid and contract documents shall require, all such contractors to pay prevailing wages (in accordance with Articles 1 and 2 of Chapter 1, Part 7, Division 2 of the Labor Code) and to otherwise comply with applicable provisions of the Labor Code, the Government Code and the Public Contract Code relating to public works projects of cities/counties and as required by the procedures and standards of AGENCY with respect to the construction of its public works projects or as otherwise directed by the Public Works Department.

(d) All such contractors shall be required to provide proof of insurance coverage throughout the term of the construction of the TUMF Improvements which they will construct in conformance with AGENCY's standard procedures and requirements.

(e) Developer and all such contractors shall comply with such other requirements relating to the construction of the TUMF Improvements which AGENCY may impose by written notification delivered to Developer and each such contractor at any time, either prior to the receipt of bids by Developer for the construction of the TUMF Improvements, or, to the extent required as a result of changes in applicable laws, during the progress of construction thereof.

Developer shall provide proof to AGENCY, at such intervals and in such form as AGENCY may require that the foregoing requirements have been satisfied as to the TUMF Improvements.

2.4 Quality of Work; Compliance With Laws and Codes. The construction plans and specifications for the TUMF Improvements shall be prepared in accordance with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements. The TUMF Improvements shall be completed in accordance with all approved maps, plans, specifications, standard drawings, and special amendments thereto on file with AGENCY, as well as all applicable federal, state, and local laws, ordinances, regulations, codes, standards, and other requirements applicable at the time work is actually commenced.

2.5 Standard of Performance. Developer and its contractors, if any, shall perform all work required, constructing the TUMF Improvements in a skillful and workmanlike manner, and consistent with the standards generally recognized as being employed by professionals in the same discipline in the State of California. Developer represents and maintains that it or its

contractors shall be skilled in the professional calling necessary to perform the work. Developer warrants that all of its employees and contractors shall have sufficient skill and experience to perform the work assigned to them, and that they shall have all licenses, permits, qualifications and approvals of whatever nature that are legally required to perform the work, and that such licenses, permits, qualifications and approvals shall be maintained throughout the term of this Agreement.

2.6 Alterations to TUMF Improvements. All work shall be done and the TUMF Improvements completed as shown on approved plans and specifications, and any subsequent alterations thereto. If during the course of construction and installation it is determined that the public interest requires alterations in the TUMF Improvements, Developer shall undertake such design and construction changes as may be reasonably required by AGENCY. Any and all alterations in the plans and specifications and the TUMF Improvements to be completed may be accomplished without first giving prior notice thereof to Developer's surety for this Agreement.

3.0 Maintenance of TUMF Improvements. AGENCY shall not be responsible or liable for the maintenance or care of the TUMF Improvements until AGENCY approves and accepts them. AGENCY shall exercise no control over the TUMF Improvements until accepted. Any use by any person of the TUMF Improvements, or any portion thereof, shall be at the sole and exclusive risk of Developer at all times prior to AGENCY's acceptance of the TUMF Improvements. Developer shall maintain all of the TUMF Improvements in a state of good repair until they are completed by Developer and approved and accepted by AGENCY, and until the security for the performance of this Agreement is released. It shall be Developer's responsibility to initiate all maintenance work, but if it shall fail to do so, it shall promptly perform such maintenance work when notified to do so by AGENCY. If Developer fails to properly prosecute its maintenance obligation under this section, AGENCY may do all work necessary for such maintenance and the cost thereof shall be the responsibility of Developer and its surety under this Agreement. AGENCY shall not be responsible or liable for any damages or injury of any nature in any way related to or caused by the TUMF Improvements or their condition prior to acceptance.

4.0 Fees and Charges. Developer shall, at its sole cost, expense, and liability, pay all fees, charges, and taxes arising out of the construction of the TUMF Improvements, including, but not limited to, all plan check, design review, engineering, inspection, sewer treatment connection fees, and other service or impact fees established by AGENCY.

5.0 AGENCY Inspection of TUMF Improvements. Developer shall, at its sole cost, expense, and liability, and at all times during construction of the TUMF Improvements, maintain reasonable and safe facilities and provide safe access for inspection by AGENCY of the TUMF Improvements and areas where construction of the TUMF Improvements is occurring or will occur.

6.0 Liens. Upon the expiration of the time for the recording of claims of liens as prescribed by Sections 8412 and 8414 of the Civil Code with respect to the TUMF Improvements, Developer shall provide to AGENCY such evidence or proof as AGENCY shall require that all persons, firms and corporations supplying work, labor, materials, supplies and equipment to the construction of the TUMF Improvements, have been paid, and that no claims of liens have been recorded by or on behalf of any such person, firm or corporation. Rather than await the

expiration of the said time for the recording of claims of liens, Developer may elect to provide to AGENCY a title insurance policy or other security acceptable to AGENCY guaranteeing that no such claims of liens will be recorded or become a lien upon any of the Property.

7.0 Acceptance of TUMF Improvements; As-Built or Record Drawings. If the TUMF Improvements are properly completed by Developer and approved by AGENCY, and if they comply with all applicable federal, state and local laws, ordinances, regulations, codes, standards, and other requirements, AGENCY shall be authorized to accept the TUMF Improvements. AGENCY may, in its sole and absolute discretion, accept fully completed portions of the TUMF Improvements prior to such time as all of the TUMF Improvements are complete, which shall not release or modify Developer's obligation to complete the remainder of the TUMF Improvements. Upon the total or partial acceptance of the TUMF Improvements by AGENCY, Developer shall file with the Recorder's Office of the County of Riverside a notice of completion for the accepted TUMF Improvements in accordance with California Civil Code sections 8182, 8184, 9204, and 9208 ("Notice of Completion"), at which time the accepted TUMF Improvements shall become the sole and exclusive property of AGENCY without any payment therefore. Notwithstanding the foregoing, AGENCY may not accept any TUMF Improvements unless and until Developer provides one (1) set of "as-built" or record drawings or plans to the AGENCY for all such TUMF Improvements. The drawings shall be certified and shall reflect the condition of the TUMF Improvements as constructed, with all changes incorporated therein.

8.0 Warranty and Guarantee. Developer hereby warrants and guarantees all the TUMF Improvements against any defective work or labor done, or defective materials furnished in the performance of this Agreement, including the maintenance of the TUMF Improvements, for a period of one (1) year following completion of the work and acceptance by AGENCY ("Warranty"). During the Warranty, Developer shall repair, replace, or reconstruct any defective or otherwise unsatisfactory portion of the TUMF Improvements, in accordance with the current ordinances, resolutions, regulations, codes, standards, or other requirements of AGENCY, and to the approval of AGENCY. All repairs, replacements, or reconstruction during the Warranty shall be at the sole cost, expense, and liability of Developer and its surety. As to any TUMF Improvements which have been repaired, replaced, or reconstructed during the Warranty, Developer and its surety hereby agree to extend the Warranty for an additional one (1) year period following AGENCY's acceptance of the repaired, replaced, or reconstructed TUMF Improvements. Nothing herein shall relieve Developer from any other liability it may have under federal, state, or local law to repair, replace, or reconstruct any TUMF Improvement following expiration of the Warranty or any extension thereof. Developer's warranty obligation under this section shall survive the expiration or termination of this Agreement.

9.0 Administrative Costs. If Developer fails to construct and install all or any part of the TUMF Improvements, or if Developer fails to comply with any other obligation contained herein, Developer and its surety shall be jointly and severally liable to AGENCY for all administrative expenses, fees, and costs, including reasonable attorney's fees and costs, incurred in obtaining compliance with this Agreement or in processing any legal action or for any other remedies permitted by law.

10.0 Default; Notice; Remedies.

10.1 Notice. If Developer neglects, refuses, or fails to fulfill or timely complete any obligation, term, or condition of this Agreement, or if AGENCY determines there is a violation of any federal, state, or local law, ordinance, regulation, code, standard, or other requirement, AGENCY may at any time thereafter declare Developer to be in default or violation of this Agreement and make written demand upon Developer or its surety, or both, to immediately remedy the default or violation (“Notice”). Developer shall substantially commence the work required to remedy the default or violation within five (5) days of the Notice. If the default or violation constitutes an immediate threat to the public health, safety, or welfare, AGENCY may provide the Notice verbally, and Developer shall substantially commence the required work within twenty-four (24) hours thereof. Immediately upon AGENCY’s issuance of the Notice, Developer and its surety shall be liable to AGENCY for all costs of construction and installation of the TUMF Improvements and all other administrative costs or expenses as provided for in this Section 10.0 of this Agreement.

10.2 Failure to Remedy; AGENCY Action. If the work required to remedy the noticed default or violation is not diligently prosecuted to a completion acceptable to AGENCY within the time frame contained in the Notice, AGENCY may complete all remaining work, arrange for the completion of all remaining work, and/or conduct such remedial activity as in its sole and absolute discretion it believes is required to remedy the default or violation. All such work or remedial activity shall be at the sole and absolute cost, expense, and liability of Developer and its surety, without the necessity of giving any further notice to Developer or surety. AGENCY’s right to take such actions shall in no way be limited by the fact that Developer or its surety may have constructed any of the TUMF Improvements at the time of AGENCY’s demand for performance. In the event AGENCY elects to complete or arrange for completion of the remaining work and the TUMF Improvements, AGENCY may require all work by Developer or its surety to cease in order to allow adequate coordination by AGENCY.

10.3 Other Remedies. No action by AGENCY pursuant to this Section 10.0 et seq. of this Agreement shall prohibit AGENCY from exercising any other right or pursuing any other legal or equitable remedy available under this Agreement or any federal, state, or local law. AGENCY may exercise its rights and remedies independently or cumulatively, and AGENCY may pursue inconsistent remedies. AGENCY may institute an action for damages, injunctive relief, or specific performance.

11.0 Security; Surety Bonds. Prior to the commencement of any work on the TUMF Improvements, Developer or its contractor shall provide AGENCY with surety bonds in the amounts and under the terms set forth below (“Security”). The amount of the Security shall be based on the estimated actual costs to construct the TUMF Improvements, as determined by AGENCY after Developer has awarded a contract for construction of the TUMF Improvements to the lowest responsive and responsible bidder in accordance with this Agreement (“Estimated Costs”). If AGENCY determines, in its sole and absolute discretion, that the Estimated Costs have changed, Developer or its contractor shall adjust the Security in the amount requested by AGENCY. Developer’s compliance with this Section 11.0 et seq. of this Agreement shall in no way limit or modify Developer’s indemnification obligation provided in Section 12.0 of this Agreement.

11.1 Performance Bond. To guarantee the faithful performance of the TUMF Improvements and all the provisions of this Agreement, to protect AGENCY if Developer is in default as set forth in Section 10.0 et seq. of this Agreement, and to secure the one-year guarantee and warranty of the TUMF Improvements, Developer or its contractor shall provide AGENCY a faithful performance bond in an amount which sum shall be not less than one hundred percent (100%) of the Estimated Costs. The AGENCY may, in its sole and absolute discretion, partially release a portion or portions of the security provided under this section as the TUMF Improvements are accepted by AGENCY, provided that Developer is not in default on any provision of this Agreement and the total remaining security is not less than Ten (10%) of the Estimated Costs. All security provided under this section shall be released at the end of the Warranty period, or any extension thereof as provided in Section 11.0 of this Agreement, provided that Developer is not in default on any provision of this Agreement.

11.2 Labor & Material Bond. To secure payment to the contractors, subcontractors, laborers, materialmen, and other persons furnishing labor, materials, or equipment for performance of the TUMF Improvements and this Agreement, Developer or its contractor shall provide AGENCY a labor and materials bond in an amount which sum shall not be less than one hundred percent (100%) of the Estimated Costs. The security provided under this section may be released by written authorization of AGENCY after six (6) months from the date AGENCY accepts the TUMF Improvements. The amount of such security shall be reduced by the total of all stop notice or mechanic's lien claims of which AGENCY is aware, plus an amount equal to twenty percent (20%) of such claims for reimbursement of AGENCY's anticipated administrative and legal expenses arising out of such claims.

11.3 Additional Requirements. The surety for any surety bonds provided as Security shall have a current A.M. Best rating of at least "A" and FSC-VIII, shall be licensed to do business in California, and shall be satisfactory to AGENCY. As part of the obligation secured by the Security and in addition to the face amount of the Security, Developer, its contractor or the surety shall secure the costs and reasonable expenses and fees, including reasonable attorney's fees and costs, incurred by AGENCY in enforcing the obligations of this Agreement. Developer, its contractor and the surety shall stipulate and agree that no change, extension of time, alteration, or addition to the terms of this Agreement, the TUMF Improvements, or the plans and specifications for the TUMF Improvements shall in any way affect its obligation on the Security.

11.4 Evidence and Incorporation of Security. Evidence of the Security shall be provided on the forms set forth in Exhibit "B", unless other forms are deemed acceptable by the AGENCY, and when such forms are completed to the satisfaction of AGENCY, the forms and evidence of the Security shall be attached hereto as Exhibit "B" and incorporated herein by this reference.

12.0 Indemnification. Developer shall defend, indemnify, and hold harmless AGENCY, the Western Riverside Council of Governments (WRCOG), their elected officials, board members, employees, and agents from any and all actual or alleged claims, demands, causes of action, liability, loss, damage, or injury to property or persons, including wrongful death, whether imposed by a court of law or by administrative action of any federal, state, or local governmental agency, arising out of or incident to any acts, omissions, negligence, or willful misconduct of

Developer, its employees, contractors, or agents in connection with the performance of this Agreement, or arising out of or in any way related to or caused by the TUMF Improvements or their condition prior to AGENCY's approval and acceptance of the TUMF Improvements ("Claims"). This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys fees, and related costs or expenses, and the reimbursement of AGENCY, WRCOG, their elected officials, board members, employees, and/or agents for all legal expenses and costs incurred by each of them. This indemnification excludes only such portion of any Claim which is caused solely and exclusively by the negligence or willful misconduct of AGENCY as determined by a court or administrative body of competent jurisdiction. Developer's obligation to indemnify shall survive the expiration or termination of this Agreement, and shall not be restricted to insurance proceeds, if any, received by AGENCY, WRCOG, their elected officials, board members, employees, or agents.

13.0 Insurance.

13.1 Types; Amounts. Developer shall procure and maintain, and shall require its contractors to procure and maintain, during performance of this Agreement, insurance of the types and in the amounts described below ("Required Insurance"). If any of the Required Insurance contains a general aggregate limit, such insurance shall apply separately to this Agreement or be no less than two times the specified occurrence limit.

13.1.1 General Liability. Occurrence form general liability insurance at least as broad as Insurance Services Office Form CG 00 01, or equivalent form, with an **occurrence** limit of Two Million Dollars (\$2,000,000) and aggregate limit of Four Million Dollars (\$4,000,000) for bodily injury, personal injury, and property damage.

13.1.2 Business Automobile Liability. Business automobile liability insurance at least as broad as Insurance Services Office Form CA 00 01 (coverage symbol 1 – any auto), or equivalent form, with a combined single limit of not less than One Million Dollars (\$1,000,000) per occurrence. Such insurance shall include coverage for the ownership, operation, maintenance, use, loading, or unloading of any auto owned, leased, hired, or borrowed by the insured or for which the insured is responsible.

13.1.3 Workers' Compensation. Workers' compensation insurance with limits as required by the Labor Code of the State of California and employers' liability insurance with limits of not less than One Million Dollars (\$1,000,000) per occurrence, at all times during which insured retains employees.

13.1.4 Professional Liability. For any consultant or other professional who will engineer or design the TUMF Improvements, liability insurance for errors and omissions with limits not less than Two Million Dollars (\$2,000,000) per occurrence, shall be procured and maintained for a period of five (5) years following completion of the TUMF Improvements. Such insurance shall be endorsed to include contractual liability.

13.2 Deductibles. Any deductibles or self-insured retentions must be declared to and approved by AGENCY. At the option of AGENCY, either: (a) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects AGENCY, its elected officials,

officers, employees, agents, and volunteers; or (b) Developer and its contractors shall provide a financial guarantee satisfactory to AGENCY guaranteeing payment of losses and related investigation costs, claims, and administrative and defense expenses.

13.3 Additional Insured; Separation of Insureds. The Required Insurance, except for the professional liability and workers' compensation insurance, shall name AGENCY, WRCOG, their elected officials, board members, officers, employees, and agents as additional insureds with respect to work performed by or on behalf of Developer or its contractors, including any materials, parts, or equipment furnished in connection therewith. For Required Insurance provided by Developer's contractors, WRCOG shall be added as an additional insured using ISO CG 2038 or an exact equivalent. The Required Insurance shall contain standard separation of insureds provisions, and shall contain no special limitations on the scope of its protection to AGENCY, WRCOG, their elected officials, board members, officers, employees, or agents.

13.4 Primary Insurance; Waiver of Subrogation. The Required Insurance, except for the professional liability and workers' compensation insurance shall be primary with respect to any insurance or self-insurance programs covering AGENCY, WRCOG, their elected officials, board members, officers, employees, or agents. The Required Insurance, except for the professional liability insurance, shall provide that the insurance company waives all right of recovery by way of subrogation against AGENCY and WRCOG in connection with any damage or harm covered by such policy.

13.5 Certificates; Verification. Developer and its contractors shall furnish AGENCY with original certificates of insurance and endorsements effecting coverage for the Required Insurance. The certificates and endorsements for each insurance policy shall be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements must be received and approved by AGENCY before work pursuant to this Agreement can begin. AGENCY reserves the right to require complete, certified copies of all required insurance policies, at any time.

13.6 Term; Cancellation Notice. Developer and its contractors shall maintain the Required Insurance for the term of this Agreement and shall replace any certificate, policy, or endorsement which will expire prior to that date. All policies shall be endorsed to provide that the Required Insurance shall not be suspended, voided, reduced, canceled, or allowed to expire except on thirty (30) days' prior written notice to AGENCY. If such notice of cancellation endorsements are unavailable, Developer shall provide such thirty (30) days' written notice of cancellation.

13.7 Insurer Rating. Unless approved in writing by AGENCY, all Required Insurance shall be placed with insurers licensed to do business in the State of California and with a current A.M. Best rating of at least "A" and FSC-VIII.

14.0 TUMF Credit.

14.1 Developer's TUMF Obligation. Developer hereby agrees and accepts that as of the date of this Agreement, the amount Developer is obligated to pay to AGENCY _ pursuant to Ordinance No. 1514 as part of the TUMF Program, **provided that Developer constructs all 4,862**

units, is Forty-One Million Five Hundred and Ninety Thousand Two Hundred and Fifty-Two dollars (\$41,592,252.00) (“TUMF Obligation”). This TUMF Obligation shall be initially determined under the TUMF fee schedule in effect for the AGENCY at the time the Developer submits a building permit application for the TUMF Improvement. Notwithstanding, this TUMF Obligation does not have to be paid until the Certificate of Occupancy is obtained.

14.2 Fee Adjustments. Notwithstanding the foregoing, Developer agrees that this Agreement shall not estop AGENCY from adjusting the TUMF in accordance with the provisions of AGENCY Ordinance No. 1514.

14.3 Credit Offset Against TUMF Obligation. Pursuant to Ordinance No. 1514 and in consideration for Developer's obligation under this Agreement for the delivery of TUMF Improvements, credit shall be applied by AGENCY to offset the TUMF Obligation (“Credit”) subject to adjustment and reconciliation under Section 14.5 of this agreement. Developer hereby agrees that the amount of the Credit shall be applied after Developer has initiated the process of project delivery of TUMF Improvements to the lowest responsible bidder in accordance with this Agreement. Developer further agrees that the dollar amount of the Credit shall be equal to the lesser of: (A) the bid amount set forth in the contract awarded to the lowest responsible bidder, or (B) the unit cost assumptions for the TUMF Improvement in effect at the time of the contract award, as such assumptions are identified and determined in the most recent TUMF Nexus Study and the TUMF Administrative Plan adopted by WRCOG (“Unit Cost Assumptions”). The current unit cost assumptions in the 2016 TUMF Nexus Study for the TUMF Improvements is \$5,128,000.

The bid amount and the Unit Cost Assumptions shall hereafter be collectively referred to as “Estimated Credit”. At no time will the Credit exceed the Developer’s TUMF Obligation. If the dollar amount of the Estimated Credit exceeds the dollar amount of the TUMF Obligation, Developer will be deemed to have completely satisfied its TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. If the dollar amount of the Estimated Credit is less than the dollar amount of the TUMF Obligation, the Developer agrees the Credit shall be applied to offset the TUMF Obligation as follows:

(i) For residential units in the Project, the Credit shall be applied to all residential units to offset and/or satisfy the TUMF Obligation. The residential units for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to each unit, shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

(ii) For commercial and industrial structures in the Project, the Credit shall be applied to all commercial and industrial development to offset and/or satisfy the TUMF Obligation. The commercial or industrial structure(s) for which the TUMF Obligation has been offset and/or satisfied by use of the Credit, and the amount of offset applicable to such structure(s), shall be identified in the notice provided to the Developer by AGENCY pursuant to this section.

AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section, including how the Credit is applied to offset the TUMF Obligation as described above.

14.4 Verified Cost of the TUMF Improvements. Upon recordation of the Notice of Completion for the TUMF Improvements and acceptance of the TUMF Improvements by AGENCY, Developer shall submit to the AGENCY Public Works Director the information set forth in the attached Exhibit “C”. The AGENCY Public Works Director, or his or her designee, shall use the information provided by Developer to calculate the total actual costs incurred by Developer in delivering the TUMF Improvements covered under this Agreement (“Verified Costs”). The AGENCY Public Works Director will use his or her best efforts to determine the amount of the Verified Costs and provide Developer written notice thereof within thirty (30) calendar days of receipt of all the required information from Developer.

14.5 Reconciliation; Final Credit Offset Against TUMF Obligation. The Developer is aware of and accepts the fact that Credits are speculative and conceptual in nature. The actual amount of Credit that shall be applied by AGENCY to offset the TUMF Obligation shall be equal to the lesser of: (A) the Verified Costs or (B) Unit Cost Assumptions for the TUMF Improvements as determined in accordance with Section 14.3 of this Agreement (“Actual Credit”). No Actual Credit will be awarded until the Verified Costs are determined through the reconciliation process. Please be advised that while a Developer may use an engineer’s estimates in order to estimate Credits for project planning purposes, the Actual Credit awarded will only be determined by the reconciliation process.

(a) TUMF Balance. If the dollar amount of the Actual Credit is less than the dollar amount of the TUMF Obligation, the AGENCY Public Works Director shall provide written notice to Developer of the amount of the difference owed (“TUMF Balance”) and Developer shall pay the TUMF Balance in accordance with Ordinance No. 1514 to fully satisfy the TUMF Obligation (see Exhibit “F” - Example “A”).

(b) TUMF Reimbursement. If the dollar amount of the Actual Credit exceeds the TUMF Obligation, Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may apply for a reimbursement agreement, to the extent applicable, as provided in Section 14.6 of this Agreement. AGENCY shall provide Developer written notice of the determinations that AGENCY makes pursuant to this section (see Exhibit “F” - Example “B”).

(c) TUMF Overpayment. If the dollar amount of the Actual Credit exceeds the Estimated Credit, but is less than the TUMF Obligation, but the Actual Credit plus additional monies collected by AGENCY from Developer for the TUMF Obligation exceed the TUMF Obligation (“TUMF Overpayment”), Developer will be deemed to have fully satisfied the TUMF Obligation for the Project and may be entitled to a refund. The AGENCY’s Public Works Director shall provide written notice to WRCOG and the Developer of the amount of the TUMF Overpayment and AGENCY shall direct WRCOG to refund the Developer in accordance with Ordinance No. 1514 (see Exhibit “F” - Example C).

14.6 Reimbursement Agreement. If authorized under either Section 14.3 or Section 14.5 Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the Actual Credit exceeds the TUMF Obligation, as determined pursuant to Section 14.3 of this Agreement, Ordinance No1514, and the TUMF Administrative Plan adopted by WRCOG ("Reimbursement Agreement"). If AGENCY and WRCOG agree to a Reimbursement Agreement with Developer, the Reimbursement Agreement shall be executed on the form set forth in Exhibit "D," and shall contain the terms and conditions set forth therein. The Parties agree that the Reimbursement Agreement shall be subject to all terms and conditions of this Agreement, and that upon execution, an executed copy of the Reimbursement Agreement shall be attached hereto and shall be incorporated herein as a material part of this Agreement as though fully set forth herein.

15.0 Miscellaneous.

15.1 Assignment. Developer may, as set forth herein, assign all or a portion of its rights pursuant to this Agreement to a purchaser of a portion or portions of the Property ("Assignment"). Developer and such purchaser and assignee ("Assignee") shall provide to AGENCY such reasonable proof as it may require that Assignee is the purchaser of such portions of the Property. Any assignment pursuant to this Section shall not be effective unless and until Developer and Assignee have executed an assignment agreement with AGENCY in a form reasonably acceptable to AGENCY, whereby Developer and Assignee agree, except as may be otherwise specifically provided therein, to the following: (1) that Assignee shall receive all or a portion of Developer's rights pursuant to this Agreement, including such credit as is determined to be applicable to the portion of the Property purchased by Assignee pursuant to Section 14.0 et seq. of this Agreement, and (2) that Assignee shall be bound by all applicable provisions of this Agreement.

15.2 Relationship Between the Parties. The Parties hereby mutually agree that this Agreement shall not operate to create the relationship of partnership, joint venture, or agency between or among AGENCY, WRCOG and Developer. Developer's contractors are exclusively and solely under the control and dominion of Developer. Nothing herein shall be deemed to make Developer or its contractors an agent or contractor of AGENCY. This Agreement shall be interpreted and administered in a manner consistent with the TUMF Administrative Plan in effect at the time this Agreement is executed.

15.3 Warranty as to Property Ownership; Authority to Enter Agreement. Developer hereby warrants that it owns fee title to the Property and that it has the legal capacity to enter into this Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority make this Agreement and bind each respective Party.

15.4 Prohibited Interests. Developer warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for Developer, to solicit or secure this Agreement. Developer also warrants that it has not paid or agreed to pay any company or person, other than a bona fide employee working solely for Developer, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon the making of this Agreement. For breach of this warranty, AGENCY shall have the right to rescind this Agreement without liability.

15.5 Notices. All notices, demands, invoices, and written communications shall be in writing and delivered to the following addresses or such other addresses as the Parties may designate by written notice:

To AGENCY: City of Banning
Attn: City Manager
99 E. Ramsey Street
Banning, CA 92220
Fax No. (951) 922-3128

To Developer: Pardee Homes
Attn: Chris Courtney
1250 Corona Pointe Court, Suite 600
Corona, CA 92879
Fax No. (951) 428-4410

Depending upon the method of transmittal, notice shall be deemed received as follows: by facsimile, as of the date and time sent; by messenger, as of the date delivered; and by U.S. Mail first class postage prepaid, as of 72 hours after deposit in the U.S. Mail.

15.6 Cooperation; Further Acts. The Parties shall fully cooperate with one another, and shall take any additional acts or sign any additional documents as may be necessary, appropriate, or convenient to attain the purposes of this Agreement.

15.7 Construction; References; Captions. It being agreed the Parties or their agents have participated in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days, or period for performance shall be deemed calendar days and not work days. All references to Developer include all personnel, employees, agents, and contractors of Developer, except as otherwise specified in this Agreement. All references to AGENCY include its elected officials, officers, employees, agents, and volunteers except as otherwise specified in this Agreement. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

15.8 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

15.9 Termination. This Agreement shall terminate 10 years after the Effective Date, unless extended in writing by the Parties. In addition, this Agreement shall terminate 5 years after the Effective Date in the event that the TUMF Improvements as specified in the Credit Agreement is not commenced within 5 years of the Effective **Date**.

15.9.1 Waiver. No waiver of any default shall constitute a waiver of any other default or breach, whether of the same or other covenant or condition. No waiver, benefit, privilege, or service voluntarily given or performed by a Party shall give the other Party any contractual right by custom, estoppel, or otherwise.

15.9.2 Binding Effect. Each and all of the covenants and conditions shall be binding on and shall inure to the benefit of the Parties, and their successors, heirs, personal representatives, or assigns. This section shall not be construed as an authorization for any Party to assign any right or obligation.

15.9.3 No Third Party Beneficiaries. There are no intended third party beneficiaries of any right or obligation assumed by the Parties.

15.9.4 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

15.9.5 Consent to Jurisdiction and Venue. This Agreement shall be construed in accordance with and governed by the laws of the State of California. Any legal action or proceeding brought to interpret or enforce this Agreement, or which in any way arises out of the Parties' activities undertaken pursuant to this Agreement, shall be filed and prosecuted in the appropriate California State Court in the County of Riverside, California. Each Party waives the benefit of any provision of state or federal law providing for a change of venue to any other court or jurisdiction including, without limitation, a change of venue based on the fact that a governmental entity is a party to the action or proceeding, or that a federal right or question is involved or alleged to be involved in the action or proceeding. Without limiting the generality of the foregoing waiver, Developer expressly waives any right to have venue transferred pursuant to California Code of Civil Procedure Section 394.

15.9.6 Time is of the Essence. Time is of the essence in this Agreement, and the Parties agree to execute all documents and proceed with due diligence to complete all covenants and conditions.

15.9.7 Counterparts. This Agreement may be signed in counterparts, each of which shall constitute an original and which collectively shall constitute one instrument.

15.9.8 Entire Agreement. This Agreement contains the entire agreement between AGENCY and Developer and supersedes any prior oral or written statements or agreements between AGENCY and Developer.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

DEVELOPER:
PARDEE HOMES, A CALIFORNIA
CORPORATION

By: _____

Its:_____

ATTEST:

By: _____

Its: _____

CITY OF BANNING

By: _____

Its:_____

ATTEST:

By: _____

Its: _____

EXHIBIT “A”

LEGAL DESCRIPTION OF PROPERTY

[ATTACH BEHIND THIS PAGE]

EXHIBIT “B”

FORMS FOR SECURITY

[ATTACHED BEHIND THIS PAGE]

BOND NO. _____
 INITIAL PREMIUM: _____
 SUBJECT TO RENEWAL

PERFORMANCE BOND

WHEREAS, the City of Banning, a California municipal corporation ("AGENCY") has executed an agreement with Pardee Homes, a California Corporation (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter the "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain TUMF Improvement and Credit/Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, the Agreement is hereby referred to and incorporated herein by this reference; and

WHEREAS, Developer or its contractor is required by the Agreement to provide a good and sufficient bond for performance of the Agreement, and to guarantee and warranty the Work constructed thereunder.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY in the sum of _____ (\$_____), said sum being not less than one hundred percent (100%) of the total cost of the Work as set forth in the Agreement, we bind ourselves, our heirs, executors and administrators, successors and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such, that if Developer and its contractors, or their heirs, executors, administrators, successors or assigns, shall in all things stand to and abide by, and well and truly keep and perform the covenants, conditions, agreements, guarantees, and warranties in the Agreement and any alteration thereof made as therein provided, to be kept and performed at the time and in the manner therein specified and in all respects according to their intent and meaning, and to indemnify and save harmless AGENCY, its officers, employees, and agents, as stipulated in the Agreement, then this obligation shall become null and void; otherwise it shall be and remain in full force and effect.

As part of the obligation secured hereby, and in addition to the face amount specified therefor, there shall be included costs and reasonable expenses and fees, including reasonable attorney's fees, incurred by AGENCY in successfully enforcing such obligation, all to be taxed as costs and included in any judgment rendered.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the said Agreement or to the Work to be

performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

Signer is Representing:

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the _____ corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

BOND NO. _____
 INITIAL PREMIUM: _____
 SUBJECT TO RENEWAL

LABOR & MATERIAL BOND

WHEREAS, the City of Banning, a California municipal corporation ("AGENCY") has executed an agreement with Pardee Homes, a California corporation (hereinafter "Developer"), requiring Developer to perform certain work consisting of but not limited to, furnishing all labor, materials, tools, equipment, services, and incidentals for the construction of street and transportation system improvements (hereinafter "Work");

WHEREAS, the Work to be performed by Developer is more particularly set forth in that certain Improvement and Credit / Reimbursement Agreement dated _____, (hereinafter the "Agreement"); and

WHEREAS, Developer or its contractor is required to furnish a bond in connection with the Agreement providing that if Developer or any of his or its contractors shall fail to pay for any materials, provisions, or other supplies, or terms used in, upon, for or about the performance of the Work contracted to be done, or for any work or labor done thereon of any kind, or for amounts due under the provisions of 3248 of the California Civil Code, with respect to such work or labor, that the Surety on this bond will pay the same together with a reasonable attorney's fee in case suit is brought on the bond.

NOW, THEREFORE, we the undersigned, _____, as Principal and _____, a corporation organized and existing under the laws of the State of _____ and duly authorized to transact business under the laws of the State of California, as Surety, are held and firmly bound unto the AGENCY and to any and all material men, persons, companies or corporations furnishing materials, provisions, and other supplies used in, upon, for or about the performance of the said Work, and all persons, companies or corporations renting or hiring teams, or implements or machinery, for or contributing to said Work to be done, and all persons performing work or labor upon the same and all persons supplying both work and materials as aforesaid, the sum of _____ (\$_____), said sum being not less than 100% of the total amount payable by Developer under the terms of the Agreement, for which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, successors and assigns jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH that if Developer or its contractors, or their heirs, executors, administrators, successors, or assigns, shall fail to pay for any materials, provisions, or other supplies or machinery used in, upon, for or about the performance of the Work contracted to be done, or for work or labor thereon of any kind, or fail to pay any of the persons named in California Civil Code Section 9100, or amounts due under the Unemployment Insurance Code with respect to work or labor performed by any such claimant, or for any amounts required to be deducted, withheld, and paid over to the Employment Development Department from the wages of employees of the contractor and his

subcontractors pursuant to Section 13020 of the Unemployment Insurance Code with respect to such work and labor, and all other applicable laws of the State of California and rules and regulations of its agencies, then said Surety will pay the same in or to an amount not exceeding the sum specified herein.

In case legal action is required to enforce the provisions of this bond, the prevailing party shall be entitled to recover reasonable attorneys' fees in addition to court costs, necessary disbursements and other consequential damages. In addition to the provisions hereinabove, it is agreed that this bond will inure to the benefit of any and all persons, companies and corporations entitled to make claims under Sections 8024, 8400, 8402, 8404, 8430, 9100 of the California Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

The said Surety, for value received, hereby stipulates and agrees that no change, extension of time, alteration or additions to the terms of the Agreement or to the Work to be performed thereunder or the specification accompanying the same shall in any way affect its obligations on this bond, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Agreement or to the Work.

IN WITNESS WHEREOF, we have hereto set our hands and seals this ____ day on _____, 20__.

Principal

By: _____
President

Surety

By: _____
Attorney-in-Fact

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

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

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____
Date Here Insert Name and Title of the Officer

personally appeared _____
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

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

Description of Attached Document

Title of Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____ Signer's Name: _____

<input type="checkbox"/> Corporate Officer – Title(s): _____	<input type="checkbox"/> Corporate Officer – Title(s): _____
<input type="checkbox"/> Partner - <input type="checkbox"/> Limited <input type="checkbox"/> General	<input type="checkbox"/> Partner - <input type="checkbox"/> Limited <input type="checkbox"/> General
<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact	<input type="checkbox"/> Individual <input type="checkbox"/> Attorney in Fact
<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator	<input type="checkbox"/> Trustee <input type="checkbox"/> Guardian or Conservator
<input type="checkbox"/> Other: _____	<input type="checkbox"/> Other: _____
Signer is Representing: _____	Signer is Representing: _____

CERTIFICATE AS TO CORPORATE PRINCIPAL

I, _____, certify that I am the _____ Secretary of the corporation named as principal in the attached bond, that _____ who signed the said bond on behalf of the principal was then _____ of said corporation; that I know his signature, and his signature thereto is genuine; and that said bond was duly signed, sealed and attested for and in behalf of said corporation by authority of its governing Board.

(Corporate Seal)

Signature

Date

NOTE: A copy of the power of attorney to local representatives of the bonding company may be attached hereto.

EXHIBIT “C”**DOCUMENTATION TO BE PROVIDED TO AGENCY BY DEVELOPER FOR
DETERMINATION OF CONSTRUCTION COSTS**

To assist AGENCY in determining the Construction Costs for a completed TUMF Improvement, Developer shall provide the following documents to AGENCY:

1. Plans, specifications and Developer’s civil engineer’s cost estimate;
2. List of bidders from whom bids were requested;
3. Construction schedules and progress reports;
4. Contracts, insurance certificates and change orders with each contractor or vendor;
5. Invoices received from all vendors;
6. Canceled checks for payments made to contractors and vendors (copy both front and back of canceled checks);
7. Spreadsheet showing total costs incurred in and related to the construction of each TUMF Improvement and the check number for each item of cost and invoice;
8. Final lien releases from each contractor and vendor; and
9. Such further documentation as may be reasonably required by AGENCY to evidence the completion of construction and the payment of each item of cost and invoice.

EXHIBIT “D”**REIMBURSEMENT AGREEMENT
TRANSPORTATION UNIFORM MITIGATION FEE PROGRAM**

THIS REIMBURSEMENT AGREEMENT (“Agreement”) is entered into this ____ day of _____, 2018, by and between the City of Banning, a California municipal corporation (“AGENCY”), and Pardee Homes, a California corporation, with its principal place of business at 1250 Corona Pointe Courte, Suite 600, Corona, California 92879 (“Developer”). AGENCY and Developer are sometimes hereinafter referred to individually as “Party” and collectively as “Parties”.

RECITALS

WHEREAS, AGENCY and Developer are parties to an agreement dated _____, 2018, entitled “Improvement and Credit Agreement - Transportation Uniform Mitigation Fee Program” (hereinafter “Credit Agreement”);

WHEREAS, Sections 14.1 through 14.3 of the Credit Agreement provide that Developer is obligated to pay AGENCY the TUMF Obligation, as defined therein, but shall receive credit to offset the TUMF Obligation if Developer constructs and AGENCY accepts the TUMF Improvements in accordance with the Credit Agreement;

WHEREAS, Section 14.5 of the Credit Agreement provides that if the dollar amount of the credit to which Developer is entitled under the Credit Agreement exceeds the dollar amount of the TUMF Obligation, Developer may apply to AGENCY and WRCOG for a reimbursement agreement for the amount by which the credit exceeds the TUMF Obligation;

WHEREAS, Section 14.5 additionally provides that a reimbursement agreement executed pursuant to the Credit Agreement (i) shall be executed on the form attached to the Credit Agreement, (ii) shall contain the terms and conditions set forth therein, (iii) shall be subject to all terms and conditions of the Credit Agreement, and (iv) shall be attached upon execution to the Credit Agreement and incorporated therein as a material part of the Credit Agreement as though fully set forth therein; and

WHEREAS, AGENCY and WRCOG have consented to execute a reimbursement agreement with Developer pursuant to the Credit Agreement, Ordinance No. 1514, and the TUMF Administrative Plan adopted by WRCOG.

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

TERMS

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

2.0 Effectiveness. This Agreement shall not be effective unless and until the Credit Agreement is effective and in full force in accordance with its terms.

3.0 Definitions. Terms not otherwise expressly defined in this Agreement, shall have the meaning and intent set forth in the Credit Agreement.

4.0 Amount of Reimbursement. Subject to the terms, conditions, and limitations set forth in this Agreement, the Parties hereby agree that Developer is entitled to receive the dollar amount by which the Actual Credit exceeds the dollar amount of the TUMF Obligation as determined pursuant to the Credit Agreement, Ordinance No. 1514, and the TUMF Administrative Plan adopted by WRCOG (“Reimbursement”). The Reimbursement shall be subject to verification by WRCOG. AGENCY and Developer shall provide any and all documentation reasonably necessary for WRCOG to verify the amount of the Reimbursement. The Reimbursement shall be in an amount not exceeding \$5,128,000 (“Reimbursement Amount”). AGENCY shall be responsible for obtaining the Reimbursement Amount from WRCOG and transmitting the Reimbursement Amount to the Developer. In no event shall the dollar amount of the Reimbursement exceed the difference between the dollar amount of all credit applied to offset the TUMF Obligation pursuant to Section 14.3, 14.4, and 14.5 of the Credit Agreement, and one hundred (100%) of the approved unit awarded, as such assumptions are identified and determined in the Nexus Study, as it may be adjusted, and the TUMF Administrative Plan adopted by WRCOG.

5.0 Payment of Reimbursement; Funding Contingency. The payment of the Reimbursement Amount shall be subject to the following conditions:

5.1 Developer shall have no right to receive payment of the Reimbursement unless and until (i) the TUMF Improvements are completed and accepted by AGENCY in accordance with the Credit Agreement, (ii) the TUMF Improvements are scheduled for funding pursuant to the five-year Transportation Improvement Program adopted annually by WRCOG, (iii) WRCOG has funds available and appropriated for payment of the Reimbursement amount.

5.2 Developer shall not be entitled to any interest or other cost adjustment for any delay between the time when the dollar amount of the Reimbursement is determined and the time when payment of the Reimbursement is made to Developer by WRCOG through AGENCY.

6.0 Affirmation of Credit Agreement. AGENCY and Developer represent and warrant to each other that there have been no written or oral modifications or amendments of the Credit Agreement, except by this Agreement. AGENCY and Developer ratify and reaffirm each and every one of their respective rights and obligations arising under the Credit Agreement. AGENCY and Developer represent and warrant that the Credit Agreement is currently an effective, valid, and binding obligation.

7.0 Incorporation Into Credit Agreement. Upon execution of this Agreement, an executed original of this Agreement shall be attached as Exhibit “D” to the Credit Agreement and shall be incorporated therein as a material part of the Credit Agreement as though fully set forth therein.

8.0 Terms of Credit Agreement Controlling. Each Party hereby affirms that all provisions of the Credit Agreement are in full force and effect and shall govern the actions of the Parties under this Agreement as though fully set forth herein and made specifically applicable hereto, including without limitation, the following sections of the Credit Agreement: Sections 10.0 through 10.3, Section 12.0, Sections 13.0 through 13.7, Sections 14.0 through 14.6, and Sections 15.0 through 15.17.

[SIGNATURES OF PARTIES ON NEXT PAGE]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

PARDEE HOMES, A CALIFORNIA
CORPORATION
("Developer")

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

CITY OF BANNING, A CALIFORNIA
MUNICIPAL CORPORATION

By: _____

Its: _____

ATTEST:

By: _____

Its: _____

EXHIBIT “E”**TUMF CREDIT / REIMBURSEMENT ELIGIBILITY PROCESS**

1. Prior to the construction of any TUMF Improvement, Developer shall follow the steps listed below:

- (a) Prepare a separate bid package for the TUMF Improvements.
- (b) The plans, cost estimate, specifications and contract document shall require all contractors to pay prevailing wages and to comply with applicable provisions of the Labor Code, Government Code, and Public Contract Code relating to Public Works Projects.
- (c) Bids shall be obtained and processed in accordance with the formal public works bidding requirements of the AGENCY.
- (d) The contract(s) for the construction of TUMF Improvements shall be awarded to the lowest responsible bidder(s) for the construction of such facilities in accordance with the AGENCY’s requirements and guidelines.
- (e) Contractor(s) shall be required to provide proof of insurance coverage throughout the duration of the construction.

2. Prior to the determination and application of any Credit pursuant to a TUMF Improvement and Credit Agreement executed between AGENCY and Developer ("Agreement"), Developer shall provide the AGENCY and WRCOG with the following:

- (a) Copies of all information listed under Item 1 above.
- (b) Surety Bond, Letter of Credit, or other form of security permitted under the Agreement and acceptable to the AGENCY and WRCOG, guaranteeing the construction of all applicable TUMF Improvements.

3. Prior to the AGENCY’s acceptance of any completed TUMF Improvement, and in order to initiate the construction cost verification process, the Developer shall comply with the requirements as set forth in Sections 7, 14.2 and 14.3 of the Agreement, and the following conditions shall also be satisfied:

- (a) Developer shall have completed the construction of all TUMF Improvements in accordance with the approved Plans and Specifications.
- (b) Developer shall have satisfied the AGENCY’s inspection punch list.
- (c) After final inspection and approval of the completed TUMF Improvements, the AGENCY shall have provided the Developer a final inspection release letter.

(d) AGENCY shall have filed a Notice of Completion with respect to the TUMF Improvements pursuant to Section 3093 of the Civil Code with the County Recorder's Office, and provided a copy of filed Notice of Completion to WRCOG.

(e) Developer shall have provided AGENCY a copy of the As-Built plans for the TUMF Improvements.

(f) Developer shall have provided AGENCY copies of all permits or agreements that may have been required by various resource/regulatory agencies for construction, operation and maintenance of any TUMF Improvements.

(g) Developer shall have submitted a documentation package to the AGENCY to determine the final cost of the TUMF Improvements, which shall include at a minimum, the following documents related to the TUMF Improvements:

(i) Plans, specifications, and Developer's Civil Engineer's cost estimates; or Engineer's Report showing the cost estimates.

(ii) Contracts/agreements, insurance certificates and change orders with each vendor or contractor.

(iii) Invoices from all vendors and service providers.

(iv) Copies of cancelled checks, front and back, for payments made to contractors, vendors and service providers.

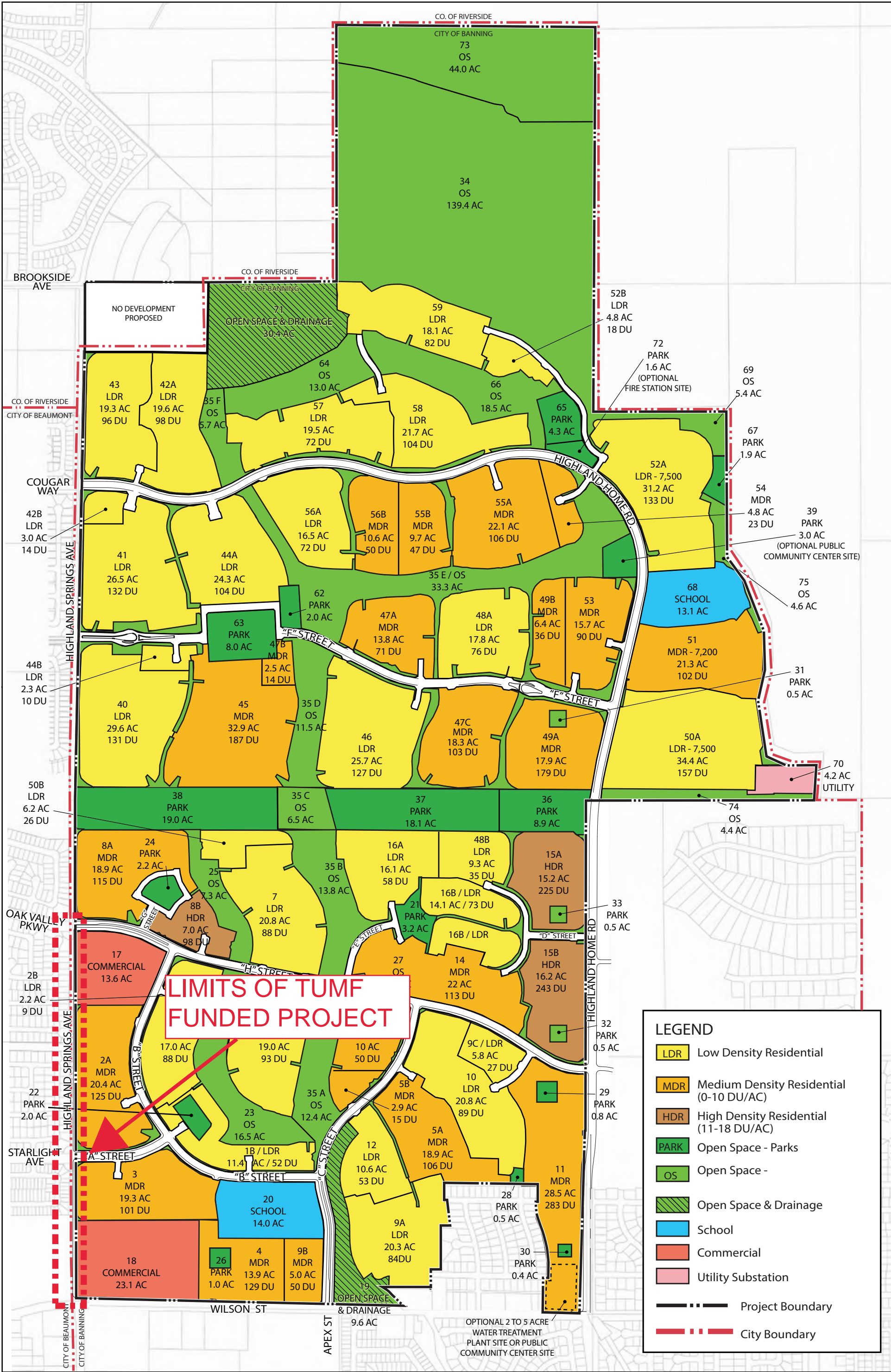
(v) Final lien releases from each contractor and vendor (unconditional waiver and release).

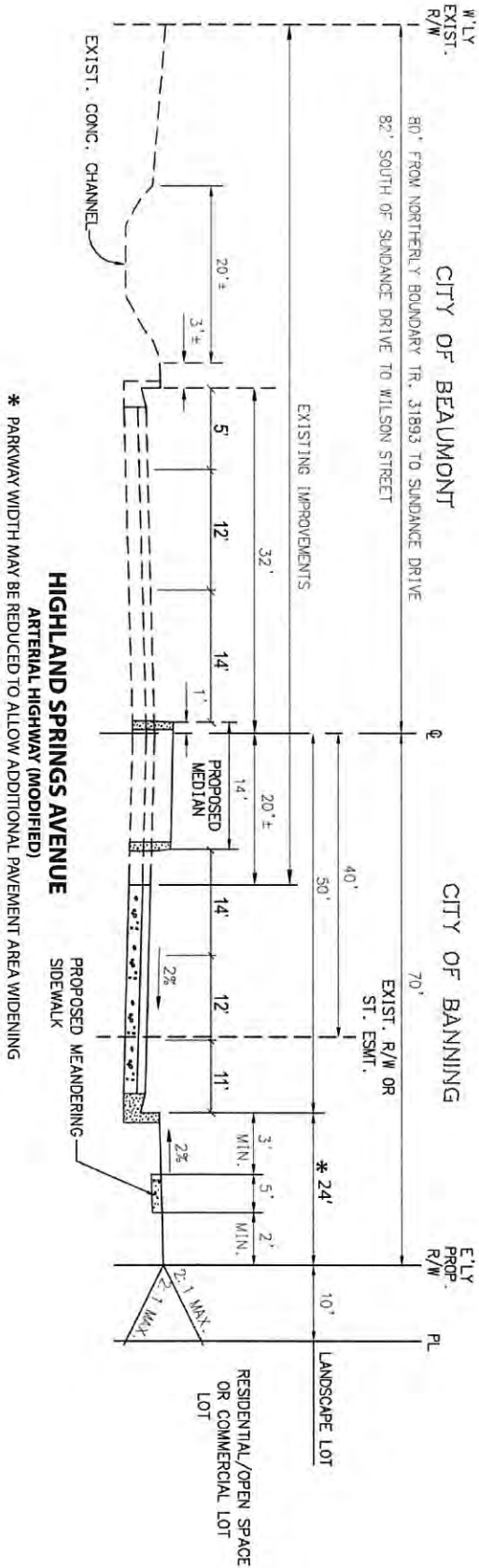
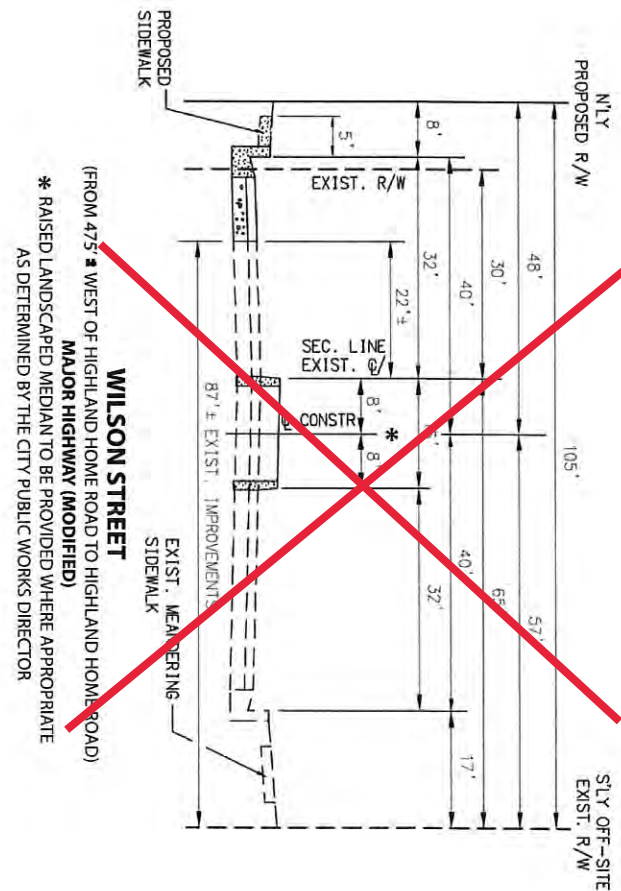
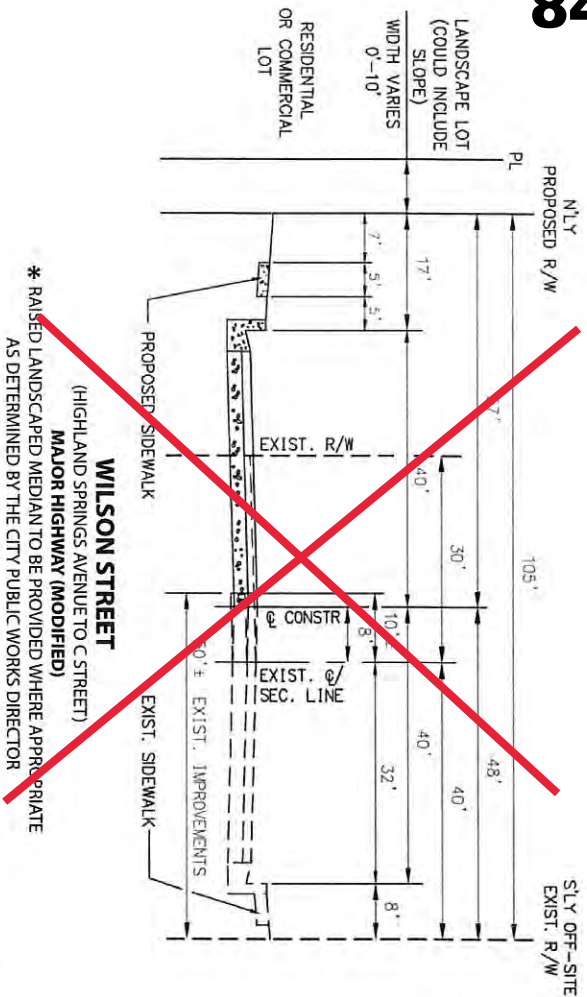
(vi) Certified contract workers payroll for AGENCY verification of compliance with prevailing wages.

(vii) A total cost summary, in spreadsheet format (MS Excel is preferred) and on disk, showing a breakdown of the total costs incurred. The summary should include for each item claimed the check number, cost, invoice numbers, and name of payee. See attached sample for details. [ATTACH SAMPLE, IF APPLICABLE; OTHERWISE DELETE REFERENCE TO ATTACHED SAMPLE]

ATTACHMENT 3

(Project Exhibits)





TUMF Unit Cost Assumption Calculation

TUMF Improvement Cost Estimate				
Segment	Project Limits	Linear Feet/ Miles	Maximum TUMF Share	
			Phase	Amount
Highland Springs Avenue	Wilson Street to Oak Valley Parkway	0.73 miles	Planning	\$102,000
			Engineering	\$254,000
			ROW/Utilities	\$3,322,000
		# of New Lanes	Construction	\$1,016,000
		2	Contingency	\$434,000
			Total	\$5,128,000

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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/City Engineer

MEETING DATE: May 14, 2019

SUBJECT: Adopt Resolution, Declaring Opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 Unless Amended to Remove the Proposed Statewide Water Tax

RECOMMENDED ACTION:

Staff recommends that City Council adopt Resolution, declaring opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 unless amended to remove the proposed statewide water tax.

BACKGROUND:

Past and present California governors and legislators have identified the need for a funding program in the State that would assist disadvantage communities to have access to safe drinking water. Most Californians have access to safe drinking water, however, there are some rural disadvantage communities in California with water sources that contain natural and anthropogenic contaminants (e.g. nitrates and arsenic). In most, if not all cases, it is financially difficult for these communities to construct and operate and maintain treatment facilities.

In 2017, Senator William Monning proposed SB 623 in an effort to establish a statewide drinking water tax, which was advanced by Governor Brown, but eventually rejected by the Legislative Budget Committee in June 2018. A similar effort was taken via SB 845 (Monning, Vidak), but again failed.

As part of Governor Newsom's proposed budget for Fiscal Year 2019/2020, there is a proposal for a Safe and Affordable Drinking Water Fund which is proposed to be funded through a statewide tax on drinking water, assessments on fertilizer sales and confined animal operations.

Assembly Bill 217 (Garcia), which contains a proposed water tax, passed out of the Assembly Environmental Safety and Toxic Materials Committee on March 26, 2019 and is headed to the Assembly Appropriations Committee. The bill was recently amended and currently proposes a fifty cent (\$.50) fee which would be assessed annually on each service connection for all public water systems. If approved, the City of Banning's assessment would be \$5,225 per year (based on 10,450 connections).

JUSTIFICATION:

Most local public water agencies agree that providing safe and reliable water to communities should be a goal of the state, but oppose a statewide water tax. Here are issues that have been identified related to the proposed water tax:

- Local water agencies and Cities would have to act as taxation entities, which could require reconfiguration of billing system and staff resources to implement. The additional expenses required to implement the proposed water tax would be an additional burden on current water customers.
- It is not sound policy to tax an essential life resource.
- There are current funding sources to assist with the issue:
 - o The state budget has set aside \$23.5 Million in General Fund revenue for safe drinking water programs and projects.
 - o California voters approved Proposition 68 which includes \$250 Million for safe drinking water that is prioritized for disadvantage communities.

If approved, staff will transmit a copy of this Resolution to the appropriate parties.

FISCAL IMPACT:

A water tax of \$.50/connection amounts to \$5,225 per year (based on 10,450 connections). There could also be a fiscal impact related to billing software reconfiguration and staff resources to implement the tax; these additional expenses have not been calculated at this time.

ALTERNATIVE:

Reject Proposed Resolution and provide direction to staff.

ATTACHMENTS:

1. Resolution 2019-____

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-__)

RESOLUTION 2019-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, DECLARING OPPOSITION TO THE 2019 BUDGET TRAILER BILL LANGUAGE AND ASSEMBLY BILL 217 UNLESS AMENDED TO REMOVE THE PROPOSED STATEWIDE WATER TAX

WHEREAS, past and present California governors and legislators have identified the need for a funding program in the State that would assist disadvantage communities to have access to safe drinking water; and

WHEREAS, in 2017, Senator William Monning proposed Senate Bill 623 in an effort to establish a statewide drinking water tax, which was advanced by Governor Brown, but eventually rejected by the Legislative Budget Committee in June 2018; and

WHEREAS, as part of Governor Gavin Newsom's proposed budget for Fiscal Year 2019/2020 ("2019 Budget Trailer Bill"), there is a proposal for a Safe and Affordable Drinking Water Fund which is proposed to be funded through a statewide tax on drinking water, assessments on fertilizer sales and confined animal operations; and

WHEREAS, Assembly Bill (AB) 217 (Garcia), which contains a proposed water tax, passed out of the Assembly Environmental Safety and Toxic Materials Committee on March 26, 2019 and is headed to the Assembly Appropriations Committee. AB 217 currently includes a fifty cent (\$.50) fee ("Water Tax") which would be assessed annually on each service connection for all public water systems; and

WHEREAS, the City of Banning City Council has determined that the 2019 Budget Trailer Bill language and AB 217, as written, is not in the best interest of the citizens of Banning and opposes both unless amended to remove the proposed statewide Water Tax.

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

SECTION 1. Adopts Resolution 2019-XX, declaring opposition to the 2019 Budget Trailer Bill Language and Assembly Bill 217 unless amended to remove the proposed statewide water tax.

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 14th day of May, 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

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CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-____ was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 14th of May, 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning
Banning, California

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

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

MEETING DATE: May 14, 2018

SUBJECT: Adopt Resolution, Requesting Approval of Stipulation for Entry of Interlocutory Judgment between Southern California Edison Company and City of Banning in connection with *Southern California Edison Company v. RRM Properties, LTD., et al.* (Riverside County Superior Court Case No. RIC 1813789)

RECOMMENDED ACTION:

1. Approve Stipulation for Interlocutory Judgment between the City of Banning and Southern California Edison Company.
2. Authorize the City Manager to execute the Stipulation for Interlocutory Judgment in the form substantially attached as Attachment 1 hereto.

BACKGROUND:

In July 2018, Southern California Edison Company (SCE) filed an eminent domain proceeding to condemn portions of the real properties located in the City of Banning, and identified Assessor's Parcel Numbers 534-100-001, 534-100-002, 534-100-004, 534-100-006, 534-100-007, 534-110-003, and 534-110-005 (RRM Property). RRM Properties, LTD. is the owner of the RRM Property. SCE seeks to acquire certain permanent and temporary construction easements (Subject Property) on the RRM Property for the construction, operation, and use of certain facilities, including electric substations, towers, poles, electric power lines, and communication lines, for the transmission and distribution of electricity in connection with the West of Devers Upgrade Project (SCE Project).

The Complaint in Eminent Domain named the Banning Water Company as a defendant based on its interest in certain easements recorded against the Subject Property. It

appears that Banning Water Company was dissolved in 1967 and that the City of Banning is the successor to the interests of Banning Water Company. The City was served with the Summons and Complaint in October 2018. The City filed an Answer to the Complaint asserting that as the successor to the interests of Banning Water Company, the City has an interest in the easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside (City easements). These City easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns.

The City and SCE discussed the SCE Project and the City's easement interests and determined that it was in the best interest of the parties to enter into a Stipulation for Entry of Interlocutory Judgment to resolve the issues between them in this proceeding, to protect the City's easement interests, and to minimize litigation costs. Specifically, the Stipulation for Interlocutory Judgment provides:

- i. The use for which SCE seeks to condemn the permanent easements and the temporary construction easements comprising the Subject Property in connection with the construction, operation and use as part of the SCE Project, is and was authorized by law, and is and was a public use; the public interest and necessity require said SCE Project; said SCE Project is and was planned and located in the manner that will be most compatible with the greatest public good and least private injury; and the property being acquired herein is necessary for said SCE Project.
- ii. The City is the successor to the interests of Banning Water Company. Thus, the City is the successor in rights to easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside. These easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns.
- iii. Any Judgment in Condemnation in the proceeding will not terminate, vacate, impair, modify or alter the existing validity and priority of the City's easement interests in and on the Subject Property.
- iv. The City and SCE agree that to the extent that the City's easement interests overlap with the Subject Property SCE is seeking to

condemn, both parties will continue to jointly use the Subject Property pursuant to CCP section 1240.510 *et seq.*

- v. In the event that SCE requires the City to remove, relocate or modify any City facilities constructed and maintained within the City's easement area to facilitate SCE's West of Devers Upgrade Project, SCE will provide the City with new and/or existing additional rights reasonably comparable with any property rights relinquished by the City to facilitate construction of the Project on the Subject Property prior to the City's relocation of its facilities, and will pay for the relocation of the City's impacted facilities, including any damages resulting to any of the City's remaining facilities as a result of any required relocation.
- vi. The Stipulation is not a subordination of the City's rights or title to or interest in its easement interests on the Subject Property, nor should the Stipulation be construed as a waiver of any provisions contained in the City's easement area or a waiver of any cost relocation of affected facilities, including damages to any of the City's remaining facilities located in the City's easement area on the Subject Property. The Stipulation will be incorporated in the Stipulation for Entry of Judgement and Final Order of Condemnation.
- vii. Each party shall bear its own costs, litigation expenses, attorneys' and experts' fees associated with the conduct of this eminent domain proceeding and all actions preliminary, ancillary, or associated thereto.

The City does not believe that any City facilities are located in the area of the City easements. This Stipulation for Interlocutory Judgment ensures that the City's interests in the City easements are not terminated, vacated, impaired, modified or altered by SCE's condemnation of the Subject Property for the SCE Project. To the extent that the City's easement interests on the Subject Property overlap with the Subject Property SCE seeks to condemn, both parties will continue to jointly use the Subject Property pursuant to CCP section 1240.510 *et seq.* Further, in the event that any City facilities are located in the City easements and SCE requires the City to remove, relocate or modify any such City facilities to facilitate the SCE Project, the Stipulation provides that SCE will provide the City with new and/or existing additional rights reasonably comparable with any property rights relinquished by the City to facilitate construction of the Project on the Subject Property prior to the City's relocation of its facilities, and that SCE will pay for the relocation of the City's impacted facilities, including any damages resulting to any of the City's remaining facilities as a result of any required relocation.

The Stipulation authorizes the Court to enter a Stipulated Interlocutory Judgment confirming the above. It would fully resolve the issues between the City and SCE in this proceeding.

FISCAL IMPACT:

None.

ALTERNATIVES:

1. Approve as recommended.
2. Do not approve the Stipulation for Interlocutory Judgment

ATTACHMENTS:

1. Resolution No. 2019-____
2. Stipulation for Interlocutory Judgment (Case RIC 1813789)
3. Stipulated Interlocutory Judgment (Case RIC 1813789)

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(RESOLUTION NO. 2019-____)

RESOLUTION 2019-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THAT CERTAIN STIPULATION FOR INTERLOCUTORY JUDGMENT BETWEEN SOUTHERN CALIFORNIA EDISON COMPANY AND CITY OF BANNING IN CONNECTION WITH *SOUTHERN CALIFORNIA EDISON COMPANY V. RRM PROPERTIES, LTD., ET AL.* (RIVERSIDE COUNTY SUPERIOR COURT CASE NO. RIC 1813789)

WHEREAS, in July 2018, Southern California Edison Company (SCE) filed an eminent domain proceeding to condemn portions of the real properties located in the City of Banning, and identified Assessor's Parcel Numbers 534-100-001, 534-100-002, 534-100-004, 534-100-006, 534-100-007, 534-110-003, and 534-110-005, which are owned by RRM Properties, LTD. (collectively RRM Property); and

WHEREAS, SCE seeks to acquire certain permanent and temporary construction easements (Subject Property) on the RRM Property for the construction, operation, and use of certain facilities, including electric substations, towers, poles, electric power lines, and communication lines, for the transmission and distribution of electricity in connection with the West of Devers Upgrade Project (SCE Project); and

WHEREAS, the Complaint in Eminent Domain named the Banning Water Company as a defendant based on its interest in certain easements recorded against the Subject Property. The City of Banning is the successor to the interests of Banning Water Company, which include an interest in the easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside (City easements). These City easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns; and

WHEREAS, the City and SCE discussed the SCE Project and the City's easement interests and determined that it was in the best interest of the parties to enter into that certain Stipulation for Entry of Interlocutory Judgment between SCE and the City (Stipulation for Interlocutory Judgment) to resolve all issues between them in this proceeding, to protect the City's easement interests, and to minimize litigation costs; and

WHEREAS, pursuant to the Stipulation for Interlocutory Judgment, the City's interests in the City easements are not terminated, vacated, impaired, modified or altered by SCE's condemnation of the Subject Property for the SCE Project. To the extent that the City's easement interests on the Subject Property overlap with the Subject Property SCE seeks to condemn, both parties will continue to jointly use the Subject Property pursuant to Code of Civil Procedure Section 1240.510 *et seq.* Further, in the event that any City facilities are located in the City easements and SCE requires the City to remove, relocate, or modify any such City facilities to facilitate the SCE Project, the Stipulation

provides that SCE will provide the City with new and/or existing additional rights reasonably comparable with any property rights relinquished by the City to facilitate construction of the SCE Project on the Subject Property prior to the City's relocation of its facilities, and that SCE will pay for the relocation of the City's impacted facilities, including any damages resulting to the City's remaining facilities, if any.

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

SECTION 1. The City Council hereby approves the Stipulation for Interlocutory Judgment.

SECTION 2. The City Manager is authorized to execute the Stipulation for Interlocutory Judgment in substantially the form attached as Attachment 1 to the staff report that accompanies the Resolution.

SECTION 3. The City Clerk is authorized to certify 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 14th day of May, 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-____, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

(Stipulation for Interlocutory Judgment (Case RIC 1813789))

PATRICIA A. CIRUCCI, State Bar No. 210574
 LISA DELORME, State Bar No. 198940
 2244 Walnut Grove Avenue, 3rd Floor
 Rosemead, CA 91770
 Tel: (626) 302-6889
 Fax: (626) 302-6997

KEITH E. MCCULLOUGH, State Bar No. 142519
 kmccullough@AlvaradoSmith.com
 ANDREW M. JONES, State Bar No. 245118
 ajones@AlvaradoSmith.com
 ALVARADOSMITH
 A Professional Corporation
 1 MacArthur Place, Suite 200
 Santa Ana, California 92707
 Tel: (714) 852-6800
 Fax: (714) 852-6899

Attorneys for Plaintiff
SOUTHERN CALIFORNIA EDISON COMPANY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF RIVERSIDE**

SOUTHERN CALIFORNIA EDISON
 COMPANY, a California corporation,

Plaintiff,

v.

RRM PROPERTIES, LTD., a California
 Limited Partnership; BANNING LAND
 COMPANY; BANNING WATER COMPANY;
 BEAUMONT CONCRETE COMPANY, a
 Nevada corporation; FIRST AMERICAN
 TITLE INSURANCE COMPANY; and DOES 1
 to 200, inclusive; and all persons unknown
 claiming any title or interest in or to the property
 sought to be condemned herein,

Defendants.

CASE NO.: RIC1813789

JUDGE: Hon. Sharon J. Waters, Dept. 10

**STIPULATION FOR INTERLOCUTORY
 JUDGMENT BETWEEN
 BETWEEN SOUTHERN CALIFORNIA
 EDISON COMPANY AND CITY OF
 BANNING; [PROPOSED] STIPULATED
 INTERLOCUTORY JUDGMENT**

ACTION FILED: July 6, 2018

[APN: 534-100-001; 534-100-002; 534-100-
 004; 534-100-006; 534-100-007; 534-110-
 003; 534-110-005]

This Stipulation for Interlocutory Judgment is entered into by and between Plaintiff,
 Southern California Edison Company ("SCE") and Defendant City of Banning ("Banning") with
 reference to the following facts:

A. SCE commenced the above-entitled action in eminent domain to acquire a portion of

the real property which has been assigned Assessor's Parcel Number 534-100-001; 534-100-002; 534-100-004; 534-100-006; 534-100-007; 534-110-003; 534-110-005, located in the County of Riverside, State of California, and with the specific property being acquired being more particularly described in SCE's Complaint on file in this matter (the term "Subject Property" refers to the property being acquired in this action).

B. The Subject Property is required for the construction, operation and use as part of the West of Devers Upgrade Project ("Project").

C. Banning is the successor in interest to the Banning Water Company. Banning therefore is the successor in rights to easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside. These easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns. Banning represents that as successor in interest to the Banning Water Company it is authorized to enter into this Stipulation and has not transferred or gifted any interest as it relates to the interest in the Subject Property.

D. The parties hereto deem it in their best interests to allow SCE to obtain a Stipulated Interlocutory Judgment as to Banning to settle the claims of Banning in this action, and subsequently a Final Order of Condemnation, based upon the terms and conditions of the Order sought herein, as well as the resolution of the claims of all other named defendants in this action.

NOW, THEREFORE, IT IS HEREBY STIPULATED:

1. SCE is and was authorized and entitled to exercise the power of eminent domain for public purposes under Pursuant to *Article I*, Section 19 of the *California Constitution*, *California Code of Civil Procedure* §§ 1240.010, 1240.020 and 1240.030, and *Government Code* § 40404(a) in the acquisition of the Subject Property.

2. The use for which SCE seeks to condemn the Subject Property, to wit, in connection with the construction, operation and use as part of the West of Devers Upgrade Project ("Project"), is and was authorized by law, and is and was a public use; the public interest and necessity require said

Project; said Project is and was planned and located in the manner that will be most compatible with the greatest public good and least private injury; and the property being acquired herein is necessary for said Project.

3. Banning is the successor in interest to the Banning Water Company. Banning therefore is the successor in rights to easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside. These easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns.

4. Any Judgment in Condemnation in the proceeding will not terminate, vacate, impair, modify or alter the existing validity and priority of the Banning's easement interests in and on the Subject Property.

5. Banning and SCE agree that to the extent that Banning's easement interests on the Subject Property overlap with the easement interests SCE is seeking to condemn, both parties will continue to jointly use the Subject Property pursuant to CCP section 1240.510 et seq.

6. In the event that SCE requires Banning to remove, relocate or modify any Banning facilities constructed and maintained within the Banning's easement area to facilitate SCE's West of Devers Upgrade Project, SCE will provide Banning with new and/or existing additional rights reasonably comparable with any property rights relinquished by the Banning to facilitate construction of the Project on the Subject Property prior to Banning's relocation of its facilities, and will pay for the relocation of the Banning's impacted facilities, including any damages resulting to any of the Banning's remaining facilities as a result of any required relocation.

7. The Stipulation is not a subordination of the Banning's rights or title to or interest in its easement interests on the Subject Property, nor should the Stipulation be construed as a waiver of any provisions contained in Banning's easement area or a waiver of any cost relocation of affected facilities, including damages to any of Banning's remaining facilities located in Banning's easement area on the Subject Property. The Stipulation will be incorporated in the Stipulation for Entry of

Judgement and Final Order of Condemnation.

8. Each party shall bear its own costs, litigation expenses, attorneys' and experts' fees associated with the conduct of this eminent domain proceeding and all actions preliminary, ancillary, or associated thereto.

9. Upon entry of this Stipulated Interlocutory Judgment, SCE shall be entitled to apply *Ex Parte* to obtain a Final Order of Condemnation as to all defendants and interests in this proceeding based upon the eventual settlement of those separate claims.

10. The Court shall retain jurisdiction to enforce the terms and conditions of this Stipulation and the subsequent Stipulated Interlocutory Judgment pursuant to *Code of Civil Procedure* §664.1.

DATED: _____, 2019

CITY OF BANNING, a California municipal corporation, as successor to the interests of Banning Water Compnay

By: _____
DOUGLAS SCHULZE
City Manager

DATED: _____, 2019

SOUTHERN CALIFORNIA EDISON COMPANY

By: _____
JAMES SPENCE
Its: Senior Manager, Real Properties

APPROVED AS TO FORM ONLY:

DATED: _____, 2019

RICHARDS, WATSON & GERSHON
A PROFESSIONAL COPORATION

By: _____
PAULA GUTIERREZ BAEZA
Attorneys for Defendant
CITY OF BANNING

DATED: _____, 2019

ALVARADOSMITH
A Professional Corporation

By: _____

KEITH E. MCCULLOUGH
ANDREW M. JONES
Attorneys for Plaintiff
SOUTHERN CALIFORNIA EDISON
COMPANY

ATTACHMENT 3

(Stipulated Interlocutory Judgment (Case RIC 1813789))

PATRICIA A. CIRUCCI, State Bar No. 210574
 LISA DELORME, State Bar No. 198940
 2244 Walnut Grove Avenue, 3rd Floor
 Rosemead, CA 91770
 Tel: (626) 302-6889
 Fax: (626) 302-6997

KEITH E. MCCULLOUGH, State Bar No. 142519
 kmccullough@AlvaradoSmith.com
 ANDREW M. JONES, State Bar No. 245118
 ajones@AlvaradoSmith.com
 ALVARADOSMITH
 A Professional Corporation
 1 MacArthur Place, Suite 200
 Santa Ana, California 92707
 Tel: (714) 852-6800
 Fax: (714) 852-6899

Attorneys for Plaintiff
SOUTHERN CALIFORNIA EDISON COMPANY

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 COUNTY OF RIVERSIDE**

SOUTHERN CALIFORNIA EDISON
 COMPANY, a California corporation,

Plaintiff,

v.

RRM PROPERTIES, LTD., a California
 Limited Partnership; BANNING LAND
 COMPANY; BANNING WATER COMPANY;
 BEAUMONT CONCRETE COMPANY, a
 Nevada corporation; FIRST AMERICAN
 TITLE INSURANCE COMPANY; and DOES 1
 to 200, inclusive; and all persons unknown
 claiming any title or interest in or to the property
 sought to be condemned herein,

Defendants.

CASE NO.: RIC1813789

JUDGE: Hon. Sharon J. Waters, Dept. 10

**STIPULATED INTERLOCUTORY
 JUDGMENT RE DEFENDANT CITY OF
 BANNING**

ACTION FILED: July 6, 2018

[APN: 534-100-001; 534-100-002; 534-100-
 004; 534-100-006; 534-100-007; 534-110-
 003; 534-110-005]

Plaintiff, Southern California Edison Company (“SCE”) and Defendant, City of Banning, a California municipal corporation (“Banning”) having previously stipulated to the facts, terms and conditions set forth in the Stipulation for Interlocutory Judgment in Eminent Domain, and having

requested the Court to make and enter its Stipulated Interlocutory Judgment in Condemnation consistent with said stipulation with respect to the just compensation claims of Banning, which maintain easements related to water interests on the Subject Property which property is more particularly described in SCE's Complaint on file in this matter, and having waived Statement of Decision, Notice of Entry of Judgment, Interest, Costs and Fees;

**NOW THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED,
ADJUDGED AND DECREED AS FOLLOWS:**

1. SCE is and was authorized and entitled to exercise the power of eminent domain for public purposes under Pursuant to *Article I*, Section 19 of the *California Constitution*, *California Code of Civil Procedure* §§ 1240.010, 1240.020 and 1240.030, and *Government Code* § 40404(a) in the acquisition of the Subject Property.
2. The use for which SCE seeks to condemn the Subject Property, to wit, in connection with the construction, operation and use as part of the West of Devers Upgrade Project ("Project"), is and was authorized by law, and is and was a public use; the public interest and necessity require said Project; said Project is and was planned and located in the manner that will be most compatible with the greatest public good and least private injury; and the property being acquired herein is necessary for said Project.
3. Banning is the successor in interest to the Banning Water Company. Banning therefore is the successor in rights to easements recorded April 4, 1895 in Book 28, Page 102 of Deeds and March 14, 1885 in Book 31 Page 38 of Deeds in the official records of the County of Riverside. These easements grant a right of way over and through the Subject Property, together with a right of entry thereon for the construction and maintenance of all necessary irrigation ditches, pipes, or flumes, as reserved to the Banning Land Company and Banning Water Company, their successors or assigns.
4. Any Judgment in Condemnation in the proceeding will not terminate, vacate, impair, modify or alter the existing validity and priority of the City's easement interests in and on the Subject Property.
5. Banning and Edison agree that to the extent that Banning's easement interests on the

Subject Property overlap with the easement interests Edison is seeking to condemn, both parties will continue to jointly use the Subject Property pursuant to CCP section 1240.510 et seq.

6. In the event that SCE requires Banning to remove, relocate or modify any Banning facilities constructed and maintained within the City's easement area to facilitate SCE's West of Devers Upgrade Project, SCE will provide Banning with new and/or existing additional rights reasonably comparable with any property rights relinquished by the City to facilitate construction of the Project on the Subject Property prior to Banning's relocation of its facilities, and will pay for the relocation of the Banning's impacted facilities, including any damages resulting to any of the Banning's remaining facilities as a result of any required relocation.

7. The Stipulation is not a subordination of the Banning's rights or title to or interest in its easement interests on the Subject Property, nor should the Stipulation be construed as a waiver of any provisions contained in Banning's easement area or a waiver of any cost relocation of affected facilities, including damages to any of Banning's remaining facilities located in Banning's easement area on the Subject Property. The stipulation for Interlocutory Judgment will be incorporated in the Stipulation for Entry of Judgement and Final Order of Condemnation.

8. Each party shall bear its own costs, litigation expenses, attorneys' and experts' fees associated with the conduct of this eminent domain proceeding and all actions preliminary, ancillary, or associated thereto.

9. Upon entry of this Stipulated Interlocutory Judgment, SCE shall be entitled to apply *Ex Parte* to obtain a Final Order of Condemnation as to all defendants and interests in this proceeding based upon the eventual settlement of those separate claims.

10. The Court shall retain jurisdiction to enforce the terms and conditions of this Stipulation and the subsequent Stipulated Interlocutory Judgment pursuant to *Code of Civil Procedure* §664.1.

Good cause appearing, **IT IS SO ORDERED.**

DATED: _____

By: _____
Judge of the Superior Court

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: May 14, 2019

SUBJECT: CEDAR HILLS APARTMENTS (THE PROJECT)
ORDINANCE 1543 ADOPTING ZONE CHANGE 18-3503,
CITY COUNCIL RESOLUTION 2019-___ ADOPTING A
MITIGATED NEGATIVE DECLARATION AND MITIGATION
MONITORING REPORT AND APPROVING GENERAL PLAN
AMENDMENT 18-2504 AND DESIGN REVIEW 18-7001 FOR
THE PROPOSED DEVELOPMENT OF A 96-UNIT APARTMENT
FACILITY AND ASSOCIATED INFRASTRUCTURE ON 7.08
ACRES OF LAND WITHIN THE LOW DENSITY RESIDENTIAL
(LDR) LAND USE DISTRICT (APN 534-283-011 AND 534-283-
014)

RECOMMENDED ACTION:

Staff recommends that the City Council:

1. Adopt Resolution 2019-___ to adopt a Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program (Environmental Assessment 18-1508); and approve General Plan Amendment 17-2504, Design Review 18-7001 for the Cedar Hills Apartment Project; and
2. Approve Ordinance 1543 approving Zone Change 18-3503 to amend the Zoning Map, Title 17 of the Banning Municipal Code for two lots totaling 7.08 acres located south of East Hoffer Street and west of North Hathaway Street, from Low Density Residential (LDR) to High Density Residential (HDR).

PLANNING COMMISSION ACTION:

On April 3, 2019, the Planning Commission conducted a dully noticed public hearing and recommended adoption of the Mitigated Negative Declaration and approval of the proposed project.

PROJECT DESCRIPTION:

The applicant is proposing a General Plan Amendment (GPA) and Zone Change to change the zoning and Land Use Designation (LUD) from Low Density Residential (LOR) (0-5 DU/AC) to High Density Residential (HDR) (11-18 DU/AC) and a Design Review Application for the construction of a 96-unit apartment complex with Club House, Swimming Pool, and All Purpose Recreation Court on 7.04 acres of land located south of East Hoffer Street and west of North Hathaway Street (APN's 534-283-011, 534-283-014).

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

The proposed General Plan Amendment 18-2504, Zone Change 18-3503 and Design Review 18-7011 are considered a “project” as defined by the California Environmental Quality Act (CEQA) (Public Resources Code § 2100 et seq.). An Initial Study *EA 18-1508) has been prepared and made available for public review beginning on March 8, 2019 and closing on March 28, 2019.

Based upon analysis contained in the Initial Study, staff determined that any potentially significant effects on the environment would be reduced to less than significant levels by mitigation measures incorporated in the Initial Study and that the preparation of a Mitigated Negative Declaration (MND) was appropriate. All mitigation measures are carried forward into project Conditions of Approval. A Mitigation Monitoring Report and Program (MMR)) has also been prepared, as required by CEQA.

FISCAL IMPACT:

The proposed project was processed at the applicant’s expense and approval of the project will likely have a positive financial impact to the City of Banning through the increase in the assessed land value for the subject parcel. However, a Fiscal Analysis has not been conducted on the Project.

OPTIONS:

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

ATTACHMENTS:

1. Planning Commission Staff Report
2. City Council Resolution No. 2019-__
3. City Council Ordinance No. 1543
4. Site Plan
5. Conditions of Approval
6. Initial Study/MND
7. Notice of Intent/Notice of Availability
8. Public Hearing Notice
9. Public Comments and Responses

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

Planning Commission Staff Report

CITY OF BANNING

Planning Commission Report

MEETING DATE: April 3, 2019

TO: Planning Commission

FROM: Adam Rush, AICP, Community Development Director

PREPARED BY: Mark de Manincor, Contract Planner

SUBJECT: NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION, MITIGATION MONITORING AND REPORTING PROGRAM (ENVIRONMENTAL ASSESSMENT 18-1508), GENERAL PLAN AMENDMENT 18-2504, ZONE CHANGE 18-3503 AND DESIGN REVIEW 18-7011, TO CONSIDER THE CONSTRUCTION OF A 96-UNIT APARTMENT COMPLEX ON APROXIMATELY SEVEN ACRES OF LAND AND TO CHANGE ZONING FROM LOW DENSITY RESIDENTIAL (LDR) TO HIGH DENSITY RESIDENTIAL (HDR), LOCATED SOUTH OF EAST HOFFER STREET AND WEST OF NORTH HATHAWAY STREET (APN'S 534-283-011, 534-283-014)

RECOMMENDATION:

That the Planning Commission adopt Resolution 2019-05, recommending to the City Council approval of following actions:

1. General Plan Amendment 18-2504.
2. Zone Change 18-3503.
3. Design Review 18-7011.
4. Mitigated Negative Declaration (MND) and Mitigation Monitoring Report and Program for the project (Environmental Assessment 18-1508).

APPLICANT INFORMATION:

Project Applicant: John and Diana Hanna
16197 Krameria Ave.
Riverside, CA 92504

Property Owner: John and Diana Hanna
16197 Krameria Ave.
Riverside, CA 92504

Project Location: South of East Hoffer Street and west of North Hathaway Street

APN Information: APN(s) 534-283-011, 534-283-014

APPLICANT'S REQUEST:

The applicant, is requesting consideration of a Mitigated Negative Declaration and Mitigation and Monitoring Report and Program (MMRP) for a project proposing a General Plan Amendment (GPA) and Zone Change to change the zoning and Land Use Designation (LUD) from Low Density Residential (LDR) (0-5 DU/AC) to High Density Residential (HDR) (11-18 DU/AC) and a Design Review Application for the construction of a 96-unit apartment complex with Club House, Swimming Pool, and All Purpose Recreation Court on 7.04 acres of land located south of East Hoffer Street and west of North Hathaway Street (APN's 534-283-011, 534-283-014).

PROJECT BACKGROUND AND SETTING:

The site is currently vacant with no visual sign of past development. The site has been recently disked and cleared (in accordance with the Municipal Code), for weed abatement although there is still some sparse vegetation present. A few rock and debris piles are present onsite. The property slopes slightly downward from northwest to southeast. The highest point at the northwest corner is 2,369 feet above mean sea level (amsl) and the low point at the southeast corner is 2,331 feet amsl. The property is adjacent to East Hoffer Street and North Hathaway Street which are both improved streets. The project consists of two lots that create an "L-Shape" which are conditioned to be merged prior to final inspection and/or occupancy of the site. With the two parcels merged, the site will consist of 7.08 gross acres. Northeast of and adjacent to the site, off-site but within the "L-Shape", is a single-family residence. To the north, northwest and west are existing single-family homes. South of the project site is an existing Apartment Complex and to the east is the Morongo Band of Mission Indians Reservation. North of the project site is vacant land.

The site is currently zoned, Low Density Residential (LDR) which allows for 0-5 single-family homes per acre. The project is a proposal to construct a 96-unit multi-family apartment complex, therefore a General Plan Amendment and Zone Change are required. The applicant proposes to change the General Plan/Zoning to, High Density Residential (HDR) which allows for 11-18 dwelling units per acre.

The project proposes 96, two-bedroom, multi-family units of 910 square feet each. Tenants will enter from North Hathaway Street to a circle drive that allows ingress to the left or right through secured gates and to parking areas. In front of the gates is a parking area for the 2,600 square foot Club House with Leasing Office. On either side of the Club House there will be four 16-unit buildings. Behind the Club House and between the four 16-unit buildings will be a swimming pool and multi-use court. Another four 8-unit buildings will be located north of the 16-unit buildings, all totaling 96-units. There is a second gate at East Hoffer Street that provides vehicle access to and from the parking areas. A table of surrounding land uses is below.

The applicant has submitted a phasing plan for the development of the project. Phase 1 consists of the club house, swimming pool, two 16-unit apartment buildings, 70-parking spaces and related infrastructure. Phase 2 consists of the multi-purpose court, two 16-unit apartment buildings and 80-parking spaces. The third and final phases consists of four 8-unit apartment buildings and 75 parking spaces.

LAND USE SUMMARY TABLE

	Existing Land Use	Zoning Designation	General Plan Designation
Subject Site	Vacant	Low Density Residential (LDR)	LDR
North	Vacant Land and Developed Single-Family Residential	LDR/Industrial-Mineral Resources (IMR)	LDR/IMR
Northeast	Developed Single-Family Residential	IMR	IMR
Northwest	Developed Single-Family Residential	LDR	LDR
South	Apartments/Single-Family Residential	LDR, High Density Residential (HDR)	LDR, HDR
East	Vacant	Tribal Land	Outside the City Boundary
West	Developed Single-Family Residential	LDR	LDR

ANALYSIS:

General Plan Amendment/Zone Change

Due to the applicant's request, to allow a High-Density Residential (HDR) project in the Low-Density Residential (LDR) zone, a General Plan Amendment (GPA) and Zone Change (ZC) application has been submitted. In California, each jurisdiction is allowed four General Plan Amendments per year pursuant to California Government Code Section 65358 (b) which states, "no mandatory element of a general plan shall be amended more frequently than four times during any calendar year. Subject to that limitation, an amendment may be made at any time, as determined by the legislative body. Each amendment may include more than one change to the general plan." This General Plan Amendment/Zone change request represents the second Amendment for the year (2019).

In accordance with Banning Municipal Code Section 17.64.010, "Purpose of General Plan Amendments, (A) The General Plan is the comprehensive long-term plan for the physical development of the City and lays the basic framework for all subsequent planning actions taken by the City. Since the City Council is desirous of proper development within the City and wishes to continue to encourage the development of appropriate projects, it becomes necessary to regulate such development so that it is properly integrated into the City's long term vision and planning process." As stated above, it is the responsibility of the Planning Commission and City Council to determine whether this project is appropriate, proper and fits within the long term vision of the City.

Findings for or against the project can be found in the attached Planning Commission Resolution 2019-05.

Design Review

Pursuant to Banning Municipal Code (BMC) Section 17.56.010, The purpose of the Design Review is to:

1. Establish design review procedures for development proposals.
2. Assure that proposed projects conform to development standards and design guidelines.
3. Focus on community design principles which result in creative, imaginative solutions which establish quality design for the City.
4. Promote the order and harmonious appearance of structures, landscaping, parking areas, etc; and

5. Maintain the public health, safety and general welfare and property throughout the City.

The project is found to be consistent with development standards as demonstrated in the Development Standards Table below. The project meets or exceeds, lot size, setbacks, density, width, depth, lot coverage, parking, landscaping and all other standards.

DEVELOPMENT STANDARDS TABLE

Description	LDR	HDR	Proposed
Min. Lot Size (AC. Or S.F) SFR/MFU	7,000 S.F./2 AC.	7,000 S.F.	7.04 AC.
Max. Density (Units/AC.)	0-5	11-18	14
Min. Lot Width (Feet)	70	150	330
Min. Lot Depth (Feet)	90	100	330
Min. Front Setback (Feet)	20	15	164.5
Min. Rear Setback (Feet)	15	10	61
Min. Side Yard Setback (Feet)	10	5	52
Min. Street Side (Feet)	15	10	N/A
Max Bldg. Coverage (%)	40	40	21.29
Max. Height (Stories/Feet)	2/35	4/60	2/30.5
Max. Fence/Wall Height (Feet)	6	6	6

PARKING SUMMARY TABLE

UNITS	REQUIRED	PROPOSED
2bd (Covered)	2(96) = 192	192
Guest (Uncovered)	4/96 = 24	24
Club House	9	9
	225	225

LANDSCAPE/OPEN SPACE SUMMARY TABLE

TYPE	AREA	REQUIRED	PROPOSED
SITE	308,404 S.F.	92,521 S.F. (30%)	99,029 S.F.

Notes: Landscape shall be designed in accordance with Municipal Code chapter 17.32

Design Guidelines

According to the Multi-family site planning section of the Design Guidelines, "Residential developments surrounded by long high walls, parking lots, and rows of carports along public streets are examples of practices to be avoided." The proposed project does not include parking lots and rows of carports along public streets, although it does include long high walls adjacent to existing residential development to mitigate for noise impacts. These walls will be six-feet tall and made of high quality decorative block. Along the

western boundary of the project site the six-foot tall block wall will be elevated by a three-foot tall retaining wall. The six-foot tall block wall along the southern boundary of the project site will be elevated by an eight-foot tall retaining wall. The walls will be set back from the top of the retaining walls by a five-foot landscape buffer. These retaining walls are essential as they allow for the height required to grade the property to drain, storm water flows, into the two detention basins along the southeastern boundary of the project site.

The proposed project design should include significant landscape and hardscape elements with clearly identifiable access driveways, convenient and accessible parking, landscaped and screened parking. The project consists of three amenities as required for multi-family projects that have between 51 and 100 units. The three amenities are; clubhouse, swimming pool and multi-use court. Parking and trash enclosures are conveniently located throughout the site. Landscaping will screen parking areas, trash enclosures and detention basins.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

The proposed General Plan Amendment No. 18-2504, Zone Change 18-3503 and Design Review 18-7011 are considered a "project" as defined by the California Environmental Quality Act ("CEQA") (Public Resources Code § 21000 *et seq.*). An Initial Study (EA 18-1508) has been prepared and made available for public review beginning on March 8, 2019 and closing on March 28, 2019.

Based upon analysis contained in the Initial Study, staff determined that any potentially significant effects on the environment would be reduced to less than significant levels by mitigation measures incorporated in the Initial Study and that the preparation of a Mitigated Negative Declaration (MND) was appropriate. All mitigation measures are carried forward into project Conditions of Approval. A Mitigation Monitoring Report and Program (MMRP) has also been prepared, as required by CEQA.

MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):

The project is located outside of any MSHCP criteria cell area's and plan compliance is provided through payment of the MSHCP Mitigation Fee at the time of building permit issuance and the attached Mitigation and Monitoring Report and Program. According to the Initial Study, surveys for the Burrowing Owl and Migratory Birds are required as part of the Mitigation and Monitoring Report and Program. With conformance to the Conditions of Approval and Mitigation Measures contained in the Mitigation Monitoring Report and Program, the project will be compliant with MSHCP.

AIRPORT LAND USE COMMISSION

On October 11, 2018 the Riverside County Airport Land Use Commission (ALUC) found General Plan Amendment 18-2504 and Zone Change 18-3503, consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016. The same day, ALUC found the Design Review, conditionally consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016 subject to conditions which are listed in the projects conditions of approval and Mitigation Measures listed in the Initial Study and Mitigation Monitoring Report and Program.

PUBLIC COMMUNICATION

The proposed General Plan Amendment, Zone Change and Design Review for construction of a 96-unit apartment complex with 2 bedroom units and associated improvements was advertised in the Record Gazette newspaper on March 8 2019 and again, March 22, 2019 (Attachment 4 & 5). As of the date of this report, staff has received three comment letters. 1. South Coast Air Quality Management District (SCAQMD). 2. FEMA. 3. Brent Bumpus. Lilburn Corporation, who prepared the Air Quality/Greenhouse Gas Report, has prepared a response to SCAQMD's comments which are attached to this Staff Report and incorporated into the Final MND (Initial Study) and conditions; The FEMA comment does not apply as this project is not in a flood zone; and, a Staff response is attached to this Staff Report for the comment letter received by Mr. Bumpus.

Prepared by:


 Mark de Manincor
 Contract Planner

Reviewed by:


 Adam Rush
 Community Development Director

Attachments:

1. Planning Commission Resolution 2019-05, Conditions of Approval
2. Initial Study/Mitigated Negative Declaration, Mitigation Monitoring Report and Program
3. Site Plan, Floor Plans, Elevations, Phasing Plan
4. Notice of Intent/Notice of Availability
5. Public Hearing Notice
6. SCAQMD comments/Lilburn Corp., response

ATTACHMENT 2

Planning Commission Resolution No. 2019-05

RESOLUTION NO. 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING REPORT AND PROGRAM FOR A PROPOSED 96-UNIT APARTMENT PROJECT, APPROVING GENERAL PLAN AMENDMENT 18-2504 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION OF REAL PROPERTY FROM LOW DENSITY RESIDENTIAL TO HIGH DENSITY RESIDENTIAL AND APPROVE DESIGN REVIEW 18-7001 TO PERMIT THE DEVELOPMENT OF A PROPOSED 96-UNIT APARTMENT COMPLEX ON 7.08 ACRES OF LAND LOCATED ON THE SOUTH SIDE OF EAST HOFFER STREET AND WEST OF NORTH HOFFER STREET (APN 534-283-011 AND 534-283-014)

WHEREAS, an application for General Plan Amendment 18-2504, Zone Change 18-3503, Design Review 18-7011 to permit the development of a proposed 96-Unit Apartment Complex (collectively, the “Project”), has been duly filed by:

Project Applicant/Owner: John and Diana Hanna

Project Location: Noted Above

APNs: 534-283-011, 534-283-014

Lot Area: 7.08 acres;

WHEREAS, the City Council of the City of Banning (“City”) adopted the current Banning General Plan on January 31, 2006; and

WHEREAS, California Government Code Section 65358(a) authorizes the City Council to amend the General Plan if it deems to be in the public interest; and

WHEREAS, the City Council has the authority to review and either approve or deny General Plan Amendment 18-2504 for a change in the General Plan from Low Density Residential to High Density Residential and the authority per Chapter 17.56 of Banning Municipal Code to review and either approve or deny Design Review 18-7011 for the property located south of East Hoffer Street and west of North Hathaway Street; and

WHEREAS, in accordance with Government Code Sections 65353, 65355, and 65090, on March 8, 2019, the City gave public notice, by advertisement in the Record Gazette Newspaper of a notice of intent to adopt a Mitigated Negative Declaration (MND) announcing the 20-day circulation period for public review and comment on the Draft Mitigated Negative Declaration. Likewise, in accordance with State of California Public

Resources Code Section 21165, a Public Hearing Notice was advertised in the Record Gazette Newspaper for the Planning Commission hearing to be held on April 3, 2019. Copies of the Draft MND were made available at Banning City Hall and Banning Public Library, and comments received during the 20-day review period are incorporated into the Final MND, along with the City's responses to each comment for review and consideration by the Planning Commission; and

WHEREAS, in accordance with Government Code Section 65353, on April 3, 2019 the Planning Commission held a duly-noticed public hearing to consider General Plan Amendment 18-2504, Zone Change 18-3503, and Design Review 18-7001, Final Mitigated Negative Declaration 18-1508, and Mitigation Monitoring Report and Program, and recommended that the City Council approve General Plan Amendment 18-2504, Zone Change 18-3503 and Design Review 18-7011 for the 7.08-acre site; and

WHEREAS, on May 14, 2019 the City Council held a duly noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the General Plan Amendment 18-250-4 and the Design Review 18-7001 and at which the City Council considered the General Plan Amendment and Design Review; and

WHEREAS, the City Council reviewed General Plan Amendment 18-2504 and Design Review 18-7011 for compliance with the California environmental procedures and considered Mitigated Negative Declaration 18-1508 and mitigation Monitoring and Reporting Program.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City/s Local CEQA Guidelines and Thresholds of Significance, the Staff recommendation as provide in the Staff Report dated May 14, 2019, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

A. Public Record:

The documents and other materials constituting the record of the proceedings upon which the City's decision and its findings are based is located at the City of Banning Community Development Department, Planning Division. The Final Mitigated Negative Declaration meets the requirements of this finding in that documents and other material constituting the record of the proceedings upon which the City's decision and findings are located at the Planning Division of the City of Banning, 99 East Ramsey Street, CA, 92220 in the custody of the Banning Community Development Department as part of the public record.

B. CEQA:

The approval of this General Plan Amendment is in compliance with requirements of the California environmental Quality Act (CEQA), in that on May 14, 2019 a duly noticed public hearing, the City Council considered the project's Final mitigated Negative Declaration 18-1508 (Exhibit A) and mitigation Monitoring Report and Program (Exhibit B) and found that no significant environmental impacts would occur after required Mitigation Measures.

SECTION 2. GENERAL PLAN AMENDMENT 18-2504 FINDINGS:

The City Council hereby finds:

A. The proposed Amendment is internally consistent with the General Plan.

Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to High-Density Residential (HDR) and the proposed development would be consistent with uses permitted within the HDR land use district. The HDR land use designation is intended to allow High-Density Residential development of 11-18 dwelling units per acre which is consistent with the proposed Project.

B. The proposed change in the General Plan land use designation from Low Density Residential to High Density Residential will not be detrimental to the public interest, health, safety, convenience or welfare in that:

The proposed Project will complement the adjoining High-Density Residential development to the south. As demonstrated in the analysis contained in the Planning Commission Staff report dated April 3, 2019, and the MND prepared for the Project (Environmental Assessment 18-1508), There are not features unique to the Project site or the proposed use that would create conditions detrimental to the public interest, health, safety, convenience, or welfare of the City.

C. The proposed amendment would maintain the appropriate balance of land uses within the City, in that:

Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to High-Density Residential (HDR), and the proposed development will be consistent with uses permitted within the HDR land use designation. The HDR land use designation is intended to allow High-Density Residential development of 11-18 dwelling units per acre which is consistent with the proposed project.

The Project is consistent with the General Plan Land Use Element Policy 1, which states: "The land use map shall provide a range of housing densities while considering land use compatibility with non-residential land uses," and Policy 2, which states: "Projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected." The Project will be consistent with both policies

ads the development provides for High-Density Residential near and Industrial Zone, which acts as a buffer between the Low-Density Residential to the north and west of the Project Site and the Project will be compatible with the existing High-Density Residential development adjacent to and south of the Project site, thereby closely matching the neighborhood character.

- D. The subject parcel is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation and the anticipated land use developments, in that:

The 7.08-acre site is of adequate size to accommodate the proposed 96-Unit apartment complex subject to compliance with the proposed Conditions of Approval attached to this Resolution as Exhibit C. No natural constraints exist to the proposed development and no significant adverse environmental impacts are anticipated with mitigation measures contained in the MND for the Project (Environmental Assessment 18-1508).

The Project site is adjacent to both East Hoffer Street and North Hathaway Street, which are existing improved local streets that provide access and all utilities to the site and surrounding land uses. The site is compatible with the High-Density Residential development to the south and Low-Density Residential development to the north and west. The site is relatively flat and devoid of vegetation due to recent disking for weed abatement, thus no unique physical features or vegetation will be affected by the proposed Project.

SECTION 3: DESIGN REVIEW 18-7011

The City Council hereby finds:

- A. The proposed project is consistent with the General Plan.

The Project is consistent with the General Plan Land Use Element Policy 1, which states: “The land use map shall provide a range of housing densities while considering land use compatibility with non-residential land uses,” and Policy 2, which states: “Projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected.” The Project will be consistent with both policies ads the development provides for High-Density Residential near and Industrial Zone, which acts as a buffer between the Low-Density Residential to the north and west of the Project Site and the Project will be compatible with the existing High-Density Residential development adjacent to and south of the Project site, thereby closely matching the neighborhood character.

- B. The proposed project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

The proposed Project is consistent with the Zoning Ordinance and the development standards of the High Density Residential Zone, with imposition of Conditions of

Approval, as detailed in the analysis contained in the Planning Commission Staff Report dated April 3, 2019.

- C. The design and layout of the proposed project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.

The proposed Project has provided site and circulation layout design in such a way that the Project will not interfere with the use and enjoyment of existing and future development in the surrounding area. The proposed Project provides vehicular access from North Hathaway street as well as East Hoffer street. A six-foot tall block wall will buffer the project from existing residential development to the south and west and the design of lighting on-site is subject to compliance with the Municipal Code to prevent spillage onto adjacent areas.

- D. The design of the proposed project is compatible with the character of the surrounding neighborhood.

The proposed 96-Unit Apartment Complex will not impair the integrity and character of the residential district in which it is located because it is surrounded by existing single-family and multi-family residential development and is adjacent to local streets, North Hathaway Street and East Hoffer Street. The building architecture, site circulation and landscaping have been designed in a manner that the Project is compatible with the character of the surrounding neighborhood, with imposition of Conditions of Approval and CEQA mitigation measures. Additionally, a six-foot tall block wall, along with landscaping will buffer the site from residential areas to the south and west.

SECTION 4: CITY COUNCIL ACTION

The City Council hereby takes the following action:

Adopt the Mitigated Negative Declaration (Environmental Assessment 18-1508) and the associated Mitigation Monitoring and Reporting Program; Approve General Plan Amendment 18-2504 amending the General Plan land use designation on APN 534-283-001 and 534-283-014 from Low Density Residential to High Density Residential; and approve Design Review 18-7011 to permit the development of a proposed 96-Unit Apartment Complex.

PASSED, APPROVED AND ADOPTED this 14th day of May, 2019.

Arthur L Welch, Mayor
City of Banning

ATTEST:

Daryl A. Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-____ was duly adopted at a regular meeting of the City Council of the City of Banning held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl A Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 3

City Council Ordinance No. 1543

ORDINANCE 1543

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE 18-3503 TO AMEND THE ZONING CLASSIFICATION FOR REAL PROPERTY LOCATED SOUTH OF EAST HOFFER STREET AND WEST OF NORTH HATHAWAY STREET (APNS: 534-283-011 AND 534-283-014) FROM LOW DENSITY RESIDENTIAL (LDR) TO HIGH DENSITY RESIDENTIAL (HDR), AND MAKING FINDINGS PURSUANT TO CEQA

WHEREAS, an application for General Plan Amendment 18-2504, Zone Change 18-3503, Design Review 18-7011, and Environmental Assessment 18-1508 to permit the development of a proposed 96-Unit Apartment Complex (collectively, the “Project”), has been duly filed by:

Project Applicant/Owner:	John and Diana Hanna
Project Location:	In the northeastern portion of the City south of East Hoffer Street, and west of North Hathaway Street, in the City of Banning, California
APNs:	534-283-011, 534-283-014
Lot Area:	7.08 acres;

WHEREAS, Zone Change No. 18-3503 is the subject of this Ordinance;

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.050, 17.116.030, and 17.56.040, on April 3, 2019, the Planning Commission held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the Planning Commission adopted Resolution 2019-05 by a 5-0-0 vote, recommending that the City Council approve General Plan Amendment 18-2504, Zone Change No. 18-3503, and Design Review 18-7011;

WHEREAS, in accordance with Government Code Sections 65355, 65856, and 65090 and Banning Municipal Code Section 17.68.020.B., on May 3, 2019, the City gave public notice, by advertisement in the Record Gazette Newspaper, and by mailing to the owner of the subject real property, the owner’s duly authorized agent, the Applicant, and the property owners within 300 feet of the Project site, of a public hearing concerning the Project;

WHEREAS, pursuant to Banning Municipal Code Section 17.116.040 and Government Code Sections 65853 and 65857, the City Council is authorized to approve,

modify, or disapprove the Planning Commission's recommendation on Zone Change 18-3503; and

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.040, 17.116.040, and 17.56.040, and Government Code Sections 65355 and 65856, on May 14, 2019, the City Council held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the City Council considered the Project.

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

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

A. Pursuant to the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000 *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. § 15000 *et seq.*) and City's local CEQA Guidelines (collectively, the "Guidelines"), City staff prepared an Initial Study of the potential environmental effects of the approval of the Project. Based upon the findings contained in that Study, a Mitigated Negative Declaration (MND) is proposed for adoption. The MND public review period ran for 20 days; a total of three comment letters were received.

B. The City prepared written responses to all comments received on the MND during the comment period and those responses to comments are incorporated into the Final MND, which Final MND was prepared in accordance with CEQA, is on file with the City Planning Division, and is incorporated herein by this reference. The responses to public agency comments were delivered to each public agency commenter on or about April 3, 2019, which is at least ten (10) days prior to any certification of the Final MND.

C. On May 14, 2019, the City Council conducted a duly noticed public hearing to consider the Project and the Final MDN, reviewed the staff report, accepted and considered public testimony. Based upon the evidence presented at the hearing, including the staff report and oral testimony, the City Council, by separate City Council Resolution 2019-____, certified the Final MND, adopted findings pursuant to CEQA for the Project as set forth in Exhibit "A" to City Council Resolution 2019-____, and adopted a Mitigation Monitoring and Reporting Program ("MMRP") for the Project as set forth in Exhibit "B" City Council Resolution 2019-____.

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

E. The custodian of records for the Final MND, MMRP, and all other materials that constitute the record of proceedings upon which the City Council's decision was based, including, without limitation, staff reports, all of the materials that comprise and support the Final MND and the staff reports, is the Planning Division of the City of

Banning. Those documents are available for public examination during normal business hours at the City of Banning, Community Development Department, Planning Division, 99 E. Ramsey Drive, Banning, California 92220.

SECTION 2. Findings for Approval of Zone Change 18-3503. The City Council of the City of Banning hereby finds and determines that Zone Change 18-3503 should be approved because:

Finding No. 1: The proposed Zone Change 18-3503 is consistent with the goals and policies of the General Plan.

Finding of Fact: The Project is consistent with the General Plan Land Use Element Policy 1, which states: "The land use map shall provide a range of housing densities while considering land use compatibility with non-residential land uses," and Policy 2, which states: "Projects adjacent to existing neighborhoods shall be carefully reviewed to assure that neighborhood character is protected." The Project will be consistent with both policies as the development provides for High-Density Residential near and Industrial Zone, which acts as a buffer between the Low-Density Residential to the north and west of the Project site and the Project will be compatible with the existing High-Density Residential development adjacent to the south of the Project site, thereby closely matching the neighborhood character.

Finding No. 2: The proposed Zone Change 18-3503 is internally consistent with the Zoning Ordinance.

Finding of Fact: The proposed Project is not anticipated to result in exceeding, either cumulatively or individually, any applicable level of service standards. Pursuant to the Project's Conditions of Approval, the proposed Project will be constructed in conformance with City standards and specifications.

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

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

SECTION 3: CITY COUNCIL ACTION - Approval of Zone Change 18-3503. Based on the foregoing, the City Council of the City of Banning hereby approves Zone Change 18-3503, amending the Zoning Classification for real property located south of East Hoffer Street and west of North Hathaway Street (APNs: 534-283-011 and 532-283-014) from Low Density Residential (LDR) to High Density Residential (HDR). This approval of Zone Change 18-3503 is conditioned upon the City Council's adoption of a resolution approving General Plan Amendment 18-2504 and Design Review 18-7011.

PASSED, APPROVED AND ADOPTED this 14th day of May, 2018.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl A. Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl A. Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance 1543 was duly adopted at a regular meeting of the City Council of the City of Banning held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl A. Betancur, Deputy City Clerk
City of Banning, California

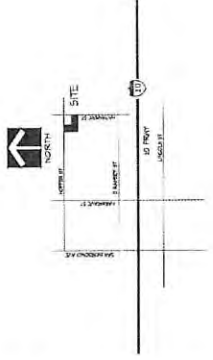
ATTACHMENT 4

Site Plan

E. HOFFER STREET



SITE
INFRASTRUCTURE
IS IN PHASE I



1/2" = 1' MAP N.T.S.

PROJECT APPLICANT:

ELIAS ALFARO
800 ALFARO PLACE
RIVERSIDE, CA 92504
TEL: 951/454-0912
E-MAIL: ALFAROA@EARTHLINK.NET

OWNER:

JOHN & DANIA HANNA
1000 ALFARO PLACE
RIVERSIDE, CA 92504
TEL: 951/454-0912

APN #: 534 - 283 - 011 / 014

GROSS LOT AREA: 308,451 SQ. FT. 7.08 AC

PROJECT DATA:

16 UNITS 2 BDRM 1 BATH 910 SF

PROPOSED BLDG 3 STORY HEIGHT 33 FT

TYPICAL PRIVATE SPACE 220 SQ. FT.

RECREATIONAL BLDG 2,800 SQ. FT.

PROVIDED 3 PARKING SPACES

PARKING REQUIREMENT:

REQUIRED 16 UNITS X 2.25 = 36 SPACES PROVIDED

REQUIRED 12 COVERED SPACES PROVIDED

TOTAL PARKING SPACES PROVIDED: 225

LANDSCAPING CALCULATIONS:

REQUIRED OPEN SPACE 30% @ 30,000 S.F. = 90,000 S.F.

PROVIDED LANDSCAPING AREA: 60,000 S.F.

LOT COVERAGE

RECREATIONAL BLDG: 2,800 SQ. FT.

LOT COVERAGE: 60,000 / 308,451 = 19.45 %

EXISTING ZONING: LCV DENSITY

PROPOSED ZONING: HIGH DENSITY

TYPE OF CONSTRUCTION: VBI 1 HOUR

SPRINKLERED: YES

STORIES: 2

AUTOMATIC FIRE ALARM REQUIRED N.F.P.A. 72.

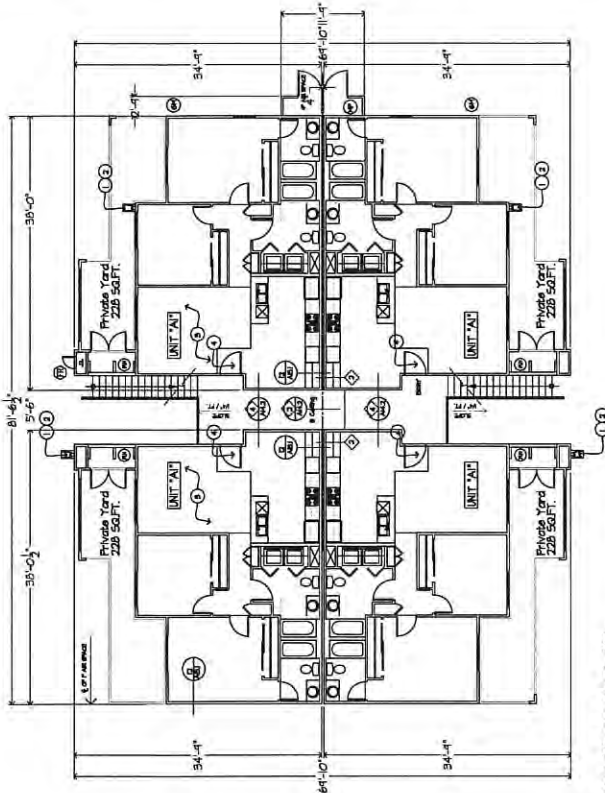




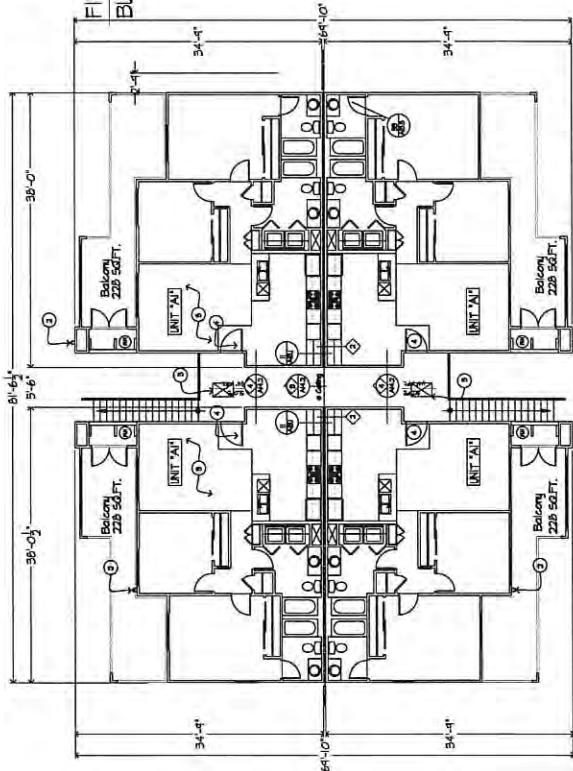
APN # : 534 - 283 - 011 / 014
BANNING CALIFORNIA
JOHN & DIANA HANNA
16197 KRAMERIA AVE
RIVERSIDE, CA 92504
TEL: 951 / 453-4997

CEGAR HILLS
APARTMENTS
BANNING CALIFORNIA
FLOOR PLAN BUILDING F&H & J

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UNIT 103
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FIRST FLOOR PLAN
BUILDING F&H & J



SECOND FLOOR PLAN
BUILDING F&H & J



CDAR HILLS
APARTMENTS
BANNING CALIFORNIA

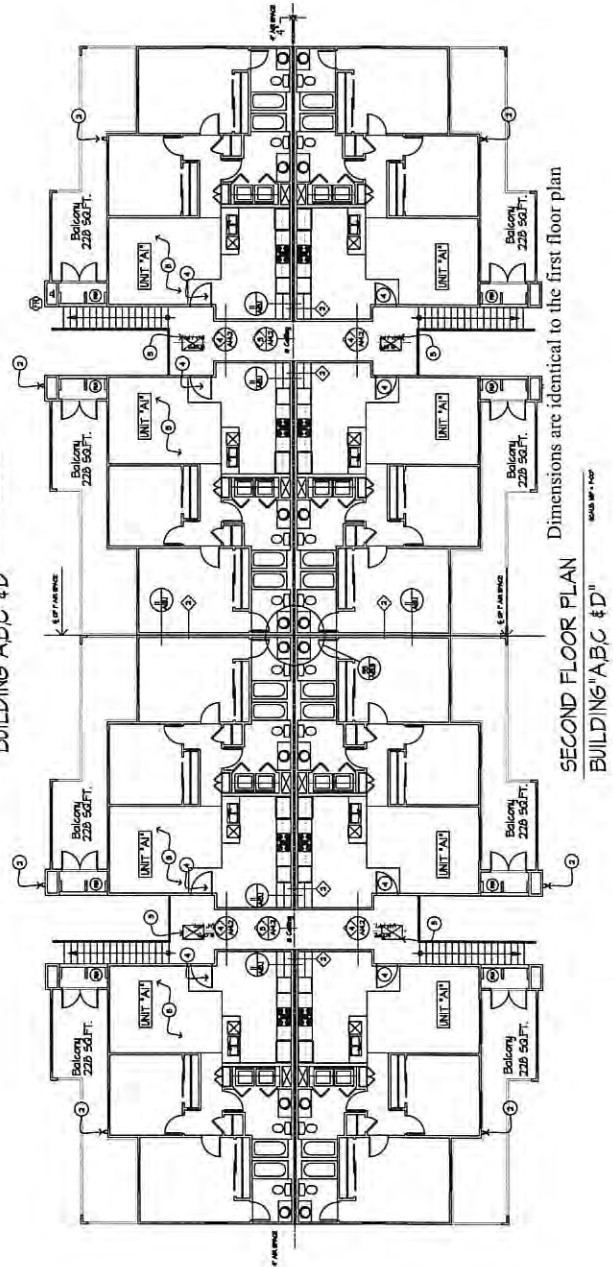
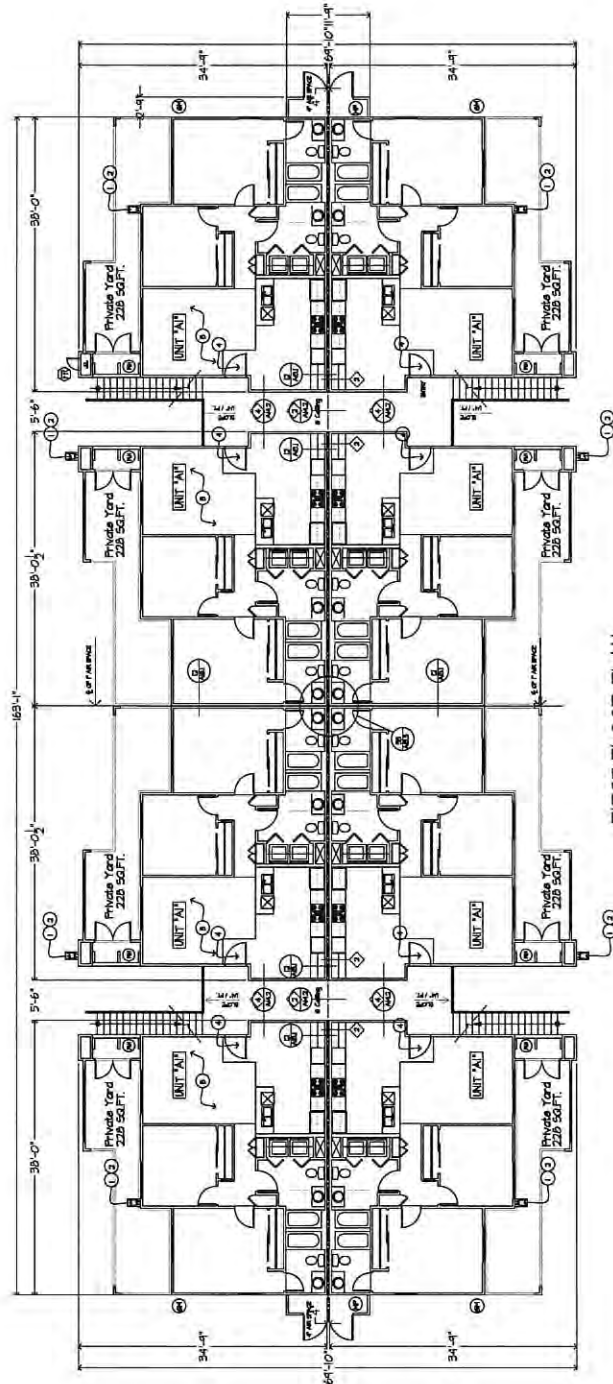
JOHN & DIANA HANNA
16197 KRAMERIA AVE
RIVERSIDE, CA 92504
TEL: 951 / 453-4997

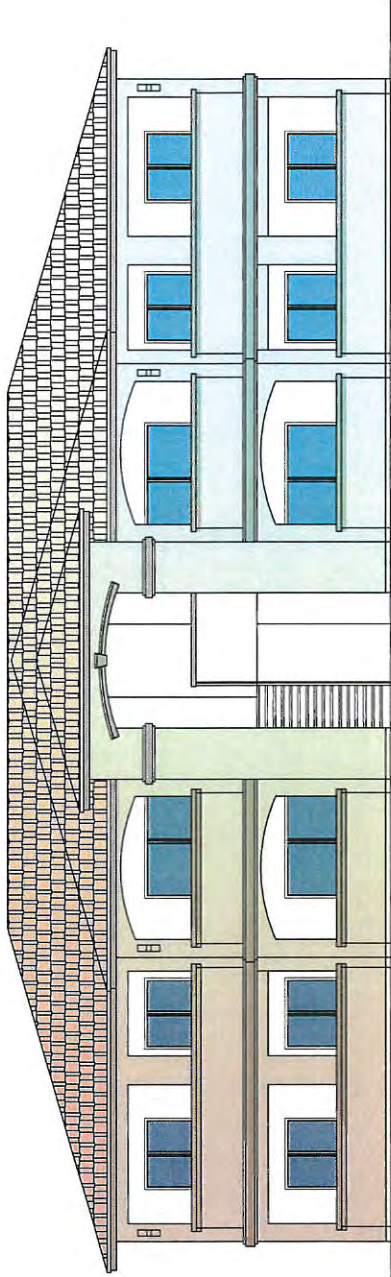
APN # : 534 - 263 - 011 / 014
BANNING CALIFORNIA

DATE: 01-11-18
DRAWN BY: J. HANNA
CHECKED BY: J. HANNA
SCALE: AS SHOWN

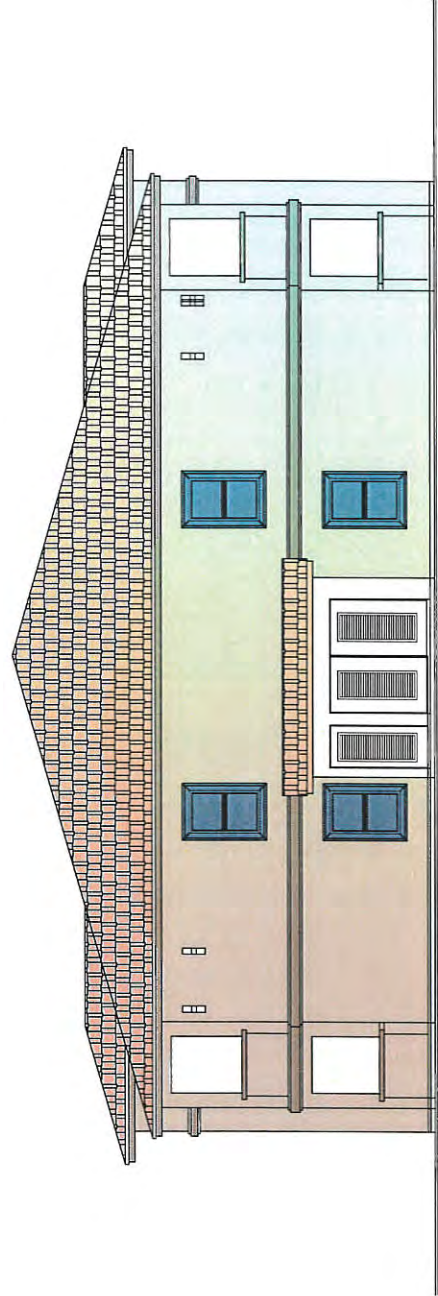
TYPICAL FLOOR PLAN

THIS FLOOR PLAN IS A REPRESENTATION OF THE PROPOSED DEVELOPMENT. IT IS NOT TO BE USED FOR CONSTRUCTION OR AS A BASIS FOR ANY OTHER DOCUMENT. IT IS THE RESPONSIBILITY OF THE APPLICANT TO OBTAIN ALL NECESSARY PERMITS AND APPROVALS FROM THE APPROPRIATE AGENCIES.

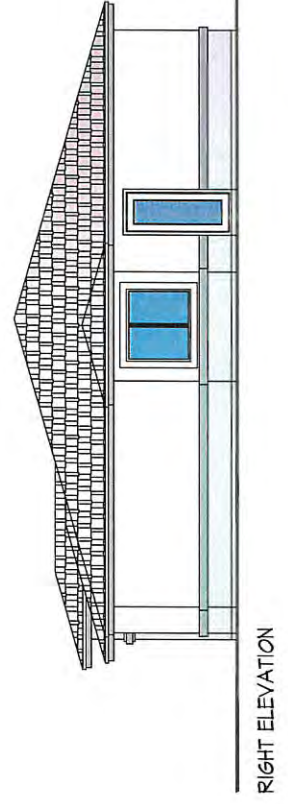
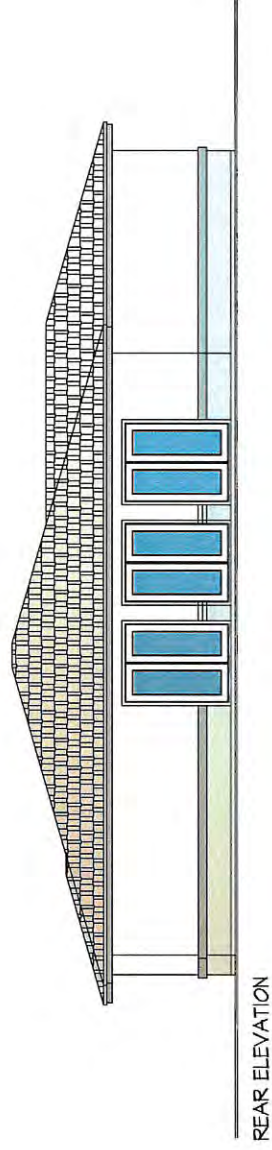
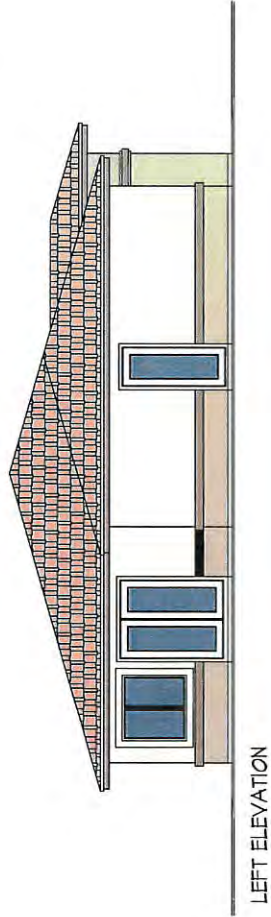
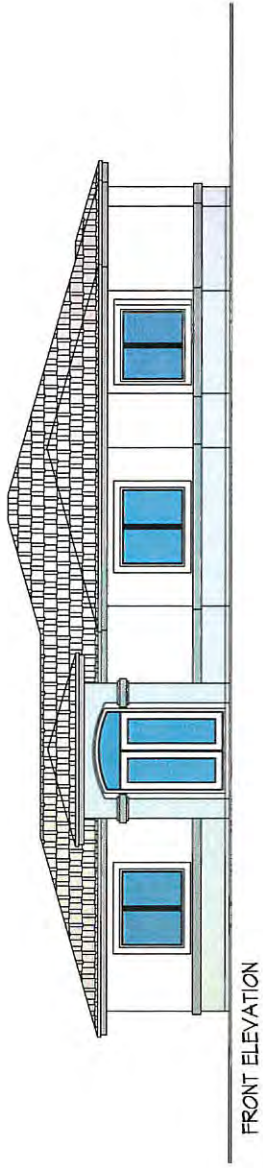




FRONT ELEVATION (REAR ELEVATION SIMILAR)



SIDES ELEVATIONS



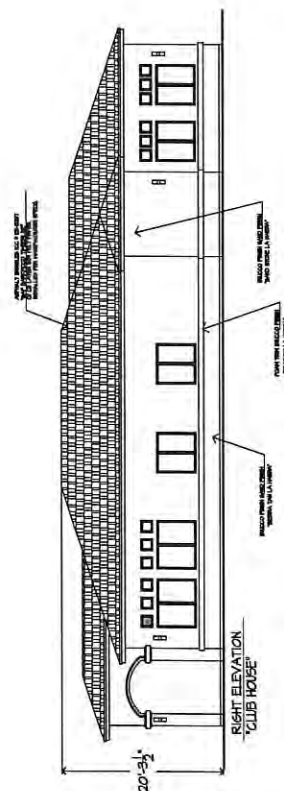
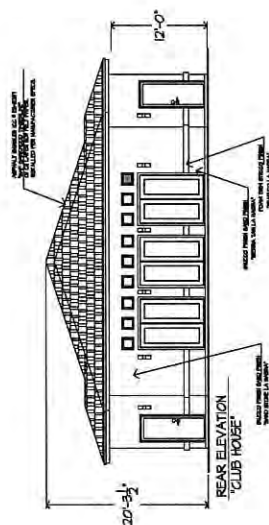
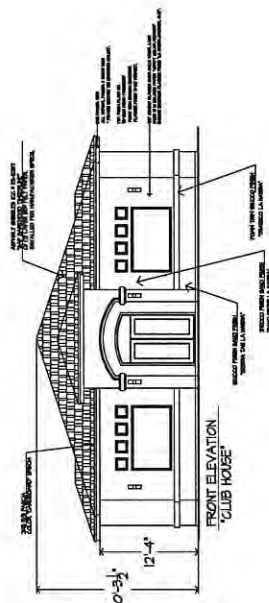
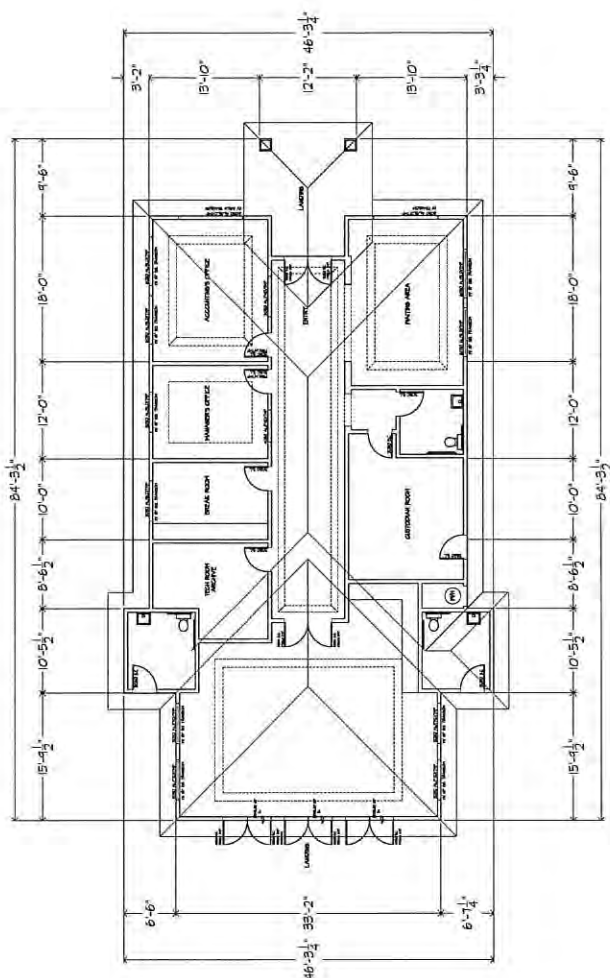
ALFA DESIGN
6420 MIDWAY PLACE
IRVINE, CA 92618
TEL: 949-250-7541 E-MAIL: alpha@alfo.com

CEDAR HILLS
APARTMENTS
BANNING CALIFORNIA

JOHN & DIANA HANNA
16197 KRAMERIA AVE
RIVERSIDE, CA. 92504
TEL: 951 / 453-4997

BANNING CALIFORNIA
APN #: 534 - 283 - 011 / 014

AD **ADALFA DESIGN**
 10000 MIDWAY PLACE
 VAN NUYS, CA 91411
 TEL: (818) 700-6841
 FAX: (818) 700-6841
 E-MAIL: info@adalfadesign.com
 WWW: www.adalfadesign.com



ALFA DESIGN



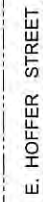
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N. HATHAWAY STREET

REET

STH HATHAWAY

N



ATTACHMENT 5

Conditions of Approval



COMMUNITY DEVELOPMENT DEPARTMENT

99 E. Ramsey Street · P.O. Box 998 · Banning, CA 92220-0998 · (951) 922-3125 · Fax (951) 922-3128

PROJECT #: DR 18-7011, GPA 18-2504, ZC 18-3503

SUBJECT: Conditions of Approval (Planning Commission Resolution 2019-05)

APPLICANT: John and Diana Hanna

LOCATION: APN: 534-283-011 and 014

EXHIBIT B

*** All fair share agreements, covenant agreements and agreements subject to recordation will be subject to review and approval by the City Attorney and will include appropriate enforcement provisions by the City and be properly securitized.**

Community Development Department

1. This Design Review, General Plan Amendment and Zone Change approval is for the proposed development of a 96-Unit Apartment Complex on 7.08-acres of land.
2. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to, arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent

- jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.
3. The issuance of these Conditions of Approval do not negate the requirements of the Engineering/Public Works Department or submittal, review, and approval of: street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the City Engineer.
 4. Construction shall commence within two (2) years from the date of project approval, or Design Review, General Plan Amendment and Zone Change approval shall become null and void. Additionally, if after commencement of construction, work is discontinued for a period of one year, the Design Review, General Plan Amendment and Zone Change shall become null and void. Projects may be built in phases if pre-approved by the review authority. The Community Development Director may, upon a written application being filed 30 days prior to expiration and for good cause, grant a one-time extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Design Review complies with all current Ordinance provisions.
 5. The project shall develop in accordance with the phasing plan as approved.
 6. A lot merger combining lots know as Assessor's Parcel Numbers 534-283-011 and 014 shall be recorded prior to final inspection and/or occupancy of the project site.
 7. A copy of the signed resolution of approval or Community Development Director's letter of approval and all conditions of approval and any applicable mitigation measures shall be reproduced in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for review and approval as required by the reviewing department.
 8. The site shall be developed and maintained in accordance with the plans stamped approved by the City, which include site plans, architectural elevations, exterior materials and colors, landscaping, and grading on file in the Planning Division; the conditions contained herein; and, municipal code regulations.
 9. Approval of this entitlement shall not waive compliance with any sections of the Development Code, other applicable City Ordinances, in effect at the time of building permit issuance.
 10. All graffiti shall be removed immediately or within 24 hours of notice from the City.

11. Exterior noise, including any bells, public address system, etc. shall not exceed 65 dBA at the property line.
12. There shall be no light spillover onto the adjacent properties from the parking lot lighting and/or exterior building lighting, including outdoor security lighting. All lighting fixtures shall not have a visible light source, must be shielded and directed downward and away from adjoining properties and public rights-of-way.
13. All trash enclosures shall be required with three, decorative walls with enhanced wall cap, pedestrian entrance, structural roof cover and gate, in a style compatible with the structure's architecture. The gate shall be maintained in working order and shall remain closed except when in use; per City Standards.
14. All roof-mounted equipment or utility equipment on the side of the structure, or on the ground, shall not be visible from adjacent properties, the public rights-of-way or the parking lot. Any architectural screening that is proposed to shield the roof-mounted equipment shall be compatible in terms of colors and materials of the building. Landscape screening for ground mounted equipment shall be of sufficient size and quantity to fully screen the equipment.
15. The project shall at all times comply with all Federal, State, County and City laws, codes, regulations and standards including those that relate to hazardous materials.
16. Prior to any use of the project site, or construction activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.
17. All ground-mounted utility appurtenances, such as transformers and A/C condensers, shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berms, and/or landscaping to the satisfaction of the Community Development Director.
18. All building numbers shall be identified in a clear and concise manner, including proper illumination.
19. All new proposed signs shall be reviewed under a Sign Review application submittal and a separate permit is required prior to installation.
20. All mitigation measures contained in the Mitigation Monitoring Report and Program for this project shall become part of these conditions of approval.
21. The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. Multi-family residential developments shall provide a solid overhead structure for mail boxes with adequate lighting. The final location of the mail boxes and the design of the overhead structure shall be subject to

Community Development Director review and approval prior to the issuance of building permits.

22. If fireplaces are installed in any unit, they shall be natural gas supplied fireplaces. Wood burning fireplaces are prohibited. Building Plans shall incorporate the minimum accessories necessary to operate the natural gas fireplaces, as determined by the Community Development Director.
23. The land divider, or any successor-in-interest to the land divider, shall be responsible for maintenance and upkeep of all slopes, landscaped areas and irrigation systems within the project site unless otherwise stated through these conditions of approval; more specifically the landscaping within the ten (10') foot wide Banning Utility Easement and the Right-of-Way Landscaping.
24. The developer shall file a Landscaping and Irrigation Plan to the Community Development Department for review and approval. Said plan shall be submitted to the Department in the form of a set of working/construction drawings, along with the current fee. The plan shall be in compliance with the Banning Municipal Code. The plan shall show all common open space areas. The plan shall address all areas and conditions of the project site requiring landscaping and irrigation to be installed including, but not limited to, (slope planting, common area and/or park landscaping, and individual front yard landscaping). Emphasis shall be placed on using plant species that are drought tolerant and low water using. The plans shall provide for the following:
 1. Permanent automatic irrigation systems shall be installed on all landscaped areas requiring irrigation. Low water use systems are encouraged.
 2. All utility service areas and enclosures shall be screened from view with landscaping and decorative barriers or baffle treatments, as approved by the Planning Department. Utilities shall be placed underground.
 3. Any required landscape screening shall be designed to be opaque up to a minimum height of six (6) feet at maturity.
 4. Parkways and landscaped building setbacks shall be landscaped to provide visual screening or a transition into the primary use area of the site. Landscape elements shall include earth berming, ground cover, shrubs, and specimen trees in conjunction with meandering sidewalks, benches, and other pedestrian amenities where appropriate as approved by the Community Development Department.
 5. Landscaping plans shall incorporate the use of specimen accent trees at key visual focal points within the project.
 6. Landscaping plans shall incorporate native and drought tolerant plants where appropriate.
 7. All specimen trees and significant rock outcroppings on the subject property intended for retention shall be shown on the project's grading plans. Replacement trees for those to be removed shall also be shown.
 8. All trees shall be minimum double-staked. Weaker and/or slow-growing trees shall be steel-staked.
 9. Multi-programmable irrigation controllers which have enough programs to break up all irrigation stations into hydro zones shall be used. If practical and feasible, rain shutoff devices shall be employed to prevent irrigation after significant precipitation. Irrigation systems shall be designed so areas which have different

water use requirements are not mixed on the same station (hydro zones). Assistance in implementing a schedule based on plant water needs is available from CIMIS or Mobile Lab. The use of drip irrigation should be considered for all planter areas that have a shrub density that will cause excessive spray interference of an overhead irrigation system. Use flow reducers to mitigate broken heads next to sidewalks, streets, and driveways. (BMP S2) 10. Plants with similar water requirements shall be grouped together in order to reduce excessive irrigation runoff and promote surface filtration, where possible. (BMP S3).

Public Works Department

General Requirements

25. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.
26. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:
 - Fire Marshal (access)
 - Public Works Department (grading permits, street improvement permits)
 - Riverside County Flood Control & Water Conservation District (storm drain)
 - California Regional Water Quality Control Board Colorado River Basin (RWQCB)
 - South Coast Air Quality Management District (SCAQMD)

The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.

27. The following improvement plans shall be prepared by a Civil Engineer licensed by the State of California and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized in writing by the City Engineer, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar film. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors):

- a. Rough Grading Plans 1" = 40' horizontal
 (All Conditions of Approval shall be reproduced on last sheet of set)
- b. Haul Route Plans 1" = 40' horizontal
- c. Clearing Plans 1" = 50' horizontal
 (Include construction fencing plan)
- d. Erosion Control & SWPPP, WQMP 1" = 40' Horizontal
 (Note: a, b, c & d shall be reviewed and approved concurrently)
- e. Storm Drain Plans 1" = 40' Horizontal
- f. Street Improvement Plans 1" = 40' Horizontal
- g. Precise Grading Plans 1" = 40' Horizontal
- h. Landscaping Plans 1" = 20 Horizontal
- i. Water Improvement Plans 1" = 40' Horizontal
- j. Sewer Improvement Plans 1" = 40' Horizontal
 1" = 4' Vertical

Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

All off-site plan and profile, street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

28. Upon completion of construction, the Developer shall furnish the City with reproducible record drawings on Mylar film of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD files submitted to the City, revised to reflect the "As-Built" conditions.

Street Improvements/Right-of-Way

29. The current General Plan of the City of Banning designated Hathaway Street as a Major Highway defined as 100-foot right of way with a 76-foot street section from curb to curb. Applicant shall offer to dedicate to the City of Banning the additional right-of-way for Hathaway Street (50 feet one-half width) fronting the site as a Major Highway for public street and utilities purposes. Legal descriptions and plats of street dedication shall be provided to the Engineering Division for review and

approval before acceptance by City Council and recorded by the County of Riverside.

30. The current General Plan of the City of Banning designated Hoffer Street as a Local Street defined as 60-foot right of way with a 40-foot street section from curb to curb. Applicant shall offer to dedicate to the City of Banning the additional right-of-way for Hoffer Street (30 feet one-half width) fronting the site as public street and utilities purposes. Legal descriptions and plats of street dedication shall be provided to the Engineering Division for review and approval before acceptance by City Council and recorded by the County of Riverside.
31. The City and Developer are to enter into a Development Agreement (DA) to guarantee the construction of the public improvements as listed in the Conditions of Approval and as shown on the approved plans. The applicant shall work with the City Attorney's Office to execute the DA and pay all related legal processing fees.
32. All street improvement designs shall provide pavement and lane transitions per City of Banning and Caltrans standards for transition to existing street sections.
33. Construct half-width street improvements fronting Hathaway Street (50 feet from centerline) and Hoffer Street (30 feet from centerline) including street lighting, curb and gutter, driveway approaches, sidewalk, parkway, asphalt concrete paving, traffic signs and striping, and any transitions. Street lights shall be installed offset of the existing street lights. Applicant's geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
34. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee.
35. The applicant shall plant and perpetually maintain trees, shrubs, and ground cover placed in the parkway, slopes adjacent to public right-of-ways constructed in connection with the project. This includes providing irrigation and the clearing of debris and weed removal.
36. All required public improvements for the project shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.

Grading and Drainage

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

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

33. At a minimum, all development will make provisions to store runoff from rainfall events up to and including the one-hundred year, three-hour event. Post-development peak urban runoff discharge rates shall not exceed pre-development peak urban runoff discharge rates.
34. If the site is located in a Flood Area as identified in Flood Insurance Rate Map dated August 28, 2008 the developer is responsible for providing a certification by a registered professional engineer or architect demonstrating that encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
35. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The project shall accept and convey storm flows from the adjacent property to the north and west.
36. The applicant shall comply with Chapter 13.24 "Storm water Management Systems" of the Banning Municipal Code (BMC) and Title 18 "Grading, Erosion and Sediment Control" of the California Building Code related to excavation and grading; and, the State Water Resources Control Board's orders, rules and regulations.
37. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.
38. The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any permit issuance.
39. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through and including acceptance of all improvements by the City.
40. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):

- Temporary Soil Stabilization (erosion control).
 - Temporary Sediment Control.
 - Wind Erosion Control.
 - Tracking Control.
 - Non-Storm Water Management.
 - Waste Management and Materials Pollution Control.
41. All erosion and sediment control BMPs proposed by the applicant shall be designed using the CASQA BMP handbook and approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.
42. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.
43. Prior to issuance of any grading or building permit, a Project-Specific Water Quality Management Plan (WQMP) shall be reviewed and approved in accordance with California Regional Water Quality Control Board Colorado River Basin Region Order No. R7-2013-0011.
44. Prior to the issuance of any building permit(s), a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity.
45. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.
46. The following notation shall be placed on the grading plan: "No more than three days prior to removing trees, shrubs or tall herbaceous vegetation during the breeding season for migratory birds (February 15 to August 31) a qualified biologist shall conduct a nesting bird survey."
47. Prior to the issuance of a building permit, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.

Traffic/Airport Safety Zone

48. Prior to the issuance of a grading permit or building permit, the applicant shall submit and obtain approval in writing from the Fire Marshall for the plans for all public or private access drives or streets. The plans shall include plan and sectional views and indicate the grade and width of the access road measured flow-line to flow-line. When a dead-end access exceeds 150 feet or when otherwise required, a clearly marked fire apparatus access turnaround must be provided and approved by the Fire Marshall. Applicable covenant, conditions or restrictions or other approved documents shall contain provisions which prohibit

obstructions such as speed bumps/humps, control gates or other modifications within said easement or access road unless prior approval of the Fire Marshall is granted.

49. Driveway grades shall not exceed eight percent unless approved by the City Engineer.
50. Access drives to the public right-of-way shall be restricted to those approved by the City Engineer as shown on the approved plans.
51. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street/access driveway as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.
52. Prior to the issuance of a grading permit or building permit, the applicant shall conduct a Traffic Impact Analysis and submit the report to the Engineering Division for review and approval. All mitigation identified in the Traffic Impact Analysis shall be implemented by the applicant to the satisfaction of the City Engineer.
53. The site is located within an airport safety zone as designated in the Riverside County Airport Land Use Compatibility Plan. Prior to approval of any building permit, the project shall be submitted to the Riverside Airport Land Use Commission for a consistency determination and the Applicant shall provide written evidence that the project meets all conditions set forth by said Commission.

Trash/Recycling

54. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler, Waste Management of the Inland Valley at 1-800-423-9986, for disposal of construction debris.
55. The developer shall participate in the City's recycling program by providing two trash receptacles, one for regular trash and one for recycling, within the covered trash enclosure. The covered trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.
56. The developer shall prepare, and submit to the Department of Public Works a Recyclables Plot Plan prior to the issuance of the First Building Permit. The developer shall avoid the location of a trash enclosure adjacent to or behind the residence identified as 882 N. Allen St. Furthermore, trash enclosures shall not be

located within the westerly parking aisle between Building “C” and Building “F”. The recyclables Plot Plan shall identify the location of all trash enclosures, including an additional trash enclosure located within the vicinity of the southeastern portion of the Project site.

57. All trash enclosures shall be covered and enclosed with a split-face block (including cap) or other similar material as approved by the Community Development Director.

Lot Merger

58. Applicant shall submit a copy of the Grant Deed of the proposed lot merger parcels to the City.
59. Applicant shall submit legal descriptions and plats of the proposed lot merger to the City for review and approval.
60. All legal descriptions and plats must be prepared, stamped and signed by a Registered Land Surveyor or Civil Engineer in the State of California on letter size paper.

Fees

61. Plan check fees for professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid at the time of submittal of said documents for review and approval in accordance with the fee schedule in effect at the time of submittal.
62. Public Works Inspection fees shall be paid prior to issuance of any permits in accordance with the fee schedule in effect at time of time of scheduling.
63. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid at the time of building permit issuance in accordance with the fee schedule in effect at that time.
64. A plan storage fee shall be paid for any engineering plans that may be required prior to issuance of certificate of occupancy in accordance with the fee schedule in effect at the time the fee is paid.

Water

65. Submit Water Improvement Plans along with hydraulic analysis calculations demonstrating adequate fire protection to the Water Division for review and approval.

66. Onsite water mains shall be privately owned and maintained, and can be PVC C-900 as proposed in the preliminary plans. The Public portion of the water improvements, from the point of connection to the City's water distribution system to the RP Backflow device shall use Ductile Iron CL 350 pipe. The private water system shall be "looped", that is connected to the City's distribution system on both Hoffer St. and Hathaway St., as shown on the preliminary plot plans. This will require two RP backflow devices and two Octave Ultrasonic Master Meters. Applicant shall submit meter sizing calculations along with Water Improvement Plans as shown on the preliminary plot plans; which are required to be submitted for review and approval by the Department of Public Works. Any modifications or deviations from this condition shall be approved (in writing) by the Director of Public Works.
67. Placement of private fire hydrants shall be coordinated with the Fire Department, and painted red to differentiate from public fire hydrants which are typically yellow.
68. RP backflow prevention device must be installed for each connection to the public water system and be in compliance with the State of California Department of Health Regulations. Contact the City of Banning Water Operations Division prior to installation of backflow prevention devices.
69. Individual rental units shall be sub-metered for water, and separate meters used for irrigation areas and the clubhouse, or as approved by the Director of Public Works. These private meters need to be tested annually for accuracy and registered with the Riverside County Division of weights and Measures.

Sewer

70. Submit Sewer Improvement Plans to the Wastewater Division for review and approval.
71. All public sewer lines shall be PVC SDR 26 and the sewer mains shall be a minimum of 8" diameter. All onsite sewer mains shall be privately owned and maintained by the HOA or property management company.
72. A sewer backwater check valve shall be provided for each building with a finished pad elevation lower than the rim elevation of the immediate upstream sewer manhole.

Electric Utility Department

73. Points of connection will be Hoffer Street for the northern parcel and Hathaway Street for the two proposed merged southern parcels.
74. The developer will be required to underground the existing overhead lines on Hathaway Street in conjunction with street widening.
75. The developer will be responsible for installing street lighting with any required street improvements on Hoffer Street and Hathaway Street.
76. A dedicated easement along the west property line for existing power lines will be required. This easement will be from the center of the pole line east to a maximum of ten (10') feet.
77. The dedicated easement, referenced in Condition of Approval No. 76, shall be maintained by the Banning Utility District for the life of the easement.

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

78. Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. These plans are required in electronic format. We currently use AutoCad2016. Plans should consist of a plot plan, site plan, one-line diagram of proposed electrical main service panels and a sheet showing load calculations by an electrical engineer. Additional sheets may be required upon request.
79. Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension.
80. Granting easement for electric facilities installation / maintenance, etc.
81. Installation of all electric utility conduits and substructures.
82. All trenching, backfill, and compaction.

The City of Banning Electric Utility shall be responsible for:

83. Reviewing plans submitted by customer.
81. Design an electrical utility plan for the installation of substructures and conduit by developer.
82. Providing a cost estimate for installing an underground electrical system for this project.

83. Inspecting all trenches prior to backfilling. 24-hour prior notice is required before inspection.
84. Install electrical apparatus including primary conductors, terminations, metering, and transformer to provide electrical service for this project.

Building and Safety Department

The following comments are required at time of plan check submittal

85. The Site shall be developed in compliance with all current model codes. All plans shall be designed in compliance with the latest editions of the California Building Codes as adopted by the City of Banning.
 - a. The following specific items will need to be addressed. Based on information provided additional comments may be generated:
 - i. Proposed buildings shall be accessible to persons with disabilities per CBC 11B.
 - ii. Plumbing, Mechanical and Electrical systems shall comply with the California Building Codes.
 - iii. Buildings shall comply with the latest editions of the CBC, specifically, exiting, light and ventilation, accessibility, structural supports and design as well as accessibility for customers and employees.
 - iv. Riverside County Health Department approval required prior to any permits issued by the Building Department.
86. Site development and grading shall be designed to provide access to all entrances and exterior ground floor exits and access to normal paths of travel, and where necessary to provide access. Paths of travel shall incorporate (but not limited to) exterior stairs, landings, walks and sidewalks, pedestrian ramps, curb ramps, warning curbs, detectable warnings, signage, gates, lifts and walking surface material. The accessible route(s) of travel shall be the most practical direct route between accessible building entrances, site facilities, accessible parking, public sidewalks, and the accessible entrance(s) to the site. California Building Code (CBC) 11A and 11B.
 - a. City of Banning enforces the State of California provisions of the California Building Code disabled access requirements. The Federal ADA standards differ in some cases from the California State requirements. It is the building

owner's responsibility to be aware of those differences and comply accordingly.

b. Disabled access parking shall be located on the shortest accessible route.

87. Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer. Based on change of use and potential exiting and fire life safety improvements.
88. Commercial buildings on the site shall be accessible per California Building Code (CBC) 11B.
89. Site Facilities such as parking (open and covered), recreation facilities, and trash dumpsters, shall be accessible per California Building Code (CBC) 11A, 11B and 31B.
90. Separate submittals and permits are required for all accessory structures such as but not limited to, trash enclosures, patios, block walls and storage buildings.
91. Pursuant to California Business and Professions Code Section 6737, this project is required to be designed by a California licensed architect or engineer.

Additional Conditions

92. All block walls shall have an anti-graffiti coating.
93. All block walls shall be split-face with cap or other similar materials acceptable to the Community Development Director. The block wall color scheme shall be consistent with the theme of the surrounding community and incorporate light browns, tans, or beige colorization.
94. Parking shall be prohibited on all drive isles.
95. An additional trash enclosure shall be installed within the southeast corner of the site.
96. Security cameras shall be installed with 45-day back-up.
97. A weight room shall be installed in the club house. The weight room shall include a minimum of five cardio machines (ellipse, cycling, treadmills, and/or stair masters) and a sufficient number of exercise equipment to accommodate the maximum occupancy of the weight room as dictated by the Fire Marshall with respect to the occupancy. Weights shall be of "Olympic standard" and include a mixture of "free weights" and circuit machines.

Exhibit A
Draft Conditions of Approval
DR 18-7011
Page **16** of **16**

END

ATTACHMENT 6

Initial Study/MND

**INITIAL STUDY &
MITIGATED NEGATIVE DECLARATION
18-1508
FOR**

**General Plan Amendment 18-2504 Zone Change 18-3503,
Design Review 18-7011.**



PREPARED FOR:
City of Banning
99 East Ramsey Street
Banning, CA 92220
Contact: Mark de Manincor, Contract Planner
(951) 922-3123

APPLICANT

John and Diana Hanna
16197 Krameria Avenue
Riverside, CA 92504
951-453-4997

March 2019

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APPENDICES

The following technical studies in support of this Initial Study are available to the public for review at the Community Development Department, Planning Division.

Appendix A – Biological Assessment
Appendix B - Phase I Cultural Resources Investigation
Appendix C – Report of Soils and Foundation Evaluations
Appendix D – Hydrology Study & Drainage Analysis
Appendix E – Noise Impact Analysis
Appendix F – Traffic Impact Analysis
Appendix G – Air Quality/Greenhouse Gas Analysis
Appendix H – Riverside County Airport Land Use Commission Report
Appendix I - Lilburn Corporation, Localized Significance Thresholds letter to SCAQMD

CITY OF BANNING INITIAL STUDY

Project Title: Hanna 96 Apartment Project
(GPA 18-2504, ZC 18-3503, DR 18-7011, EA 18-1508.)

Lead Agency Name: City of Banning Community Development Department
Planning Division

Address: 99 E. Ramsey Street
Banning, CA 92220

Contact Person: Mark de Manincor
Phone Number: (951) 922-3123

Project Sponsor: John and Diana Hanna
Address: 16197 Krameria Avenue
Riverside, CA 92504

Existing General Plan Designation: Low Density Residential (LDR 0-5 DU/AC)
Existing Zoning: Low Density Residential (LDR 0-5 DU/AC)

Proposed General Plan Designation: High Density Residential (HDR 11-18 DU/AC)
Proposed Zoning Designation: High Density Residential (HDR 11-18 DU/AC)

General Plan Amendment/Zone Change: From Low Density Residential to High Density Residential (HDR 11-18 DU/AC)

Project Location (Address/Nearest cross-streets): The project consist of two parcels totaling 7.08-acres. The Site is located south of and adjacent to Hoffer Street and west of and adjacent to North Hathaway Street in the City of Banning (refer to Figure 1: Regional Location Map and Figure 2: Vicinity Map). The properties are legally described as APN 534-283-011 and 14 and are within Section 3 of Township 3 South, Range 1 East, San Bernardino Base and Meridian.

Project Description: John and Diana Hanna are proposing (Design Review 18-7011) to construct a 96-unit multi-family apartment complex on approximately 7.08 gross acres of land. The apartment complex consists of four 16-unit two-story buildings, four 8-unit two story buildings and one 2,600 square foot single-story Club House. The height of the two-story structures as proposed are 32.5 feet and the single-story club house will be just over 20 feet. All 96 units will be two bedrooms with 910 square feet in floor area. The Site Plan shows 225 parking spaces will be provided which include eight accessible spaces and 192 covered spaces. In accordance with the Banning Municipal Code, 216 spaces are required (refer to Figure 3: Site Plan).

The City of Banning designates zoning at the Project Site as Low Density Residential (0-5 du/acre). The Applicant has applied for a General Plan Amendment (GPA 18-2504) and Zone Change (ZC 18-3503) from Low Density Residential to High Density Residential (11-18 du/acre). The request for a Zone Change and General Plan Amendment must be approved by both the

Planning Commission and City Council and only four General Plan Amendments are allowed per year (California Government Code Section 65358 (b)).

The project also consists of two parcels (534-283-011 and 14) which will be required to be merged into one parcel as part of the conditions of approval. The Parcel Merger is an administrative approval which does not require approval from the Planning Commission or City Council. The parcel merger is being processed concurrently with the Design Review, General Plan Amendment and Zone Change.

The applicant proposes to construct the project in three phases. Phase one will consist of two 16-unit apartment buildings, Club House, Swimming Pool, related infrastructure and 70 parking spaces. Phase two will consist of two 16-unit apartment buildings, a multi-purpose court and 80 parking spaces. Phase three will consist of four 8-unit apartment buildings and 75 parking spaces.

Surrounding Land Uses and Setting: The Project Site is vacant, relatively flat, with sparse vegetation, debris piles and bare dirt. Other surrounding development includes developed single-family low-density residential use to the south west, west, north and northeast. There is an existing High-Density Residential Zone with an apartment facility to the south. East and northeast of the site is the Morongo Band of Mission Indians Reservation which is undeveloped near the site and is adjacent to the City boundary. East and southeast of the site is an industrial zone that was once developed but is now vacant with only one structure left on the property. The property is not within a Historic Preservation Zone, a Fire Responsibility Area, or an Agricultural Preserve. It also is not located within a Cell Group of the Western Riverside County Multiple-Species Habitat Conservation Plan, or within a floodplain. The property is within Airport Compatibility Zone D of the Banning Municipal Airport Influence Area.

The topography of the site is relatively flat with a gentle downward slope from northwest to southeast at a rate of about 4.2%. The highest point, located on the northwest corner of the site, is 2369 feet above mean sea level while the lowest point, located on the southeast corner of the site, is 2331 feet above mean sea level.

The site is undeveloped and highly disturbed. Currently, the site is routinely subjected to weed abatement activities, as evidenced by the disking observed onsite and in historical aerial imagery. Pedestrian footpaths and vehicular dirt access roads crisscross the project site. Rock/boulder piles as well as trash and debris piles resulting from illegal dumping are scattered throughout the site, most notably near the center and southern portions of the site.



REGIONAL LOCATION MAP
Hanna 96 Apartment Project
North Hathaway Street and East Hoffer Street
Banning, California

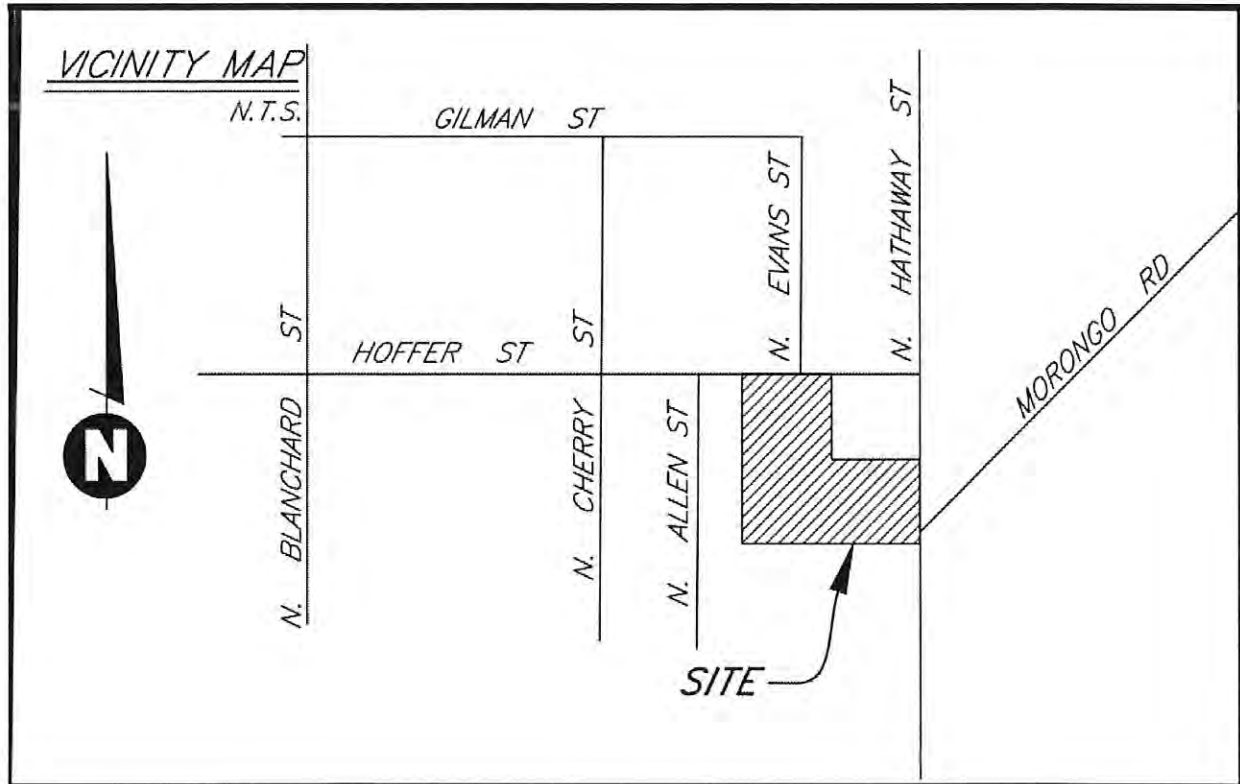


FIGURE 2

PROJECT VICINITY MAP
Hanna 96 Apartment Project
North Hathaway Street and East Hoffer Street
Banning, California

Initial Study for the Hanna 96 Apartment Project

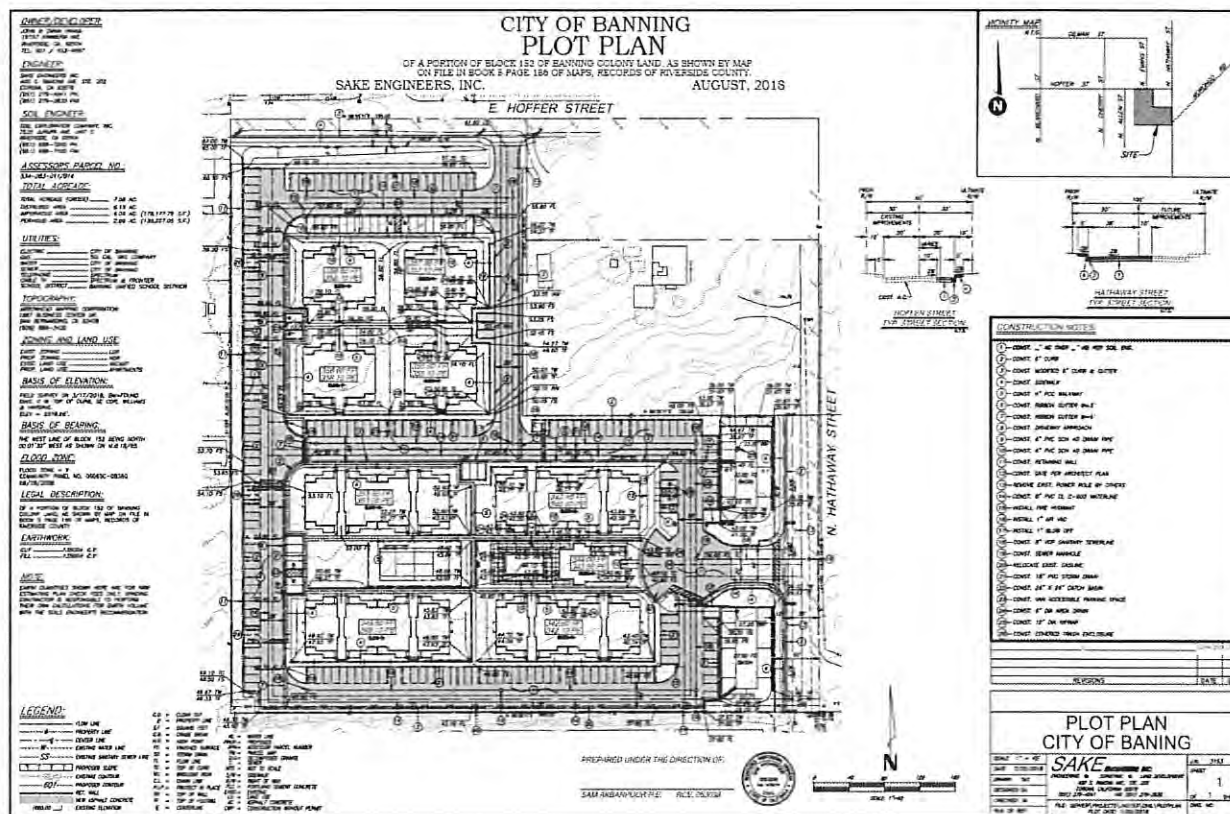


FIGURE 3

PROJECT SITE PLAN

Hanna 96 Apartment Project

North Hathaway Street and East Hoffer Street

Banning, California

ENVIRONMENTAL FACTORS POTENTIALLY AFFECTED

The environmental factors checked below would be potentially affected by this project, involving at least one impact that is a "Potentially Significant Impact" or "Less Than Significant Impact with Mitigation Incorporated" as indicated by the checklist on the following pages.

- | | | |
|--|---|--|
| <input type="checkbox"/> Aesthetics | <input type="checkbox"/> Agriculture and Forestry | <input type="checkbox"/> Air Quality |
| <input checked="" type="checkbox"/> Biological Resources | <input checked="" type="checkbox"/> Cultural Resources | <input type="checkbox"/> Geology /Soils |
| <input type="checkbox"/> Greenhouse Gas Emissions | <input checked="" type="checkbox"/> Hazards & Hazardous Materials | <input type="checkbox"/> Hydrology / Water Quality |
| <input type="checkbox"/> Land Use/ Planning | <input type="checkbox"/> Mineral Resources | <input checked="" type="checkbox"/> Noise |
| <input type="checkbox"/> Population / Housing | <input type="checkbox"/> Public Services | <input type="checkbox"/> Recreation |
| <input type="checkbox"/> Transportation/Traffic | <input checked="" type="checkbox"/> Tribal Cultural Resources | <input type="checkbox"/> Utilities / Service Systems |
| <input checked="" type="checkbox"/> Mandatory Findings of Significance | | |

DETERMINATION

On the basis of this initial evaluation:

- () I find that the Proposed Project COULD NOT have a significant effect on the environment. A NEGATIVE DECLARATION will be prepared.
- (✓) I find that although the Proposed Project could have a significant effect on the environment, there will not be a significant effect in this case because revisions in the project have been made by, or agreed to, by the project proponent. A MITIGATED NEGATIVE DECLARATION will be prepared.
- () I find that the Proposed Project MAY have a significant effect on the environment, and an ENVIRONMENTAL IMPACT REPORT is required.
- () I find that the Proposed Project MAY have a "Potentially Significant Impact" or "Potentially Significant Unless Mitigated" impact on the environment, but at least one effect 1) has been adequately analyzed in an earlier document pursuant to applicable legal standard and 2) has been addressed by mitigation measures based on the earlier analysis as described on attached sheets. An ENVIRONMENTAL IMPACT REPORT is required, but it must analyze only the effects that remain to be addressed.
- () I find that although the Proposed Project could have a significant effect on the environment, because all potentially significant effects 1) have been analyzed adequately in an earlier EIR or NEGATIVE DECLARATION pursuant to applicable standards, and 2) have been avoided or mitigated pursuant to that earlier EIR or NEGATIVE DECLARATION, including revisions or mitigation measures that are imposed upon the Proposed Project, nothing further is required.

Signature: _____ Date: _____

Mark de Manincor, Contract Planner

EVALUATION OF ENVIRONMENTAL IMPACTS

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
1. AESTHETICS. <i>Would the project:</i>					
a)	Have a substantial effect on a scenic vista?	()	()	()	(✓)
b)	Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a State Scenic Highway?	()	()	()	(✓)
c)	Substantially degrade the existing visual character or quality of the site and its surroundings?	()	()	(✓)	()
d)	Create a new source of substantial light or glare, which would adversely affect day or nighttime views in the area?	()	()	(✓)	()

Impact Discussion:

- a) **No Impact.** According to the City's General Plan, the Project Site is not within a scenic vista/scenic highway view corridor. Nearby streets include East Hoffer Street, and North Hathaway Street. Neither of these is designated as a scenic route in the General Plan. There are no scenic vistas that would be impacted by the Proposed Project, and therefore no impacts would result.
- b) **No Impact.** The 7.08-acre Project Site is currently vacant and is located south of East Hoffer Street and west of North Hathaway Street. The Project Site is surrounded by single-family residential to the southwest, west and north. The Morongo Band of Mission Indians Reservation is located to the east and northeast of the site. Previously developed and now abandoned Business Park zoned property lies to the east and southeast. To the south, there is an existing multi-family development (apartment complex). There are no designated State Scenic Highways within the vicinity of the Project Site. Similarly, there are no historic buildings on-site or in the vicinity that would be impacted as a result of the Project. No impacts would result.
- c) **Less than Significant Impact.** The City of Banning designates the Project Site as Low Density Residential (LDR) (0-5 du/acre). The Project Proponent has submitted an Application for a Zone Change to High Density Residential (HDR) (11-18 du/acre). This district allows for multi-family residential up to 18 dwelling units per acre. The project site is essentially level, presently vacant and has no significant vegetation or unique physical features. Because there is an existing Apartment Complex directly south and adjacent to the project; approval of the Proposed Project would not substantially alter the visual character of the area. The proposed two-story building would consequently have a less than significant impact and no mitigation measures are necessary.
- d) **Less than Significant Impact.** The project site is currently vacant; thus, no light or glare currently emanates from the site. The proposed project will create a new source of light

and glare. Potentially sensitive receptors in the vicinity include multi-family residential to the south, and residential development to the west and to the north. Lighting to be provided on-site would be typical of similar development, with no unusual features or characteristics.

As a condition of approval, a photometric plan for installation of lighting within the parking area and building entries shall be designed in a manner to control spillage of light from the Project Site, as required by the City of Banning Municipal Code. Attention will be made to assure no spillage of lights onto the residential properties to the north, south and west. The lighting plan must also comply with Title 24 of the California Uniform Building Code. Compliance with these regulations is a Condition of Approval. Consequently, impacts to sensitive receptors will be less than significant.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
<p>2. AGRICULTURAL RESOURCES. In determining whether impacts to agricultural resources are significant environmental effects, lead agencies may refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Department of Conservation as an optional model to use in assessing impacts on agriculture and farmland. In determining whether impacts to forest resources, including timberland, are significant environmental effects, lead agencies may refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board. Would the project:</p>				
<p>a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use?</p>	()	()	()	(✓)
<p>b) Conflict with existing zoning for agricultural use, or a Williamson Act contract?</p>	()	()	()	(✓)
<p>c) Involve other changes in the existing environment, which, due to their location or nature, could result in conversion of Farmland to non-agricultural use?</p>	()	()	()	(✓)
<p>d) Result in the loss of forest land or conversion of forest land to non-forest use?</p>	()	()	()	(✓)
<p>e) Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to non-agricultural use or conversion of forest</p>	()	()	()	(✓)

Impact Discussion:

a, c, e) **No Impact.** The California Department of Conservation Farmland Mapping and Monitoring Program (FMMP) produces maps and statistical data that inventories agricultural land resources in the State. Agricultural land is rated according to soil quality and irrigation status; the best quality land is classified as Prime Farmland. The maps are updated every

two years and the latest maps are available digitally through the FMMP interactive mapping viewer.

The Project site and vicinity was reviewed in the FMMP interactive map on January 28, 2019. The Project Site and vicinity is identified as urban built-up land. No Prime Farmland, Unique Farmland, or Farmland of Statewide Importance is identified for the Project Site or in the immediate vicinity. Therefore, the Proposed Project would not result in the conversion of farmland designated of importance locally or statewide to a non-agricultural use. No impacts would occur.

- b) **No Impact.** California Land Conservation (Williamson) Act of 1965 was adopted to regulate the conversion of farmland/agricultural land into non-agricultural use and control urban expansion. The Act enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to long term agricultural or open space use. No portion of the Project Site is contracted under the Williamson Act. Therefore, the Proposed Project would not impact any Williamson Act Land Conservation Contract. Similarly, approval of the Proposed Project would not conflict with or change existing zoning for agricultural use, or a Williamson Act Contract. No impacts would result.
- d) **No Impact.** The 7.08-acre Project Site is currently vacant and is located south of East Hoffer Street and west of North Hathaway Street. No portion of the Project Site is located within forest land. Consequently, approval of the proposed General Plan Amendment (GPA), Zone Change (ZC) and Design Review (DR) to allow site development would not result in the loss of forest land or convert forest land to a non-forest use. No impacts would result.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
3. AIR QUALITY. <i>Would the project:</i>					
a)	Conflict with or obstruct implementation of the applicable air quality plan?	()	()	(✓)	()
b)	Violate any air quality standard or contribute substantially to an existing or projected air quality violation?	()	()	(✓)	()
c)	Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable Federal or State ambient air quality standard (including releasing emissions, which exceed quantitative thresholds for ozone precursors?	()	()	(✓)	()
d)	Expose sensitive receptors to substantial pollutant concentrations?	()	()	(✓)	()
e)	Create objectionable odors affecting a substantial number of people?	()	()	(✓)	()

Impact Discussion:

In February 2019, Lilburn Corporation prepared an Air Quality and Greenhouse Gas Assessment for the project. This assessment is contained in Appendix G, which is available for review at the Community Development Department, Planning Division. Findings are summarized in the following discussion. Additionally, Lilburn Corporation provided an assessment for Localized Significance Thresholds (LSTs) in a response letter to the South Coast Air Quality Management District (SCAQMD), also available for review at the Community Development Department, Planning Division.

- a) **Less than Significant Impact.** The Project Site is located in the South Coast Air Basin (SCAB). The South Coast Air Quality Management District (SCAQMD) has jurisdiction over air quality issues and regulations within the SCAB. The Air Quality Management Plan (AQMP) for the basin establishes a program of rules and regulations administered by SCAQMD to obtain attainment of the state and federal air quality standards. The most recent AQMP (2016 AQMP) was adopted by the SCAQMD on March 3, 2017. The 2016 AQMP incorporates the latest scientific and technological information and planning assumptions, including transportation control measures developed by the Southern California Association of Governments (SCAG) from the 2016 Regional Transportation Plan/Sustainable Communities Strategy, and updated emission inventory methodologies for various source categories.

Conflicts with the AQMP would arise if Project activities resulted in a substantial increase in employment or population that was not previously adopted and/or approved in a General Plan. Large population or employment increases could affect transportation control strategies, which are among the most important in the air quality plan, since

transportation is a major contributor to particulates and ozone for which the SCAB is not in attainment.

The Proposed Project consists of a General Plan Amendment and Zone Change from Low Density Residential (0-5 DU/AC) to High Density Residential (11-18 DU/AC). The General Plan identifies the project site for build-out of up to 35 single-family residential units which would generate approximately 95 new residents. (SCAG, May 2018, average 2.72 residents per household, City of Banning). The proposed project consists of 96 multi-family units which would generate approximately 261 new residents. This represents 166 additional residents above the General Plan estimates. This estimate is considered above average as some Banning Residents may move to these apartments and Apartments generally house fewer persons per household than single-family homes.

The State of California and the City of Banning Housing Element requires the City to provide locations for additional housing to meet the Regional Housing Needs Allocation (RHNA). Once built, this project will help the State and City achieve their RHNA goals. The proposed project is estimated to generate approximately 45-50 temporary jobs. A portion of these employees can be assumed to be drawn from the existing local labor pool and a portion may represent outside labor. Consequently, the proposed General Plan Amendment and Zone Change would result in a minimal deviation from population and employment projections which form the basis of the AQMP. Therefore, the proposed project would not result in a conflict or obstruction to the implementation of the AQMP.

- b/c) **Less than Significant Impact.** The Proposed Project's construction and operational emissions were screened using California Emissions Estimator Model (CalEEMod) version 2016.3.2 prepared by Lilburn Corporation, February 2019. The emissions estimates incorporate Rule 402 and 403 by default as required during construction. The criteria pollutants screened for include reactive organic gases (ROG), nitrous oxides (NO_x), carbon monoxide (CO), sulfur dioxide (SO₂), and particulates (PM₁₀ and PM_{2.5}). In addition, reactive organic gas (ROG) emissions are analyzed. Two of the analyzed pollutants, ROG and NO_x, are ozone precursors. Both summer and winter season emission levels were estimated.

Construction Emissions

Construction emissions are considered short-term, temporary impacts and were modeled with the following parameters: site grading (mass and fine grading), building construction, paving, and architectural coating. Construction is anticipated to begin in early to mid-2019 and be completed in 2020. Estimated emissions generated by construction of the Proposed Project are shown in Table 1 and Table 2, which represent winter and summer construction emissions, respectively. As shown in Table 1 and Table 2, construction emissions would not exceed SCAQMD thresholds. Impacts would be less Than Significant.

Table 1
Winter Construction Emissions Summary
(Pounds per Day)

Source/Phase	ROG	NO _x	CO	SO ₂	PM ₁₀	PM _{2.5}
Site Preparation	4.4	45.6	22.7	0.04	10.7	6.7
Grading	2.7	28.4	16.8	0.03	4.5	2.8
Building Construction	3.1	25.0	22.3	0.05	2.9	1.7
Paving	1.7	14.1	15.1	0.02	0.9	0.7
Architectural Coating	32.2	1.8	2.6	0.01	0.4	0.2
Highest Value (lbs/day)	32.2	45.6	22.7	0.05	10.7	6.7
SCAQMD Threshold	75	100	550	150	150	55
Significant	No	No	No	No	No	No

Source: CalEEMod.2016.3.2 Winter Emissions.
Phases do not overlap and represent the highest concentration.

Table 2
Summer Construction Emissions Summary
(Pounds per Day)

Source/Phase	ROG	NO _x	CO	SO ₂	PM ₁₀	PM _{2.5}
Site Preparation	4.4	45.6	22.9	0.04	10.7	6.7
Grading	2.7	28.4	17.0	0.03	4.5	2.8
Building Construction	3.1	25.0	23.2	0.05	2.9	1.7
Paving	1.7	14.1	15.3	0.02	0.9	0.7
Architectural Coating	32.2	1.8	2.8	0.01	0.4	0.2
Highest Value (lbs/day)	32.2	45.6	23.2	0.05	10.7	6.7
SCAQMD Threshold	75	100	550	150	150	55
Significant	No	No	No	No	No	No

Source: CalEEMod.2016.3.2 Summer Emissions.
Phases do not overlap and represent the highest concentration.

Compliance with SCAQMD Rules 402, and 403

Although the Proposed Project does not exceed SCAQMD thresholds for construction emissions, the Project Proponent would be required to comply with all applicable SCAQMD rules and regulations, because the SCAB is in non-attainment status for ozone and suspended particulates (PM₁₀ and PM_{2.5}).

The Project Proponent would be required to comply with Rules 402 nuisance, and 403 fugitive dust, which require the implementation of Best Available Control Measures (BACMs) for each fugitive dust source, and the AQMP which identifies Best Available Control Technologies (BACTs) for area sources and point sources. The BACMs and BACTs would include, but not be limited to the following:

1. The Project Proponent shall ensure that any portion of the site to be graded shall be pre-watered prior to the onset of grading activities.
 - (a) The Project Proponent shall ensure that watering of the site or other soil stabilization method shall be employed on an on-going basis after the initiation of any grading activity on the site. Portions of the site that are actively being graded shall be watered regularly (3x daily) to ensure that a crust is formed on the ground surface and shall be watered at the end of each workday.

- (b) The Project Proponent shall ensure that all disturbed areas are treated to prevent erosion until the site is constructed upon.
- (c) The Project Proponent shall ensure that landscaped areas are installed as soon as possible to reduce the potential for wind erosion.
- (d) The Project Proponent shall ensure that all grading activities are suspended during first and second stage ozone episodes or when winds exceed 25 miles per hour.

During construction, exhaust emissions from construction vehicles and equipment and fugitive dust generated by equipment traveling over exposed surfaces, would increase NO_x and PM₁₀ levels in the area. Although the Proposed Project does not exceed SCAQMD thresholds during construction, the Applicant/Contractor would be required to implement the following conditions as required by SCAQMD:

- 2. To reduce emissions, all equipment used in grading and construction must be tuned and maintained to the manufacturer's specification to maximize efficient burning of vehicle fuel. Site development will be limited to one acre disturbed per day.
- 3. The contractor shall utilize (as much as possible) pre-coated building materials and coating transfer or spray equipment with high transfer efficiency, such as high volume, low pressure (HVLV) spray method, or manual coatings application such as paint brush, hand roller, trowel, dauber, rag, or sponge.
- 4. The contractor shall utilize water-based or low VOC coating per SCAQMD Rule 1113, The following measures shall also be implemented:
 - Use Super-Compliant VOC paints whenever possible.
 - If feasible, avoid painting during peak smog season: July, August, and September.
 - Recycle leftover paint. Take any left-over paint to a household hazardous waste center; do not mix leftover water-based and oil-based paints.
 - Keep lids closed on all paint containers when not in use to prevent VOC emissions and excessive odors.
 - For water-based paints, clean up with water only. Whenever possible, do not rinse the clean-up water down the drain or pour it directly into the ground or the storm drain. Set aside the can of clean-up water and take it to a hazardous waste center (www.cleanup.org).
 - Recycle the empty paint can.
 - Look for non-solvent containing stripping products.
 - Use Compliant Low-VOC cleaning solvents to clean paint application equipment.
 - Keep all paint and solvent laden rags in sealed containers to prevent VOC emissions.
- 5. The Project Proponent shall ensure that existing power sources are utilized where feasible via temporary power poles to avoid on –site diesel power generation.

6. The Project Proponent shall ensure that construction personnel are informed of ride sharing and transit opportunities.
7. All buildings on the project site shall conform to energy use guidelines in Title 24 of the California Administrative Code as updated to reduce energy consumption and reduce GHG emissions.
8. The operator shall maintain and effectively utilize and schedule on site equipment and delivery trucks in order to minimize exhaust emissions from truck idling.

Operational Emissions

Operational emissions are categorized as energy (generation and distribution of energy to the end use), area (operational use of the project), mobile (vehicle trips), water (generation and distribution of water to the land use), and waste (collecting and hauling waste to the landfill). The operational mobile source emissions were calculated in accordance with the Transportation Impact Analysis prepared for the Proposed Project by Fehr and Peers in August 2018. Note, the City of Banning will be the electric energy provider for the Proposed Project, however, at the time of this analysis, CalEEMod Version 2016.3.2 does not contain an emissions model for the Banning Electric Department; Therefore, the operational emissions analysis implemented Southern California Edison as an industry standard.

The City of Banning General Plan with Zoning Overlay designates the Project Site as Low-Density Residential development allowing between zero to five dwelling units per acre (0-5 du/ac, 35 units). The Project Proponent is requesting a zone change to High Density Residential (11-18 du/ac, 96 units) to allow for the development of the proposed 96-unit apartment complex. Therefore, analysis of operational criteria pollutants and GHGs was conducted for the Proposed Project as well as the potential buildout under the existing General Plan (GP) and zoning designations to provide a long-term emissions comparison. Emissions associated with the Proposed Project's operational activities in comparison to buildout of the Project Site under the existing General Plan/Zoning designations are listed in Table 3 and Table 4, which represent the winter and summer operational emissions, respectively.

The Proposed Project does not exceed applicable SCAQMD regional thresholds either during construction or operational activities. Consequently, the associated impacts are considered to be Less Than Significant; and no mitigation measures are necessary.

Table 3
Winter Operational Emissions Summary
(Pounds per Day)

Proposed Project¹						
Source	ROG	NO_x	CO	SO₂	PM₁₀	PM_{2.5}
Area	27.5	2.1	56.7	0.1	7.4	7.4
Energy	0.0	0.4	0.2	0.0	0.0	0.0
Mobile	1.1	9.5	13.6	0.1	5.2	1.4
Totals (lbs/day)	28.7	12.0	70.5	0.2	12.6	8.8
SCAQMD Threshold	55	55	550	150	150	55
Significance	No	No	No	No	No	No
Existing Zoning²						
Source	ROG	NO_x	CO	SO₂	PM₁₀	PM_{2.5}
Area	10.6	0.8	20.7	0.0	2.7	2.7
Energy	0.0	0.3	0.1	0.0	0.0	0.0
Mobile	0.6	5.0	7.3	0.0	2.6	0.7
Total Value (lbs/day)	11.2	6.1	28.1	0.1	5.3	3.4
SCAQMD Threshold	55	55	550	150	150	55
Significant	No	No	No	No	No	No
Delta³						
Source	ROG	Nox	CO	SO₂	PM₁₀	PM_{2.5}
Delta of Total Values (lbs/day)	17.5	5.9	42.4	0.1	7.3	5.4

¹ High Density Residential (11-18 du/ac)

² Low Density Residential (0-5 du/ac)

³ Difference between the Proposed Project compared to buildout of the Project Site under Existing GP/Zoning

Source: CalEEMod.2016.3.2 Winter Emissions.

Table 4
Summer Operational Emissions Summary
(Pounds per Day)

Proposed Project¹						
Source	ROG	NO_x	CO	SO₂	PM₁₀	PM_{2.5}
Area	27.5	2.1	56.7	0.1	7.4	7.4
Energy	0.0	0.4	0.2	0.0	0.0	0.0
Mobile	1.3	9.5	15.8	0.1	5.2	1.4
Totals (lbs/day)	28.9	12.0	72.7	0.2	12.6	8.8
SCAQMD Threshold	55	55	550	150	150	55
Significance	No	No	No	No	No	No
Existing Zoning²						
Source	ROG	NO_x	CO	SO₂	PM₁₀	PM_{2.5}
Area	10.6	0.8	20.7	0.0	2.7	2.7
Energy	0.0	0.3	0.1	0.0	0.0	0.0
Mobile	0.7	5.0	8.4	0.0	2.6	0.7
Total Value (lbs/day)	11.3	6.1	29.2	0.1	5.3	3.4
SCAQMD Threshold	55	55	550	150	150	55
Significant	No	No	No	No	No	No
Delta³						
Source	ROG	Nox	CO	So2	PM10	PM2.5
Delta of Total Values (lbs/day)	17.6	5.9	43.5	0.1	7.3	5.4

¹ High Density Residential (11-18 du/ac)

² Low Density Residential (0-5 du/ac)

³ Difference between the Proposed Project compared to buildout of the Project Site under Existing GP/Zoning

Source: CalEEMod.2016.3.2 Summer Emissions.

- d) **Less than Significant Impact.** Localized Significance Thresholds (LSTs) methodology is incorporated herein to represent worst-case scenario emissions thresholds. The LSTs were developed to analyze the significance of potential air quality impacts of proposed projects to sensitive receptors (i.e. schools, single-family residences, etc.) and provide screening tables for small projects (one, two, or five acres). Projects are evaluated based on geographic location and distance from the sensitive receptor (25, 50, 100, 200 or 500 meters from the site).

For the purposes of a CEQA analysis, the South Coast Air Quality Management District (SCAQMD) considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility or anywhere that it is possible for an individual to remain for 24 hours. Additionally, schools, playgrounds, child care centers, and athletic facilities can also be considered as sensitive receptors. Commercial and industrial facilities are not included in the definition of sensitive receptor because employees do not typically remain on-site for a full 24 hours, but are usually present for shorter periods of time, such as eight hours.

The Project Site is approximately 7.08 acres and therefore the "five-acre" LST thresholds were utilized as larger sites (e.g. 10 acres) are typically granted a larger emission allowance. The nearest sensitive receptor land uses are the single-family residences which are located immediately north, west, and south of the Project Site and therefore LSTs are based on an 82-foot (25-meter) distance. CalEEMod version 2016.3.2 was used

to estimate the on-site and off-site emissions associated with construction and operation of the Proposed Project. It should be noted that the operational phase is comprised of three sources: Area, Energy, and Mobile; and the Area source includes the following four subcategories: Architectural Coating, Consumer Products, Hearth, and Landscaping. CalEEMod version 2016.3.2 assumes the implementation of "hearths" (e.g. wood-burning fireplaces); however, the Proposed Project will not include wood-burning fireplaces. This will be a condition of project approval imposed by the City on the Project. Therefore, wood-burning fireplaces will not contribute to the Proposed Project's operational emissions and associated emissions of PM₁₀ and PM_{2.5} were subtracted from the modeled totals. A comparison of the Proposed Project's construction and operational emissions with the appropriate LST thresholds is presented in Table 5.

Table 5
Localized Significance Thresholds
(Pounds per Day)

Source	NO _x	CO	PM ₁₀		PM _{2.5}	
Construction Emissions (Max. from Table 1 and Table 2)	45.6	23.2	10.7		6.7	
Operational Emissions (Max. from Table 3 and Table 4) ¹	1.4	9.7	0.5		0.2	
Highest Value (lbs/day)	45.6	23.2	10.7	0.5	6.7	0.2
LST Thresholds	236	2,817	21*	6 [†]	11*	3 [†]
Greater Than Threshold?	No	No	No	No	No	No

Note: PM₁₀ and PM_{2.5} emissions are separated into construction and operational thresholds in accordance with the SCAQMD Mass Rate LST look-up Tables.

* Construction emissions LST

[†] Operation emissions LST

¹ Per LST methodology mobile source emissions do not need to be included except for land use emissions and on-site vehicle emissions. It is estimated that approximately 10 percent of mobile emissions will occur on the project Site.

Source: CalEEMod 2016.3.2 Summer & Winter Emissions; SCAQMD Final Localized Significance Threshold Methodology; SCAQMD Mass Rate Look-up Tables for five-acre site in Source Receptor Area No. 29, distance of 24 meters.

As shown in Table 5, the Proposed Project's emissions are not anticipated to exceed the thresholds for LSTs. Therefore, the Proposed Project is not anticipated to expose sensitive receptors to substantial pollutant concentrations. Less than significant impacts are anticipated, and no mitigation measures are required.

- e) **Less than Significant Impact.** The Proposed Project will not involve activities typically associated with the emission of objectionable odors. Potential odor sources associated with the Proposed Project may result from construction equipment exhaust and the application of asphalt and architectural coatings during construction activities; and the temporary storage of solid waste (refuse) associated with the Projects' (long-term operational) uses. Standard construction measures such as those listed under Threshold b) and c) would minimize odor impacts resulting from construction activity. It should be noted that any construction odor emissions generated would be temporary, short-term, and intermittent in nature and would cease upon completion of the respective phase of construction activity. Project-generated refuse would be stored in covered containers and removed at regular intervals in compliance with the City of Banning's solid waste regulations. The Project would also be required to comply with SCAQMD Rule 402 to prevent occurrences of public nuisances. Consequently, odors associated with the Proposed Project construction and operations would be Less Than Significant and no mitigation is necessary.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
4. BIOLOGICAL RESOURCES. <i>Would the project:</i>					
a)	Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service?	()	(✓)	()	()
b)	Have a substantial adverse effect on riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations or by the California Department of Fish and Game or US Fish and Wildlife Service?	()	()	()	(✓)
c)	Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means?	()	()	()	(✓)
d)	Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites?	()	(✓)	()	()
e)	Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?	()	()	()	(✓)
f)	Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community conservation Plan, or other approved local, regional, or State habitat conservation plan?	()	()	(✓)	()

Impact Discussion:

In November 2018, Riverside Biological, Inc. performed a Habitat Assessment and MSHCP Consistency Analysis under the requirements of the Western Riverside County Multiple Species Habitat Conservation Plan (MSCHP). This assessment is contained in Appendix A, which is available for review at the Community Development Department, Planning Division. Findings are summarized in the following discussion.

- a) **Less than Significant Impact with Mitigation.** A data search for information on plant and wildlife species known occurrences within the vicinity of the Project Site has been

conducted along with review of biological texts on general and specific biological resources, and those resources considered to be sensitive by various wildlife agencies, local governmental agencies and interest groups.

A field survey of the Project Site was conducted on October 23, 2018 and included an evaluation of Project Site's habitats, records of the general and sensitive biological resources present on-site and taking representative photographs. The survey included habitat assessment surveys for resources covered under the MSHCP survey requirements. The Project Site was mapped by the MSHCP as disturbed/developed in both the 1994 and 2012 mapping.

The project site is highly disturbed due to past and current land use practices. As a result of the disturbance caused by these land use practices, the vegetation on the project site is sparse and dominated by ruderal, non-native vegetation. At the time of the site visit, what sparse vegetation found onsite was located along the peripheral of the project site, as most of the site was recently subjected to weed abatement, evidenced by disking. Vegetation was dominated by non-native species including lamb's quarters (*Chenopodium album*), and dry grasses including ripgut brome (*Bromus diandrus*) and wild oat (*Avena fatua*). Other non-dominant species observed onsite include common sunflower (*Helianthus annuus*), catclaw acacia (*Senegalia greggii*), California sand-aster (*Corethrogyne filaginifolia*), jimson weed (*Datura stramonium*), and coyote melon (*Cucurbita palmate*). Sparsely distributed individual California buckwheat (*Eriogonum fasciculatum*) plants were observed intermixed into the ruderal vegetation along the eastern and southern site boundary.

During the field survey, no amphibian or reptile species were observed. Wildlife common to suburban areas was observed using the site. Some species observed include mourning dove (*Zenaida macroura*), common raven (*Corvus corax*), and California ground squirrel (*Spermophilus beecheyi*).

The proposed project is located within "The Pass" Area Plan of the MSHCP (Multiple Species Habitat Conservation Plan) but is not located within or adjacent to a Criteria Area or Conservation Area. Thus, the proposed project is not subject to the MSHCP's Urban/Wildlands Interface Guidelines. No riparian/riverine/vernal pool resources are present. The project site is within the MSHCP survey areas for NEPSSA (Narrow Endemic Plant Species Survey Areas) habitat assessment and burrowing owl habitat assessment as discussed below.

The project is within MSHCP NEPSSA survey area 8 for many-stemmed dudleya (*Dudleya multicaulis*) and Yucaipa onion (*Allium marvinii*). Suitable soils and/or habitat conditions for the two target species do not occur on site; therefore, focused surveys were not required for these species.

The project falls within the MSHCP burrowing owl survey area. Burrowing owls are found in open, dry grasslands, agricultural and range lands, and desert habitats often associated with burrowing animals. They can also inhabit grass, forb, and shrub stages of pinyon, and ponderosa pine habitats. They nest in abandoned burrows of ground squirrels or other animals, in pipes, under piles of rock or debris, and in other similar features.

A habitat assessment survey for burrowing owl was conducted on October 23, 2018. Suitable habitat for burrowing owl is present on site, specifically associated with the

various rocky debris piles surrounded by bare ground and sparse, low-lying ruderal vegetation located near the center of the project site. Burrows that could have been occupied by burrowing owl were found in these rock pile locations. However, no burrowing owls or burrowing owl sign (e.g., whitewash, pellets, scat, tracks, and/or feathers) were observed during the survey. Due to the presence of suitable habitat and burrows, a burrowing owl focused survey will need to be conducted during the breeding season, March 1 – August 31, per the MSHCP Burrowing Owl Survey Guidelines.

Because the burrowing owl is a mobile species, it has a potential to subsequently occupy any suitable burrows within the site, even if focused surveys determine the site is not currently occupied by burrowing owls. Per the MSHCP 30-day Pre-Construction Burrowing Owl Survey Guidelines, an additional pre-construction survey is required for the burrowing owl within 30 days prior to start of grading/construction activities to determine if the burrowing owl has subsequently occupied the development area. If burrowing owls are found to be present, for compliance with the MSHCP, project-specific mitigation would be developed and authorized through consultation with the City of Banning and the CDFW (California Department of Fish and Wildlife).

BIO – 1 *Due to the presence of suitable habitat and burrows found onsite during the burrowing owl habitat assessment survey, a burrowing owl focused survey will need to be conducted during the breeding season, March 1 – August 31, per the MSHCP Burrowing Owl Survey Guidelines (revised March 29, 2006). To avoid potential effects to the burrowing owl, an additional pre-construction survey is required for the burrowing owl within 30 days prior to start of grading/construction activities to determine if the burrowing owl has subsequently occupied the development area.*

- b) **No Impact.** Riparian/Riverine Areas are lands that contain habitat dominated by trees, shrubs, and persistent emergent, which occur close to or depend upon soil moisture from a nearby water source; or areas with fresh water flowing during all or a portion of the year. Riverine/riparian/wetland areas may support species federally/state listed as threatened/endangered riparian bird species, such as the southwestern willow flycatcher (*Empidonax traillii extimus*), least Bell's vireo (*Vireo bellii pusillus*), and yellow-billed cuckoo (*Coccyzus americanus occidentalis*). The proposed project site does not contain any riverine, riparian, or wetland resources.
- c) **No Impact.** California's vernal pools are depressions that seasonally pond with winter rains as a result of a shallow, relatively impermeable layer of soil or rock that creates a perched water table. Ponding in vernal pools occurs for sufficient duration to inhibit growth of upland vegetation and facilitate growth of annual or small perennial plants specially adapted to initial growth in saturated soils. Under the MSHCP, vernal pools include seasonal wetlands (having indicators of hydric soil, hydrophytic vegetation, and wetland hydrology) in natural depressions or in artificial depressions created to provide wetland habitat (MSHCP Vol. I, p. 6-22). Vernal pool fairy shrimp typically inhabit small depressions in sandstone or vernal pools or similar habitats in unplowed grassland. Artificially created features do not meet the MSHCP definition of vernal pool unless created for the purpose of providing wetlands habitat. The proposed project site does not contain vegetative, hydrologic, or soil characteristics associated with vernal pool habitat. No vernal pools or fairy shrimp habitat, including other potential fairy shrimp habitat, are present.

The U.S. Army Corps of Engineers (USACE), under Section 404 of the Federal Clean Water Act (CWA), regulates discharges of dredged or fill material into "waters of the United States." These waters include wetlands and non-wetland bodies of water that meet specific criteria, including a connection to interstate commerce. This connection may be direct (through a tributary system linking a stream channel with traditional navigable waters used in interstate or foreign commerce) or it may be indirect (through a connection identified in USACE regulations). The USACE typically regulates as non-wetland waters of the U.S. any body of water displaying an "ordinary high-water mark" (OHWM). In order to be considered a "jurisdictional wetland" under Section 404, an area must possess hydrophytic vegetation, hydric soils, and wetland hydrology. The CDFW, under Sections 1600 et seq. of the California Fish and Game Code, regulates alterations to lakes, rivers, and streams. A stream is defined by the presence of a channel bed and banks and at least an occasional flow of water. The Regional Water Quality Control Board (RWQCB) is responsible for the administration of Section 401 of the CWA, through water quality certification of any activity that may result in a discharge to jurisdictional waters of the U.S. The RWQCB may also regulate discharges to "waters of the state," including wetlands, under the California Porter-Cologne Water Quality Control act.

No drainage features, ponded areas, wetlands, or riparian habitat subject to jurisdiction by the CDFW, USACE, and/or RWQCB were found within the proposed project site. Neither CWA Section 404 and 401 permits nor a CDFW streambed alteration agreement is necessary.

- d) **Less than Significant Impact with Mitigation.** Raptors and all migratory bird species, whether listed or not, receive protection under the Migratory Bird Treaty Act (MBTA) of 1918. The MBTA prohibits individuals to kill, take, possess or sell any migratory bird, bird parts (including nests and eggs) except per regulations prescribed by the Secretary of the Interior Department (16 U. S. Code 703). Additional protection is provided to all bald and golden eagles under the Bald and Golden Eagle Protection Act of 1940, as amended. State protection is extended to all birds of prey by the CDFW Code, Section 3503 and 3503.5. No take is allowed under these provisions except through the approval of the agencies or their designated representatives.

Wildlife movement and the fragmentation of wildlife habitat are recognized as critical issues that must be considered in assessing impacts to wildlife. In summary, habitat fragmentation is the division or breaking up of larger habitat areas into smaller areas that may or may not be capable of independently sustaining wildlife and plant populations. Wildlife movement (more properly recognized as species movement) is the temporal movement of individuals (plants and animals) along diverse types of corridors. Wildlife corridors are especially important for connecting fragmented habitat areas.

At the time of the survey, there were shrubs and other vegetation found along the periphery of the site that may provide nest sites for birds, and burrowing owls may nest in the abandoned ground squirrel burrows, rock piles, pipes, or similar features. Additionally, the site is suitable for ground nesting species, such as killdeer (*Charadrius vociferous*). To avoid any potential effects to nesting birds protected by the California Fish and Game Code, vegetation-clearing and preliminary ground-disturbance work should be completed outside of bird breeding season (typically February 15 through August 31). In the event that initial ground work cannot be conducted outside the bird breeding season, pre-construction surveys would be required within 3 days prior to construction. Should nesting birds be found, an exclusionary buffer will be established by the biologist. The buffer may

be up to 500 feet in diameter, depending on the species of nesting bird found. This buffer will be clearly marked in the field by construction personnel under guidance of the biologist, and construction clearing will not be conducted within this zone until the biologist determines that the young have fledged, or the nest is no longer active.

BIO – 2 *To avoid potential effects to nesting migratory birds and raptors protected by the California Fish and Game Code, vegetation – clearing and preliminary ground – disturbance work should be completed outside of bird breeding season (typically February 15 through August 31). If these construction activities cannot be scheduled to avoid the bird breeding season, a pre – construction nesting bird survey should be conducted within 3 days prior to project construction ground disturbing activities to avoid effects to birds protected under the California Fish and Game Code.*

- e) **No Impact.** Currently, the City of Banning does not have a tree preservation policy or ordinance in place. However, the Project Site would be landscaped in accordance with approved drought tolerant trees, shrubs and groundcover in accordance with Banning Municipal Code Section 17.32 (Landscaping Standards). Therefore, conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance would not result. Consequently, no impacts are anticipated, and no mitigation measures are necessary.
- f) **Less than Significant Impact.** The Project Site is located within the MSHCP Conservation Area. As part of the Conservation Area, there is a concern with the identification of specific areas that are necessary to assemble a sufficiently large and diverse parcel to protect the resources of concern for that reserve. Each area has a designated conservation plan and is therefore referred to as an Area Plan. The smallest unit is the Cell, which individually form the basis for Cell Groups that make up Area Plans. The MSHCP defines [Criteria] Cells as “a unit within the Criteria Area generally 160 acres in size, approximating one quarter section,” and Cell Groups as “an identified grouping of Cells within the Criteria Area.”

All the Cells have been identified during the preparation of the MSHCP and form the basis for identifying areas of sensitivity. Areas outside Cells are generally not considered to have a high sensitivity for the species identified by the MSHCP, although they could have resources such as riparian habitat that are sensitive and require additional analysis. The Project Site is not located within or adjacent to any Criteria Cells. Consequently, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan, and no mitigation measures are necessary.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
5. CULTURAL RESOURCES. <i>Would the project:</i>				
a) Cause a substantial adverse change in the significance of a historical resource as defined in § 15064.5?	()	(✓)	()	()
b) Cause a substantial adverse change in the significance of an archeological resource pursuant to § 15064.5?	()	(✓)	()	()
c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature?	()	(✓)	()	()
d) Disturb any human remains, including those interred outside of formal cemeteries?	()	(✓)	()	()

Impact Discussion:

In November 2018, a Phase I Cultural Resources Investigation was prepared for the Project by Brian F. Smith and Associates, Inc., (BFSA), which included an archeological records search, Native American consultation, paleontological overview, historic background research, and field survey (see Appendix B, Phase I Cultural Resources Assessment). A copy of the report is contained in Appendix B, which is available for review at the community Development Department, Planning Division. Findings presented in the Cultural Resources report are outlined in the following discussion.

The City of Banning Planning Department has conducted notification and consultation with the Native American Historical Commission (NAHC) and area tribes, as required under SB 18 and AB 52. Discussion and mitigation language contained in this section reflect the results of those consultations.

- a-b) **Less than Significant with Mitigation:** During the field survey conducted in November 1, 2018, the Project Site was found to be nearly void of native vegetation, and the surficial deposits were likely impacted by past disturbance and weed abatement. The Project Site is surrounded by modern improvements (i.e., existing development, roadways, infrastructure, etc.).

BFSA completed a standard archaeological records search through the University of California, Riverside, Eastern Information Center, Riverside, California. Research indicated that the general area was subject to prior studies and that a minimum of 41 cultural resources studies have been completed within one-mile of the Project Site. Two of the previous studies include the current APE (Area of Potential Effect) (Underwood et al. 1986; Tang et al. 2004). No resources have ever been recorded within the APE; however, neither of the previous studies mapped within the subject property included a formal survey of the entire project. The records search identified 212 cultural resources within one mile of the subject property. Most of the resources identified within the record search are buildings and features associated with the early to mid-twentieth century development of Banning; however, historic trash scatters are also common in the region.

A Sacred Lands File (SLF) search was requested from the Native American Heritage Commission (NAHC), which did not identify any sacred sites or locations of Native American concern within the project vicinity.

The archaeological survey did not identify any resources within the subject property; However, given the prior disturbance within the APE that might mask archaeological deposits and the frequency of archaeological deposits and historic structures surrounding the project APE, there remains the potential to encounter buried or masked cultural deposits within the project. Therefore, it is recommended that a Mitigation Monitoring and Reporting Program (MMRP) be implemented as a condition of project approval. The MMRP should include archaeological monitoring of all excavation and grading activities associated with the project, in addition to a testing and significance evaluation should historic or prehistoric resources be encountered.

CR – 1 *Prior to the issuance of grading permits, the applicant shall provide written verification in the form of a letter from the project archaeologist to the lead agency stating that a certified archaeologist has been retained to implement the monitoring program.*

CR – 2 *The project applicant shall provide Native American monitoring (Morongo Band of Mission Indians) during grading. The Native American monitor shall work in concert with the archaeological monitor to observe ground disturbances and search for cultural materials.*

CR – 3 *The certified archaeologist shall attend the pre-grading meeting with the contractors to explain and coordinate the requirements of the monitoring program.*

CR – 4 *During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and tribal representative shall be on-site, as determined by the consulting archaeologist, to perform periodic inspections of the excavations. The frequency of inspections will depend upon the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The consulting archaeologist shall have the authority to modify the monitoring program if the potential for cultural resources appears to be less than anticipated.*

CR – 5 *Isolates and clearly non-significant deposits will be minimally documented in the field so the monitored grading can proceed.*

CR – 6 *In the event that previously unidentified cultural resources are discovered, the archaeologist shall have the authority to divert or temporarily halt ground disturbance operation in the area of discovery to allow for the evaluation of potentially significant cultural resources. The archaeologist shall contact the lead agency at the time of discovery. The archaeologist, in consultation with the lead agency, shall determine the significance of the discovered resources. The lead agency must concur with the evaluation before construction activities will be allowed to resume in the affected area. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the consulting archaeologist and approved by the lead agency before being carried out using professional archaeological methods. If any human bones are discovered, the county coroner and lead agency shall be contacted. If the remains are determined to be of Native American origin, the Most Likely Descendant (MLD), as identified by the NAHC, shall be contacted in order to determine proper treatment and disposition of the remains.*

CR – 7 *Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered, and features recorded using professional archaeological methods. The project archaeologist shall determine the amount of material to be recovered for an adequate artifact sample for analysis.*

CR – 8 *All cultural material collected during the grading monitoring program shall be processed and curated according to the current professional repository standards. The collections and associated records shall be transferred, including title, to an appropriate curation facility, to be accompanied by payment of the fees necessary for permanent curation.*

CR – 9 *A report documenting the field and analysis results and interpreting the artifact and research data within the research context shall be completed and submitted to the satisfaction of the lead agency prior to the issuance of any building permits. The report will include DPR Primary and Archaeological Site Forms.*

- c) **Less than Significant with Mitigation:** A paleontological overview was completed for the general area in 2004 and updated in 2017. The research confirmed that the area west of the Project Site consists of Mesozoic-aged granitic and meta-sedimentary rocks that are not conducive to yielding paleontological specimens. The County of Riverside GIS system identifies the Project Site and vicinity as being within an area of “Low Sensitivity” for paleontological specimens as it is dominated by the presence of metasedimentary deposits. However, older Quaternary alluvial deposits may be present in a shallow context and therefore, the Project Site does have a level of sensitivity. Nonetheless, previous development and infrastructure excavations in the surrounding area have failed to result in the identification of any fossil specimens. Therefore, the overall project area is not considered to be highly sensitive for fossil remains but does have a potential to yield fossils in the event site preparation activities impact older alluvium. Consequently, to ensure potential impacts are reduced to a less than significant impact, Mitigation Measures CR-1 through CR-9 listed above shall be implemented.
- d) **Less than Significant with Mitigation:** Construction activities, particularly grading, soil excavation and compaction, could adversely affect unknown buried human remains. If remains are uncovered during excavation or site preparation, appropriate authorities would be contacted as required by State law. However, in the event remains are determined to be of Native American descent, Mitigation Measures CR-1 through CR-9 shall be implemented. With mitigation, potential impacts to human remains are considered less than significant.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
6. GEOLOGY AND SOILS. <i>Would the project:</i>					
a)	Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:				
i)	Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.	()	()	()	(✓)
ii)	Strong seismic ground shaking?	()	()	(✓)	()
iii)	Seismic-related ground failure, including liquefaction?	()	()	(✓)	()
iv)	Landslides?	()	()	()	(✓)
b)	Result in substantial soil erosion or the loss of topsoil?	()	()	(✓)	()
c)	Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on- or off-site landslide, lateral spreading, subsidence, liquefaction or collapse?	()	()	(✓)	()
d)	Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property?	()	()	()	(✓)
e)	Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater?	()	()	()	(✓)

Impact Discussion:

In July 2018, a report of Soils and Foundation Evaluations was prepared by Soil Exploration Company, Inc. A copy of the report is contained in Appendix C, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.

a)

i) **No Impact.** The San Gorgonio Pass Fault is the closest Alquist-Priolo Earthquake Fault Zone to the Project site as delineated in the latest State Earthquake Fault Zone maps and in Exhibit V-3 of the General Plan. The San Gorgonio Pass Fault is located approximately 2.5 miles north of Interstate 10. The San Gorgonio Pass fault zone is comprised of a series of north-dipping reverse and thrust faults connected by strike tear faults. The most recently active strands of faults occur at the base of the Banning Bench, in the north central part of Banning. The Highland Scarp along the western edge of the City is considered an active segment of the San Gorgonio Pass fault zone. The San Gorgonio Pass fault is capable of producing a maximum credible earthquake magnitude of 7.4 – 7.6 (M_{max}). The Project Site is not located within an Alquist-Priolo Earthquake Fault Zone; therefore. Consequently, no impacts from fault rupture on-site are anticipated and no mitigation measures are necessary.

ii) **Less than Significant Impact.** The Proposed Project involves the construction of a 96-unit apartment complex. While the Project Site may be subject to strong seismic ground shaking associated with area faults, any ground shaking that might occur on-site would be typical of the area in general. In addition, all structures must comply with seismic building standards contained in the California Uniform Building Code. Consequently, potential adverse impacts from exposure to strong seismic ground shaking are considered less than significant and no mitigation measures beyond compliance with applicable regulations are necessary.

iii) **Less than Significant Impact.** Liquefaction occurs primarily in saturated, loose, fine to medium grained soils in areas where the groundwater table is within 50 feet of the surface. During liquefaction, involved soils behave like a liquid or semi-viscous substance and can cause structural distress or failure due to ground settlement, a loss of load-bearing capacity in foundation soils, and the buoyant rise of buried structures. Three general conditions induce liquefaction; 1) strong ground shaking for a sustained period, 2) presence of unconsolidated granular sediments, and 3) occurrence of water-saturated sediments within 50 feet of the ground surface.

There is a low potential for liquefaction at the Project Site (Riverside County Parcel Report for APN's 534-283-011 and 014). The Soils and Foundation Evaluation prepared by Soils Exploration Company, Inc. for the Project Site, also determined that the potential for liquefaction at the site is considered low due to the presence of cohesive silty, sandy soils encountered during exploration and historical groundwater depth in excess of 50 feet below grade. Consequently, potential adverse effects related to seismically induced ground failure including liquefaction are considered less than significant and no mitigation measures beyond compliance with applicable regulations are necessary,

iv) **No Impact.** The City of Banning General Plan identifies an increased potential for landslides to occur where there is a high seismic potential, including areas with steep slopes and deeply incised canyons, rock with inherently weak components, or highly fractured and folded rock. The northernmost and southernmost portions of the City are described as highly susceptible to seismically induced slope failure due to the proximity to mountains and hillsides. Additionally, areas with slopes steeper than 15 degrees are described as generally subject to slope failure.

Elevation at the Project site ranges from approximately 2,374 feet above mean sea level (amsl) at the northwesterly end to approximately 2,339 feet amsl at the southeasterly end; no hillsides with slopes greater than 15 degrees occur on-site or in the immediate vicinity. Consequently, no adverse effects related to on-site landslides are anticipated.

- b) **Less than Significant Impact.** In July 2018, a Report of Soils and Foundation Evaluations was prepared by Soils Exploration Company, Inc. A copy of the report is on-file and available for review at the City of Banning Community Development Department. The purpose of the evaluation was to determine the nature and engineering properties of the near grade soils, and to provide geotechnical recommendations for foundation design, slab-on-grade, paving, parking, site grading, utility trench excavations and backfill, and inspections during construction. The evaluation included subsurface explorations, soils sampling, necessary laboratory testing, and engineering analysis. Field investigations included seven (7) exploratory test trenches to a maximum of 15 feet below the current grade surface. The report concluded that the Project Site is suitable for the proposed project provided that the recommendations presented in the report are incorporated into the Project and are implemented during site excavation and construction. Recommendations from the report would be incorporated into the Project final engineering designs and be included in final Project approvals as conditions of approval; therefore, less than significant impacts are anticipated.
- c) **Less than Significant Impact.** The San Gorgonio Pass Fault is the closest Alquist-Priolo Earthquake Fault Zone to the Project Site as delineated in the latest State Earthquake Fault Zone maps and in Exhibit V-3 of the General Plan. The San Gorgonio Pass Fault is located approximately 2.5 miles north of Interstate 10. The San Gorgonio Pass fault zone is comprised of a series of north-dipping reverse and thrust faults connected by strike tear faults. The most recently active strands of faults occur at the base of the Banning Bench, in the central part of Banning. The Highland Scarp along the western edge of the City is considered an active segment of the San Gorgonio Pass fault zone. The San Gorgonio Pass Fault is capable of producing a maximum credible earthquake magnitude of 7.4 – 7.6 (M_{max}).

Elevations at the Project Site range from approximately 2,374 feet amsl at the northwesterly end to approximately 2,339 feet amsl at the southeasterly end; there are no hills or prominent landforms in the immediate vicinity. As concluded in the Soils and Foundation Evaluation, the potential for some total and differential settlements due to ground shaking may be expected; however, based on adjacent completed projects within the vicinity, earthquake induced settlement is considered to be within tolerable limits. Therefore, it is not anticipated that implementation of the Proposed Project would result in soil that would become unstable as a result of the project or cause off-site landslide, lateral spreading, subsidence, liquefaction, or collapse. No impacts are anticipated.

- d) **No Impact.** Expansive soils (shrink-swell) are fine grained clay soils generally found in historical floodplains and lakes. Expansive soils are subject to swelling and shrinkage in relation to the amount of moisture present in the soil. Structures built on expansive soils may incur damage due to differential settlements of the soil as expansion and contraction takes place. Information about shrink-swell classes and linear extensibility is available in the Natural Resource Conservation Service (NRCS) soil survey reports. A high shrink-swell potential indicates a hazard to maintenance of structures built in/on/or with material

having this rating. Moderate to low ratings lessen the hazard. According to the NRCS the Ramona sandy loam soils class occurs at the Project Site. As identified by the NRCS, Ramona sandy loam does not have limitations related to expansive soils. In addition, the Report of Soils and Foundations, prepared by Soil Exploration Company, Inc., concluded that on-site soils were found to be sandy in nature and are not considered expansive. The Project would implement all recommendations included in the report as discussed in Section VI(b); therefore, no impacts related to expansive soils are anticipated.

- d) **No Impact.** No septic tanks or alternative wastewater disposal is proposed. Upon approval of the Proposed Project, the project would connect to the City's sewer collection system that currently serves the immediate vicinity. No impacts from soils incapable of adequately supporting septic tanks or alternative wastewater disposal systems would result.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
7. GREENHOUSE GAS EMISSIONS.	<i>Would the project:</i>				
a)	Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?	()	()	(✓)	()
b)	Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases?	()	()	(✓)	()

Impact Discussion:

- a) **Less than Significant Impact.** According to CEQA Guidelines Section 15064.4, when making a determination of the significance of greenhouse gas emissions, the "lead agency shall have discretion to determine, in the context of a particular project, whether to (1) use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use." In addition, CEQA Guidelines section 15064.7(c) provides that "a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts" on the condition that "the decision of the lead agency to adopt such thresholds is supported by substantial evidence."

The Global Warming Solutions Act of 2006 requires that by the year 2020, the Greenhouse Gas (GHG) emissions generated in California be reduced to the levels of 1990. The City of Banning has not adopted its own thresholds of significance for greenhouse gas emissions. However, the City finds persuasive and reasonable the approach to determining significance of greenhouse gas emissions established by the South Coast Air Quality Management District (SCAQMD), within which the City is located.

Many gases make up the group of pollutants that are believed to contribute to global climate change. However, three gases are currently evaluated and represent the highest concentration of GHG: Carbon dioxide (CO₂), Methane (CH₄), and Nitrous oxide (N₂O). SCAQMD provides guidance methods and/or Emission Factors that are used for evaluating a project's emissions in relation to the thresholds. A threshold of 3,000 MTCO₂E (Metric tons of carbon dioxide equivalent) per year has been adopted by SCAQMD for non-industrial type projects as potentially significant for global warming (Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, SCAQMD, October 2008).

The proposed project would require earthmoving, structural building and other activities such as asphalt paving. The project's construction activities were screened for emission generation using the CalEEMod version 2016.3.2 emissions estimator model. Fehr and Peers conducted a TIA for the proposed project, August 2018. The modeled emissions anticipated from the Proposed Project compared to the SCAQMD threshold are shown below in Table 6 and Table 7.

As shown in Table 5 and Table 6, site activities and improvements would not exceed the SCAQMD threshold for GHG. Consequently, less than significant project related GHG impacts are anticipated, and no mitigation measures are necessary.

Table 6
Greenhouse Gas Construction Emissions
(Metric Tons per Year)

Source/Phase	CO₂	CH₄	N₂O
Site Preparation	17.9	0.0	0.0
Grading	28.1	0.0	0.0
Building Construction	268.8	0.0	0.0
Paving	21.4	0.0	0.0
Architectural Coating	4.8	0.0	0.0
Total MTCO₂e	342.6		
SCAQMD Threshold	3,000		
Significant	NO		

Source: CalEEMod.2016.3.2 Annual Emissions.

Table 7
Greenhouse Gas Operational Emissions
(Metric Tons per Year)

Proposed Project ¹			
Source/Phase	CO ₂	CH ₄	N ₂ O
Area	31.4	0.0	0.0
Energy	228.5	0.0	0.0
Mobile	1093.5	0.1	0.0
Waste	9.0	0.5	0.0
Water	41.9	0.2	0.0
Total (MTCO ₂ e)	1427.5		
SCAQMD Threshold	3,000		
Significant	NO		
Existing Zoning ²			
Source	CO ₂	CH ₄	N ₂ O
Area	11.4	0.0	0.0
Energy	154.3	0.0	0.0
Mobile	527.7	0.0	0.0
Waste	8.3	0.5	0.0
Water	15.3	0.1	0.0
Total (MTCO ₂ e)	733.6		
SCAQMD Threshold	3,000		
Significant	No		
Delta ³			
Delta of Totals (MTCO ₂ e)	693.9		

¹ High Density Residential 911-18 du/ac)

² Low Density Residential (0-5 du/ac)

³ Difference between the Proposed Project compared to buildout of the Project Site under Existing GP/Zoning

Source: CalEEMod.2016.3.2 Annual Emissions

- b) **Less than Significant Impact.** There are no GHG plans, policies, or regulations that have been adopted by the California Air Resources Board (CARB) or SCAQMD that would apply to the type of emissions source represented by the proposed project. It is possible that CARB may develop performance standards for project-related activities prior to project construction. In such an event, applicable performance standards would be implemented. The project, as proposed, does not conflict with an existing applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases. Consequently, associated impacts would be less than significant, and no mitigation measures are necessary.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
8. HAZARDS AND WASTE MATERIALS. <i>Would the project:</i>		()	()	(✓)	()
a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?		()	()	(✓)	()
b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident considerations involving the release of hazardous materials into the environment?		()	()	(✓)	()
c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within 1/4 mile of an existing or proposed school?		()	()	()	(✓)
d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment?		()	()	()	(✓)
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project result in a safety hazard for people residing or working in the project area?		()	(✓)	()	()
f) For a project within the vicinity of a private airstrip, would the project result in a safety hazard for people residing or working in the project area?		()	()	()	(✓)
g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan?		()	()	()	(✓)
h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands?		()	()	(✓)	()

Impact Discussion:

- a) **Less than Significant Impact.** Construction of the project would involve short-term use of petroleum-based fuels, lubricants, and other similar materials. The construction phase may also include the transport of gasoline and diesel fuel to the Project Site and onsite storage for the purpose of fueling construction equipment. Long-term operation of the proposed project would involve routine periodic use of pesticides, herbicides and fertilizers typically associated with landscape maintenance.

No activities using or generating an unusual amount of hazardous substances are anticipated. Use, transport, handling, and disposal of any hazardous substances must comply with all federal, State and local laws regulating their management and use. Consequently, potential impacts related to creating a significant hazard to the public or the environment through the routine transport, use or disposal of hazardous materials are considered less than significant, and no mitigation measures aside from compliance with applicable regulations are necessary.

- b) **Less than Significant Impact.** Please refer to the preceding threshold discussion (8-a.) Other aspects of the proposed project, as has been noted, would utilize common products for cleaning and maintenance. No activities that would involve the use of explosive, acutely toxic or caustic substances that could result in accident or upset conditions are anticipated. Consequently, the risk of accidental release of hazardous materials is considered less than significant, and no mitigation measures beyond compliance with applicable regulations are necessary.

- c) **No Impact.** The project is located within ¼ mile of Hoffer Elementary School located at 1115 East Hoffer Street. Implementation of the Proposed Project would not emit hazardous emissions or involve the handling of hazardous or acutely hazardous materials, substances, or waste that would be a potential threat to the school. Consequently, no impacts to schools would result.

- d) **No Impact.** The Project Site is not on any official list of hazardous materials sites. Pursuant to California Government Code Section 65962.5, the California Department of Toxic Substances Control (DTSC) compiles the Cortese List and updates it at least annually. The Cortese List includes hazardous waste facilities subject to corrective actions, land designated as hazardous waste property or border zone property, sites included in the abandoned site assessment program, and qualifying sites pursuant to Section 25356 of the Health and Safety Code. A copy of the most recent Cortese List was examined, and the Project site is not identified on the list. Consequently, no impacts related to Government Code Section 65962.5 are anticipated.

- e) **Less than Significant Impact with Mitigation.** The Banning Municipal Airport is located approximately 0.7 miles southeast of the Project Site, at 600 South Hathaway Street, adjacent to the Southern Pacific Railroad and the I-10 freeway. The project site is also located within the boundaries of the Banning Municipal Airport Land Use Plan, and is subject to the jurisdiction of the Riverside County Airport Land Use Commission (ALUC.) The Proposed Project involves the construction and operation of a 96-Unit Apartment Complex, and as such, would not create conditions that would conflict with airport land uses or create an aviation safety hazard for people residing or working in the area. On October 18, 2018, the Riverside County Airport Land Use Commission found the project

to be Conditionally Consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016. As such; the project will not have a significant impact with the mitigation measures identified in the October 18, 2018 report. (see Appendix H, Riverside County Airport Land Use Commission Report.)

HAZ - 1 *Any outdoor lighting installed shall be hooded or shielded to prevent either the spillage of lumens or reflection into the sky. Outdoor lighting shall be downward facing.*

HAZ - 2 *The following uses shall be prohibited:*

- (a) Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward an aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator.*
- (b) Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards and aircraft engaged in a straight final approach towards a landing at an airport.*
- (c) Any use which would generate smoke or water vapor, or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area. (Such uses include landscaping utilizing water features, aquaculture, production of cereal grains, sunflower, and row crops, artificial marshes, wastewater management facilities, composting operations, trash transfer stations that are open on one or more sides, recycling centers containing putrescible wastes, construction and demolition debris facilities, fly ash disposal, and incinerators.)*
- (d) Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.*

HAZ - 3 *The attached notice shall be provided to all potential purchasers of the property and to tenants of the proposed dwelling units and shall be recorded as a deed notice. (see attached notice in Appendix H, Riverside County Airport Land Use Commission Report.)*

HAZ - 4 *Any proposed detention basin or facilities shall be designed so as to provide for a detention period for the design storm that does not exceed 48 hours and to remain totally dry between rainfalls. Vegetation in and around such facilities that would provide food or cover for bird species that would be incompatible with airport operations shall not be utilized in project landscaping.*

HAZ – 5 *The proposed clubhouse shall be single-story and not exceed 1,768 square feet in floor area, unless additional airport land use compatibility evaluation occurs.*

- f) **No Impact.** There are no private airstrips within the vicinity of the Project Site. The nearest airport, as noted previously, is the Banning Municipal Airport located approximately 0.7 miles east of the Project Site. Approval of the Proposed Project would not result in an aviation safety hazard for people residing or working in the Project area. No impacts are anticipated.

- g) **No Impact.** The Emergency Preparedness Element of the General Plan identifies the potential for natural and man-made disasters that could affect the City and its Sphere of Influence. In 1996 the City adopted the Multi-Hazard Functional Planning Guidance document that includes: 1) the Banning Emergency Plan; 2) twelve functional annexes that describe emergency response organization; and 3) a listing of operational data such as resources, key personnel, and essential facilities and contacts. The City does not have an established evacuation route; however, depending on the location and extent of an emergency, major surface streets could be utilized to route traffic through the City. The I-10 Freeway and State Highway 243 to State Route 79 are also major regional access routes serving the City which could be used during disaster events.

Construction of the Proposed Project would not interfere with emergency response. Appropriate Banning Police Department, and Riverside County Sheriff's Department access standards must be adhered to allow adequate emergency access. Operation of the Project would not interfere with emergency response or with any adopted evacuation plans. No impacts are anticipated.

- h) **Less than Significant Impact.** The California Fire Plan was established in 1996 and is a cooperative effort between the State Board of Forestry and Fire Protection and the California Department of Forestry (CDF). Using four main criteria, the system ranks the fire hazard of the wildland areas of the State. The criteria used for evaluation include: fuels, weather, assets at risk, and level of service (a measure of Fire Department's success in initial-attack fire suppression).

The City of Banning is divided into five fire threat zones: Extreme, Very High, High, Moderate, and No Fuel. The project site is located within the High Fire Hazard Zone, which includes most of the developed central portion of the City along the I-10. In this zone, relief is minimal and hardscape (concrete, asphalt and structures) and landscaping vegetation predominate. This zone also includes most of the bed of the San Gorgonio River, where some vegetation is present seasonally.

There are no significant areas of brush, grass or trees within the Project Area; the Project Site is surrounded by development and existing, paved roadways. Therefore, although located within a High Fire Threat Zone, construction and operation of the 96-Unit Apartment Project would not expose people or structures to a significant risk of loss, injury or death involving wildland fires. Less than significant impacts are anticipated and no mitigation measures are necessary.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
9. HYDROLOGY AND WATER QUALITY.	<i>Would the project:</i>	()	()	(✓)	()
a)	Violate any water quality standards or waste discharge requirements?	()	()	(✓)	()
b)	Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted)?	()	()	()	(✓)
c)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner, which would result in substantial erosion or siltation on- or off-site?	()	()	(✓)	()
d)	Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner that would result in flooding on- or off-site?	()	()	(✓)	()
e)	Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?	()	()	(✓)	()
f)	Otherwise substantially degrade water quality?	()	()	(✓)	()
g)	Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map?	()	()	()	(✓)
h)	Place within a 100-year flood hazard area structures, which would impede or redirect flood flows?	()	()	()	(✓)
i)	Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam?	()	()	()	(✓)
j)	Inundation by seiche, tsunami, or mudflow?	()	()	()	(✓)

Impact Discussion:

In August 2018, Sake Engineering, Inc. prepared a Preliminary Hydrology and Hydraulic Report and a Water Quality Management Plan for the Proposed Project. Copies of the reports are contained in Appendix D, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion

- a,f) **Less than Significant Impact.** The Proposed Project would disturb approximately 7.08 acres and is therefore subject to the National Pollution Discharge Elimination System (NPDES) permit requirements. The State of California is authorized to administer various aspects of the NPDES. Construction activities covered under the State's General Construction permit include removal of vegetation, grading, excavating, or any other activity that causes the disturbance of one acre or more. The General Construction permit requires recipients to reduce or eliminate non-storm water discharges into storm water systems, and to develop and implement a Storm Water Pollution Prevention Plan (SWPPP). The purpose of a SWPPP is to: 1) identify pollutant sources that may affect the quality of discharges of storm water associated with construction activities; and 2) identify, construct and implement storm water pollution control measures to reduce pollutants in storm water discharges from the construction site during and after construction.

The Regional Water Quality Control Board (RWQCB) has issued an area-wide NPDES Storm Water Permit for the County of Riverside, the Riverside County Flood Control and Water Conservation District, and the incorporated cities of the County. The City of Banning then requires implementation of measures for a project to comply with the area-wide permit requirements. A SWPPP is based on the principles of Best Management Practices (BMPs) to control and abate pollutants. The SWPPP must include BMPs so that construction of the Project would not pollute surface waters. BMPs may include, but are not limited to street sweeping of paved roads around the Project Site during construction, and the use of hay bales or sand bags to control erosion during the rainy season. BMPs may also include or require:

- The contractor to avoid applying materials during periods of rainfall and protect freshly applied materials from runoff until dry.
- All waste to be disposed of in accordance with local, state and federal regulations. The contractor to contract with a local waste hauler or ensure that waste containers are emptied weekly. Waste containers cannot be washed out on-site.
- All equipment and vehicles to be serviced off-site.

Preparation of a SWPPP as required by law and compliance with NPDES regulations would reduce the potential for storm water discharges during grading and construction from to a Less than Significant level. No other mitigation is necessary.

- b) **No Impact.** The City of Banning is within the boundary of the Coachella Valley Hydrologic Unit. The Coachella Valley Groundwater Basin is underlain by several large subsurface aquifers, known as sub-basins, with boundaries that are generally defined by faults that restrict the lateral movement of water. The Basin extends from Banning easterly to the

Salton Sea. The City of Banning is underlain by the San Gorgonio Pass Sub-basin. Within the City boundary, the San Gorgonio Pass Sub-basin is divided into a series of storage units: The Banning Canyon Storage Unit, the Banning Bench Storage Unit, the East and West Banning Storage Units, the Beaumont Storage Unit, and the Cabazon Storage Unit. To the west of the San Gorgonio Pass Sub-basin is the Beaumont Groundwater Basin. Groundwater basins are naturally recharged through the percolation of runoff, direct precipitation, subsurface inflow, and artificial recharge. The Banning Canyon area receives water from percolation of canyon flows through the gravelly soils of the canyon bottom. In addition, a stone ditch running southerly through the Banning Canyon provides intake areas to distribute water to spreading ditches, which interconnect with spreading ponds to enhance percolation. The San Gorgonio Sub-basin is also recharged naturally with runoff from the adjacent San Jacinto and San Bernardino Mountains. The Project Site is not designated as an area for groundwater recharge.

The City of Banning Public Works Department provides domestic water service to the City of Banning. The City owns and operates wells, reservoirs, and a distribution line system to deliver domestic water within the Banning planning area. The City provides municipal water service to an area of approximately 23 square miles, including approximately 30,500 people, via 10,650 metered service connections.

The Project Site would be serviced by the City Water Department. Water demand of the 96-Unit Apartment Complex, as estimated, is expected to be approximately 76,800 gallons per day or 28 million gallons per year which is equivalent to 86 acre-feet per year. The Proposed Project when compared to the existing General Plan Low Density residential land use designation on the Project Site, would generate additional demand for water resources based on the assumption of 96 high density units. The Proposed Project would not substantially deplete groundwater supplies nor would it interfere substantially with recharge since it is not within an area designated as a recharge basin or spreading ground. No adverse impact is anticipated.

- c-e) **Less than Significant Impact.** The Drainage Analysis conducted by Sake Engineering, Inc., identified off-site (tributary) drainages areas, existing on-site drainage areas, developed conditions and calculation of peak flow rates and runoff volumes, examined the sizing of on-site detention facilities in accordance with City of Banning and Riverside County requirements, and identified the floodplain for the Project Site.

With proposed on-site improvements the run-off for post development flows will be conveyed to onsite detention/infiltration basins via a gutter and storm drain system. The total run-off from the project site will drain into two proposed detention/infiltration basins located at the southeast corner of the project along Hathaway Street. The site is divided into two parts. The northern part with approximately 3.75 acres is draining to the northern infiltration basin and the southern part with 3.22 acres will be draining to the southern infiltration basin. The basins are designed to satisfy the Water Quality Management Practice (WQMP) requirements per County of Riverside and also meet the requirement for City of Banning Ordinance 1415, which requires the developer will make provisions to store runoff from rainfall events up to and including the 100-year, three-hour duration event onsite via storage or infiltration basins. The overall site is designed to prevent flooding of any building in the event of larger storms or any failure of infiltration system. The water will leave the property from the southeast corner of the project. With planned project drainage improvements, impacts related to the alteration of drainage patterns and surface run-off are anticipated to be less than significant and no other mitigation measures are necessary,

- g,h) **No Impact.** Per FEMA Flood Insurance Rate Map (FIRM) Panel No. 06065C0836G (effective date: August 28, 2008), the Project Site lies within an unshaded Zone "X" floodplain. Unshaded Zone "X" is defined as "areas determined to be outside the annual 2% chance floodplain). The Project would not place unprotected housing within a 100-year flood hazard area as mapped on a Federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map. No impacts are anticipated.
- i) **No Impact.** A Dam Inundation Zone refers to the area downstream that would be subjected to flood waters in the event of a failure to a dam or body of impounded water. The State of California designates areas of potential flooding in the event of sudden or total failure of any dam. There are no dams within the vicinity of the City. According to Figure S-16 of the County of Riverside General Plan, the nearest dam is located near Calimesa/Moreno Valley, approximately 15 miles west/northwest of the project site.
- A levee generally refers to structures that hold flood water during storm events. The Banning Levee, located approximately four miles northwest of the project site, was constructed along the south side of the San Gorgonio River, about 900 feet north of the intersection of Banning Canyon Road and Summit Drive. According to County of Riverside General Plan Figure S-10, the project site does not occur within an area susceptible to inundation from failure of a dam or levee. No impacts are anticipated.
- j) **No Impact.** Due to the inland distance from the Pacific Ocean and any other significant body of water, tsunamis and seiche are not potential hazards; therefore, impacts from seiche and tsunami are not anticipated.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
10. LAND USE AND PLANNING. <i>Would the project:</i>					
a)	Physically divide an established community?	()	()	()	(✓)
b)	Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to, a general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect?	()	()	(✓)	()
c)	Conflict with any applicable habitat conservation plan or natural community conservation plan?	()	()	()	(✓)

Impact Discussion:

- a) **No Impact.** The 7.08-acre Project Site is currently vacant and is located on the south side of East Hoffer Street and on the west side of North Hathaway Street. The Project Site has developed single family residential to the southwest, west, north and northeast. There is an existing multi-family apartment complex to the south and the Morongo Band of Mission Indians Reservation to the east. Since the majority of surrounding parcels are developed,

the Proposed Project would not physically divide an established community. No impacts would result.

- b) **Less than Significant Impact.** The Proposed Project includes a General Plan Amendment (GPA) and a Zone Change (ZC) from Low Density Residential to High Density Residential. Upon City Council approval of the requested General Plan Amendment and Zone Change, the site's zoning would be changed to High Density Residential (HDR) (11-18 du/acre), and the proposed development would be consistent with uses permitted within the HDR Zone.

The land use designation in the Land Use Element will be changed from Low Density Residential to High Density Residential, consistent with the proposed project. Because the City identified excess land capacity to meet the most recent RHNA allocation, no conflict with the Housing Element will occur with the proposed project.

In consideration of the preceding factors, a less than significant impact related to established land use plans and policies would result with the proposed project. No mitigation measures are necessary.

- c) **No Impact.** Please refer to the Biological Resources section, (Threshold 4 of this Initial Study. The Project Site is not located within or adjacent to any MSHCP Criteria Cells. Therefore, the Project would not conflict with the provisions of an adopted Habitat Conservation Plan. No impacts would result.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
11. MINERAL RESOURCES. <i>Would the project:</i>				
a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the State?	()	()	()	(✓)
b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan?	()	()	()	(✓)

Impact Discussion:

- a) **No Impact.** The Project site is located within a mineral resource zone area classified as MRZ-3 as identified in Exhibit IV-8 in the City of Banning General Plan. Areas classified as MRZ-3 are defined as containing mineral deposits, the significance of which cannot be evaluated from available data. The City of Banning General Plan identifies one aggregate producer within its planning area; the Banning Quarry which is located in the eastern portion of the City approximately 1.25 miles northeast of the Proposed Project. Implementation of the Proposed Project would not result in the loss of known mineral resources because the site is not locally identified as an important mineral resource recovery site.

- b) **No Impact.** Implementation of the Proposed Project would not result in the loss of known mineral resources because the site is not locally identified as an important mineral resource recovery site. No impacts would result.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
12. NOISE. <i>Would the project result in:</i>				
a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?	()	(✓)	()	()
b) Exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?	()	()	()	(✓)
c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project?	()	(✓)	()	()
d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project?	()	(✓)	()	()
e) For a project located within an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels?	()	()	()	(✓)
f) For a project within the vicinity of a private airstrip, would the project expose people residing or working in the project area to excessive noise levels?	()	()	()	(✓)

Impact Discussion:

In November 2018, a Noise Impact Assessment was prepared for the Proposed Project by LSA. A copy of the report is contained in Appendix E, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion

a/c/d) **Less than Significant Impact with Mitigation.**

Noise is usually defined as unwanted sound. Noise consists of any sound that may produce physiological or psychological damage and/or interfere with communication, work, rest, recreation and sleep.

To the human ear, sound has two significant characteristics: pitch and loudness. Pitch is generally an annoyance, while loudness can affect the ability to hear. Pitch is the number

of complete vibrations, or cycles per second, of a sound wave, which results in the tone's range from high to low. Loudness is the strength of a sound, and it describes a noisy or quiet environment; it is measured by the amplitude of the sound wave. Loudness is determined by the intensity of the sound wave combined with the reception characteristics of the human ear. Sound intensity refers to how hard the sound wave strikes an object, which in turn produces the sound's effect. This characteristic of sound can be precisely measured with instruments. The analysis of a project defines the noise environment of the project area in terms of sound intensity and its effect on adjacent sensitive land uses.

Sound intensity is measured with the A-weighted decibel scale. Decibels, unlike linear units (e.g., inches or pounds), are measured on a logarithmic scale representing points on a sharply rising curve. For example, 10 decibels (dB) is 10 times more intense than 1 dB, 20 dB is 100 times more intense than 1 dB, and 30 dB is 1,000 times more intense than 1 dB.

Sound levels are generated from a source, and their decibel level decreases as the distance from that source increases. Sound levels dissipate exponentially with distance from their noise sources. For a single point source, sound levels decrease approximately 5 dB for each doubling of distance from the source.

There are many ways to rate noise for various time periods, but an appropriate rating of ambient noise affecting humans also accounts for the annoying effects of sound. The equivalent continuous sound level is the total sound energy of time-varying noise over a sample period. However, the predominant rating scales for human communities in the State of California are the Community Noise Equivalent Level (CNEL) or the day-night average noise level based on A-weighted decibels (dBA). CNEL is the time-varying noise over a 24-hour period, with a 5-dBA weighting factor applied to the hourly for noise occurring from 7:00 p.m. to 10:00 p.m. (defined as relaxation hours) and a 10 dBA weighting factor applied to noise occurring from 10:00 p.m. to 7:00 a.m. (defined as sleeping hours). The City uses the CNEL noise scale for long-term noise impact assessment.

Physical damage to human hearing begins at prolonged exposure to sound levels higher than 85 dBA. Exposure to high sound levels affects the entire system, with prolonged sound exposure in excess of 75 dBA increasing body tensions, thereby affecting blood pressure and functions of the heart and the nervous system. In comparison, extended periods of sound exposure above 90 dBA would result in permanent cell damage. When the sound level reaches 120 dBA, a tickling sensation occurs in the human ear, even with short-term exposure. This level of sound is called the threshold of feeling. As the sound reaches 140 dBA, the tickling sensation is replaced by a feeling of pain in the ear. A sound level of 160-165 dBA will result in dizziness or a loss of equilibrium. The ambient or background noise problem is widespread and generally more concentrated in urban areas than in outlying, less-developed areas.

The primary existing noise sources in the project area are transportation facilities. The traffic on East Hoffer Street and North Hathaway Street is a steady source of ambient noise. Other sources of noise include the mining facility to the north (see table 8 below).

Sensitive land uses in the project vicinity. The project site is located adjacent to existing residential uses and vacant land to the north, northeast, south and west. The closest sensitive receptors are the adjacent single-family residences to the west, the adjacent

single-family residences to the north east and the adjacent multi-family residences to the south.

TABLE 8

Land Use Category	Noise Range (CNEL), dB			
	I	II	III	IV
Passively used open spaces	50	50-55	55-70	70+
Auditoriums, concert halls, amphitheaters	45-50	50-65	65-70	70+
Residential – low-density single family, duplex, mobile homes	50-55	55-70	70-75	75+
Residential – multi-family	50-60	60-70	70-75	75+
Transient lodging – motels, hotels	50-60	60-70	70-80	80+
Schools, libraries, churches, hospitals, nursing homes	50-60	60-70	70-80	80+
Actively used open spaces – playground, neighborhood parks	50-67		67-73	73+
Golf courses, riding stables, water recreation, cemeteries	50-70		70-80	80+
Office buildings, business, commercial, and professional	50-67	67-75	75+	
Industrial, manufacturing, utilities, agriculture	50-70	70-75	75+	

Source: California Department of Health Services, Office of Noise Control (1976)

Noise Range I – Normally Acceptable: Specified land use is satisfactory, based upon the assumption that any buildings involved are of normal conventional construction, without any special noise insulation requirements.

Noise Range II – Conditionally Acceptable: New construction or development should be undertaken only after a detailed analysis of the noise reduction requirements is made and needed noise insulation features are included in the design. Conventional construction but with closed windows and fresh air supply systems or air conditioning, will normally suffice.

Noise Range III – Normally Unacceptable: New construction or development should generally be discouraged. If new construction or development does proceed, a detailed analysis of the noise reduction requirements must be made and needed noise insulation features included in the design.

Noise Range IV – Clearly Unacceptable: New construction or development should generally not be undertaken.

Long-term (24-hour) noise level measurements were conducted on November 18, 2018, using three DLX Noise Pro Dosimeters. The purpose of the long-term noise level measurements is to document the existing ambient noise environment. Table 8 summarizes the long-term noise level measurements along with the measured CNEL level. As shown in Table 8, results of the long-term noise monitoring adjacent to the project site range from 58 to 65 dBA CNEL along with hourly results of the long-term noise level measurements for monitoring locations LT-1, LT-2, and LT-3. LT-1 was located on East Hoffer Street, LT-2 was located on the southwest corner of the property and LT-3 was located on North Hathaway Street.

According to the Noise Impact Analysis, both short-term and long-term noise mitigation is required to reduce noise impacts below City thresholds. There are short-term construction impacts and long-term parking area noise impacts. Mitigation measures are listed below.

NOISE – 1 *Short-Term Construction Noise Impacts will require the following mitigation measures:*

- *The construction contractor shall conduct construction activities between the hours of 7:00 a.m. and 6:00 p.m. as specified in Section 8.44.090(E) of the Banning Municipal Code.*
- *The construction contractor shall construct a minimum 6-foot-high temporary construction barrier or a permanent minimum 8-foot-high wall on the west side of the project prior to site preparation, which includes excavation and grading of the project site. The temporary construction barrier may be constructed of any material that has a minimum Sound Transmission Class (STC) rating of 28.*

- *The construction contractor shall construct a minimum 7-foot-high temporary construction barrier on the south side of the project prior to site preparation, which includes excavation and grading of the project site. The temporary construction barrier may be constructed of any material that has a minimum STC 28 rating.*
- *During all project site excavation and grading, the project contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers consistent with manufacturers' standards.*
- *The construction contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise sources and most noise-sensitive receptors nearest the project site during all project construction.*
- *The construction contractor shall place all stationary construction equipment so that the emitted noise is directed away from the sensitive receptors nearest the project site.*

NOISE – 2 *The following mitigation measures would be required to reduce stationary noise impacts:*

- *A minimum 6-foot-high wall on the south side of the project.*
- *A minimum 8-foot-high wall on the west side of the project.*

- b) **No Impact.** The vibration impact analysis discusses the level of human annoyance using vibration levels in VdB (vibration velocity decibels) and has assessed the potential for building damage using vibration levels in PPV [peak particle velocity (in/sec)] because vibration levels calculated in RMS [root-mean-square (velocity)] are best for characterizing human response to building vibration, whereas vibration level in PPV is best used to characterize potential for damage. Vibration levels up to 102 VdB is considered safe for buildings consisting of reinforced concrete, steel, or timber (no plaster), and would not result in any construction damage. For non-engineered timber and masonry building, the construction vibration damage criterion is 94 VdB.

For typical construction activity, the equipment with the highest vibration generation potential is the wheel loader and loaded truck, each of which would generate 86 VdB at 25 feet. The closest buildings to the project construction boundary are the adjacent single and multi-family residences. The adjacent single and multi-family residences would experience vibration levels of up to 83 VdB. This vibration level has the potential to result in community annoyance because vibration levels exceed the FTA's (Federal Transit Administration) Community annoyance threshold of 72 VdB. However, this vibration level would not result in building damage because vibration levels would not exceed the FTA vibration damage threshold of 94 VdB for residential structures constructed of on-engineered timber. Therefore, no construction vibration impacts would occur during project construction and no vibration reduction measures are required.

- e) **No Impact.** The project is located outside the 55 dBA CNEL noise contour of the Banning Municipal Airport based on the Banning General Plan Airport Noise Contours at Buildout. Therefore, the project site is located within an area with maximum noise levels from aircraft operation less than 55 dBA CNEL. No impact is anticipated.
- f) **No Impact.** There are no private airstrips within the vicinity of the Project Site. No impacts from aircraft noise are anticipated.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
13. POPULATION AND HOUSING. <i>Would the project:</i>				
a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure)?	()	()	(✓)	()
b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere?	()	()	()	(✓)
c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere?	()	()	()	(✓)

Impact Discussion:

- a) **Less than Significant Impact.** Construction activity at the Project Site would be short-term and would not create any new long-term jobs. The project does include the construction of 96 multi-family units which has the potential of increasing the population in Banning. According to the California Department of Finance, Demographic Report E-5; it is estimated that the current population in 2018 in Banning is 31,282 persons. The report also estimates that there are 2.72 persons per household. Using this information, we can conclude that there is a potential to increase the population by 261 persons providing everyone comes from outside the City (2.72 persons per unit multiplied by 96 units equals 261.12). This is equal to a 0.83 percent increase in population. According to the California Department of Housing and Community Development, there is not enough housing being built. Additionally, the City of Banning 2013-2021 Housing Element indicates the Regional Housing Needs Allocation (RHNA) for Banning is 3,792 units. Therefore, the construction of 96 units will help the State in achieving its housing goals and the City to meet its RHNA. No mitigation measures are necessary.
- b) **No Impact.** The Project Site is currently vacant; therefore, the Proposed Project would not displace any existing housing units to accommodate the Project. No impacts would result, and no mitigation measures are necessary.
- c) **No Impact.** The Project Site is currently vacant and would not displace any existing housing or residents. No impacts would result, and no mitigation measures are necessary.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
14. PUBLIC SERVICES. <i>Would the project result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:</i>				
a) Fire protection?	()	()	(✓)	()
b) Police protection?	()	()	(✓)	()
c) Schools?	()	()	(✓)	()
d) Parks?	()	()	()	(✓)
e) Other public facilities? [Roads and Infrastructure]	()	()	(✓)	()

Impact Discussion:

The following analysis is based on information contained in the City of Banning's General Plan, and City website (<http://banning.ca.us/>), the Banning Police Department staff and website (<http://www.banningpolice.org/>), and telephone consultation with the Banning Unified School District.

- a) **Less than Significant Impact.** Fire protection services for the Project would be provided by the City of Banning through a contractual agreement with the Riverside County Fire Department, which contracts with the California Department of Forestry. Through a mutual aid agreement with surrounding communities, including Beaumont, Calimesa and Cabazon, each city has access to and benefits from the services provided by fire stations in other cities. The Riverside County Fire Department provides full service including fire protection, paramedic response, hazardous materials response, search and rescue, swift water rescue, and disaster preparedness. Currently, a total of 12 fire personnel are stationed in the City of Banning. A Fire personnel ratio of 1:2,606 persons currently exists in the City.

The City is served by one fire station (Station No. 89) located behind City Hall and less than a mile from the Project Site. The planning area is also served by a fire station located in the City of Beaumont, approximately five-miles west of the Project Site.

The proposed 96-Unit Apartment Complex would be required to comply with City fire suppression standards including building sprinklers and adequate fire access. No activities that would involve the use of explosive, extremely flammable or hazardous substances are anticipated with the proposed project. (See Section XVIII- Hazards and Hazardous Materials). All new development must pay fire protection impact fees, which will be a Condition of Approval. Potential impacts to fire protection services are, thus, considered less than significant and no mitigation measures are necessary.

- b) **Less than Significant Impact.** The Project Site is currently serviced by the City of Banning Police Department which is located adjacent to City Hall and is less than a mile from the Project Site. Services offered by the department include field patrol, detective bureau, an emergency tactical unit, a gang task force (a regional task force that monitors gang activity, provides gang suppression and conducts search warrants) school resource officer, and a reserve police officer program. The Banning Police Department's Communications Center is staffed with 12 Public Safety Dispatchers that are responsible for answering emergency and non-emergency calls for service. The 35 sworn positions include the Chief of Police, 2 Commanders, 6 Sergeants, 6 Corporals, and 20 Officers. Banning Police Department officers respond to high priority calls within three to seven minutes, depending on the time of the day and traffic flow, (<http://www.banningpolice.org>). The current level of law enforcement staffing in the City is approximately 1.4 sworn officers for every 1,000 residents. The City has historically maintained a goal of 1.8 police officers per 1,000 residents.

The proposed project would increase the population providing the residents are new to the City, this would result in a demand increase of less than a one percent in total officers to maintain the City's current level of service. Since the Department currently achieves a three to seven-minute response time, a negligible change in police protection services is anticipated. All new development must pay police protection impact fees, which will be included as a Condition of Approval. With payment of impact fees, the impact to police protection services is considered less than significant and no other mitigation measures are necessary.

- c) **Less than Significant Impact.** The Banning Unified School District (BUSD), one of the oldest districts in Riverside County, currently provides school services for a 200 square-mile area. The District encompasses Banning, Cabazon, White Water, Poppet Flats, and the Morongo Indian Reservation.

The School District mitigates impacts on school facilities and services through development impact fees. Under Section 65995 of the California Government Code, school districts may charge development fees to help finance local school services. However, the code prohibits State or local agencies from imposing school impact fees, dedications, or other requirements in excess of the maximum allowable fee, which currently are \$2.97 per square foot of new residential development. As a Condition of Approval, the Project Proponent must pay current developer fees prior to issuance of building permits, as required by the BUSD. With payment of appropriate impact fees, a less than significant impact is anticipated, and no mitigation measures are necessary.

- d) **No Impact.** The City of Banning Parks and Recreation Department provides recreational facilities and amenities for the citizens within the community. According to the City of Banning General Plan, the City has eight developed parks totaling approximately 200 acres.

With an estimated population of 31,282 people and a total of approximately 200 acres of parkland, the City currently has a ratio of approximately 6.45 acres of park land per 1,000 in population. All new residential development must pay park land impact fees on a per unit basis, which will be a Condition of Approval. Consequently, no impacts to park services or facilities are anticipated and no mitigation measures are necessary.

- e) **Less Than Significant Impact.** The Project is to be developed on an infill site, is limited in scale and is located within an area that is currently served by existing City-maintained roads (i.e., Sun Lakes Boulevard), sewer, water and utility services, new service connections and payment of service impact fees are required and will be a Condition of Approval. Development of the Project Site is not anticipated to create a significant amount of additional demand on public facilities. A less than significant impact would result, and no other mitigation measures are necessary.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
15. RECREATION. <i>Would the project:</i>				
a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated?	()	()	()	(✓)
b) Does the project include recreational facilities or require the construction or expansion of recreational facilities which might have an adverse physical effect on the environment?	()	()	()	(✓)

Impact Discussion:

- a) **No Impact.** Please refer to discussion under threshold 14 (d). The City of Banning Parks and Recreation Department provides recreational facilities and amenities for the community and has eight developed parks totaling approximately 200 acres. In addition to these existing facilities, the City has dedicated another 150 plus acres of land for future park development.

With an estimated population of 31,282 people and a total of approximately 200 acres of parkland, the City currently has a park ratio of approximately 6.45 acres per 1,000 in population. No impacts to park services are anticipated.

- b) **No Impact.** The Proposed Project is the development of a 96-Unit Apartment Complex with Club House, Swimming Pool and Multi-Use Court. Amenities are required in accordance with the Banning Municipal Code. These amenities are not expected to generate any adverse physical effect on the environment as they are all on site and there is no public access. No impacts from the development of recreation facilities would result.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
16. TRANSPORTATION/TRAFFIC. <i>Would the project:</i>					
a)	Conflict with an applicable plan, ordinance or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit?	()	()	(✓)	()
b)	Conflict with an applicable congestion management program, including, but not limited to level of service standards and travel demand measures, or other standards established by the county congestion management agency for designated roads or highways?	()	()	(✓)	()
c)	Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks?	()	()	()	(✓)
d)	Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)?	()	()	()	(✓)
e)	Result in inadequate emergency access?	()	()	()	(✓)
f)	Conflict with adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities, or otherwise decrease the performance or safety facilities?	()	()	()	(✓)

Impact Discussion:

In December 2018, a Traffic Impact Analysis (TIA) was prepared for the Proposed Project by Fehr & Peers. The TIA provides an assessment of the traffic impacts that may result from the approval and development of the Proposed Project. Detailed methodology to analyze traffic generation and related impacts is detailed in Appendix F, which is available for review at the Community Development Department, Planning Division. Findings presented in the technical study are outlined in the following discussion.

- a/b) **Less Than Significant Impact.** Study objectives include (1) documentation of Existing traffic conditions in the vicinity of the site; (2) calculation of Existing Plus Project traffic conditions; (3) analysis of Existing Plus Ambient Growth Plus Project traffic conditions; (4) evaluation of traffic conditions for Existing Plus Ambient Growth Plus Project Plus Cumulative; and (5) determination of on-site and off-site improvements and system management actions needed to achieve City of Banning level of service requirements. In

order to achieve City of Banning level of service requirements the proposed project shall not cause traffic deficiencies or other significant impacts to the transportation infrastructure.

As stated in the City of Banning General Plan - Circulation Element roadway capacity is defined as the number of vehicles that may pass over a section of roadway in a given time period under prevailing conditions. Roadway capacity is most restricted by intersection design and operation. The capacity of a roadway and the degree to which that capacity is being utilized is typically described as the roadway's Level of Service (LOS). LOS is a qualitative measure of the efficiency of traffic flow and is defined by alphabetical connotations, ranging from "A" through "F," that characterize roadway operating conditions. LOS A represents an optimum or free-flowing condition, and LOS F indicates extremely slow speeds and system failure. For General Plan purposes, LOS C was assumed to be the "acceptable" LOS for all General Plan roadways within the City, and LOS D at freeway interchanges. Roadway LOS descriptions are provided below in Table 9.

The definition of an intersection deficiency has been obtained from the City of Banning General Plan Circulation Element. The General Plan states that the City shall maintain peak hour LOS D or better on all local roadways and intersections. The definition of an intersection deficiency has been obtained from the City of Beaumont General Plan, which states that LOS D is the maximum acceptable threshold for intersections. In the City of Banning, an impact is considered significant if the project-related traffic causes an intersection to move from an acceptable LOS to an unacceptable LOS. If a significant impact occurs, mitigation is required to bring the intersection back to an acceptable LOS, or to no-project conditions if the intersection is projected to operate an unacceptable LOS for no-project conditions. The site is currently vacant and not generating trips. Based upon the County of Riverside Traffic Impact Analysis Preparation Guide requirements and discussion with the City of Banning engineering staff, the study area includes the one adjacent intersection of East Hoffer Street and North Hathaway Street.

For the purposes of the TIA, the Proposed Project is anticipated for opening in Year 2019 and is proposed to be built in three phases. This traffic impact analysis is based upon existing traffic counts collected in the study area in June 2018 and December 2018.

Table 9
Roadway LOS Description

LOS	Quality of Traffic Flow
A	Primarily free-flow operations at average travel speed usually about 90 percent of the free-flow speed for the arterial classification. Vehicles are completely unimpeded in their ability to maneuver within the traffic stream. Stopped delay at signalized intersections is minimal.
B	Reasonably unimpeded operations at average travel speeds usually about 70 percent of the free-flow speed of the arterial classification. Ability to maneuver within the traffic stream is only slightly restricted. Stopped delays are not bothersome, and drivers generally are not subject to appreciable tension.
C	Traffic operations are stable. However, mid-block maneuverability may be more restricted than in LOS B. Longer queues, adverse signal coordination, or both may contribute to lower average travel speeds of about 50 percent of the average free-flow speed for the arterial classification. Motorists will experience some appreciable tensions while driving.
D	Borders on range where small increases in flow may cause substantial increases in approach delay and decreases in arterial speed. LOS D may be due to adverse signal progression, inappropriate signal timing, high volumes, or some combination of these factors. Average travel speeds are about 40 percent of the free-flow speed. For planning purposes, this LOS is the lowest that is considered acceptable.
E	Characterized by significant approach delays and average travel speeds of one-third or less of the free-flow speed. Typically caused by some combination of adverse progression, high signal density (more than two signalized intersection per mile), high volumes, extensive queuing, delays at critical intersections, and/or inappropriate signal timing.
F	Arterial flow at extremely slow speeds, below one-third to one-fourth of the free-flow speed. Intersection congestion is likely at critical signalized intersections, with high approach delays and extensive queuing. Adverse progression is frequently a contributor to this condition.

Source: City of Banning General Plan Circulation Element

The Transportation Impact Analysis (TIA) was developed based on the requirements within the County of Riverside Traffic Impact Analysis Preparation Guide, (April 2008) and input from the City of Banning. The project study area was established based on discussions with staff at the City of Banning and includes the one adjacent intersection of East Hoffer Street and North Hathaway Street. Trip generation rates were determined for daily traffic and morning peak hour inbound and outbound traffic, and evening peak hour inbound and outbound traffic for the proposed land use. The Proposed Project is anticipated to generate approximately 703 daily vehicle trips of which 44 will occur during the morning peak hour and 54 will occur during the evening peak hour as demonstrated in Table 4-2 of the attached TIA.

Existing intersection operations of the study intersection currently operate at LOS A, an acceptable level, during the peak hours. The opening year projections for traffic impacts demonstrate a LOS A, a continued acceptable level. Cumulative LOS for the year 2035

shows the intersection operates at a LOS B which is still an acceptable level of service. These impacts are considered less than significant.

- c) **No Impact.** The Banning Municipal Airport is located less than a mile of the Project Site, at 600 South Hathaway Street, adjacent to the Southern Pacific Railroad and the I-10 Freeway. The approximately 295-acre airport site includes 65 hangars and 32 tie downs. It includes a 5,100-foot runway and is capable of handling most private single engine and corporate jet aircraft. According to the City of Banning General Plan the airport averages approximately 10 to 15 takeoffs and landings daily, and about 12,000 operations per year. Air traffic at the Municipal Airport is comprised primarily of private, single engine fixed-wing aircraft.

The project site is located within the boundaries of the Airport Land Use Plan (ALUC) for the Municipal Airport and is therefore, subject to the jurisdiction of the Riverside County Airport Land Use Commission. The Proposed Project involves the construction of a 96-Unit Apartment Complex which would not be expected to alter operations, change air traffic patterns or conflict with the airport land uses for people residing or working in the area. The Riverside County Land Use Commission found the project to be consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, amended in 2016. No aviation impacts are anticipated.

- d) **No Impact.** The project as proposed will not substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment) as no new roads or intersections are proposed. No Impact.
- e) **No Impact.** The Emergency Preparedness Element of the General Plan outlines the potential for natural and man-made disasters that could affect the City and its Sphere of Influence. According to the General Plan, in 1996 the City adopted the Multi-Hazard Functional Planning Guidance document that includes: 1) the Banning Emergency Plan; 2) twelve functional annexes that describe an emergency response organization; and 3) a listing of operational data such as resources, key personnel, and essential facilities and contacts. The City does not have an established evacuation route; however, depending on the location and extent of an emergency, major surface streets could be utilized to route traffic through the City.

Construction of the Proposed Project would not alter or interfere with emergency response operations or an adopted emergency evaluation plan. The project proposes two points of ingress and egress which provides adequate circulation to, from and around the site.

- f) **No Impact.** There are no bus stops adjacent to the Project Site. According to the County of Riverside General Plan Trail and Bikeway Plan, there are no existing or planned pedestrian trails in the vicinity or adjacent to the Project Site. In addition, the Circulation Element of the City of Banning General Plan does not specify any planned pedestrian trails in the vicinity or adjacent to the Project Site., and none are existing. In consideration of these factors, implementation of the Proposed Project would not conflict with any adopted policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities. No impacts would result; thus, no mitigation measures are necessary.

Issues and Supporting Information Sources:	Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
17. TRIBAL CULTURAL RESOURCES. <i>Would the project:</i> Cause a substantial adverse change in the significance of a tribal cultural resource, defined in Public Resources Code section 21074 as either a site, feature, place, cultural landscape that is geographically defined in terms of the size and scope of the landscape, sacred place, or object with cultural value to a California Native American tribe, and that is:				
a) Listed or eligible for listing in the California Register of Historical Resources, or in a local register of historical resources as defined in Public Resources Code section 5020.1(k), or	()	(√)	()	()
b) A resource determined by the lead agency, in its discretion and supported by substantial evidence, to be significant pursuant to criteria set forth in subdivision (c) of Public Resources Code Section 5024.1. In applying the criteria set forth in subdivision (c) of Public Resources Code Section 5024.1, the lead agency shall consider the significance of the resource to a California Native American Tribe.	()	(√)	()	()

Impact Discussion:

- a) **Less Than Significant Impact.** As discussed previously in Threshold 5a (Cultural Resources) there are no listed historic resources or any eligible for listing at the Project site and the site is currently vacant. Nonetheless, it is possible that previously undiscovered historical resources may be encountered at the Project site. Results of the cultural resources investigation and tribal consultations are reflected in the impact discussion and Mitigation Measures contained in Section 5 – Cultural Resources. With mitigation contained in Section 5 of this Initial Study, impacts to tribal cultural resources are considered reduced to a less than significant level.
- b) Assembly Bill 52 (AB 52), signed into law in 2014, amended CEQA and established new requirements for tribal notification and consultation. AB 52 applies to all projects for which a notice of preparation or notice of intent to adopt a negative declaration/mitigated negative declaration is issued after July 1, 2015. AB 52 also broadly defines a new

resource category of tribal cultural resources and established a more robust process for meaningful consultation that includes:

- prescribed notification and response timelines;
- consultation on alternatives, resource identification, significance determinations, impact evaluation, and mitigation measures; and
- documentation of all consultation efforts to support CEQA findings.

AB 52 notification was initiated for this Project as required for a notice of intent to adopt a negative declaration/mitigated negative declaration.

Senate Bill (SB) 18 requires local agencies to consult with tribes prior to making certain planning decisions and to provide notice to tribes at certain key points in the planning process, thereby providing tribes an opportunity to participate in local land use decisions at an early planning stage. SB 18 notification was initiated for this Project as required for a General Plan Amendment and associated Change of Zone.

In accordance with SB 18 and AB 52, the City sent letters of Notice to all Native American tribes on the recommended NAHC (Native American Historic Commission) distribution list, advising of the General Plan Amendment, Zone Change, Design Review and Environmental Assessment. Tribal consultations are being held as requested. Since AB 52 and SB 18 consultation is currently in progress by the Lead Agency A site-specific cultural resources investigation was conducted, as requested by local tribes, at the Project site. Results of the cultural resources investigation and tribal consultations are reflected in the impact discussion and Mitigation Measures contained in Section 5 – Cultural Resources. With mitigation contained in Section 5 of this Initial Study, impacts to tribal cultural resources are considered reduced to a less than significant level.

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
18. UTILITIES AND SERVICE SYSTEMS. <i>Would the project:</i>		()	()	(✓)	()
a)	Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board?	()	()	(✓)	()
b)	Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	()	()	()	(✓)
c)	Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects?	()	()	()	(✓)
d)	Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed?	()	()	(✓)	()
e)	Result in a determination by the wastewater treatment provider, which serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments?	()	()	()	(✓)
f)	Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs?	()	()	()	(✓)
g)	Comply with Federal, State, and local statutes and regulations related to solid waste?	()	()	()	(✓)

Impact Discussion:

- a,e) **Less Than Significant Impact.** The City of Banning Public Works Wastewater Division provides sanitary wastewater services to the City of Banning. The City Public Works Department is located at 99 East Ramsey Street. The City of Banning Wastewater Reclamation Plant is located at 2242 East Charles Street. The City contracts with United Water Services for the operation and maintenance of the water reclamation plant. Recent upgrades of the plant resulted in an increase of secondary treatment capacity to 3.6 million gallons-per-day, including improvements that could accommodate future capacity to approximately 5.8 million gallons-per-day. Daily the, plant currently receives an average flow of approximately 2.3–2.4 million gallons-per day.

Water demand of the project, as estimated, is expected to be approximately 76,800 gallons per day or 28 million gallons per year, which is equivalent to 86 acre-feet per year. A conservative estimate of 50 percent of the total water use returning to wastewater flow results in 0.078 million of gallons per day (MGD) in additional flow to the City of Banning

Public Works Wastewater facility. The Project would be required to meet the requisites of the City of Banning and the Regional Water Quality Control Board (RWQCB) regarding wastewater quality. The Proposed Project would not require the construction of new wastewater facilities, exceed wastewater treatment requirements, or exceed wastewater treatment capacities. Therefore, impacts related to wastewater treatment requirements of the RWQCB are less than significant and no mitigation measures are necessary.

- b) **No impact.** Please refer to discussion in item 18–a. above. There is enough capacity available in existing water and wastewater treatment facilities to accommodate the additional flow estimated to be generated by the Proposed Project. The project would not require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects. No mitigation measures are necessary.
- c) **No Impact.** Currently, offsite flows drain easterly along the gutter on East Hoffer Street then south along the North Hathaway Street gutter. On site flows drain southeasterly to North Hathaway Street.

Pursuant to City of Banning Ordinance No. 1415, Section 6, retention of the entire calculated developed conditions 100-year, 3-hour volume of 53,378 cubic feet (CF) is required. County of Riverside policy is reduction of peak flows for all storm events up to and including the 10-year, 24-hour event. Two detention basins and two underground infiltration systems are proposed for the project. Based on this system, the proposed underground infiltration system will retain and infiltrate the entire developed conditions volumes for all events. No impacts are anticipated.

- d) **Less than Significant Impact:** The City of Banning Public Works and Utilities Department provides domestic water services to the City of Banning, and to unincorporated Riverside County lands located southwesterly of the City limits. The various storage units of the San Geronio Pass groundwater basin serve as the main water source for the City. There are 22 operating groundwater wells from which the City obtains its water. These are in Banning Water Canyon and in residential and commercial districts throughout the City. The City also owns six unequipped groundwater wells, three of which could be used as a future water source.

The distribution line system serving the City consists of water lines ranging from 2" to 30" in diameter. The City operates its water services with guidance from its Urban Water Management Plan. Water demand of the project, as estimated, is expected to be 76,800 GPD or 28 million gallons per year which is equivalent to 86 acre-feet per year. The year 2015 population within the water service area is estimated at 30,491 and is projected to increase to 37,700 based on a factor of 3.12 persons per water service connection. The year 2040 projected population increases to 56,685 if two major proposed Specific Plan developments within the City's service area are approved and constructed. Based on the City of Banning Final 2015 Urban Water Management Plan, adopted in 2016, for the Planning Period of 2020 – 2040, adequate water supply is projected for meeting demands. The Multiple Dry Years Supply and Demand Comparison (UWMP Table 6-6) shows that in the first and third years of multiple year dry conditions, there is a shortfall of 311 acre-feet per year to meet demands. However, the UWMP indicates that the 46,774 acre-feet of water stored in the Beaumont Basin storage account is not included in the supply totals and concludes that the City has ample water supplies to meet projected demands through

2040. Therefore, the City has enough water supplies available to serve the Project based on existing entitlements and resources; less than significant impact would result.

- f) **No Impact.** The City of Banning contracts with Waste Management Inland Empire for solid waste and disposal services. Solid waste that is not diverted to recycling or composting facilities is transported to the Lamb Canyon Sanitary Landfill. The Lamb Canyon Sanitary Landfill is in the City of Beaumont, approximately three miles southwest of the City of Banning. It is owned and operated by the Riverside County Waste Management Department and accepts solid waste collected from the communities of Banning, Beaumont, Hemet and San Jacinto. It may also accept solid waste generated from anywhere within Riverside County.

The Lambs Canyon Sanitary Landfill has a design capacity of 33,041,000 cubic yards and can receive a maximum permitted tonnage of 5,000 tons per day. The facility has an estimated closure year of 2021. The proposed project would generate approximately one (1) ton of solid waste per day¹, which is approximately 0.020 percent of the permitted capacity of the landfill. The Proposed Project would not place a significant demand on solid waste services and would not be served by a landfill with insufficient permitted capacity. No impacts are anticipated.

- g) **No Impact.** As required by Assembly Bill 939 (AB939), the California Integrated Waste Management Act, all cities and counties within the state must divert 50 percent of their wastes from landfills by the year 2000. Construction and Demolition (C&D) debris represents a large portion of materials being disposed of at landfills. To achieve the State-mandated diversion goal, the City has implemented a variety of programs that seek to reduce the volume of solid waste generated, encourage reuse, and support recycling efforts. Collected green waste from the Banning area is taken to a green waste recycling station in Romoland. Other recyclable materials, such as glass, plastic, and paper are transported to a third-party recycler in the City of Pico Rivera. Construction and operation of the project must comply with all federal, State, and local statutes and regulations related to solid waste. No impacts are anticipated, and no mitigation measures are necessary.

¹ Based on the California Integrated Waste Management Board Estimated Solid Waste Generation Rates for Institutions (Medical offices/hospitals).

Issues and Supporting Information Sources:		Potentially Significant Impact	Less Than Significant with Mitigation Incorporated	Less Than Significant Impact	No Impact
19. MANDATORY FINDINGS OF SIGNIFICANCE					
a)	Does the project have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory?	()	(✓)	()	()
b)	Does the project have impacts that are individually limited, but cumulatively considerable? ("Cumulatively considerable" means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects)?	()	()	(✓)	()
c)	Does the project have environmental effects which will cause substantial adverse effects on human beings, either directly or indirectly?	()	(✓)	()	()

Impact Discussion:

- a) **Less Than Significant with Mitigation.** The Project site has been previously disturbed by rough grading activities and contains minimal vegetation or other natural features. A general biological assessment of the project site was conducted under the requirements of the Western Riverside County Multiple Species Habitat Conservation Plan (MSCHP). A field survey of the Project Site was also conducted which included an evaluation of habitats. In addition, records of the general and sensitive biological resources present on-site and in the surrounding area were consulted.

No amphibian or reptile species were observed during surveys. Bird species were observed, none of which are listed as rare or endangered. Compliance with the MSHCP required an assessment for Narrow Endemic Plant Species, presence of burrowing owl habitat, riverine and riparian habitats, as well as vernal pools and fairy shrimp habitat, and jurisdictional waters. The Narrow Endemic Plant Species identified two candidate plant species as potentially present in the area. Neither of these plant species were identified on the project site, and no suitable habitat or soils are present. The Project Site does provide suitable habitat for burrowing owls and migratory birds, therefore, **Mitigation Measures BIO - 1 and BIO – 2** apply. Less than significant impacts to biological resources are anticipated with mitigation measures.

No prehistoric or historic cultural resources were identified within the Project Site. The Project Site is, however, located within an area considered moderately sensitive for prehistoric archaeological resources. Implementation of **Mitigation Measure CUL – 1 through CUL – 9** will ensure potential impacts to archeological resources are reduced to a less than significant level. In consideration of the foregoing information, the project does not have the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal, or eliminate important examples of the major periods of California history or prehistory.

- (b) **Less than Significant with Mitigation.** The Project is not anticipated to generate significant cumulative impacts from any of the areas studied. Conditions of Approval and current Government regulation reduce impacts to less than significant without mitigation. Although there will be increased traffic, population, water and sewer usage and air quality long term impacts; all of these impacts have been reduced to less than significant.
- (c) **Less than Significant with Mitigation.** There are Hazardous Impacts identified due to the proximity to the Banning Municipal Airport. These impacts have been reduced to less than significant with mitigation. **Mitigation Measures HAZ – 1 through 5** apply. Additionally, impacts that effect humans were studied and found to be significant without mitigation. Therefore, **Mitigation Measures NOISE – 1 and 2** apply which will reduce noise impact to less than significant. No potentially significant impacts have been identified in any other subject area that would affect humans.

REFERENCES

Habitat Assessment and MSHCP Consistency Analysis for the Hoffer Street & Hathaway Street Residential Project. City of Banning, County of Riverside, California, Riverside Biological, Inc., November 2018.

Preliminary Hydrology and Hydraulic Report for Assessor's Parcel No. 534-283-011/014, City of Banning, Riverside County, CA, Sake Engineers, Inc., August 2018.

Water Quality Management Plan for APN 534-283-011 & 014, Hoffer Street, Banning CA 92220, Sake Engineers Inc., August 3, 2018.

Preliminary Soil Investigation and Infiltration Tests Report, Proposed 96-Unit, Two-Story Residential Development, Soil Exploration Company Inc., July 9, 2018.

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LIST OF PREPARERS

City of Banning (Lead Agency)
99 East Ramsey Street, Banning, CA 92220
Community Development Department
Planning Division
Mark de Manincor, Contract Planner
951-922-3123



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SENT VIA E-MAIL AND USPS:

March 21, 2019

ARush@ci.banning.ca.us

Adam Rush, Director
City of Banning, Community Development Department
99 East Ramsey Street
Banning, CA 92220

Mitigated Negative Declaration (MND) for the Proposed General Plan Amendment (18-2504) Zone Change (18-3503) Design Review (18-7011) Project

South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final MND.

SCAQMD Staff's Summary of Project Description

The Lead Agency is proposing to construct a 96-unit apartment complex and a 2,600-square-foot club house on 7.08 acres (Proposed Project). The Proposed Project is located on the southwest corner of Hoffer Street and North Hathaway Street. Construction of the Proposed Project is expected to occur over approximately 13 months and become operational in 2022¹.

SCAQMD Staff's Summary of Air Quality Analysis

In the Air Quality Analysis, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to SCAQMD's regional air quality CEQA significance thresholds. Based on the analysis, the Lead Agency found that the Proposed Project would result in a less than significant regional air quality impact. Additionally, the Lead Agency found that "none of the analyzed criteria pollutants would exceed the calculated local emissions thresholds at the nearest sensitive receptors."² However, the Lead Agency did not conduct a localized air quality impact analysis for construction or operational air quality impacts to support the less than significant finding on the Proposed Project's localized air quality impacts.

SCAQMD Staff's General Comments

SCAQMD staff is concerned with the Lead Agency's finding that the Proposed Project's localized air quality impacts resulting from construction and operational activities would be less than significant because the MND did not include quantification of localized emissions for comparison to SCAQMD's localized air quality CEQA significance thresholds. Therefore, SCAQMD staff recommends that the Lead Agency support this finding by revising the MND to include a localized air quality impact analysis that quantifies localized emissions and compares those emissions to the appropriate SCAQMD Localized Significance Thresholds (LSTs). In the event that this revision results in a finding that a new significant impact would occur, feasible mitigation measures would be required under CEQA. Detailed comments and potential mitigation measures are provided in the attachment.

Conclusion

Pursuant to CEQA Guidelines Section 15074, prior to approving the Proposed Project, the Lead Agency shall consider the MND for adoption together with any comments received during the public review

¹ MND. Page 175

² MND. Page 18.

process. Please provide the SCAQMD with written responses to all comments contained herein prior to the adoption of the Final MND. When responding to issues raised in the comments, response should provide sufficient details giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful, informative, or useful to decision makers and to the public who are interested in the Proposed Project.

SCAQMD staff is available to work with the Lead Agency to address these issues and any other questions that may arise. Please contact Robert Dalbeck, Assistant Air Quality Specialist, at (909) 396-2139 or RDalbeck@aqmd.gov, if you have any questions regarding these comments.

Sincerely,

Lijin Sun

Lijin Sun, J. D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

Attachment

LS:RD

RVC190313-02

Control Number

ATTACHMENT

Localized Air Quality Impact Analysis

1. Air quality impacts from both construction and operation activities should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment required during grading, earth-loading/unloading, paving, architectural coatings, and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operational impacts from residential projects typically include area sources (e.g. architectural coatings, consumer products, hearths), mobile sources (e.g. residential vehicle trips, materials delivery, road dust), and energy consumption (e.g. electricity, gas, water). These emission sources have enough specificity to reasonably assume which of those emissions would be emitted on-site, such as off-road construction equipment or area sources during operation. The SCAQMD LSTs methodology and associated mass look-up tables are not designed to evaluate localized impacts from mobile sources traveling over the roadways. LSTs represent the maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based upon the total area of the emissions source, the ambient air quality in each source receptor area (SRA) in which the emission source is located, and the distance to the nearest sensitive receptor. Sensitive receptors are people that have an increased sensitivity to air pollution or environmental contaminants. They include schools, parks and playgrounds, daycare centers, nursing homes, elderly care facilities, hospitals, and residential dwelling units.

Based on a review of the MND and aerial photographs, SCAQMD staff found that the Proposed Project is approximately seven acres in size, and that sensitive receptors are located immediately adjacent to the Proposed Project within 25 meters. In the MND, the Lead Agency stated that “The thresholds for a 7-acre site with sensitive receptors located within 25 meters of property lines were used to analyze the proposed project and represent a worst-case scenario³.” However, SCAQMD’s Final LST Methodology Mass Rate LST Look-Up Table does not include thresholds for a 7-acre site⁴. Additionally, the Lead agency performed a regional air quality analysis for the Proposed Project and used it to correlate with or substitute for a need for a localized air quality analysis. Specifically, the Lead Agency did not quantify the Proposed Project’s localized construction or operational emissions in the MND, nor did they compare those emissions to the appropriate SCAQMD CEQA air quality LSTs. To ensure that any nearby sensitive receptors are not adversely affected by the construction or operational activities that are occurring in close proximity, SCAQMD staff recommends that the Lead Agency quantify the Proposed Project’s localized construction and operational emissions and disclose the localized air quality impacts in the Final MND to support a finding that the Proposed Project’s localized air quality impacts would be less than significant necessitating no mitigation measures. SCAQMD guidance for performing a localized air quality analysis is available on SCAQMD’s website⁵.

Recommended Mitigation Measures

2. In the event that the Lead Agency finds, after revisions to the Air Quality Analysis based on Comment No. 1, that the Proposed Project’s localized construction or operational emissions would be significant, implementation of feasible mitigation measures would be required under CEQA.

³ MND, Page 17.

⁴ South Coast Air Quality Management District. *Localized Significance Thresholds: Appendix C - Mass Rate LST Look-Up Table*. Accessed at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/appendix-c-mass-rate-lst-look-up-tables.pdf>.

⁵ South Coast Air Quality Management District. *Localized Significance Thresholds*. Accessed at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

SCAQMD staff has compiled a list of recommended mitigation measures as suggested resources and guidance to the Lead Agency to assist the identification of feasible mitigation measures, if needed and required under CEQA for the Proposed Project, for incorporation in the Final MND.

Mitigation Measures for Construction Impacts

- a. Require the use of off-road diesel-powered construction equipment that meets or exceeds the California Air Resources Board (CARB) and U.S. EPA Tier 4 off-road emissions standards for equipment rated at 50 horsepower or greater during construction to further reduce criteria pollutant emissions. Such equipment will be outfitted with Best Available Control Technology (BACT) devices including a CARB certified Level 3 Diesel Particulate Filters (DPFs). Level 3 DPFs are capable of achieving at least 85 percent reduction in particulate matter emissions⁶. A list of CARB verified DPFs are available on the CARB website⁷. To ensure that Tier 4 construction equipment or better will be used during the Proposed Project's construction, SCAQMD staff recommends that the Lead Agency include this requirement in applicable bid documents, purchase orders, and contracts. Successful contractor(s) must demonstrate the ability to supply the compliant construction equipment for use prior to any ground disturbing and construction activities. A copy of each unit's certified tier specification or model year specification and CARB or SCAQMD operating permit (if applicable) shall be available upon request at the time of mobilization of each applicable unit of equipment. Additionally, the Lead Agency should require periodic reporting and provision of written construction documents by construction contractor(s) to ensure compliance, and conduct regular inspections to the maximum extent feasible to ensure compliance.

Mitigation Measures for Operational Impacts

- b. Provide electric vehicle (EV) charging stations. Require at least 5% of all vehicle parking spaces include EV charging stations. Vehicles that can operate at least partially on electricity have the ability to substantially reduce the significant NOx and ROG impacts. It is important to make this electrical infrastructure available when the Proposed Project is built. The cost of installing electrical charging equipment onsite is significantly cheaper if completed when the project is built compared to retrofitting an existing building. Therefore, SCAQMD staff recommends the Lead Agency require the Proposed Project to provide the appropriate infrastructure to facilitate sufficient electric charging for vehicles to plug-in in the Final MND.
- c. Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs throughout the apartment complex to generate solar energy for the respective buildings.
- d. Maximize the planting of trees in landscaping and parking lots.
- e. Use light colored paving and roofing materials.
- f. Require use of electric or alternatively fueled street-sweepers with HEPA filters.
- g. Require use of electric lawn mowers and leaf blowers.
- h. Utilize only Energy Star heating, cooling, and lighting devices, and appliances.
- i. Use of water-based or low VOC cleaning products.

⁶ California Air Resources Board. November 16-17, 2004. *Diesel Off-Road Equipment Measure – Workshop*. Page 17. Accessed at: https://www.arb.ca.gov/msprog/ordiesel/presentations/nov16-04_workshop.pdf.

⁷ *Ibid*. Page 18.

March 25, 2019

Mr. Mark De Manincor
City of Banning
Planning Division
99 E. Ramsey Street
Banning, CA 92220

**SUBJECT: Response to SCAQMD Comment Letter on IS/MND for 96-unit Apartment
Complex Project, Dated March 21, 2019**

Dear Mark:

This letter is in response to the City's request for Lilburn Corporation to provide a Localized Significance Threshold Analysis, a Response to Comment letter received from South Coast Air Quality Management District (SCAQMD), and a letter report for staff's use for the proposed 96-unit Apartment Complex/General Plan Amendment Project. As we discussed, the responses provided herein will provide the City with information to respond to the SCAQMD and to have the additional information necessary to proceed with adoption of a Mitigated Negative Declaration based on the Initial Study that was circulated for public review.

The primary concern of SCAQMD is the lack of a Localized Significance Thresholds (LSTs) Analysis included in the Initial Study. The analysis was not previously prepared for the Initial Study to comply with SCAQMD's own guidelines. Their March letter however requests inclusion of the LSTs. Their letter's primary comment and Lilburn Corporation's response is included below.

Comment 1: SCAQMD staff is concerned with the Lead Agency's finding that the Proposed Project's localized air quality impacts resulting from construction and operational activities would be less than significant because the MND did not include quantification of localized emissions for comparison to SCAQMD's localized air quality significant thresholds. Therefore, SCAQMD staff recommends that the Lead Agency support this finding by revising the MND to include a localized air quality impact analysis that quantifies localized emissions and compares those emissions to the appropriate SCAQMD Localized Significance Thresholds (LSTs). In the event that this revision results in a finding that a new significant impact would occur, feasible mitigation measures would be required under CEQA.

Response 1: City staff acknowledges SCAQMD's comments regarding the Proposed Project's localized air quality impacts resulting from construction and operational activities. As demonstrated in Tables 1 – 4 of the IS/MND, the Proposed Project does not

exceed applicable SCAQMD regional thresholds either during construction or operational activities. Additionally, as stated by the AQMD's Localized Significance Thresholds Fact Sheet, use of LSTs is not mandatory and a lead agency's use of the LSTs is entirely voluntary. However, given the SCAQMD's comment and concerns, an LST analysis for the Proposed Project has been conducted and is summarized below:

LST methodology is incorporated herein to represent worst-case scenario emissions thresholds. The LSTs were developed to analyze the significance of potential air quality impacts of proposed projects to sensitive receptors (i.e. schools, single family residences, etc.) and provide screening tables for small projects (one, two, or five acres). Projects are evaluated based on geographic location and distance from the sensitive receptor (25, 50, 100, 200, or 500 meters from the site).

For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility or anywhere that it is possible for an individual to remain for 24 hours. Additionally, schools, playgrounds, child care centers, and athletic facilities can also be considered as sensitive receptors. Commercial and industrial facilities are not included in the definition of sensitive receptor because employees do not typically remain on-site for a full 24 hours, but are usually present for shorter periods of time, such as eight hours.

The Project Site is approximately 7.08 acres and therefore the "five-acre" LST thresholds were utilized as larger sites (e.g. 10 acres) are typically granted a larger emission allowance. The nearest sensitive receptor land uses are the single-family residences which are located immediately north, west, and south of the Project Site and therefore LSTs are based on an 82-foot (25-meter) distance. CalEEMod version 2016.3.2 was used to estimate the on-site and off-site emissions associated with construction and operation of the Proposed Project. It should be noted that the operational phase is comprised of three sources: Area, Energy, and Mobile; and the Area source includes the following four subcategories: Architectural Coating, Consumer Products, Hearth, and Landscaping. CalEEMod version 2016.3.2 assumes the implementation of "hearths" (e.g. wood-burning fireplaces); however, the Proposed Project will not include wood-burning fireplaces. This will be a condition of project approval imposed by the City on the Project. Therefore, wood-burning fireplaces will not contribute to the Proposed Project's operational emissions and associated emissions of PM₁₀ and PM_{2.5} were subtracted from the modeled totals. A comparison of the Proposed Project's construction and operational emissions with the appropriate LST thresholds is presented in Table 5.

Mr. Mark De Manincor
 March 25, 2019
 Page 3

Table 5
Localized Significance Thresholds
(Pounds per Day)

Source	NO _x	CO	PM ₁₀		PM _{2.5}	
Construction Emissions (Max. from Table 1 and Table 2)	45.6	23.2	10.7		6.7	
Operational Emissions (Max. from Table 3 and Table 4) [†]	1.4	9.7	0.5		0.2	
Highest Value (lbs/day)	45.6	23.2	10.7	0.5	6.7	0.2
LST Thresholds	236	2,817	21*	6 [†]	11*	3 [†]
Greater Than Threshold?	No	No	No	No	No	No

Note: PM₁₀ and PM_{2.5} emissions are separated into construction and operational thresholds in accordance with the SCAQMD Mass Rate LST Look-up Tables.

* Construction emissions LST

[†] Operational emissions LST

[†]Per LST methodology mobile source emissions do not need to be included except for land use emissions and on-site vehicle emissions. It is estimated that approximately 10 percent of mobile emissions will occur on the Project Site.

Source: CalEEMod.2016.3.2 Summer & Winter Emissions; SCAQMD Final Localized Significance Threshold Methodology; SCAQMD Mass Rate Look-up Tables for five-acre site in Source Receptor Area No. 29, distance of 25 meters.

As shown in Table 5, the Proposed Project's emissions are not anticipated to exceed the thresholds for LSTs. Therefore, the Proposed Project is not anticipated to expose sensitive receptors to substantial pollutant concentrations. Less than significant impacts are anticipated, and no mitigation measures are required.

If you should have any questions or require additional information, please do not hesitate to give me or Daniel Macias a call.

Sincerely,



for

Frank Amendola
 Project Manager

GPA 18-2504, ZC 18-3503, DR 18-7011
Mitigation, Monitoring and Reporting Program (MMRP)
April 2019

Mitigation Measures	Timing	Verification	
		Department	Date
BIOLOGICAL RESOURCES			
<p>Mitigation Measure BIO-1: Due to the presence of suitable habitat and burrows found onsite during the burrowing owl habitat assessment survey, a burrowing owl focused survey will need to be conducted during the breeding season, March 1 – August 31, per the MSHCP Burrowing Owl Survey Guidelines (revised March 29, 2006). To avoid potential impacts to the burrowing owl, an additional pre-construction survey is required for the burrowing owl within 30 days prior to start of grading/construction activities to determine if the burrowing owl has subsequently occupied the development area.</p>	<p>During the breeding season, March 1 – August 31 and 30 days prior to grading</p>	<p>Planning Department, Engineering Department</p>	
<p>Mitigation Measure BIO-2: To avoid potential effects to nesting migratory birds and raptors protected by the California Fish and Game Code, vegetation – clearing and preliminary ground – disturbance work should be completed outside of bird breeding season (typically February 15 through August 31). If these construction activities cannot be scheduled to avoid the bird breeding season, a pre – construction nesting bird survey should be conducted within 3 days prior to project construction ground disturbing activities to avoid effects to birds protected under the California Fish and Game Code.</p>	<p>February 15 through August 31 or 3 days prior to ground disturbing.</p>	<p>Planning Department, Engineering Department</p>	
CULTURAL RESOURCES			
<p>Mitigation Measure CR-1: Prior to the issuance of grading permits, the applicant shall provide written verification in the form of a letter from the project archaeologist to the lead agency stating that a certified archaeologist has been retained to implement the monitoring program.</p>	<p>Prior to the Issuance of Grading Permits.</p>	<p>Engineering Department</p>	

Mitigation Measure	Timing	Department	Signature	Date
Mitigation Measure CR-2: The project applicant shall provide Native American monitoring (Morongo Band of Mission Indians) during grading. The Native American monitor shall work in concert with the archaeological monitor to observe ground disturbances and search for cultural materials.	During Grading and Construction	Engineering Department		
Mitigation Measure CR-3: The certified archaeologist shall attend the pre-grading meeting with the contractors to explain and coordinate the requirements of the monitoring program.	Prior to grading and construction	Engineering Department		
Mitigation Measure CR-4: During the original cutting of previously undisturbed deposits, the archaeological monitor(s) and tribal representative shall be on-site, as determined by the consulting archaeologist, to perform periodic inspections of the excavations. The frequency of inspections will depend upon the rate of excavation, the materials excavated, and the presence and abundance of artifacts and features. The consulting archaeologist shall have the authority to modify the monitoring program if the potential for cultural resources appears to be less than anticipated.	During grading and construction	Engineering Department		
Mitigation Measure CR-5: Isolates and clearly non-significant deposits will be minimally documented in the field so the monitored grading can proceed.	During grading and construction	Engineering Department		
Mitigation Measure CR-6: In the event that previously unidentified cultural resources are discovered, the archaeologist shall have the authority to divert or temporarily halt ground disturbance operation in the area of discovery to allow for the evaluation of potentially significant cultural resources. The archaeologist shall contact the lead agency at the time of discovery. The archaeologist, in consultation with the lead agency, shall determine the significance of the discovered resources. The lead agency must concur with the evaluation before construction activities will be allowed to resume in the	During grading and construction	Engineering Department		

Mitigation Measure	Timing	Department	Signature	Date
affected area. For significant cultural resources, a Research Design and Data Recovery Program to mitigate impacts shall be prepared by the consulting archaeologist and approved by the lead agency before being carried out using professional archaeological methods. If any human bones are discovered, the county coroner and lead agency shall be contacted. In the event that the remains are determined to be of Native American origin, the Most Likely Descendant (MLD), as identified by the NAHC, shall be contacted in order to determine proper treatment and disposition of the remains.				
Mitigation Measure CR-7 Before construction activities are allowed to resume in the affected area, the artifacts shall be recovered and features recorded using professional archaeological methods. The project archaeologist shall determine the amount of material to be recovered for an adequate artifact sample for analysis.	During grading and construction	Engineering Department		
Mitigation Measure CR-8 All cultural material collected during the grading monitoring program shall be processed and curated according to the current professional repository standards. The collections and associated records shall be transferred, including title, to an appropriate curation facility, to be accompanied by payment of the fees necessary for permanent curation.	During grading and construction	Engineering Department		
Mitigation Measures CR-9 A report documenting the field and analysis results and interpreting the artifact and research data within the research context shall be completed and submitted to the satisfaction of the lead agency prior to the issuance of any building permits. The report will include DPR Primary and Archaeological Site Forms.	During grading and construction	Engineering Department		
HAZARDS AND HAZARDOUS MATERIALS				
Mitigation Measures HAZ-1 Any outdoor lighting installed shall be hooded or shielded to prevent either the spillage of lumens or reflection into the sky. Outdoor lighting shall be downward facing.	During construction	Building Department		

Mitigation Measure	Timing	Department	Signature	Date
<p>Mitigation Measures HAZ-2 The following uses shall be prohibited:</p> <ol style="list-style-type: none"> 1. Any use which would direct a steady light or flashing light of red, white, green, or amber colors associated with airport operations toward an aircraft engaged in an initial straight climb following takeoff or toward and aircraft engaged in a straight final approach toward a landing at an airport, other than an FAA-approved navigational signal light or visual approach slope indicator. 2. Any use which would cause sunlight to be reflected towards an aircraft engaged in an initial straight climb following takeoff or towards an aircraft engaged in a straight final approach towards a landing at an airport. 3. Any use which would generate smoke or water vapor or which would attract large concentrations of birds, or which may otherwise affect safe air navigation within the area. (Such uses include landscaping utilizing water features, aquaculture, production of cereal grains, sunflower, and row crops, artificial marshes, wastewater management facilities, composting operations, trash transfer stations that are open on one or more sides, recycling centers containing putrescible wastes, construction and demolition debris facilities, fly ash disposal, and incinerators.) 4. Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation. 	During operation	Code Enforcement Department		
<p>Mitigation Measure HAZ-3 The attached notice shall be provided to all potential purchasers of the property and to tenants of the proposed dwelling units, and shall be recorded as a deed notice. (See attached notice in Appendix H, Riverside County Airport Land Use Commission Report.)</p>	Prior to Certificate of Occupancy	Building Department		

Mitigation Measure		Timing	Department	Signature	Date
Mitigation Measure HAZ-4 Any proposed detention basin or facilities shall be designed so as to provide for a detention period for the design storm that does not exceed 48 hours and to remain totally dry between rainfalls. Vegetation in and around such facilities that would provide food or cover for bird species that would be incompatible with airport operations shall not be utilized in project landscaping.		During design and construction	Engineering Department		
Mitigation Measure HAZ-5 Any use which would generate electrical interference that may be detrimental to the operation of aircraft and/or aircraft instrumentation.		During operation	Code Enforcement		
NOISE					
Mitigation Measure NOISE-1 Short-Term Construction Noise Impacts will require the following mitigation measures:		Prior to grading and construction	Engineering Department		
<ol style="list-style-type: none"> 1. The construction contractor shall conduct construction activities between the hours of 7:00 a.m. and 6:00 p.m. as specified in Section 8.44.090(E) of the Banning Municipal Code. 2. The construction contractor shall construct a minimum 6-foot-high temporary construction barrier or a permanent minimum 8-foot-high wall on the west side of the project prior to site preparation, which includes excavation and grading of the project site. The temporary construction barrier may be constructed of any material that has a minimum Sound Transmission Class (STC) rating of 28. 3. The construction contractor shall construct a minimum 7-foot-high temporary construction barrier on the south side of the project prior to site preparation, which includes excavation and grading of the project site. The temporary construction barrier may be constructed of any material that has a minimum STC 28 rating. 					

Mitigation Measure	Timing	Department	Signature	Date
<p>4. During all project site excavation and grading, the project contractors shall equip all construction equipment, fixed or mobile, with properly operating and maintained mufflers consistent with manufacturers' standards.</p> <p>5. The construction contractor shall locate equipment staging in areas that will create the greatest distance between construction-related noise sources and most noise-sensitive receptors nearest the project site during all project construction.</p> <p>6. The construction contractor shall place all stationary construction equipment so that the emitted noise is directed away from the sensitive receptors nearest the project site.</p>				
<p>Mitigation Measure NOISE-2: The following mitigation measures would be required to reduce stationary noise impacts:</p> <ol style="list-style-type: none"> 1. A minimum 6-foot-high wall on the south side of the project. 2. A minimum 8-foot-high wall on the west side of the project. 	Prior to issuance of a certificate of occupancy	Building Department		
TRIBAL CULTURAL RESOURCES				
See Cultural Resources Mitigation Measures, CR-1 through CR-9				

ATTACHMENT 7

Notice of Intent/Notice of Availability

ATTACHMENT 4
Notice of Availability/Notice of Intent

Record Gazette
218 N. Murray St.
Proof of Publication
(2015.5 C.C.P.)

163406 GPA 18-2504

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

March 22, 2019

Executed on: 03/22/2019

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Ana Rivera

Signature

NOTICE OF PUBLIC HEARING AND NOTICE OF INTENT TO ADOPT A MITIGATED NEGATIVE DECLARATION AND MITIGATION MONITORING AND REPORTING PROGRAM, CONSIDERATION OF GENERAL PLAN AMENDMENT 18-2504 AND ZONE CHANGE 18-3503 TO CHANGE THE ZONING FROM LOW DENSITY RESIDENTIAL (LDR 0-5 DU/AC) TO HIGH DENSITY RESIDENTIAL (HDR 11-18 DU/AC), DESIGN REVIEW 18-7011 TO CONSIDER THE CONSTRUCTION OF A 96 UNIT APARTMENT COMPLEX ON APPROXIMATELY 7.08 ACRES OF LAND, AND ENVIRONMENTAL ASSESSMENT 18-1508, LOCATED AT THE SOUTHWESTERLY CORNER OF EAST HOFFER STREET AND NORTH HATHAWAY STREET IN THE CITY OF BANNING, CALIFORNIA (APN 534-283-011, 534-283-014)

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, April 3, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed project. The subject parcel is located generally south of E. Hoffer Street and west of N. Hathaway Street. Information regarding the Mitigated Negative Declaration, MMRP, General Plan Amendment, Zone Change and Design Review can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>.

All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, AICP
Community Development Director

Dated: 03/19/2019

Publish: 03/22/2019

Published in

The Record Gazette

No. 163406

03/22/2019

ATTACHMENT 8

Public Hearing Notice

Record Gazette
218 N. Murray St.
Proof of Publication
(2015.5 C.C.P.)

162974 NOTICE OF AVAILABILITY

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

March 8, 2019

Executed on: 03/08/2019

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.

Ana Rivera

Signature

NOTICE OF AVAILABILITY/NOTICE OF INTENT
MITIGATED NEGATIVE DECLARATION

Project Title: General Plan Amendment (18-2504), Zone Change (18-3503) Design Review (18-7001)

NOTICE IS HEREBY GIVEN that the City of Banning (City), as Lead Agency under the California Environmental Quality Act (CEQA), has prepared a Notice of Availability (NOA) and Notice of Intent (NOI) to adopt a Mitigated Negative Declaration (MND) for a proposed General Plan Amendment (18-2504), Zone Change (18-3503) and Design Review (18-7001) (Project). The MND has been prepared pursuant to CEQA and the CEQA Guidelines. Copies of available materials may be reviewed or obtained from the City's office at the address cited below.

Project Location: The Project is located south of East Hoffer Street, and west of North Hathaway Street, in the City of Banning. Assessor's Parcel Numbers (APNs): 534-283-011 and 014.

Project Description: The Project proposes to construct a 96-Unit Apartment Complex on 7.08 acres of land which includes a General Plan Amendment and Zone Change to change the land use and zoning designation from Low Density Residential (LDR) to High Density Residential (HDR) and a Design Review.

Applicant: John and Diana Hanna, 16197 Krameria Avenue, Riverside, CA 92504.
Environmental Issues: Environmental issues addressed in the MND include: aesthetics, agriculture and forestry resources, air quality, biological resources; cultural resources; geology and soils, greenhouse gas emissions, hazards and hazardous materials, hydrology and water quality, land use and planning, mineral resources, noise; population and housing, public services, recreation, transportation and traffic, tribal cultural resources, and utilities and service systems. Per CEQA Guidelines Section 15087(c)(6), the Project area does not contain sites enumerated under Section 65962.5 of the Government Code.

Environmental Effects: The Initial Study Checklist determined that the proposed Project would result in potentially significant effects, but the Project Applicant will incorporate mitigation measures that would avoid or mitigate effects to a point where clearly no significant environmental impacts on the environment will occur. Mitigation has been included to address biological resources, cultural resources, hazards and hazardous materials, noise and tribal cultural resources.

Public Review Period: The MND will be available for a 20-day public review period from March 8, 2019 to March 28, 2019.

Written comments on this MND should be addressed to:

City of Banning
Community Development Department
99 E. Ramsay Street, Banning, CA 92220
Attn: Adam Rush, Community Development Director

A copy of the Mitigated Negative Declaration is available at the above address and at the Banning Public Library, 21 W. Nicolet Street, Banning CA 92220, as well as at the City Community Development Departments website at:

All comments must be received in writing at the address below no later than 5 p.m. on March 8, 2019. Comments received and issues and concerns raised will be evaluated to determine if the mitigation and project conditions of approval have adequately addressed the concerns. All comments received will be included as part of the record.

Public Meeting: This Project is tentatively scheduled for the April 9, 2019 Planning Commission hearing. The hearing commences at 6:30 p.m. and is held in the City Council Chambers, Banning City Hall, located at 99 E. Ramsay Street, Banning CA 92220. In that the Project requires a General Plan Amendment and Zone Change, the consideration by the Planning Commission is advisory in this matter and is included as a recommendation for the City Council to either approve, deny or modify the project.

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA.

Adam Rush
Community Development Director
Dated: March 6, 2019

Date Published: March 8, 2019

Published in
The Record Gazette

No. 162974
03-08-19

ATTACHMENT 9

Public Comments and Responses



South Coast Air Quality Management District

21865 Copley Drive, Diamond Bar, CA 91765-4178
(909) 396-2000 • www.aqmd.gov

SENT VIA E-MAIL AND USPS:

March 21, 2019

ARush@ci.banning.ca.us

Adam Rush, Director
City of Banning, Community Development Department
99 East Ramsey Street
Banning, CA 92220

Mitigated Negative Declaration (MND) for the Proposed General Plan Amendment (18-2504) Zone Change (18-3503) Design Review (18-7011) Project

South Coast Air Quality Management District (SCAQMD) staff appreciates the opportunity to comment on the above-mentioned document. The following comments are meant as guidance for the Lead Agency and should be incorporated into the Final MND.

SCAQMD Staff's Summary of Project Description

The Lead Agency is proposing to construct a 96-unit apartment complex and a 2,600-square-foot club house on 7.08 acres (Proposed Project). The Proposed Project is located on the southwest corner of Hoffer Street and North Hathaway Street. Construction of the Proposed Project is expected to occur over approximately 13 months and become operational in 2022¹.

SCAQMD Staff's Summary of Air Quality Analysis

In the Air Quality Analysis, the Lead Agency quantified the Proposed Project's construction and operational emissions and compared those emissions to SCAQMD's regional air quality CEQA significance thresholds. Based on the analysis, the Lead Agency found that the Proposed Project would result in a less than significant regional air quality impact. Additionally, the Lead Agency found that "none of the analyzed criteria pollutants would exceed the calculated local emissions thresholds at the nearest sensitive receptors."² However, the Lead Agency did not conduct a localized air quality impact analysis for construction or operational air quality impacts to support the less than significant finding on the Proposed Project's localized air quality impacts.

SCAQMD Staff's General Comments

SCAQMD staff is concerned with the Lead Agency's finding that the Proposed Project's localized air quality impacts resulting from construction and operational activities would be less than significant because the MND did not include quantification of localized emissions for comparison to SCAQMD's localized air quality CEQA significance thresholds. Therefore, SCAQMD staff recommends that the Lead Agency support this finding by revising the MND to include a localized air quality impact analysis that quantifies localized emissions and compares those emissions to the appropriate SCAQMD Localized Significance Thresholds (LSTs). In the event that this revision results in a finding that a new significant impact would occur, feasible mitigation measures would be required under CEQA. Detailed comments and potential mitigation measures are provided in the attachment.

Conclusion

Pursuant to CEQA Guidelines Section 15074, prior to approving the Proposed Project, the Lead Agency shall consider the MND for adoption together with any comments received during the public review

¹ MND, Page 175

² MND, Page 18.

Adam Rush

-2-

March 21, 2019

process. Please provide the SCAQMD with written responses to all comments contained herein prior to the adoption of the Final MND. When responding to issues raised in the comments, response should provide sufficient details giving reasons why specific comments and suggestions are not accepted. There should be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information do not facilitate the purpose and goal of CEQA on public disclosure and are not meaningful, informative, or useful to decision makers and to the public who are interested in the Proposed Project.

SCAQMD staff is available to work with the Lead Agency to address these issues and any other questions that may arise. Please contact Robert Dalbeck, Assistant Air Quality Specialist, at (909) 396-2139 or RDalbeck@aqmd.gov, if you have any questions regarding these comments.

Sincerely,

Lijin Sun

Lijin Sun, J. D.

Program Supervisor, CEQA IGR

Planning, Rule Development & Area Sources

Attachment

LS:RD

RVC190313-02

Control Number

ATTACHMENT

Localized Air Quality Impact Analysis

1. Air quality impacts from both construction and operation activities should be calculated. Construction-related air quality impacts typically include, but are not limited to, emissions from the use of heavy-duty equipment required during grading, earth-loading/unloading, paving, architectural coatings, and on-road mobile sources (e.g., construction worker vehicle trips, material transport trips). Operational impacts from residential projects typically include area sources (e.g. architectural coatings, consumer products, hearths), mobile sources (e.g. residential vehicle trips, materials delivery, road dust), and energy consumption (e.g. electricity, gas, water). These emission sources have enough specificity to reasonably assume which of those emissions would be emitted on-site, such as off-road construction equipment or area sources during operation. The SCAQMD LSTs methodology and associated mass look-up tables are not designed to evaluate localized impacts from mobile sources traveling over the roadways. LSTs represent the maximum emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based upon the total area of the emissions source, the ambient air quality in each source receptor area (SRA) in which the emission source is located, and the distance to the nearest sensitive receptor. Sensitive receptors are people that have an increased sensitivity to air pollution or environmental contaminants. They include schools, parks and playgrounds, daycare centers, nursing homes, elderly care facilities, hospitals, and residential dwelling units.

Based on a review of the MND and aerial photographs, SCAQMD staff found that the Proposed Project is approximately seven acres in size, and that sensitive receptors are located immediately adjacent to the Proposed Project within 25 meters. In the MND, the Lead Agency stated that “The thresholds for a 7-acre site with sensitive receptors located within 25 meters of property lines were used to analyze the proposed project and represent a worst-case scenario³.” However, SCAQMD’s Final LST Methodology Mass Rate LST Look-Up Table does not include thresholds for a 7-acre site⁴. Additionally, the Lead agency performed a regional air quality analysis for the Proposed Project and used it to correlate with or substitute for a need for a localized air quality analysis. Specifically, the Lead Agency did not quantify the Proposed Project’s localized construction or operational emissions in the MND, nor did they compare those emissions to the appropriate SCAQMD CEQA air quality LSTs. To ensure that any nearby sensitive receptors are not adversely affected by the construction or operational activities that are occurring in close proximity, SCAQMD staff recommends that the Lead Agency quantify the Proposed Project’s localized construction and operational emissions and disclose the localized air quality impacts in the Final MND to support a finding that the Proposed Project’s localized air quality impacts would be less than significant necessitating no mitigation measures. SCAQMD guidance for performing a localized air quality analysis is available on SCAQMD’s website⁵.

Recommended Mitigation Measures

2. In the event that the Lead Agency finds, after revisions to the Air Quality Analysis based on Comment No. 1, that the Proposed Project’s localized construction or operational emissions would be significant, implementation of feasible mitigation measures would be required under CEQA.

³ MND, Page 17.

⁴ South Coast Air Quality Management District. *Localized Significance Thresholds: Appendix C - Mass Rate LST Look-Up Table*. Accessed at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/appendix-c-mass-rate-lst-look-up-tables.pdf>.

⁵ South Coast Air Quality Management District. *Localized Significance Thresholds*. Accessed at: <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>.

SCAQMD staff has compiled a list of recommended mitigation measures as suggested resources and guidance to the Lead Agency to assist the identification of feasible mitigation measures, if needed and required under CEQA for the Proposed Project, for incorporation in the Final MND.

Mitigation Measures for Construction Impacts

- a. Require the use of off-road diesel-powered construction equipment that meets or exceeds the California Air Resources Board (CARB) and U.S. EPA Tier 4 off-road emissions standards for equipment rated at 50 horsepower or greater during construction to further reduce criteria pollutant emissions. Such equipment will be outfitted with Best Available Control Technology (BACT) devices including a CARB certified Level 3 Diesel Particulate Filters (DPFs). Level 3 DPFs are capable of achieving at least 85 percent reduction in particulate matter emissions⁶. A list of CARB verified DPFs are available on the CARB website⁷. To ensure that Tier 4 construction equipment or better will be used during the Proposed Project's construction, SCAQMD staff recommends that the Lead Agency include this requirement in applicable bid documents, purchase orders, and contracts. Successful contractor(s) must demonstrate the ability to supply the compliant construction equipment for use prior to any ground disturbing and construction activities. A copy of each unit's certified tier specification or model year specification and CARB or SCAQMD operating permit (if applicable) shall be available upon request at the time of mobilization of each applicable unit of equipment. Additionally, the Lead Agency should require periodic reporting and provision of written construction documents by construction contractor(s) to ensure compliance, and conduct regular inspections to the maximum extent feasible to ensure compliance.

Mitigation Measures for Operational Impacts

- b. Provide electric vehicle (EV) charging stations. Require at least 5% of all vehicle parking spaces include EV charging stations. Vehicles that can operate at least partially on electricity have the ability to substantially reduce the significant NOx and ROG impacts. It is important to make this electrical infrastructure available when the Proposed Project is built. The cost of installing electrical charging equipment onsite is significantly cheaper if completed when the project is built compared to retrofitting an existing building. Therefore, SCAQMD staff recommends the Lead Agency require the Proposed Project to provide the appropriate infrastructure to facilitate sufficient electric charging for vehicles to plug-in in the Final MND.
- c. Maximize use of solar energy including solar panels; installing the maximum possible number of solar energy arrays on the building roofs throughout the apartment complex to generate solar energy for the respective buildings.
- d. Maximize the planting of trees in landscaping and parking lots.
- e. Use light colored paving and roofing materials.
- f. Require use of electric or alternatively fueled street-sweepers with HEPA filters.
- g. Require use of electric lawn mowers and leaf blowers.
- h. Utilize only Energy Star heating, cooling, and lighting devices, and appliances.
- i. Use of water-based or low VOC cleaning products.

⁶ California Air Resources Board. November 16-17, 2004. *Diesel Off-Road Equipment Measure – Workshop*. Page 17. Accessed at: https://www.arb.ca.gov/msprog/ordiesel/presentations/nov16-04_workshop.pdf.

⁷ *Ibid*. Page 18.

March 25, 2019

Mr. Mark De Manincor
City of Banning
Planning Division
99 E. Ramsey Street
Banning, CA 92220

SUBJECT: Response to SCAQMD Comment Letter on IS/MND for 96-unit Apartment Complex Project, Dated March 21, 2019

Dear Mark:

This letter is in response to the City's request for Lilburn Corporation to provide a Localized Significance Threshold Analysis, a Response to Comment letter received from South Coast Air Quality Management District (SCAQMD), and a letter report for staff's use for the proposed 96-unit Apartment Complex/General Plan Amendment Project. As we discussed, the responses provided herein will provide the City with information to respond to the SCAQMD and to have the additional information necessary to proceed with adoption of a Mitigated Negative Declaration based on the Initial Study that was circulated for public review.

The primary concern of SCAQMD is the lack of a Localized Significance Thresholds (LSTs) Analysis included in the Initial Study. The analysis was not previously prepared for the Initial Study to comply with SCAQMD's own guidelines. Their March letter however requests inclusion of the LSTs. Their letter's primary comment and Lilburn Corporation's response is included below.

Comment 1: SCAQMD staff is concerned with the Lead Agency's finding that the Proposed Project's localized air quality impacts resulting from construction and operational activities would be less than significant because the MND did not include quantification of localized emissions for comparison to SCAQMD's localized air quality significant thresholds. Therefore, SCAQMD staff recommends that the Lead Agency support this finding by revising the MND to include a localized air quality impact analysis that quantifies localized emissions and compares those emissions to the appropriate SCAQMD Localized Significance Thresholds (LSTs). In the event that this revision results in a finding that a new significant impact would occur, feasible mitigation measures would be required under CEQA.

Response 1: City staff acknowledges SCAQMD's comments regarding the Proposed Project's localized air quality impacts resulting from construction and operational activities. As demonstrated in Tables 1 – 4 of the IS/MND, the Proposed Project does not

exceed applicable SCAQMD regional thresholds either during construction or operational activities. Additionally, as stated by the AQMD's Localized Significance Thresholds Fact Sheet, use of LSTs is not mandatory and a lead agency's use of the LSTs is entirely voluntary. However, given the SCAQMD's comment and concerns, an LST analysis for the Proposed Project has been conducted and is summarized below:

LST methodology is incorporated herein to represent worst-case scenario emissions thresholds. The LSTs were developed to analyze the significance of potential air quality impacts of proposed projects to sensitive receptors (i.e. schools, single family residences, etc.) and provide screening tables for small projects (one, two, or five acres). Projects are evaluated based on geographic location and distance from the sensitive receptor (25, 50, 100, 200, or 500 meters from the site).

For the purposes of a CEQA analysis, the SCAQMD considers a sensitive receptor to be a receptor such as a residence, hospital, convalescent facility or anywhere that it is possible for an individual to remain for 24 hours. Additionally, schools, playgrounds, child care centers, and athletic facilities can also be considered as sensitive receptors. Commercial and industrial facilities are not included in the definition of sensitive receptor because employees do not typically remain on-site for a full 24 hours, but are usually present for shorter periods of time, such as eight hours.

The Project Site is approximately 7.08 acres and therefore the "five-acre" LST thresholds were utilized as larger sites (e.g. 10 acres) are typically granted a larger emission allowance. The nearest sensitive receptor land uses are the single-family residences which are located immediately north, west, and south of the Project Site and therefore LSTs are based on an 82-foot (25-meter) distance. CalEEMod version 2016.3.2 was used to estimate the on-site and off-site emissions associated with construction and operation of the Proposed Project. It should be noted that the operational phase is comprised of three sources: Area, Energy, and Mobile; and the Area source includes the following four subcategories: Architectural Coating, Consumer Products, Hearth, and Landscaping. CalEEMod version 2016.3.2 assumes the implementation of "hearths" (e.g. wood-burning fireplaces); however, the Proposed Project will not include wood-burning fireplaces. This will be a condition of project approval imposed by the City on the Project. Therefore, wood-burning fireplaces will not contribute to the Proposed Project's operational emissions and associated emissions of PM₁₀ and PM_{2.5} were subtracted from the modeled totals. A comparison of the Proposed Project's construction and operational emissions with the appropriate LST thresholds is presented in Table 5.

Mr. Mark De Manincor
 March 25, 2019
 Page 3

Table 5
Localized Significance Thresholds
(Pounds per Day)

Source	NO _x	CO	PM ₁₀		PM _{2.5}	
Construction Emissions (Max. from Table 1 and Table 2)	45.6	23.2	10.7		6.7	
Operational Emissions (Max. from Table 3 and Table 4) [†]	1.4	9.7	0.5		0.2	
Highest Value (lbs/day)	45.6	23.2	10.7	0.5	6.7	0.2
LST Thresholds	236	2,817	21*	6 [†]	11*	3 [†]
Greater Than Threshold?	No	No	No	No	No	No

Note: PM₁₀ and PM_{2.5} emissions are separated into construction and operational thresholds in accordance with the SCAQMD Mass Rate LST Look-up Tables.

* Construction emissions LST

† Operational emissions LST

[†]Per LST methodology mobile source emissions do not need to be included except for land use emissions and on-site vehicle emissions.

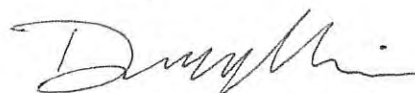
It is estimated that approximately 10 percent of mobile emissions will occur on the Project Site.

Source: CalEEMod.2016.3.2 Summer & Winter Emissions; SCAQMD Final Localized Significance Threshold Methodology; SCAQMD Mass Rate Look-up Tables for five-acre site in Source Receptor Area No. 29, distance of 25 meters.

As shown in Table 5, the Proposed Project's emissions are not anticipated to exceed the thresholds for LSTs. Therefore, the Proposed Project is not anticipated to expose sensitive receptors to substantial pollutant concentrations. Less than significant impacts are anticipated, and no mitigation measures are required.

If you should have any questions or require additional information, please do not hesitate to give me or Daniel Macias a call.

Sincerely,

 for

Frank Amendola
 Project Manager



U.S. Department of Homeland Security
FEMA Region IX
1111 Broadway, Suite 1200
Oakland, CA. 94607-4052



FEMA

March 18, 2019

Adam Rush
Community Development Center
City of Banning, Community Development Department
99 East Ramsey Street
Banning, California 92220

Dear Mr. Rush:

This is in response to your request for comments regarding the Notice of Availability/Notice of Intent Mitigated Negative Declaration, Project Title: General Plan Amendment (18-2504), Zone Change (18-3503), and Design Review (18-7011) for the City of Banning, California.

Please review the current effective Flood Insurance Rate Maps (FIRMs) for the County of Riverside (Community Number 060245), Maps revised March 6, 2018 and City of Banning (Community Number 060246), Maps revised August 28, 2008. Please note that the City of Banning, Riverside County, California is a participant in the National Flood Insurance Program (NFIP). The minimum, basic NFIP floodplain management building requirements are described in Vol. 44 Code of Federal Regulations (44 CFR), Sections 59 through 65.

A summary of these NFIP floodplain management building requirements are as follows:

- All buildings constructed within a riverine floodplain, (i.e., Flood Zones A, AO, AH, AE, and A1 through A30 as delineated on the FIRM), must be elevated so that the lowest floor is at or above the Base Flood Elevation level in accordance with the effective Flood Insurance Rate Map.
- If the area of construction is located within a Regulatory Floodway as delineated on the FIRM, any *development* must not increase base flood elevation levels. **The term *development* means any man-made change to improved or unimproved real estate, including but not limited to buildings, other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, and storage of equipment or materials.** A hydrologic and hydraulic analysis must be performed *prior* to the start of development, and must demonstrate that the development would not cause any rise in base flood levels. No rise is permitted within regulatory floodways.

Adam Rush, Community Development Center
 Page 2
 March 18, 2019

- Upon completion of any development that changes existing Special Flood Hazard Areas, the NFIP directs all participating communities to submit the appropriate hydrologic and hydraulic data to FEMA for a FIRM revision. In accordance with 44 CFR, Section 65.3, as soon as practicable, but not later than six months after such data becomes available, a community shall notify FEMA of the changes by submitting technical data for a flood map revision. To obtain copies of FEMA's Flood Map Revision Application Packages, please refer to the FEMA website at <http://www.fema.gov/business/nfip/forms.shtm>.

Please Note:

Many NFIP participating communities have adopted floodplain management building requirements which are more restrictive than the minimum federal standards described in 44 CFR. Please contact the local community's floodplain manager for more information on local floodplain management building requirements. The Banning floodplain manager can be reached by calling Andy Takata, City Manager, at (951) 922-3104. The Riverside County floodplain manager can be reached by calling Jason Uhley, General Manager and Chief Engineer, at (951) 955-1265.

If you have any questions or concerns, please do not hesitate to call me at (510) 627-7183.

Sincerely,



Gregor Blackburn, CFM, Branch Chief
 Floodplain Management and Insurance Branch

cc:

Andy Takata, City Manager, City of Banning
 Jason Uhley, General Manager and Chief Engineer, Riverside County
 Garret Tam Sing, State of California, Department of Water Resources, Southern Region
 Office
 Gregor Blackburn, CFM, Branch Chief, FMIB, DHS/FEMA Region IX
 Alessandro Amaglio, Environmental Officer, DHS/FEMA Region IX

Written Comments

Project: Hanna 96 Apartment Project
Comments on Mitigated Negative Declaration



3-18-19

To whom it may concern;

My name is Brent Bumpus and I have lived in Banning for 30 years and own (and occupy) an adjacent property to the proposed project. (882 North Allen St.)

I would like to make a number of comments on the findings of the MND.

Comment #1 Environmental study (see page 19 of MND item #4e.)

Biological

This requirement is intended to study the impacts on biological assets at the site. When the field study was conducted in Oct. 23, 2018, it was noted that the site had been recently disked. It was noted in the study that they found no evidence of burrowing owls. That's because the site was not disked, but had recently been Graded and leveled with a front-end loader, effectively killing and removing all signs of wildlife.

(see attached Google photo with Date stamp)

If this grading was done *without* city approval it would be in violation of City Municipal Code 18.09.120 "D".

If this grading was done *with* city approval, the city was in violation of Banning Ordinance #18.09.100 "A"

If the property owners respond that they were doing weed abatement required by the fire department, I would question that reasoning. In the 30 years that I have lived here the site was never leveled like that. Weed abatement only occurred at the property lines with hand held weed eaters. The vegetation shown on the attached aerial photos were mounds used as rabbit warrens and bushes with bird nests. Before grading I had seen lots of rabbits, coyotes, birds, skunks, gophers, lizards, snakes, rodents and owls at this site.

Mitigation suggestion:

a. The entire Biological Study should be rejected and the land left undisturbed for ten years to re-establish natural wildlife to ensure a fair biological assessment.

The study does recommend another owl study 30 days prior to construction activity, but that could be soon and not enough time. Although the weeds have re-established themselves from all of the rain, shrubbery needs to get a new start to offer nesting sites for birds and shrubs big enough to offer security for rabbits and their breeding warrens. Then, some rabbit warrens need to be abandoned to attract burrowing owls. In my opinion it will take years to return the biological assets to pre-graded conditions.

Comment #2

Aesthetics (see page 7 of MND)

The study makes little mention of N. Allen St., but we will be the ones most impacted..

We have a beautiful scenic vista to the east which will be blocked by an 8 foot high block wall, a sea of carport roofs and massive 30 foot high apartment buildings.

Mitigation suggestions:

- a. Downsize the project to reduce the number of carports required.
- b. Re-design the project to be only single story in height or single family homes per existing zoning.

Comment #3

Noise (see page 44 of MND item #12 d.)

The plan proposes trash enclosures within 100 ft. of my bedroom. This will have a significant impact on me.

I am approximately a quarter a mile away from the apartments on Hathaway and George St. and I would like to report that the early morning trash collection noise is considerable. It is not only the trash truck increasing engine RPMs to pick up heavy loads but the banging and clanging of metal against metal of hoisting the all-metal dumpsters over the truck roof to empty. It's *annoying* to me a quarter mile away, but it's about to become *outrageous* if you approve these plans as proposed. I looked at the Noise study and it was only conducted on one day, I doubt it was a trash day.

Mitigation suggestions:

- a. Do a noise study close to the apartments on Hathaway and George St., 100 feet away from dumpsters on trash day. Re-evaluate the noise impact to the residents to the west.
- b. Relocate trash enclosures away from existing homes.

Comment #4 Short term construction vibration
(see page 44 of MND item 12 b)

The study (LSA Noise and Vibration Impact Analysis) notes that the only equipment that will be used in construction will be "wheel loader, loaded truck, forklift and small bulldozer". It has left out compaction equipment, which will be required for soil compaction required by the Soils Exploration Co. (see Appendix E section 5.3)

Construction activities will include heavy machinery for grading and compaction equipment within 40 ft. of my house. The resulting vibration limit of 94 VdB (table 12-2 FTA-VA-1003-06) will have a significant impact on my house which was built in 1929 and is constructed of locally sourced rocks and concrete and is considered un-reinforced masonry by insurance companies. This type of construction is "extremely susceptible" to vibration damage at levels exceeding 90 VdB. (table 12-3 FTA-VA-1003-06) attached.

In other words, my house is at risk of major structural damage from proposed construction activities.

Mitigation suggestions:

a. The City could condition that no vibratory equipment be used.

It should also be noted the study did not mention the use of Earth moving scrapers and the large bulldozers that are needed to push them through this rocky soil. Since they were not considered in the study, their use should not be allowed. Likewise for any rock crushing equipment.

b. Install a noise and vibration sensor on my property during construction with an alarm to notify me and construction crews when allowable levels are reaching their limits.

c. Add me as an additional insured to cover any loss from construction and compaction activities.

Comments on Zone change:

It's not fair to adjoining property owners to change this zoning from LDR to HDR. These apartments will probably be low income Section 8 housing. We already have our share of that on the Eastside. The existing zoning would allow for maybe 10 single family homes once streets are figured in. The applicant is proposing a zone change for 96 apartments, which could easily mean 300 people will be living yards away from me, which will decrease my property value. It will forever take away the peaceful rural nature of our neighborhood that I moved here for.

Leave the existing zoning as it is and decline the zone change.

Comments on Design Review:

- a. The proposed site plan design shows contempt for the residents to the west of the project with tall block walls, boring industrial flat roofed carports and garbage dumpsters.
- b. The easement to the west of the proposed west wall will probably not be maintained and end up like the similar situation on Hathaway and George project which is overgrown with weeds.
- c. The tall block wall will invite graffiti
- d. The tall block wall will also block access to the overhead electrical wires that are in constant need of repair and maintenance by large Electrical Dept. vehicles and equipment.

Mitigation suggestions:


- a. require the 8' tall wall to be decorative on both sides - A wall covered with round river rocks would not look out of place. It would also discourage graffiti.
- b. move the wall 10' to the east to allow vehicle access to the overhead electrical power lines.
- c. or require existing overhead electrical to the west be put underground to reduce maintenance problems and improve our views of the mountains

Thank you for this opportunity to comment;

Brent Bumpus
882 N. Allen St.
Banning, CA 92220
brentjb@verizon.net

18.09.120 - Types of permits.




- A. Mass, Rough, or Precise Grading. The city engineer may issue a mass, rough, or precise grading permit for grading work upon completion of an application in accordance the grading manual. The issuance of building permits shall be determined as follows:
 - 1. Building permits may be issued for a site graded under a precise grading permit upon completion and approval of the rough grade inspection as specified in the grading manual.
 - 2. Building permits shall not be issued for a site graded under a rough grading permit unless a precise grading permit has been issued.
- C. Stockpiling. Upon approval by the planning commission of a conditional use permit (CUP), a stockpile permit may be issued for the stockpile of soil materials on a lot or parcel provided that the soil materials shall be removed from the site or compacted and graded thereon under a subsequently issued mass, rough, or precise grading permit within six months of issuance of a stockpile permit, unless modified by the planning commission, in accordance with the grading manual.
-  D. Administrative Clearing. No person shall commence any clearing and grubbing operation without first obtaining a grading or administrative clearing permit in accordance with the grading manual.

18.09.100 - Tentative subdivision or conditional use permit required.



Under either of the following circumstances, a permit shall not be issued unless and until a tentative map or a conditional use permit (CUP) has been approved by the city:

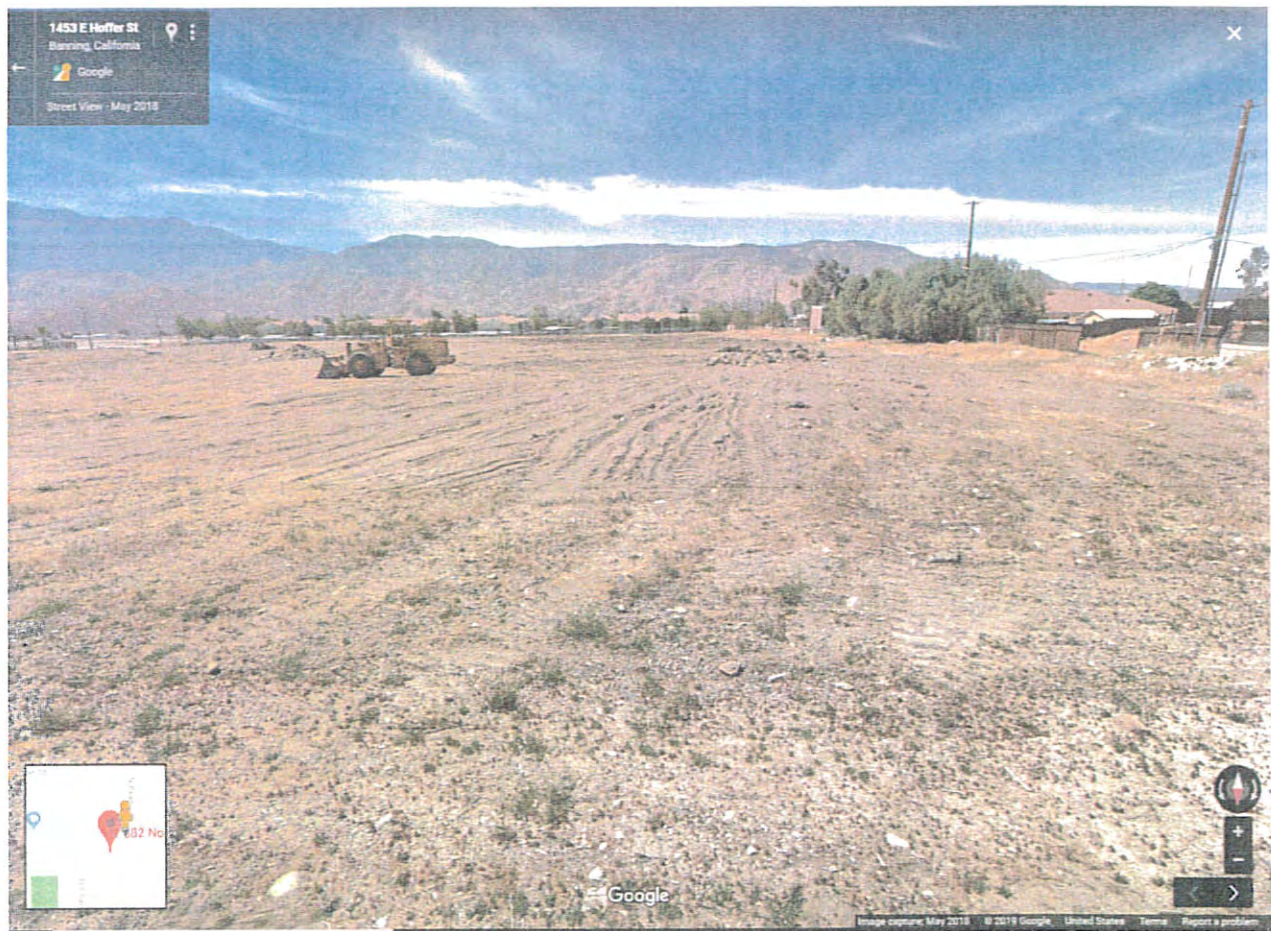
-  A. If the purpose of the proposed grading or clearing is to prepare the land for a subdivision or for some use for which a conditional use permit is required; or
- B. Notwithstanding the purpose of the proposed grading or clearing as stated in the application, if the city engineer finds that the purpose of the proposed grading or clearing is to prepare the land for subdivision or for some use for which a conditional use permit is required.

(Ord. No. 1388. § 4, 7-14-09)



Before it was graded.

You can see the mounds of vegetation that was leveled and buried.



After it was graded.
All vegetation gone and burrows buried.
Image May 2018



May 2018



TRANSIT NOISE AND VIBRATION IMPACT ASSESSMENT

FTA-VA-90-1003-06

May 2006



Office of Planning and Environment
Federal Transit Administration

12.2.2 Construction Vibration Criteria

For evaluating potential annoyance or interference with vibration-sensitive activities due to construction vibration, the criteria for General Assessment in Chapter 8 can be applied. In most cases, however, the primary concern regarding construction vibration relates to potential damage effects. Guideline vibration damage criteria are given in Table 12-3 for various structural categories.⁽¹⁰⁾ In this table, a crest factor of 4 (representing a PPV-rms difference of 12 VdB) has been used to calculate the approximate rms vibration velocity limits from the PPV limits. These limits should be viewed as criteria that should be used during the environmental impact assessment phase to identify problem locations that must be addressed during final design.

Table 12-3. Construction Vibration Damage Criteria ⁽¹¹⁾		
Building Category	PPV (in/sec)	Approximate L _v [†]
I. Reinforced-concrete, steel or timber (no plaster)	0.5	102
II. Engineered concrete and masonry (no plaster)	0.3	98
III. Non-engineered timber and masonry buildings	0.2	94
IV. Buildings extremely susceptible to vibration damage	0.12	90
[†] RMS velocity in decibels (VdB) re 1 micro-inch/second		

12.2.3 Construction Vibration Mitigation

After using the above methods to locate potential human impacts or building damage from construction vibrations, the next step is to identify control measures. Similar to the approach for construction noise, mitigation of construction vibration requires consideration of equipment location and processes, as follows:

1. Design considerations and project layout:

- Route heavily-loaded trucks away from residential streets, if possible. Select streets with fewest homes if no alternatives are available.
- Operate earth-moving equipment on the construction lot as far away from vibration-sensitive sites as possible.

12.2.2 Vibration Source Levels from Construction Equipment

Ground-borne vibration related to human annoyance is generally related to root mean square (rms) velocity levels expressed in VdB. However, a major concern with regard to construction vibration is building damage. Consequently, construction vibration is generally assessed in terms of peak particle velocity (PPV), as defined in Chapter 7.1.2. The relationship of PPV to rms velocity is expressed in terms of the "crest factor," defined as the ratio of the PPV amplitude to the rms amplitude. Peak particle velocity is typically a factor of 1.7 to 6 times greater than rms vibration velocity.

Various types of construction equipment have been measured under a wide variety of construction activities with an average of source levels reported in terms of velocity as shown in Table 12-2. In this table, a crest factor of 4 (representing a PPV-rms difference of 12 VdB) has been used to calculate the approximate rms vibration velocity levels from the PPV values. Although the table gives one level for each piece of equipment, it should be noted that there is a considerable variation in reported ground vibration levels from construction activities. The data provide a reasonable estimate for a wide range of soil conditions.

Table 12-2. Vibration Source Levels for Construction Equipment (From measured data. ^(7,8,9,10))			
Equipment		PPV at 25 ft (in/sec)	Approximate L _v [†] at 25 ft
Pile Driver (impact)	upper range	1.518	112
	typical	0.644	104
Pile Driver (sonic)	upper range	0.734	105
	typical	0.170	93
Clam shovel drop (slurry wall)		0.202	94
Hydromill (slurry wall)	in soil	0.008	66
	in rock	0.017	75
Vibratory Roller		0.210	94
Hoe Ram		0.089	87
Large bulldozer		0.089	87
Caisson drilling		0.089	87
Loaded trucks		0.076	86
Jackhammer		0.035	79
Small bulldozer		0.003	58
[†] RMS velocity in decibels (VdB) re 1 micro-inch/second			

3.6 Benching

Where fills are to be placed on ground with slopes steeper than 5:1 (horizontal : vertical), the ground shall be stepped or benched. The lowest bench shall be a minimum of 15 feet wide, shall be at least 2 feet deep, shall expose firm materials, and shall be approved by the consultant. Other benches shall be excavated in firm materials for a minimum width of 4 feet. Ground sloping flatter than 5:1 (horizontal : vertical) shall be benched or otherwise overexcavated when considered necessary by the consultant.

3.7 Approval

All areas to receive fill, including processed areas, removal areas and toe-of-fill benches shall be approved by the consultant prior to fill placement.

4.0 FILL MATERIAL

4.1 General

Material to be placed as fill shall be free of organic matter and other deleterious substances, and shall be approved by the consultant. Soils of poor gradation, expansion, or strength characteristics shall be placed in areas designated by consultant or shall be mixed with other soils to serve as satisfactory fill material.

4.2 Oversize

Oversize materials defined as rock, or other irreducible material with maximum dimension greater than 12 inches, shall not be buried or placed in fills, unless the location, materials, and disposal methods are specifically approved by the consultant. Oversize disposal operations shall be such that nesting of oversize material does not occur, and such that the oversize material is completely surrounded by compacted or densified fill. Oversize material shall not be placed within 10 feet vertically of finish grade or within the range of future utilities or underground construction, unless specifically approved by the consultant.

4.3 Import

If importing of fill material is required for grading, the import material shall meet the requirements of Section 4.1.

5.0 FILL PLACEMENT and COMPACTION

5.1 Fill Lifts

Approved fill material shall be placed in areas prepared to receive fill in near-horizontal layers not exceeding 6 inches in compacted thickness. The consultant may approve thicker lifts if testing indicates the grading procedures are such that adequate compaction is being achieved with lifts of greater thickness. Each layer shall be spread evenly and shall be thoroughly mixed during spreading to attain uniformity of material and moisture in each layer.

5.2 Fill Moisture

Fill layers at a moisture content less than optimum shall be watered and mixed, and wet fill layers shall be aerated by scarification or shall be blended with drier material. Moisture conditioning and mixing of fill layers shall continue until the fill material is at a uniform moisture content at or near optimum.

5.3 Compaction of Fill

After each layer has been evenly spread, moisture-conditioned, and mixed, it shall be uniformly compacted to not less than 90 percent of maximum dry density. Compaction equipment shall be adequately sized and shall be either specifically designed for soil compaction or of proven reliability, to efficiently achieve the specified degree of compaction.

12.2.2 Vibration Source Levels from Construction Equipment

Ground-borne vibration related to human annoyance is generally related to root mean square (rms) velocity levels expressed in VdB. However, a major concern with regard to construction vibration is building damage. Consequently, construction vibration is generally assessed in terms of peak particle velocity (PPV), as defined in Chapter 7.1.2. The relationship of PPV to rms velocity is expressed in terms of the "crest factor," defined as the ratio of the PPV amplitude to the rms amplitude. Peak particle velocity is typically a factor of 1.7 to 6 times greater than rms vibration velocity.

Various types of construction equipment have been measured under a wide variety of construction activities with an average of source levels reported in terms of velocity as shown in Table 12-2. In this table, a crest factor of 4 (representing a PPV-rms difference of 12 VdB) has been used to calculate the approximate rms vibration velocity levels from the PPV values. Although the table gives one level for each piece of equipment, it should be noted that there is a considerable variation in reported ground vibration levels from construction activities. The data provide a reasonable estimate for a wide range of soil conditions.

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For evaluating potential annoyance or interference with vibration-sensitive activities due to construction vibration, the criteria for General Assessment in Chapter 8 can be applied. In most cases, however, the primary concern regarding construction vibration relates to potential damage effects. Guideline vibration damage criteria are given in Table 12-3 for various structural categories.⁽¹⁰⁾ In this table, a crest factor of 4 (representing a PPV-rms difference of 12 VdB) has been used to calculate the approximate rms vibration velocity limits from the PPV limits. These limits should be viewed as criteria that should be used during the environmental impact assessment phase to identify problem locations that must be addressed during final design.

Table 12-3. Construction Vibration Damage Criteria ⁽¹¹⁾		
Building Category	PPV (in/sec)	Approximate L_v [†]
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II. Engineered concrete and masonry (no plaster)	0.3	98
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IV. Buildings extremely susceptible to vibration damage	0.12	90
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12.2.3 Construction Vibration Mitigation

After using the above methods to locate potential human impacts or building damage from construction vibrations, the next step is to identify control measures. Similar to the approach for construction noise, mitigation of construction vibration requires consideration of equipment location and processes, as follows:

1. Design considerations and project layout:

- Route heavily-loaded trucks away from residential streets, if possible. Select streets with fewest homes if no alternatives are available.
- Operate earth-moving equipment on the construction lot as far away from vibration-sensitive sites as possible.



City of Banning

99 E. Ramsey Street • P.O. Box 998 • Banning, CA 92220-0998 • (951) 922-3125 • Fax (951) 922-3128

COMMUNITY DEVELOPMENT DEPARTMENT

TO: Planning Commission
FROM: Planning Department Staff
DATE: March 28, 2019

SUBJECT: Response to comments from Mr. Brent Bumpus, 882 North Allen Street, Banning, CA 9220 regarding the Hanna 96 Apartment Project.

It is encouraging to know we have local citizens that participate in the entitlement process by providing comments for or against proposed projects. Mr. Bumpus has expressed concerns with the project as proposed and provided comments in the form of a letter dated March 18, 2019, that are listed below along with Staff's response to these comments.

1. Biological, Environmental Study, page 19, item 4.e). No evidence of Burrowing Owls due to on-site Grading. Grading was done with or without City approval. He suggests that the property be left undisturbed for 10-years to allow vegetation growth and allow animals to return.
 - a. Response; item 4. e) of the Initial Study states, "Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance?" The following is an excerpt taken from the Initial Study.
 4. e) **No Impact.** *Currently, the City of Banning does not have a tree preservation policy or ordinance in place. However, the Project Site would be landscaped in accordance with approved drought tolerant trees, shrubs and groundcover in accordance with Banning Municipal Code Section 17.32 (Landscaping Standards). Therefore, conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance would not result. Consequently, no impacts are anticipated, and no mitigation measures are necessary.*

Mr. Bumpus may have quoted the wrong section of the Biological Assessment. The letter describes vegetation removal and the removal of all plant and wildlife.

However, a comprehensive Biological Assessment was performed by qualified Biologist who determined that there was suitable habitat for burrowing owls and mitigation measures are imposed to mitigate the possibility of burrowing owls and nesting birds. See excerpts from the initial study regarding mitigation measures.

BIO – 1 *Due to the presence of suitable habitat and burrows found onsite during the burrowing owl habitat assessment survey, a burrowing owl focused*

survey will need to be conducted during the breeding season, March 1 – August 31, per the MSHCP Burrowing Owl Survey Guidelines (revised March 29, 2006). To avoid potential effects to the burrowing owl, an additional pre-construction survey is required for the burrowing owl within 30 days prior to start of grading/construction activities to determine if the burrowing owl has subsequently occupied the development area.

BIO – 2 *To avoid potential effects to nesting migratory birds and raptors protected by the California Fish and Game Code, vegetation – clearing and preliminary ground – disturbance work should be completed outside of bird breeding season (typically February 15 through August 31). If these construction activities cannot be scheduled to avoid the bird breeding season, a pre – construction nesting bird survey should be conducted within 3 days prior to project construction ground disturbing activities to avoid effects to birds protected under the California Fish and Game Code.*

As stated above, mitigation for the only species of concern are listed in the Initial Study, no further mitigation is required.

In response to the grading performed prior to the survey; It is typical for property owners to periodically clear their land to avoid trash buildup and fires. Fire fuel mitigation, including vegetation removal, clearing, grubbing, and reduction of brush are authorized by the City Municipal Code without the issuance of a Grading Permit. Upon review the correspondence, referenced herein, the Department of Public Works determined the clearing of land to be exempt from Grading Permits under, Banning Municipal Code Section 18.03.040 H and I (attached to this letter).

The property is being developed in accordance with the due process requirements set forth in the City's Municipal Code and General Plan.

2. Aesthetics, Environmental Study page 7. Mr. Bumpus states that the home owners on North Allen Street have a beautiful scenic vista to the east which will be blocked by an 8-foot high block wall, a sea of carport roofs and massive 30-foot high apartment buildings. He suggests that the project reduce the number of carports required or re-design the project to be only single story in height or single family homes per existing zoning.

- a. Response, item 1. a) of the Initial Study states, "Would the project have a substantial effect on a scenic vista?" The following is an excerpt from the Initial Study.

1. a) No Impact. According to the City's General Plan, the Project Site is not within a scenic vista/scenic highway view corridor. Nearby streets include East Hoffer Street, and North Hathaway Street. Neither of these is designated as a scenic route in the General Plan. There are no scenic vistas that would be impacted by the Proposed Project, and therefore no impacts would result.

The property owner's view is current obstructed through the construction of an approximately 10-foot tall garage and an approximately 8-foot tall shed in his back yard that eliminates his view eastward.

The suggestion, to reduce the number of carports will conflict with the parking requirements of the Banning Municipal Code. Furthermore, a Development Code amendment (Title 17) to change which would allow all future development to have fewer cover parking spaces.

In addition, the suggestion to reduce the structures to single-story is possible if the applicant were open to reducing the amount of units from 96 to 48, which conflicts with the preferred project design

The suggestion to only allow single family homes will not alleviate a single-family residential (SFR) subdivision from constructing either a perimeter fence/block wall or combination of both types of structures. Pursuant to the Banning Municipal Code, single-family subdivisions require the installation of a six-foot tall block wall around the perimeter. The single-family homes could be two-story at a maximum height of 35 feet and the property will likely require grading and a 2 to 3-foot-high retaining wall, in addition to a 6-foot high privacy wall/fence.

3. Noise, page 44 of Initial Study, item 12. d). Mr. Bumpus states that trash enclosures will be within 100-feet of his bedroom and there will be considerable noise during trash pickup.
 - a. Response; The trash enclosures are within 120-feet of subject property and also located behind a 6-foot tall block wall. The aforementioned wall is required pursuant to the Noise Impact Report (e.g., "Sound Study") required as part of the environmental (CEQA) review and implemented through Conditions of Approval (COA). In addition, the collection of municipal solid waste, green waste, and recycling is a statutory requirement, prescribed by state law. The City could be in violation of state law for not requiring waste disposal. Mitigation is proposed for the project and will be addressed again in item 4. below.
4. Noise and Vibration Impact Analysis, Short term construction vibration, page 44 of Initial Study, item 12. b). The adjacent property owner is concerned with noise and vibration produced from construction equipment, particularly compaction equipment. He states that the current property is constituted of unreinforced masonry structure and potential vibration could impact the dwelling. The property owner also stated that compaction equipment will be within 40-feet of his house. The property suggested that no equipment be used that could produce increased ground vibration, including but not limited to the prohibition of prohibit large bulldozers, scrapers and/or rock crushing equipment, as approved by the Department of Building & Safety. The property is requesting an alarm type of system to be installed, alerting of construction equipment that is approaching. Additionally, the property owner requests to be added as additionally insured by the contractor to be insured to cover any loss from construction and compaction activities.
 - a. Item 12. b) states, "would the project result in exposure of persons to or generation of excessive ground borne vibration or ground borne noise levels?"
 - i. A Noise and Vibration Impact Analysis was performed by LSA who will be providing a response to property owner's comment letter prior to the, April 3, 2019 Planning Commission meeting.

See Response to Comments, prepared by LSA.

5. Comments on Zone Change; It's not fair to adjoining property owners to change this zoning from LDR to HDR. These apartments will probably be low income Section 8 housing. The existing zoning would allow for maybe 10 single-family homes. 96 apartments could easily mean 300 people will be lining yards away from me, which will decrease my property value. It will forever take away from the peaceful rural nature of our neighborhood that I moved here for. Leave the existing zoning as it is and decline the zone change.
 - a. The apartments are anticipated to rent for the established market rate, determined at the time of certificate of occupancy. The project has not requested, nor informed City staff, that any type of housing subsidy and/or reduction from market rate rents is proposed. The existing zoning will allow for 35 ($5 \text{ DU/AC} \times 7.08\text{-acres} = 35$) single-family homes. Banning's average household population calculation is 2.7 persons per home ($96 \times 2.7 = 259$) and most of the larger families live in single-family homes not apartments. The impact of either a reduction or increase to the value of residential homes, within the area immediately surrounding the proposed project is not an analysis that can be conducted until the project is completed; however, no conclusive evidence details that rental properties have a significant impact upon single family property values.
6. Comments on Design Review; The proposed site plan shows contempt for the residents to the west of the project with tall block walls, boring industrial flat roofed carports and garbage dumpsters. The easement to the west will probably not be maintained. The tall block wall will invite graffiti. The tall block wall will block access to the overhead electrical wires.
 - a. The project will be a new development, with new decorative block walls, roofs, structures and landscaping. There will be no development in the easement that is maintained by the City. Graffiti is conditioned to be removed within 24 hours. The easement is for access to the overhead wires.

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Suzanne Cook, Deputy Finance Director
Kevin G. Ennis, City Attorney

MEETING DATE: May 14, 2019

SUBJECT: CONSIDERATION OF ORDINANCE No. 1545 TO AMEND CHAPTER 3.18 (MINING TAX AND MINING IMPACT FUND) OF TITLE 3 (REVENUE AND FINANCE) OF THE BANNING MUNICIPAL CODE TO SPECIFY THE USE OF DIFFERENT CONSUMER PRICE INDEXES COMMENCING FISCAL YEARS 2019 AND 2020 TO ADDRESS COST OF LIVING ADJUSTMENTS FOR THE MINING TAX AND MAKING A DETERMINATION PURSUANT TO CEQA.

RECOMMENDED ACTION:

Staff recommends that the City Council:

- I. Adopt a Categorical Exemption for Ordinance No. 1545; and
- II. Adopt Ordinance No. 1545 amending Subsection "D" of Section 3.18.030 (Mining tax on excavation and processing.) of Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance) of the Banning Municipal Code to Specify the Use of Different Consumer Price Indexes Commencing Fiscal Year 2019 and 2020 to Address Cost of Living Adjustments for the Mining tax and Making a Determination Pursuant to CEQA

APPLICANT INFORMATION:

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

BACKGROUND:

In August 2014, the City Council placed a proposed tax on surface mining operations within the City limits ("Mining Tax") on the November 2014 election ballot, known as Measure J. The voters then passed Measure J, which set the tax rate at \$0.80 per ton of mined aggregate, applicable to operations in the City, including but not limited to those conducted by Robertson's Ready Mix, Ltd. ("Robertson's"). As allowable under Banning Municipal Code Section 3.18.070 (Modification by Council), in September 2016, the City and Robertson's entered into a Memorandum of Understanding ("MOU") to resolve existing and potential legal actions and disputes between the City and Robertson's, effective July 1, 2016. The MOU provided that the City would suspend and reduce the voter-approved Mining Tax rate of \$0.80 per ton aggregate down to \$0.25 per ton aggregate. Thereafter, the City Council adopted Ordinance 1502, amending Section 3.18.030 to temporarily suspend the imposition of the \$0.80 per ton tax rate and to establish a lower rate of \$0.25 per ton tax rate, retaining the potential that the tax could later be increased by the City Council back up to a level not to exceed the voter approved amount of \$0.80 per ton.

The existing Banning Municipal Code section 3.18.030(D) (Cost of Living Adjustment) states:

"[t]he taxes imposed in subsection A and B above shall be paid quarterly on the twentieth day in the months of July, October, January and April of each year, and shall be annually adjusted based upon the percentage change equal to the percentage change in the Los Angeles-Anaheim-Riverside Consumer Price Index (C.P.I.) from July of the current year compared with July of the prior year. The C.P.I. change shall take place on October 1 of each year."

In January 2018, the United States Bureau of Labor Statistics ("BLS") eliminated the Los Angeles-Anaheim-Riverside Consumer Price Index and replaced it with two new indexes: Los Angeles-Long Beach-Anaheim and Riverside-San Bernardino-Ontario. Consequently, the 2019 CPI adjustment cannot be made in accordance with the existing methodology defined by Banning Municipal Code section 3.18.030(D).

At the April 9, 2019 City Council meeting, the City Council considered staff's proposed amendment to Section 3.18.030 (D) of the Banning Municipal Code, updating the methodology for calculating the CPI adjustment to the mining tax rate. A copy of the April 9, 2019 report is attached as Attachment 1.

At that time, staff recommended amending Section 3.18.030 (D) to update the BLS Index from the Los Angeles-Anaheim-Riverside CPI, which is no longer active, to the newly created Los Angeles-Long Beach-Anaheim index for Fiscal Year 2019 because it has adopted the historical data of the Los Angeles-Orange County-Riverside index, and then to the Riverside-San Bernardino-Ontario Index for Fiscal

Year 2020 and beyond. Staff also recommended that the month to month comparison be adjusted to align with an effective date equivalent to the beginning of the City's fiscal year: March to March, effective July 1st. The City Council approved staff's proposed amendment, and directed staff to prepare an ordinance for City Council's consideration.

Recommendation

Staff recommends that the City Council adopt the draft Ordinance attached as Attachment 2, amending Subsection "D" of Section 3.18.030 (Mining tax on excavation and processing.) of Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance) to update the BLS Index from the Los Angeles-Anaheim-Riverside CPI, which is no longer active, to the newly created (1) Los Angeles-Long Beach-Anaheim CPI for Fiscal Year 2019; and then to (2) Riverside-San Bernardino-Ontario CPI for the Fiscal Year 2020 and beyond, with a month to month comparison to be adjusted to align with an effective date equivalent to the City's fiscal year (March to March), effective July 1 of every year.

FISCAL IMPACT:

The impact of this action will help maintain the \$0.25 rate as adjusted by inflation over time. The amount of tax revenues generated by the tax fluctuates as mining production quantities fluctuates. The annual CPI adjustments for the Mining Tax will generate additional revenues that will be utilized for the Mining Impact Fund.

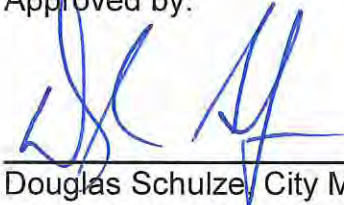
OPTIONS:

- I. Approve as recommended.
- II. Approve with desired modifications.
- III. Do not approve and provide staff with alternative direction.

ATTACHMENTS:

1. April 9, 2019 City Council Report
2. Draft Ordinance 1545

Approved by:



Douglas Schulze, City Manager

ATTACHMENT 1

April 9, 2019 City Council Report



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Rochelle Clayton, Deputy City Manager
Suzanne Cook, Deputy Finance Director

MEETING DATE: April 9, 2019

SUBJECT: Proposed Amendment to Section 3.18.030 (D) of the Banning Municipal Code, Updating the Methodology for Calculating the Annual Consumer Price Index Adjustment to the Mining Tax Rate.

RECOMMENDED ACTION:

The City Council review the proposed methodology update for calculating the Mining Tax Rate annual increase based on data from the Consumer Price Index (CPI) for Riverside-San Bernardino-Ontario index and comment or provide alternate direction to staff before proceeding with a public hearing.

JUSTIFICATION:

Staff must amend Banning Municipal Code Section 3.18.030(D) to update the United States Department of Labor, Bureau of Labor Statistics ("BLS") Index from the Los Angeles-Anaheim-Riverside CPI index, which is no longer active, to the newly created Riverside-San Bernardino-Ontario index.

This code amendment is necessary to adjust the City's Mining Tax CPI, which is further referenced in the Memorandum of Understanding ("MOU"), effective July 1, 2016, which was entered into between the City and Robertson's in order to resolve existing and potential legal actions.

Pursuant to the MOU, Sections:

- 1.(f), Mining Tax (\$0.25 per ton); and
- 2.(b), Rebate for Ready-Mix Concrete Poured Within City Limits (\$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction in City limits),

during the time the MOU is in effect, shall be adjusted annually according to the Consumer Price Index ("CPI").

Pursuant to Section 3.18.030(D) of the Banning Municipal Code (BMC), the CPI identified to use is the Los Angeles – Anaheim – Riverside index, in the months of July to July of the prior year, and effective October 1st of each year.

In January 2018, the BLS eliminated the Los Angeles – Anaheim – Riverside index and replaced it with two new indexes: Los Angeles – Long Beach – Anaheim **and** Riverside – San Bernardino – Ontario. Therefore, the 2019 CPI adjustment could not be made in accordance with the existing methodology defined by the BMC.

In order to implement a CPI adjustment for Fiscal Year 2019 and moving forward, a revised methodology for determining the rate adjustment calculation must be approved. In order to accomplish this, the below methodology is recommended, which is the same methodology approved by City Council in June 2018 for the Waste Management contract CPI increase (Resolution 2018-72). In addition to the methodology, staff further recommends that the month to month comparison be adjusted to align with an effective date equivalent to the beginning of the City's fiscal year: March to March, and effective July 1st.

- Adjustment for Fiscal Year 2019: The new Los Angeles-Long Beach-Anaheim index appears to have adopted the historical data of the Los Angeles-Orange County-Riverside index which was previously used. Therefore, staff recommends that the CPI adjustment for Fiscal Year 2019 be made using the Los Angeles-Long Beach-Anaheim index for the March to March period.
- Adjustment for fiscal years following Fiscal Year 2019: Staff recommends that for all years following Fiscal Year 2019, that the annual CPI adjustment be applied based on the new Riverside-San Bernardino-Ontario index for the March to March period.

In order to continue the annual CPI adjustment an updated method must be applied, and because the City of Banning is in Riverside County, the proposed methodology would allow for the transition to the new BLS index and the City to remain in Riverside County's index.

BACKGROUND:

In August 2014 the City Council placed a proposed tax on surface mining operations within the City limits ("Mining Tax") on the November 2014 election ballot, known as Measure J. The voters of the City of Banning ("City") passed Measure J, which set the tax rate at \$0.80 per ton of mined aggregate, applicable to operations in the City conducted by Robertson's Ready Mix, Ltd. ("Robertson's").

As allowable Banning Municipal Code section 3.18.070 (Modification by Council), in September 2016 a Memorandum of Understanding ("MOU") was entered into between

the City and Robertson's resolve existing and potential legal actions, effective July 1, 2016. The MOU set forth the terms and conditions of a settlement and compromise between Robertson's and the City, and changed the Mining Tax rate from \$0.80 per ton aggregate to \$0.25 per ton.

Additional revenues identified in the MOU, which are not subject to CPI adjustments, are as indicated in the following sections:

2.(a). Sales Tax Revenue.

- (i) Pursuant to the schedule in Section 7, Robertson's shall submit to the City an application for necessary entitlements to allow for the construction of a ready-mix concrete plant ("RMC Plant") within the City limits.
- (ii) The RMC Plant shall constitute a point of sale for ready-mix concrete manufactured at the RMC Plant irrespective of where the concrete is delivered, whether to job sites within or outside the City limits.
- (iii) The Sales Tax generated from the RMC Plant shall be calculated by Robertson's in the ordinary course of business, and, to the extent feasible, shall be paid by Robertson's to the City on a quarterly basis.

2.(c). Revenue Supplement.

- (i) "Mining Revenue" shall mean the combined revenue of the \$0.25 per ton Mining Tax, plus the additional City revenue from Sales Tax and Rebate for the prior calendar year.
- (ii) "City Revenue Goal" shall mean the total tonnage of aggregate mined by Robertson's at the Banning Quarry in a calendar year multiplied by \$0.40 per ton.
- (iii) Where the Mining Revenue is less than the City Revenue Goal in a calendar year, Robertson's shall provide a monetary supplement to the City ("Supplement").
- (iv) The Supplement shall compensate for the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Supplement exceed \$125,000 for the calendar year.
- (v) The Supplement shall be paid at the end of the final quarter of the calendar year.
- (vi) The Supplement shall remain fixed, and shall not be adjusted annually according to CPI.

FISCAL IMPACT:

The impact is unknown and based on operations. The annual CPI adjustments for Mining Tax will generate additional revenues that will be utilized for the Mining Impact Fund.


ALTERNATIVES:

City Council may choose to provide alternate direction for another CPI methodology.

ATTACHMENTS:

1. MOU between Robertson's and City
2. Measure J Ballot Language
3. Article on the BLS Index change

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

MOU between Robertson's and City

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered into as of this 19th day of September, 2016, by and between the City of Banning (the "City"), the City of Banning City Council (the "City Council") (collectively, the "City Defendants") and Robertson's Ready Mix, Ltd. ("Robertson's") (collectively, "Parties").

RECITALS

WHEREAS, the Banning Quarry ("Quarry") has operated within the City limits since the early 1900s; Robertson's has owned and operated the Quarry since 1997, in part pursuant to vested rights established prior to 1976; the Quarry produces construction aggregates that have historically been used in the City and surrounding communities; and the Quarry is the only surface mining operation within the City limits;

WHEREAS, in response to surface mining activities undertaken in prior years by or on behalf of Robertson's outside the boundaries of the Quarry's approved Reclamation Plan; Robertson's applied for an amendment to the Quarry's Reclamation Plan ("Reclamation Plan Amendment"); and thereafter the City and Robertson's have engaged in discussions over a period of several years relating to: (1) the scope of reclamation activities to be included in the Reclamation Plan Amendment, (2) scope of review pursuant to the California Environmental Quality Act ("CEQA"), (3) the scope of other permitting procedures and entitlements allegedly required for the Reclamation Plan Amendment; (4) potential for mining of additional reserves within or in areas immediately adjacent to the Quarry, and (5) potential for Robertson's and the City to enter into a Development Agreement regarding the above matters;

WHEREAS, in August 2014 the City Council placed on the ballot a proposed tax on surface mining operations within the City limits ("Mining Tax"); in the November 2014 election the voters of the City passed the tax, and the City Council subsequently set the tax rate at \$0.80 per ton of mined aggregate;

WHEREAS, the City and Robertson's have disputed the scope of environmental review and entitlements required for the Reclamation Plan Amendment, the reasonableness of the costs incurred by the City's CEQA consultant to date, who so far has been awarded contracts totaling \$249,050, for CEQA work in connection with the Reclamation Plan Amendment, which work Robertson's believes to be excessive, as well as the necessity and legality of the Mining Tax, such that Robertson's has filed several lawsuits against the City regarding these matters associated with the processing of the Reclamation Plan Amendment and the Mining Tax, including (1) Robertson's v. City of Banning, et al., Case No. RIC 1409037 ("CEQA/1983 case"), (2) Robertson's v. City of Banning, et al., Case No. RIC 1409829 ("Brown Act case"), (3) Robertson's v. City of Banning, Case No. RIC 1500296 ("Public Records Act case"), and (4) Robertson's v. City of Banning, et al., Case No. RIC 1513475 ("Tax Refund case") (collectively, "Actions");

WHEREAS, the status of the Actions is as follows: (1) the Brown Act case, following issuance of a preliminary injunction against the City, has been dismissed; (2) the Public Records Act case has been resolved through issuance of a stipulated judgment against the City, with a motion by Robertson's still pending to determine the amount of attorneys' fees to be awarded to Robertson's; (3) the CEQA/1983 case has been dismissed and the substantive constitutional claims against the City have been refiled by Robertson's against the City in the Tax Refund case, with the City's demurrer still pending in the Tax Refund case, and a tentative ruling having been issued by Judge Trask denying the demurrer on two of the four claims, and granting the demurrer on the other two of the claims, without prejudice to Robertson's amending its complaint with respect to such claims;

WHEREAS, the Parties seek to resolve their disputes, Robertson's wishes to continue to operate the Quarry in an economically sustainable manner for the indefinite future, and the City Defendants wish to secure reliable revenue from the Quarry during its period of operation and provide for the Quarry's suitable end use(s);

WHEREAS, this MOU sets forth the terms and conditions of the settlement and compromise, between and among Robertson's and the City Defendants, including those claims Robertson's has filed against the City Defendants in the Actions, in the manner set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the receipt and sufficiency of which the Parties acknowledge, Robertson's and the City Defendants do hereby agree as follows:

1. Mining Tax.

- a. The rate of the City's per-ton aggregate mining tax, enacted by the voters of the City in the November 4, 2014 general election ("Mining Tax"), shall change from \$0.80 to \$0.25 per ton of mined aggregate following: (1) execution of this MOU by all parties, and (2) adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate.
- b. The effective date of the \$0.25-per-ton Mining Tax rate shall be July 1, 2016 (on the understanding that Robertson's shall waive any further right to seek attorneys' fees in the Public Records Act case, as set forth in Section 9.b., below), and the \$0.25 per-ton Mining Tax rate shall be implemented following thirty (30) days following the "second reading" before the City Council of the City Ordinance that shall suspend the \$0.80-per-ton Mining Tax rate, referenced in Section 1.a., above.
- c. The Mining Tax and its \$0.25-per-ton rate, subject to the CPI escalation below, shall be required to remain in effect until the earlier of the following:
 - (i) Robertson's ceases to operate the Quarry, and completes final reclamation of the Quarry site (although the Mining Tax shall effectively cease when

- actual mining ceases and shall not apply to reclamation of the property), at which time the Mining Tax shall no longer be in effect;
- (ii) Three years from the date an application is submitted by Robertson's for the Development Agreement and related "Entitlements" (as defined below), unless the City approves the Development Agreement and related Entitlements prior to the end of the three-year approval period, or prior to any extension by Robertson's of that three-year approval period, in which case the \$0.25-per-ton Mining Tax rate shall be required to remain in effect until Robertson's ceases to operate the Quarry, as described above in Section 1.c.(1); or
 - (iii) The City takes formal action to issue a final denial, following a public hearing, of the Development Agreement and related Entitlements, at or before the end of the three-year approval period, or any extension by Robertson's of the three-year approval period.
 - (iv) Robertson's shall fail to pay the Revenue Supplement in Section 2 below, when such payment is due, and following notice of, and a period to cure, such failure to pay;
 - (v) Robertson's shall otherwise breach and fail to cure the terms of this MOU.
- d. It is understood that the Ordinance suspending the \$0.80 per ton Mining Tax rate will not contain a clause for automatic revival; but any revival, if permitted thereunder, would require Council adoption of an ordinance lifting the suspension or modifying the rate.
 - e. Under Sections 1.c. (ii) and 1.c. (iii), above, where the City either fails to approve within three years (or within any extension period), or affirmatively denies, the Development Agreement and related Entitlements, the Tax Refund case shall no longer be stayed, but the other Actions will not be revived.
 - f. The \$0.25 per ton Mine Tax rate, during the period of time that it is effective, shall be adjusted annually according to the Consumer Price Index ("CPI").
 - g. Robertson's shall pay taxes pursuant to the Mining Tax on a quarterly basis.

2. Additional City Revenue Opportunities.

a. Sales Tax Revenue.

- (i) Pursuant to the schedule in Section 7, Robertson's shall submit to the City an application for necessary entitlements to allow for construction of a ready-mix concrete plant ("RMC Plant") within the City limits, as part of

the application requesting the entitlements for additional mining reserves and revised reclamation plan amendment to be identified in the Development Agreement, as described below.

- (ii) The RMC Plant shall constitute a point of sale for ready-mix concrete manufactured at the RMC Plant irrespective of where the concrete is delivered, whether to job sites within or outside the City limits.
- (iii) The Sales Tax generated from the RMC Plant shall be calculated by Robertson's in the ordinary course of business, and, to the extent feasible, shall be paid by Robertson's to the City on a quarterly basis.

b. Rebate for Ready-Mix Concrete Poured Within City Limits.

- (i) For as long as Robertson's operates the Quarry pursuant to the terms of an approved Development Agreement, Robertson's shall provide the City with a cash rebate ("Rebate") of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction projects located within the City limits.
- (ii) The Rebate shall apply to ready-mixed concrete poured for both public and private projects.
- (iii) The Rebate shall apply to ready-mix concrete originating from any Robertson's ready-mix plant that is poured within the City limits.
- (iv) The Rebate shall be paid by Robertson's to the City on a quarterly basis.
- (v) Robertson's and the City shall develop an accounting system for the Rebate to be incorporated into a final Development Agreement.
- (vi) The Rebate, during the period of time that it is effective, shall be adjusted annually according to the CPI.

c. Revenue Supplement.

- (i) "Mining Revenue" shall mean the combined revenue of the \$0.25 per ton Mining Tax, plus the additional City revenue from Sales Tax and Rebate for the prior calendar year.
- (ii) "City Revenue Goal" shall mean the total tonnage of aggregate mined by Robertson's at the Banning Quarry in a calendar year multiplied by \$0.40 per ton.

- (iii) Where the Mining Revenue is less than the City Revenue Goal in a calendar year, Robertson's shall provide a monetary supplement to the City ("**Supplement**").
- (iv) The Supplement shall compensate for the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Supplement exceed \$125,000 for that calendar year.
- (v) The Supplement shall be paid at the end of the final quarter for the calendar year.
- (vi) The Supplement shall remain fixed, and shall not be adjusted annually according to the CPI.

3. **Additional Mining Reserves/Mining Entitlements.**

- a. As consideration for Robertson's agreeing to pay the Mining Tax, provide the Additional City Revenue Opportunities, described above, and agreeing to stay the Tax Refund case, the City agrees to process an application to be submitted by Robertson's to mine approximately 6 to 8 million cubic yards of additional aggregate mining reserves at the Quarry in the following two areas: (1) all paper street rights-of-way within the mining areas, and (2) an additional 23-acre area directly south of the mining area known as the Matich parcels (collectively, "**Additional Reserves**"). The areas containing the Additional Reserves are shown on the site plan attached hereto, and incorporated herein, as **Exhibit A**.
- b. In addition, the proposed project would combine Robertson's two existing reclamation plans for its overall existing Quarry operation into a single plan and amend and expand the reclamation plan area to include all mining expansion areas.
- c. Addition of the 23-acre expansion area, labeled as "Future Mining" in **Exhibit A**, attached hereto and incorporated herein, shall require either a determination of the full scope of Robertson's vested rights or approval of a conditional use permit for mining within this area.
- d. The City's agreement to process and ultimately approve Robertson's application for the Additional Reserves shall be included in and be material consideration for the Development Agreement discussed below in Section 9. If the City determines ultimately to deny Robertson's application for the Additional Reserves, then the Development Agreement shall fail for lack of consideration and shall not be approved by the City Council.

4. **Reclamation Plan Amendment and End Use.**

- a. In connection with submitting an application for the RMC Plant and the Additional Reserves, Robertson's shall submit an application for a reclamation plan amendment ("**RecPlan Amendment**"), that shall be subject to the following parameters:
 - (i) The Rec Plan Amendment shall comply with SMARA and other applicable reclamation laws and standards;
 - (ii) Robertson's shall allocate a certain percentage of the Quarry site for post-mining public use, although no specific public use will be required;
 - (iv) Robertson's will retain ownership of the Quarry site (and will be able to sell or lease some or all of the site as it sees fit), subject to the end-use requirements in the RecPlan Amendment.
- b. Following the conclusion of mining at the Quarry, including mining of the Additional Reserves, the total usable acreage at the Quarry will be approximately +/- 70-85 acres, as shown on **Exhibit A**, attached hereto and incorporated herein.
- c. Robertson's agrees to allocate 25% of the total usable acreage (25% of 70-85 acres) at the conclusion of mining for post-mining public end use.
- d. The potential range of post-mining public end uses could include the following (which shall not be exclusive):
 - (i) Permanent uses, such as (i) off-road track, (ii) entertainment use, such as concert venue, water park, amusement center, golf course, or adventure park.
 - (ii) Seasonal uses, such as Christmas tree/pumpkin patch area, etc.
 - (iii) Weekend uses such as Farmer's Market, swap meet, etc.
- e. The RMC Plant, Additional Reserves, and RecPlan Amendment, shall be collectively referred to herein as the "**Entitlements**", and shall all be subject to a single application to be submitted by Robertson's to the City.

5. **City Well Site.**

- a. The Parties agree that surface mining activities have previously occurred on property owned by the City and labeled "City Property 1 Acre Wellsite" ("**City Well Site**") on **Exhibit A**, attached hereto and incorporated herein; and, based

upon this Robertson's agrees to purchase for and on behalf of the City a replacement well site to be located outside of property owned by Robertson's or proposed to be used by Robertson's in connection with the Entitlements.

- b. The replacement well site shall be: (1) of comparable quality to the City Well site, (2) approximately .75 to 1.5 acre in size, and (3) located within one (1) mile of the Quarry site. Robertson's shall, in good faith, use its best efforts to ensure that the purchase of a replacement site for and on behalf of the City shall occur no later than December 31, 2016.

6. CEQA Review.

- a. Including the RMC Plant and Additional Reserves along with the RecPlan Amendment as part of the Entitlements will require revisions to the CEQA current project description, which in turn will necessitate modifying the currently suspended CEQA process (which previously was based solely on a RecPlan Amendment).
- b. The City has estimated, based on discussion with the CEQA consultant that revisions to the CEQA document, completion of the public process, and circulation of draft and final EIR documents for the Entitlements will cost an additional \$100,000.
- c. Robertson's has been responsible for paying the CEQA costs and shall continue to reimburse the City for the costs of the revised CEQA process. However, Robertson's shall have the discretion moving forward either to (1) allow the City's current CEQA consultant to continue work on the CEQA analysis for the Entitlements, based upon a review by Robertson's of a new scope of work and budget for the Entitlements, or (2) select a new City CEQA consultant to complete the CEQA analysis for the Entitlements.

7. Schedule.

- a. The City shall timely process the Development Agreement and application for the Entitlements (RMC Plant, Additional Reserves, and RecPlan Amendment), pursuant to the City's Mining Ordinance, SMARA, CEQA, and related laws and regulations.
- b. The Parties agree that the remaining CEQA and permitting processes for the Entitlements must be concluded no later than three years from the date of Robertson's submittal to the City of an application for the Entitlements (unless Robertson's agrees to extend the deadline); however, the Parties further agree to the following guidelines as non-binding benchmarks and milestones for completing the CEQA and permitting processes:

Task	Duration	End Date
Submit application for revised Project	45 days	October 1, 2016
Obtain proposals/select CEQA consultant	30 days	November 1, 2016
Circulate Notice of Preparation for an EIR	30 days	December 1, 2016
Prepare Admin DEIR, incl. technical studies	90 days	March 1, 2017
Internal review of Admin. Draft EIR	30 days	April 1, 2017
Consultant revises Admin DEIR, submits to City	30 days	May 1, 2017
City reviews Admin Draft EIR	30 days	June 1, 2017
Consultant revises Admin Draft EIR	30 days	July 1, 2017
City reviews revised Admin Draft EIR	15 days	July 15, 2017
Consultant final revisions to Admin Draft EIR	15 days	August 1, 2017
Final Admin Draft EIR to City for concurrence	15 days	August 15, 2017
Prepare documents and circulate Draft EIR	45 days	October 1, 2017
Public meeting to receive comments on Draft EIR	30 days	November 1, 2017
Receive comments on Draft EIR	15 days	November 15, 2017
Prepare response to comments and revise EIR	90 days	February 15, 2018
City review of Final EIR	45 days	April 1, 2018
City/Robertson's meet re comments and responses	15 days	April 15, 2018
Consultant revisions to Final EIR	30 days	May 15, 2018
Planning Commission Hearing	45 days	July 1, 2018
City Council Hearing	60 days	September 1, 2018

- c. Notwithstanding the stay of the Tax Refund case described in Section 10 below, Robertson's reserves the right to appeal any action or inaction by the City or City Council with respect to the RecPlan Amendment and/or entitlements for the Additional Reserves to the State Mining and Geology Board under SMARA, to appeal any CEQA review or determination associated with the Entitlements, and/or to challenge in court the City's actions or inactions with respect to the Entitlements or related CEQA review.
- d. In the event the Entitlements are challenged by any third party, it shall be Robertson's obligation to reasonably defend the entitlements at its sole expense, and otherwise subject to the City's standard indemnification conditions of approval.
- e. Notwithstanding the above, if the CEQA and entitlements processes are not concluded within three years from the date Robertson's submits the application for the Entitlements pursuant to this MOU, then Robertson's shall be entitled, but not required, to terminate the CEQA and permitting processes, and re-instate the Tax Refund case that will have been stayed as of the date of execution of this MOU, free of any objection by the City that the Tax Refund case or any claims or causes of action therein is barred for any reason.

8. Development Agreement.

- a. The terms and provisions set forth in Sections 1 through 8 above shall be incorporated into a Development Agreement between Robertson's and the City, which shall be approved by the City Council, along with the Entitlements, at a public hearing following certification of the above-referenced CEQA document within three years of submittal by Robertson's of an application for the Entitlements.
- b. The Parties shall work in good faith and with diligence to prepare and enter into the Development Agreement, and to have said Development Agreement approved by the City Council within that three-year period, which time period may be extended by Robertson's.
- c. If the Parties do not enter into a Development Agreement, and/or it is not approved by the City Council in a form that includes approval of the Entitlements, within three years from the date Robertson's submits the application for the Entitlements pursuant to this MOU, and such three-year period is not extended in writing by Robertson's, or if the Development Agreement is disapproved earlier by final action of the City Council, this MOU and its provisions shall terminate, and Robertson's shall be entitled to re-instate the Tax Refund case that will have been stayed as of the date of execution of this MOU, free of any objection by the City that the Tax Refund case or any claims or causes of action therein is barred for any reason.

9. Litigation Status Pending CEQA and Entitlements Processes.

- a. Robertson's and the City agree that all claims, counterclaims, and cross-claims pending and filed (or that could have been filed) in connection with the Tax Refund case shall, within 45 days of the execution of this MOU, be stayed, pending the approval of the Development Agreement and the Entitlements within three years from the submittal by Robertson's of an application for the Entitlements (unless extended by Robertson's), with each party to bear its own costs and attorney's fees.
- b. Following execution of the MOU, and based upon the understanding that the effective date of the \$0.25-per-ton Mining Tax rate shall be July 1, 2016, Robertson's shall dismiss its pending motion for attorneys' fees in the Public Records Act case, and Robertson's shall waive any further right to seek attorneys' fees in the Public Records Act case.
- c. The Parties expressly reserve their rights to bring any and all claims in violation or breach of this MOU, which claims are not released or otherwise waived by this MOU.

10. General Provisions.

a. Defense of City Entitlements.

Robertson's hereby agrees to reasonably defend any and all entitlements, approvals, reports, determinations, and authorizations granted or prepared by the City as part of its processing of the Entitlements.

b. Admissions.

Nothing contained in this MOU, nor any action taken or not taken by any Party in connection with this MOU, constitutes or shall be deemed to constitute an admission of fault or liability, such fault and liability being expressly disclaimed.

c. Entire Agreement: Severability.

This MOU contains the entire agreement between the Parties with regard to the matters set forth herein, and supersedes any prior written or oral agreements, reports, resolutions, ordinances, understandings, or arrangements. To the extent this MOU conflicts with any other applicable document, law, regulation, policy, or the like, this MOU controls. To the extent any part of this MOU is declared invalid, the remaining parts shall be severable and remain in full force and effect.

d. Governing Law.

This MOU is made in, and shall be governed, enforced, and construed under the laws of, the State of California.

e. Dispute Resolution.

All disputes relating to the validity, breach, interpretation, or enforcement of this MOU and/or of the matters set forth herein, including statutory claims of any kind, shall be filed in the Superior Court for Riverside County, California.

IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this
MOU as of _____, 2016.

DATED: 9-19-16

CITY OF BANNING

By: Arthur L. Welch
Arthur L. Welch, Mayor

DATED: 9-17-16

ATTEST:

By: Marie A. Calderon
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By: _____
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: [Signature]

APPROVED AS TO FORM:

DATED: 9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: [Signature]

IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this
MOU as of 9-19-, 2016.

DATED: 9-19-16

CITY OF BANNING

By: Arthur L. Welch
Arthur L. Welch, Mayor

DATED: 9-19-16

ATTEST:

By: Marie A. Calderon
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By: see attached page
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: [Signature]

APPROVED AS TO FORM:

DATED: 9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: [Signature]

IN WITNESS WHEREOF, the City Defendants and Robertson's have executed this
MOU as of _____, 2016.

DATED: 9-19-16

CITY OF BANNING

By: Arthur L. Welch
Arthur L. Welch, Mayor

DATED: 9-19-16

ATTEST:

By: Marie A. Calderon
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By: John C. Cotti
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: [Signature]

APPROVED AS TO FORM:

DATED: 9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: [Signature]

ATTACHMENT 2

Measure J Ballot Language

SAMPLE BALLOT / BOLETA EJEMPLAR

RV 319-009

48

INDIAN GAMING COMPACTS. REFERENDUM. A "Yes" vote approves, and a "No" vote rejects, tribal gaming compacts between the state and the North Fork Rancheria of Mono Indians and the Wiyot Tribe. Fiscal Impact: One-time payments (\$16 million to \$35 million) and for 20 years annual payments (\$10 million) from Indian tribes to state and local governments to address costs related to the operation of a new casino.

CONVENIOS DE JUEGOS DE AZAR INDIGENAS. REFERENDUM. Un voto "Si" aprueba, y un voto "No" rechaza los convenios de juegos de azar indigenas entre el estado y los indios Mono de North Fork Rancheria y la Tribu Wiyot. Impacto fiscal: Pagos por única vez (\$16 millones a \$35 millones) y pagos anuales durante 20 años (\$10 millones) de las tribus indigenas al estado y los gobiernos locales para solventar los costos relacionados con la operación de un nuevo casino.

SCHOOL/ESCOLAR

MT. SAN JACINTO COMMUNITY COLLEGE DISTRICT / DISTRITO UNIVERSITARIO COMUNITARIO DE MT. SAN JACINTO

AA

To expand college buildings serving four-year university transfer, veterans' education, and career training, by expanding career/support facilities for veterans/military, ensuring buildings are accessible for the disabled, upgrading nursing, emergency responder, criminal justice, vocational job training classrooms, updating science labs, electrical systems, technology infrastructure, acquiring, constructing, and repairing classrooms, facilities, sites/equipment, shall Mt. San Jacinto Community College District issue \$295,000,000 in bonds at legal rates with annual financial audits, citizens' oversight of funds, all funds remaining local?

Para ampliar los edificios de la universidad para servir a la transferencia universitaria de cuatro años, la educación de los veteranos, y la formación de profesionales, ampliar las instalaciones de carreras/apoyo para veteranos/militares, asegurar edificios que sean accesibles para los discapacitados, actualizar la enfermería, la respuesta a emergencias, la justicia penal, las aulas de formación trabajo vocacional, actualizar laboratorios de ciencias, sistemas eléctricos, infraestructura de tecnología, adquirir, construir y reparar aulas, instalaciones, sitios/equipo, ¿deberá Distrito Universitario Comunitario de Mt. San Jacinto emitir \$295,000,000 en bonos a tasas legales, con auditorías financieras anuales, supervisión ciudadana de los fondos, que todos los fondos permanezcan localmente?

CITY / CIUDAD

CITY OF BANNING / CIUDAD DE BANNING

J Shall an Ordinance be adopted establishing a general mining tax of 80 cents per ton upon the excavation and processing of rock material, and placing the proceeds of these taxes in the City's general fund to be spent for general governmental purposes, which includes police, fire, and maintaining streets and public areas, as well as to pay for studying, correcting and reducing the effects of mining of residents and businesses?

¿Deberá adoptarse una ordenanza que establezca un impuesto sobre la minería en general de 80 centavos por tonelada al excavar y procesar material de roca, y colocar el producto de estos impuestos en el fondo general de la Ciudad para ser desembolsado para fines gubernamentales generales, los cuales incluyen la policía, los bomberos, y el mantenimiento de calles y áreas públicas, así como para pagar para estudiar, corregir y reducir los efectos de la minería sobre los residentes y los negocios?

CA33-3-529

SAMPLE BALLOT / BOLETA EJEMPLAR



ATTACHMENT 3

Article on the BLS Index change

CPI Revisions: Los Angeles and Riverside Areas Part Company in January 2018.

By Terry R. Dowdall of Dowdall Law Offices, A.P.C. on Thursday, February 15, 2018.

In January 2018, the Bureau of Labor Statistics ("BLS") introduced a new geographic area sample for the Consumer Price Index (CPI). *As part of the new sample, Los Angeles and Riverside areas are split into two separate indices.*

The first index for the Inland Empire was published yesterday (for January 2018). Additional information on the BLS revisions is available at:

<https://www.bls.gov/opub/mlr/2016/article/the-2018-revision-of-the-CPI-geographic-sample.htm>

Thus, the current Los Angeles-Riverside-Orange County statistical area is broken into the Los Angeles-Long Beach-Anaheim area and the Riverside-San Bernardino-Ontario area.

The CPI is a measure for the average costs of consumer goods and services and is used to identify changes in the cost of living. It is way behind the real cost of doing business, and it keeps changing for political reasons. But the CPI geographic area sample is an index of CPI data for specific geographic areas. The geographic areas, called Core-Based Statistical Areas, are designated for survey based upon economic and social integration to an urban core. Economic surveys subsequently generate unique CPI data for each CBSA listed in the geographic area sample.

The Inland Empire's first Consumer Price Index is now published and it reports an inflation rate in excess of the Los Angeles-Long Beach-Anaheim area.

Riverside-San Bernardino-Ontario, CA Economy at a Glance:

Data Series	Black Data	Aug 2017	Sept 2017	Oct 2017	Nov 2017	Dec 2017	Jan 2018
Consumer Price Index, Riverside-San Bernardino-Ontario, CA							
CPI U, All items ⁽¹⁾						100.000	100.016
CPI U, All items, 12 month % change ⁽¹⁾							
CPI W, All items ⁽²⁾						100.000	100.044
CPI W, All items, 12 month % change ⁽²⁾							

Starting with January data, the Inland Empire will get a cost-of-living snapshot every two months. Los Angeles and Orange Counties will get their own CPI monthly.

No History: The BLS' Inland Empire CPI has no history. From December to January, that CPI rose .9%, a point above the .8% in L.A. and Anaheim, and about twice the 0.5% percent increase for U.S. cities. *The reason?* Gasoline prices, up 4.7% in January vs. a one-month rise of 5% in L.A.-O.C.

But moderate housing costs in Riverside and San Bernardino counties tempered the CPI measure. Housing expenses in January increased 0.1% vs. up 0.6% in L.A.-O.C. Inland Empire rents fell 0.3% vs. a jump of 0.4% in L.A.-O.C.

SOURCE:

<http://www.dowdalllaw.com/blog/2018/02/change-your-leases-cpi-revisions-los-angeles-and-riverside-areas-part-company-in-january-2018-1.shtml>

ATTACHMENT 2

Draft Ordinance

ORDINANCE NO. 1545

AN ORDINANCE OF THE CITY OF BANNING AMENDING CHAPTER 3.18 (MINING TAX AND MINING IMPACT FUND) OF TITLE 3 (REVENUE AND FINANCE) OF THE BANNING MUNICIPAL CODE TO SPECIFY THE USE OF DIFFERENT CONSUMER PRICE INDEXES COMMENCING FISCAL YEARS 2019 AND 2020 TO ADDRESS COST OF LIVING ADJUSTMENTS FOR THE MINING TAX AND MAKING A DETERMINATION PURSUANT TO CEQA

WHEREAS, in August 2014, the City Council placed a proposed tax on surface mining operations within the City limits ("Mining Tax") on the November 2014 election ballot, known as Measure J; and

WHEREAS, the voters of the City of Banning ("City") passed Measure J, which set the tax rate at \$0.80 per ton of mined aggregate, applicable to operations in the City, including, but not limited to those conducted by Robertson's Ready Mix, Ltd. ("Robertson's"); and

WHEREAS, as allowable under Banning Municipal Code Section 3.18.070 (Modification by Council), in September 2016, the City and Robertson's entered into a Memorandum of Understanding ("MOU") to resolve existing and potential legal actions, effective July 1, 2016; and

WHEREAS, the MOU set forth the terms and conditions of the City's and Robertson's settlement and compromise of its disputes, and agreed that the City would suspend and reduce the voter-approved Mining Tax rate of \$0.80 per ton aggregate down to \$0.25 per ton aggregate; and

WHEREAS, thereafter the City Council adopted Ordinance 1502, amending Section 3.18.030 to temporarily suspend and reduce the \$0.80 per ton tax rate and establish a lower rate of \$0.25 per ton tax rate, which rate could be increased by the Council at a later date; and

WHEREAS, existing Banning Municipal Code Section 3.18.030(D) (Cost of Living Adjustment) states "[t]he taxes imposed in subsection A and B above shall be paid quarterly on the twentieth day in the months of July, October, January and April of each year, and shall be annually adjusted based upon the percentage change equal to the percentage change in the Los Angeles-Anaheim-Riverside Consumer Price Index (C.P.I.) from July of the current year compared with July of the prior year. The C.P.I. change shall take place on October 1 of each year"; and

WHEREAS, in January 2018, the United States Bureau of Labor Statistics ("BLS") eliminated the Los Angeles-Anaheim-Riverside Consumer Price Index and replaced it with two new indexes: Los Angeles-Long Beach-Anaheim and Riverside-San Bernardino-Ontario; and

WHEREAS, the 2019 C.P.I. adjustment cannot be made in accordance with the existing methodology defined by Banning Municipal Code Section 3.18.030(D); and

WHEREAS, a revised methodology for determining the rate adjustment calculation must be approved in order to implement a Consumer Price Index adjustment for Fiscal Year 2019 and beyond; and

WHEREAS, the new Los Angeles-Long Beach-Anaheim index adopted the historical data of the Los Angeles-Orange County-Riverside index that was previously used and will provide the best index to use for Fiscal Year 2019 before applying the new Riverside-San Bernardino-Ontario index for fiscal years following Fiscal Year 2019; and

WHEREAS, staff recommends updating the BLS Index specified in Section 3.18.030 (D) from the Los Angeles-Anaheim-Riverside C.P.I., which is no longer active, to the newly created (a) Los Angeles-Long Beach-Anaheim C.P.I. for Fiscal Year 2019 and (b) Riverside-San Bernardino-Ontario C.P.I. for the fiscal years following Fiscal Year 2019, with a month to month comparison to be adjusted to align with an effective date equivalent to the City's fiscal year (March to March), effective July 1 of every year; and

WHEREAS, City staff has evaluated the mining tax on excavation and processing methodology and recommends that the month to month comparison be adjusted to align with an effective date equivalent to the beginning of the City's fiscal year: March to March, effective July 1st.

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

Section 1. California Environmental Quality Act (CEQA). The City Council finds and determines that this Ordinance is not subject to the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15060(c)(3), because it is not a project as defined by the CEQA Guidelines Section 15378. Adoption of the Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

Section 2. Code Amendment. The City Council hereby amends Subsection "D" of Section 3.18.030 (Mining tax on excavation and processing.) of Chapter 3.18 (Mining Tax and Mining Impact Fund) of Title 3 (Revenue and Finance), to read as follows:

"D. Cost of Living Adjustment. The taxes imposed in subsections A and B above shall be paid quarterly on the twentieth day in the months of July, October, January and April of each year, and shall be adjusted for Fiscal Year 2018-2019 based upon the percentage change in the Los Angeles-Long Beach-Anaheim Consumer Price Index (C.P.I.) and based upon the Riverside-San Bernardino-Ontario C.P.I. for Fiscal Year 2019-2020 and

thereafter, with the twelve month period being measured from March of the current year compared with March of the prior year. The C.P.I. adjustment shall take effect and be imposed on July 1 of each year."

Section 3. Severability. If any section, subsection, subdivision, sentence, clause, phrase, or portion of this ordinance or the application thereof to any person or place, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remainder of this ordinance. The City Council hereby declares it would have adopted this ordinance, and each and every section, subsection, subdivision, sentence, clause, phrase, or portion thereof, irrespective of the fact that any one or more sections, subsections, subdivisions, sentences, clauses, phrases, or portions thereof be declared invalid or unconstitutional.

Section 4. Savings Clause. Neither the adoption of this Ordinance nor the repeal of any other ordinance of this City shall in any manner affect the prosecution of any violation of any City ordinance or provision of the Banning Municipal Code, committed prior to the effective date hereto, nor be construed as a waiver of any license or penalty or the penal provision applicable to any violation thereof.

Section 5. Publication, Effective Date. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceedings of the City Council at which time the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED, AND ADOPTED on the ____ day of ____, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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

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

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CERTIFICATION

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1545, was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 14th day of May, 2019 by the following vote to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

**PREPARED BY: Kevin Ennis, City Attorney
Art Vela, Director of Public Works**

MEETING DATE: May 14, 2019

SUBJECT: Adoption of Ordinance 1546, An Urgency Ordinance of the City of Banning Regulating Small Wireless Facilities City Wide, Amending the Banning Municipal Code Regarding the Same, Declaring the Urgency and Immediate Effectiveness of the Ordinance, and Approving California Environmental Quality Act Exemptions; and Adoption of Resolution 2019-____ Adopting a City-Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities in the City, Including Public Rights-of-Way

RECOMMENDED ACTION:

That the City Council take the following actions:

1. Adopt Ordinance 1546, An Urgency Ordinance of the City of Banning, California, Regulating Small Wireless Facilities City Wide, Amending the Banning Municipal Code, Making Environmental Findings, and Declaring the Urgency Thereof; and
2. Adopt Resolution No. 2019-____, a Resolution of the City Council of the City of Banning Adopting a City-Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities

BACKGROUND:

On September 26, 2018, the Federal Communications Commission (FCC) adopted a Declaratory Ruling and Third Report and Order geared toward speeding up the deployment of small wireless facilities in the public right-of-way (hereinafter the "FCC Ruling"). The FCC Ruling went into effect January 14, 2019 and sets forth limitations on

state and local government regulation of small wireless facilities including facilities that are placed on existing or new utility poles and street light standards, and other City structures located in the public right-of-way. The FCC Ruling clarifies and specifically restricts the authority of state and local governments to regulate small wireless facilities in the public right-of-way. This Ruling is significant in that there are several characteristics in small “cell” wireless facilities technology and application, which set them apart from other wireless communication facilities. Although there are pending legal challenges to the Ruling, as of today it remains in effect. Therefore, it is prudent for the City to address this matter as soon as possible in order to have appropriate procedures and standards in effect in order to immediately require permits and otherwise deal with applications for these facilities. Staff from the Public Works Department and the City Attorney’s Office have prepared the Urgency Ordinance and a Policy containing special procedures and regulations (including objective aesthetic standards) to be adopted by resolution to administer applications for permits for such facilities. These documents are intended to assure the City is prepared to evaluate new applications for small wireless facilities consistent with the FCC Ruling. The Urgency Ordinance and Policy Resolution are attached (Attachments 1 and 2).

The following is a summary of the proposed Urgency Ordinance and Resolution.

A. Urgency Ordinance

Ordinarily, to adopt an ordinance the City Council must approve introduction of the ordinance at a first meeting, and then adopt it at a second reading. Once adopted, the ordinance normally will not become effective for 30 days. Using that procedure to adopt the attached ordinance would mean that it would not become effective until mid-June 2019. Staff has concluded that it is legally and operationally important for the City to have local small wireless facility regulations in place as soon as possible in order to be able to process applications for these facilities and thereby provide the greatest protection to the City.

Government Code Section 36937(b) provides that a city council may adopt, by a four-fifths (4/5) vote, an “urgency” ordinance at a single meeting which will take effect immediately, provided the council makes findings that it is required “for the immediate preservation of the public peace, health or safety.” Staff recommends that the Council adopt the attached ordinance as an urgency ordinance. The proposed ordinance contains findings of fact setting forth why an urgency ordinance is necessary, and if adopted by a four-fifths (4/5) vote of the City Council, the ordinance will go into effect immediately.

The Urgency Ordinance would amend Banning Municipal Code (“BMC”) Title 12 by adding a new Chapter 12.56 entitled “City Wide Regulation of Small Wireless Facilities”. Chapter 12.56 will require applicants for permits to install small wireless facilities to comply with the “City Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities”, as adopted by City Council resolution (“Policy”). Chapter 12.56 (i) provides for payment of recurring and non-recurring fees which are generally limited to those amounts deemed “reasonable” in the FCC Ruling; (ii) makes a failure to comply with

the Policy a violation of the Chapter and BMC; and (iii) provides that its provisions preempt and supersede any inconsistent or conflicting provisions contained elsewhere in the BMC.

B. Policy Resolution

The FCC Ruling authorizes local agencies to regulate to some degree the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing and overall size of the facility. Such requirements must be reasonable, technically feasible, directed at avoiding or mitigating unsightly, out-of-character installations, incorporate clearly defined standards, be applied in a principled manner, and be published in advance.

The proposed Policy, as adopted by Resolution (Attachment 2), contemplates all areas affected by the FCC Ruling and sets forth policies, procedures and standards for small wireless facilities City-wide, and in the public rights-of-way, and as outlined below:

- **Definitions** — Includes definitions used in the application and review process. Where applicable, definitions are consistent with FCC definitions related to small wireless facilities.
- **Required Permits and Approvals** — Requires a “Small Wireless Facilities Permit” for all small wireless facilities. Depending on the nature of the proposed installation, additional permits for construction may be required as consistent with other similar utility work.
- **Permit Application Requirements** — Establishes the application requirements for proposed small wireless facilities, including procedures for reviewing batched or grouped applications including required fees, construction drawings, site surveys, photo simulations, project narrative and justification, radio frequency (“RF”) Compliance Report, site agreements if applicable, and acoustical analysis for all proposed equipment.
- **Permit Application Submittal and Review** — Establishes requirements and procedures for submittal and review of small cell permit applications, including meetings with staff, application completeness, withdrawn applications, batched applications.
- **Approvals and Denials** — Describes the administrative review of applications, required findings for approval, conditional approvals, decision notices and appeals of permit decisions.
- **Conditions of Approval**— Sets forth general conditions of approval including permit terms, renewal, installation certification, time for construction build-out, site maintenance, compliance with other laws, impacts on other properties, inspections, emergency response, indemnification of the City, performance bonding, permit revocation, landscaping, cost reimbursement to City, cooperation

with RF compliance evaluations, undergrounding programs, electrical meter upgrades and relocation requirements.

- **Location Requirements** — Establishes locations that are “most preferred,” “less preferred” and “least preferred” for small wireless facilities. The policy authorizes the City to deny any application on a decorative sign or pole, and on utility poles scheduled for removal within twelve (12) months.
- **Design Standards** — Establishes requirements for shielding/shrouding or otherwise concealing equipment, requires that new/replaced poles be consistent with style, texture and color of existing poles in the area, prohibits new ground mounted electrical service/meters, details dimensional requirements and height limits, signage and landscape protection and restoration requirements.

ENVIRONMENTAL:

The draft Urgency Ordinance and Policy Resolution have been reviewed with respect to the applicability of the California Environmental Quality Act of 1970 (“CEQA”), and the State CEQA Guidelines. The City of Banning has determined that the adoption of the Urgency Ordinance and Policy Resolution is exempt from review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code Section 21000, et seq.), pursuant to State Section 15061(b)(3) of the CEQA Guidelines covering activities with no possibility of having a significant effect on the environment. In addition, the City of Banning has determined that this Resolution is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

JUSTIFICATION:

The adoption of the Urgency Ordinance and Resolution will assure the City is prepared to evaluate new applications for small wireless facilities consistent with the FCC ruling and in a manner that provides the greatest protection to the City.

FISCAL IMPACT:

Adoption of the proposed Urgency Ordinance and Policy Resolution will have no direct fiscal impact on the City. The FCC Ruling requires that fees that are charged for small wireless facility applications be fair and reasonable. The FCC has established the following fee levels as complying with this standard:

- \$500 for non-recurring fees for applications for up to five small wireless facility sites, with an additional \$100 for each additional site;
- \$1,000 for non-recurring fees for a new pole to support one or more small wireless facilities; and

- \$270 per year for all recurring fees, including any right-of-way encroachment permit fee for attachment to a municipality-owned structure in the public right-of-way (e.g., streetlight pole).

The Ordinance and Policy require payment of these fees for applications and small cell permits, which the FCC has deemed presumptively reasonable. In order to ensure that non-recurring fees are sufficient to cover staff costs for the review of small wireless facility applications, staff will document time and resources utilized in the processing of small wireless facility applications for future review. Any proposed changes to the fees charged will be presented to City Council for consideration at a later date.

ALTERNATIVE:

Do not approve the Urgency Ordinance and Resolution as recommended by staff and provide alternative direction, if desired.

ATTACHMENTS:

1. Urgency Ordinance No. 1546
2. Resolution 2019-_____

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Urgency Ordinance No. 1546)

URGENCY ORDINANCE NO. 1546**AN URGENCY ORDINANCE OF THE CITY OF BANNING, CALIFORNIA,
REGULATING SMALL WIRELESS FACILITIES CITY WIDE, AMENDING
THE BANNING MUNICIPAL CODE, AND DECLARING THE URGENCY
THEREOF**

**THE CITY COUNCIL OF THE CITY OF BANNING ORDAINS AS
FOLLOWS:**

SECTION 1. Findings:

(a) On September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in public rights-of-way. The Report and Order went into effect on January 14, 2019.

(b) The Report and Order purports to give providers of wireless services rights to utilize public rights of way and to attach so-called “small wireless facilities” to public infrastructure including infrastructure of the City of Banning, subject to payment of “presumed reasonable”, non-recurring and recurring fees. The ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order.

(c) Notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable”, i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective”, i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; are (iii) published in advance. Regulations that do not satisfy the foregoing requirements are likely to be subject to invalidation, as are any other regulations that “materially inhibit wireless service”, (e.g., overly restrictive spacing requirements.)

(d) Local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers.

(e) It is the intent of the City Council in adopting this urgency Ordinance to supersede regulations of the City that conflict with the Report and Order, and to immediately establish consistent regulations governing deployment of small wireless facilities in order to more fully protect the public health, safety, and welfare. The City Council declares that it adopts this Ordinance with the understanding that the City expressly reserves all rights to re-enact and/or establish new regulations consistent with State and federal law as it existed prior to adoption of the Report and Order in the event the Report and Order is invalidated, modified, or limited in any way.

SECTION 2. The City Council hereby amends Title 12 (Streets, Sidewalks and Public Places) of the Banning Municipal Code by adding a new Chapter 12.56 (City Wide Regulation of Small Wireless Facilities) to read as follows:

“Chapter 12.56 - CITY WIDE REGULATION OF SMALL WIRELESS FACILITIES

12.56.010 - Compliance with the City Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities.

Notwithstanding any provision of the Banning Municipal Code to the contrary, all small wireless facilities as defined in 47 C.F.R. § 1.6002(I), as may be amended or superseded, that are proposed to be located within the City, including any City-owned rights of way, are subject to the requirements of the *"City Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities"*, as adopted and amended from time to time by City Council resolution, and all such small wireless facilities must comply with that Policy.

12.56.020 - Fees. Each applicant/permittee shall pay one-time and recurring fees, per each small wireless facility, in amounts set forth in the *City Wide Policy Regarding Permitting Requirements and Development Standards for Small Wireless Facilities*, or as (i) established by resolution of the City Council that are not less than those amounts deemed presumptively reasonable under the Report and Order or then-in effect federal law or regulations; or that otherwise are determined to be a reasonable, non-discriminatory approximation of the City's costs in processing applications and administering permits for small wireless facilities; or (ii) agreed upon by the City and an applicant or permittee in a site or master agreement.

12.56.030 - Violations. Failure to comply with the *City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities* constitutes a violation of this Chapter and this Code.

12.56.040 - Conflicting provisions superseded. The provisions of this Chapter shall govern and supersede any conflicting provisions of the Banning Municipal Code with respect to the permitting and regulation of small wireless facilities within the City, including small wireless facilities in City rights of way.”

SECTION 3. The City of Banning has determined that the adoption of this Ordinance is exempt from review under the California Environmental Quality Act ("CEQA") (California Public Resources Code Section 21000, et seq.), pursuant to Section 15061(b)(3) of the CEQA Guidelines, covering activities with no possibility of having a significant effect on the environment. In addition, the City of Banning has determined that this Ordinance is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

SECTION 4. The City Council finds and declares that it is adopting this Ordinance in order to more fully protect and preserve the public health and safety with respect to

City rights-of-way in light of the adoption of the Report and Order. Notice is hereby given to any and all wireless providers obtaining a permit pursuant to the Banning Municipal Code as amended herein, that the City expressly reserves any and all rights it possessed prior to the adoption of the Report and Order concerning its authority to regulate its public rights-of-way. In the event the Report and Order is invalidated, modified, or limited in any way, the City Council reserves the right, subject to reasonable notice and due process, to modify the terms and conditions applicable to any permit issued hereunder including, but not limited to, the term, fees charged, and scope of any future wireless deployments within the City's rights-of-way.

SECTION 5. Severability. If any sections, subsections, sentence, clause, or phrase of the Chapter adopted by this Ordinance is for any reason held to be invalid or unconstitutional by the decision or legislation of any court of competent jurisdiction, or by reason of preemptive legislation, such decision or legislation shall not affect the validity of the remaining portions of the Chapter. The City Council declares that it would have passed this Ordinance, and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that one or more of the sections, subsections, sentences, clauses, or phrases thereof is declared invalid or unconstitutional.

SECTION 6. Urgency. The City Council finds that, as a result of the regulations adopted by the Federal Communications Commission effective as of January 14, 2019, as more fully described in the Recitals to this Ordinance, some City regulations governing third party use of its public rights-of-way or private property for telecommunication antennas may be invalidated which will result in an absence of standards designed to protect the public. Unless this Ordinance is effective and its regulations are immediately put in place, the public health, safety and welfare will be at risk. Therefore the immediate preservation of the public health, safety and welfare requires that this Ordinance be enacted as an urgency ordinance pursuant to Government Code Section 36937(b) and take effect immediately upon adoption, and its urgency is hereby declared.

SECTION 7. Publication, Effective Date.

The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceeding of the City Council at which time the same is passed and adopted. The City Clerk shall cause this Ordinance or a summary thereof to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated as required by law.

PASSED, APPROVED AND ADOPTED this 14th day of May, 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 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 Urgency Ordinance No. 1546 was duly adopted at a regular meeting of the City Council of the City of Banning held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

(Resolution 2019-_____)

RESOLUTION NO. 2019-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING ADOPTING A CITY WIDE POLICY
REGARDING PERMITTING REQUIREMENTS AND
DEVELOPMENT STANDARDS FOR SMALL WIRELESS
FACILITIES**

WHEREAS, on September 26, 2018, the Federal Communications Commission (“FCC”) adopted its Declaratory Ruling and Third Report and Order (“Report and Order”) relating to placement of small wireless facilities in the City, including public rights-of-way; and

WHEREAS, the Report and Order purports to give providers of wireless services rights to utilize public rights-of-way and to attach so-called “small wireless facilities” to public infrastructure, including infrastructure of the City of Banning, subject to payment of “presumed reasonable”, non-recurring and recurring fees, and the ability of local agencies to regulate use of their rights-of-way is substantially limited under the Report and Order; and

WHEREAS, notwithstanding the limitations imposed on local regulation of small wireless facilities in public rights-of-way by the Report and Order, local agencies retain the ability to regulate the aesthetics of small wireless facilities, including location, compatibility with surrounding facilities, spacing, and overall size of the facility, provided the aesthetic requirements are: (i) “reasonable,” i.e., “technically feasible and reasonably directed to avoiding or remedying the intangible public harm or unsightly or out-of-character deployments”; (ii) “objective,” i.e., they “incorporate clearly-defined and ascertainable standards, applied in a principled manner”; and (iii) published in advance. Regulations that do not satisfy the foregoing requirements may be subject to invalidation, as are any other regulations that “materially inhibit wireless service,” (e.g., overly restrictive spacing requirements); and

WHEREAS, local agencies also retain the ability to regulate small wireless facilities in the public rights-of-way in order to more fully protect the public health and safety, ensure continued quality of telecommunications services, and safeguard the rights of consumers, and pursuant to this authority retained, the City Council has amended the Banning Municipal Code to require all small wireless facilities as defined by the FCC in 47 C.F.R. § 1.6002(I), as may be amended or superseded, to comply with the requirements of a policy adopted by resolution of the City Council entitled “City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities”.

**NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING DOES
HEREBY RESOLVE AS FOLLOWS:**

SECTION 1. Findings. The City Council finds each of the facts in the preceding recitals to be true.

SECTION 2. City Wide Policy Adopted. The City Council of Banning hereby adopts the “City Wide Policy Regarding Permitting Requirements And Development Standards For Small Wireless Facilities” set forth in Exhibit A to this Resolution, and which is incorporated by reference herein.

SECTION 3. CEQA. The City of Banning has determined that the adoption of this Resolution is exempt from review under the California Environmental Quality Act (“CEQA”) (California Public Resources Code Section 21000, et seq.), pursuant to State Section 15061(b)(3) of the CEQA Guidelines covering activities with no possibility of having a significant effect on the environment. In addition, the City of Banning has determined that this Resolution is categorically exempt pursuant to Section 15301 of the CEQA Regulations applicable to minor alterations of existing governmental and/or utility-owned structures.

SECTION 4. Certification. 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 AND ADOPTED this 14th day of May, 2019:

Arthur L. Welch
Mayor
City of Banning

ATTEST:

Daryl Betancur
Deputy City Clerk

CITY OF BANNING**CITY WIDE POLICY REGARDING PERMITTING REQUIREMENTS AND
DEVELOPMENT STANDARDS FOR SMALL WIRELESS FACILITIES****SECTION 1. GENERAL PROVISIONS****SECTION 1.1. PURPOSE AND INTENT**

- (a) On September 27, 2018, the Federal Communications Commission ("FCC") adopted a *Declaratory Ruling and Third Report and Order*, FCC 18-133 (the "*Small Wireless Facilities Order*"), in connection with two informal rulemaking proceedings entitled *Accelerating Wireless Broadband Deployment by Removing Barriers to Infrastructure Investment*, WT Docket No. 17-79, and *Accelerating Wireline Broadband Deployment by Removing Barriers to Infrastructure Investment*, WC Docket No. 17-84. The regulations adopted in the *Small Wireless Facilities Order* significantly curtail the local authority over wireless and wireline communication facilities reserved to State and local governments under sections 253 and 704 in the federal Telecommunications Act. Numerous legal challenges to the *Small Wireless Facilities Order* have been raised but its regulations have become effective while such challenges are pending. Although the provisions may well be invalidated by future action, the City recognizes the practical reality that failure to comply with the *Small Wireless Facilities Order* while it remains in effect will likely result in greater harm to the City's interests than if the City ignored the FCC's ruling. Accordingly, the City Council adopts this Policy ("Policy") as a means to accomplish such compliance that can be quickly amended or repealed in the future without the need to amend the City's Municipal Code.
- (b) The City of Banning intends this Policy to establish reasonable, uniform and comprehensive standards and procedures for small wireless facilities deployment, construction, installation, collocation, modification, operation, relocation and removal within the City's territorial boundaries, consistent with and to the extent permitted under federal and California state law. The standards and procedures contained in this Policy are intended to, and should be applied to, protect and promote public health, safety and welfare, and balance the benefits from advanced wireless services with local values, which include without limitation the aesthetic character of the City. This Policy is also intended to reflect and promote the community interest by (1) ensuring that the balance between public and private interests is maintained; (2) protecting the City's visual character from potential adverse impacts and/or visual blight created or exacerbated by small wireless facilities and related communications infrastructure; (3) protecting and preserving the City's environmental resources; (4) protecting and preserving the City's public rights-of-way and municipal infrastructure located within the City's public rights-of-way; and (5) promoting

access to high-quality, advanced wireless services for the City's residents, businesses and visitors.

- (c) This Policy is not intended to, nor shall it be interpreted or applied to: (1) prohibit or effectively prohibit any personal wireless service provider's ability to provide personal wireless services; (2) prohibit or effectively prohibit any entity's ability to provide any telecommunications service, subject to any competitively neutral and nondiscriminatory rules, regulations or other legal requirements for rights-of-way management; (3) unreasonably discriminate among providers of functionally equivalent personal wireless services; (4) deny any request for authorization to place, construct or modify personal wireless service facilities on the basis of environmental effects of radio frequency emissions to the extent that such wireless facilities comply with the FCC's regulations concerning such emissions; (5) prohibit any collocation or modification that the City may not deny under federal or California state law; (6) impose any unreasonable, discriminatory or anticompetitive fees that exceed the reasonable cost to provide the services for which the fee is charged; or (7) otherwise authorize the City to preempt any applicable federal or California law.

SECTION 1.2. DEFINITIONS

- (a) **Undefined Terms.** Undefined phrases, terms or words in this Policy will have their ordinary meanings, unless otherwise defined in 47 C.F.R. Section 1.6002, or herein. If any definition assigned to any phrase, term or word in this Section 1.2 conflicts with any federal or state-mandated definition, the federal or state-mandated definition will control.
- (b) **Defined Terms.**
 - (1) **“Accessory equipment”** means the same as “antenna equipment” as defined by FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
 - (2) **“Antenna”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(b), as may be amended or superseded.
 - (3) **“Approval authority”** means the City official(s) responsible for reviewing applications for small wireless facility permits and vested with the authority to approve, conditionally approve or deny such applications as provided in this Policy.
 - (4) **“Collocation”** means the same as defined by the FCC in 47 C.F.R. § 1.6002(g), as may be amended or superseded.
 - (5) **“Concealed” or “concealment”** means camouflaging techniques that integrate the transmission equipment into the surrounding natural and/or built environment such that the average, untrained observer

cannot directly view the equipment and would not likely recognize the existence of the wireless facility or concealment technique.

- (6) **“CPUC”** means the California Public Utilities Commission.
- (7) **“Decorative pole”** means any pole that includes decorative or ornamental features and/or materials intended to enhance the appearance of the pole. Decorative or ornamental features include, but are not limited to, fluted poles, ornate luminaires and artistic embellishments. Cobra head luminaires and octagonal shafts made of concrete or crushed stone composite material are not considered decorative or ornamental.
- (8) **“FCC”** means the Federal Communications Commission or its duly appointed successor agency.
- (9) **“FCC Shot Clock”** means the presumptively reasonable time frame within which the City generally must act on a given wireless application, as defined by the FCC and as may be amended or superseded. See also, Section 2.3(e) of this Policy.
- (10) **“Ministerial permit”** means any City-issued non-discretionary permit required to commence or complete any construction or other activity subject to the City's jurisdiction. Ministerial permits may include, without limitation, any building permit, construction permit, electrical permit, encroachment permit, excavation permit, traffic control permit and/or any similar over-the-counter approval issued by the City's departments.
- (11) **“Personal wireless services”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(i), as may be amended or superseded.
- (12) **“Personal wireless service facilities”** means the same as defined in 47 U.S.C. § 332(c)(7)(C)(ii), as may be amended or superseded.
- (13) **“Public right-of-way”** means any land which has been reserved for or dedicated to the City for the use of the general public for public road purposes, including streets, sidewalks and unpaved areas.
- (14) **“RF”** means radio frequency or electromagnetic waves.
- (15) **“SCJPC”** means the Southern California Joint Pole Committee.
- (16) **“Section 6409”** means Section 6409(a) of the Middle-Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156, codified as 47 U.S.C. § 1455(a), as may be amended or superseded.

- (17) “**Small wireless facility**” or “**small wireless facilities**” means the same as defined by the FCC in 47 C.F.R. § 1.6002(l), as may be amended or superseded.

SECTION 2. SMALL WIRELESS FACILITIES

SECTION 2.1. APPLICABILITY; REQUIRED PERMITS AND APPROVALS

- (a) **Applicable Facilities.** Except as expressly provided otherwise in this Policy, the provisions in this Policy shall be applicable to all existing small wireless facilities and all applications and requests for authorization to construct, install, attach, operate, collocate, modify, reconstruct, relocate, remove or otherwise deploy small wireless facilities within the City's jurisdictional boundaries.
- (b) **Approval Authority.** The approval authority for small wireless facilities in public rights-of-way shall be the City Engineer or his/her designee. The approval authority for small wireless facilities outside of public rights-of-way shall be the Community Development Director or his/her designee.
- (c) **Small Wireless Facility Permit.** A small wireless facility permit, subject to the approval authority's prior review and approval, is required for any small wireless facility proposed on an existing, new or replacement structure, including any City-owned structure.
- (d) **Request for Approval Pursuant to Section 6409.** Requests for approval to collocate, replace or remove transmission equipment at an existing wireless tower or base station submitted pursuant to Section 6409 are not be subject to this Policy, but shall be reviewed in accordance with Section 6409.
- (e) **Other Permits and Approvals.** In addition to a small wireless facility permit, the applicant must obtain all other permits and regulatory approvals as may be required by any other federal, state or local government agencies, which includes without limitation any ministerial permits and/or other approvals issued by other City departments or divisions, approval by the Banning Electric Utility for utility pole attachments in compliance with SCJPC pole attachment rules. All applications for ministerial permits submitted in connection with a proposed small wireless facility must contain a valid small wireless facility permit issued by the City for the proposed facility. Any application for any ministerial permit(s) submitted without such small wireless facility permit may be denied without prejudice. Furthermore, any small wireless facility permit granted under this Policy shall remain subject to all lawful conditions and/or legal requirements associated with such other permits or approvals.

SECTION 2.2. SMALL WIRELESS FACILITY PERMIT APPLICATION REQUIREMENTS

- (a) **Application Contents.** All applications for a small wireless facility permit must include all the information and materials required in this subsection (a).

- (1) **Application Form.** The applicant shall submit a complete, duly executed small wireless facility permit application using the then-current City form, which must include the information described in this subsection (a).
- (2) **Application Fee.** The applicant shall submit the applicable small wireless facility permit application fee (non-recurring) as set forth in Banning Municipal Code Chapter 12.56, or as established by City Council resolution, or otherwise in such amount as presumed “reasonable” by the FCC in the Small Wireless Facilities Order. See also, Section 2.5, (a)(16), of this Policy. Batched applications must include the applicable small wireless facility permit application fee for each small wireless facility in the batch. If no permit application fee has been established, then the applicant must submit a signed written statement that acknowledges that the applicant will be required to reimburse the City for its reasonable costs incurred in connection with the application within ten (10) days after the City issues a written demand for reimbursement.
- (3) **Construction Drawings.** The applicant shall submit true and correct construction drawings, prepared, signed and stamped by a California licensed or registered engineer, that depict all the existing and proposed improvements, equipment and conditions related to the proposed project and project site, which includes without limitation any and all poles, posts, pedestals, traffic signals, towers, streets, sidewalks, pedestrian ramps, driveways, curbs, gutters, drains, handholes, manholes, fire hydrants, equipment cabinets, antennas, cables, trees and other landscape features. The construction drawings must: (i) contain cut sheets that contain the technical specifications for all existing and proposed antennas and accessory equipment, which includes without limitation the manufacturer, model number and physical dimensions; (ii) identify all structures within 250 feet from the proposed project site and call out such structures' overall height above ground level; (iii) depict the applicant's plan for electric and data backhaul utilities, which shall include the locations for all conduits, cables, wires, handholes, junctions, transformers, meters, disconnect switches, and points of connection; and (iv) demonstrate that proposed project will be in full compliance with all applicable health and safety laws, regulations or other rules, which includes without limitation all building codes, electric codes, local street standards and specifications, CPUC regulations and orders including, but not limited to, CPUC General Order 95 and 128, and the SCJPC pole attachment rules.
- (4) **Site Plan.** The applicant shall submit a survey prepared, signed and stamped by a California licensed or registered engineer. The survey must identify and depict all existing boundaries, encroachments, buildings, walls, fences and other structures within 250 feet from the proposed project site, which includes without limitation all: (i) traffic lanes; (ii) all private properties and property lines; (iii) above and below-

grade utilities and related structures and encroachments; (iv) fire hydrants, roadside call boxes and other public safety infrastructure; (v) streetlights, decorative poles, traffic signals and permanent signage; (vi) sidewalks, driveways, parkways, curbs, gutters and storm drains; (vii) benches, trash cans, mailboxes, kiosks and other street furniture; and (viii) existing trees, planters and other landscaping features.

- (5) **Photo Simulations.** The applicant shall submit site photographs and photo simulations that show the existing location and proposed small wireless facility in context from at least three vantage points within the public streets or other publicly accessible spaces, together with a vicinity map that shows the proposed site location and the photo location for each vantage point. At least one simulation must depict the small wireless facility from a vantage point approximately 50 feet from the proposed support structure or location.
- (6) **Project Narrative and Justification.** The applicant shall submit a written statement that explains in plain factual detail why the proposed wireless facility qualifies as a “small wireless facility” as defined by the FCC in 47 C.F.R. § 1.6002(l). A complete written narrative analysis will state the applicable standard and all the facts that allow the City to conclude the standard has been met. Bare conclusions not factually supported do not constitute a complete written analysis. As part of the written statement the applicant must also include (i) whether and why the proposed support is a “structure” as defined by the FCC in 47 C.F.R. § 1.6002(m); and (ii) whether and why the proposed wireless facility meets each required finding as provided in Section 2.4 of this Policy.
- (7) **RF Compliance Report.** The applicant shall submit an RF exposure compliance report that certifies that the proposed small wireless facility, as well as any collocated wireless facilities, will comply with applicable federal RF exposure standards and exposure limits. The RF report must be prepared and certified by an RF engineer acceptable to the City. The RF report must include the actual frequency and power levels (in watts effective radiated power) for all existing and proposed antennas at the site and exhibits that show the location and orientation of all transmitting antennas and the boundaries of areas with RF exposures in excess of the uncontrolled/general population limit (as that term is defined by the FCC) and also the boundaries of areas with RF exposures in excess of the controlled/occupational limit (as that term is defined by the FCC). Each such boundary shall be clearly marked and identified for every transmitting antenna at the project site.
- (8) **Regulatory Authorization.** The applicant shall submit evidence of the applicant's regulatory status under federal and California law to provide the services and construct the small wireless facility proposed in the application.

- (9) **Site Agreement.** When determined necessary by the approval authority in order to more fully protect the public health and safety, and/or when installation is proposed on a City-owned structure requiring terms and conditions for such use that are not otherwise sufficiently addressed in this Policy, the City may require the applicant to enter into a site agreement. In such cases, the City may require and the applicant shall submit a partially-executed site agreement on a form prepared by the City that states the terms and conditions for such use by the applicant. No changes shall be permitted to the City's form site agreement except as may be indicated on the form itself. Any unpermitted changes to the City's form site agreement shall be deemed a basis to deem the application incomplete. Refusal to accept the terms and conditions in the City's site agreement shall be an independently sufficient basis to deny the application. The City may, but is not required to, enter into a master agreement upon an applicant's request, when multiple facilities are proposed.
- (10) **Property Owner's Authorization.** The applicant must submit a written authorization signed by the non-City property owner that authorizes the applicant to submit a wireless application in connection with the subject property and, if the wireless facility is proposed on a utility-owned support structure, including support structures owned by the Banning Electric Utility, submit a written final utility design authorization from the utility. If required by the SCJPC for a pole attachment, the applicant must provide sufficient information to the Banning Electric Utility to permit it to file a Notice of Intention to Place Wireless Antenna.
- (11) **Acoustic Analysis.** The applicant shall submit an acoustic analysis prepared and certified by an engineer licensed by the State of California for the proposed small wireless facility and all associated equipment including all environmental control units, sump pumps, temporary backup power generators and permanent backup power generators demonstrating compliance with the City's noise regulations. The acoustic analysis must also include an analysis of the manufacturers' specifications for all noise-emitting equipment and a depiction of the proposed equipment relative to all adjacent property lines. In lieu of an acoustic analysis, the applicant may submit evidence from the equipment manufacturer(s) that the ambient noise emitted from all the proposed equipment will not, both individually and cumulatively, exceed the applicable noise limits.
- (12) **Justification for Non-Preferred Location or Structure.** If a facility is proposed anywhere other than the most preferred location or the most preferred structure within 500 feet of the proposed location as described in Section 2.6, the applicant shall demonstrate with clear and convincing written evidence all of the following:
- (A) A clearly defined technical service objective and a map showing areas that meets that objective;

- (B) A technical analysis that includes the factual reasons why a more preferred location(s) and/or more preferred structure(s) within 500 feet of the proposed location is not technically feasible;
 - (C) Bare conclusions that are not factually supported do not constitute clear and convincing written evidence.
- (b) **Additional Requirements.** The City Council authorizes the approval authority to develop, publish and from time to time update or amend permit application requirements, forms, checklists, guidelines, informational handouts and other related materials that the approval authority finds necessary, appropriate or useful for processing any application governed under this Policy. All such requirements and materials must be in written form and publicly stated to provide all interested parties with prior notice.

SECTION 2.3. SMALL WIRELESS FACILITY PERMIT APPLICATION SUBMITTAL AND COMPLETENESS REVIEW

- (a) **Requirements for a Duly Filed Application.** Any application for a small wireless facility permit will not be considered duly filed unless submitted in accordance with the requirements in this subsection (a).
- (1) **Submittal Appointment.** All applications must be submitted to the City at a pre-scheduled appointment with the approval authority. Potential applicants may generally submit either one application or one batched application per appointment as provided below. Potential applicants may schedule successive appointments for multiple applications whenever feasible and not prejudicial to other applicants for any other development project. The approval authority shall use reasonable efforts to offer an appointment within five working days after the approval authority receives a written request from a potential applicant. Any purported application received without an appointment, whether delivered in-person, by mail or through any other means, will not be considered duly filed, whether the City retains, returns or destroys the materials received.
 - (2) **Pre-Submittal Conferences.** The City encourages, but does not require, potential applicants to schedule and attend a pre-submittal conference with the approval authority for all proposed projects that involve small wireless facilities. A voluntary pre-submittal conference is intended to streamline the review process through informal discussion between the potential applicant and staff that includes, without limitation, the appropriate project classification and review process; any latent issues in connection with the proposed project, including compliance with generally applicable rules for public health and safety; potential concealment issues or concerns (if applicable); coordination with other City departments responsible for application review; and application completeness issues.

- (b) **Applications Deemed Withdrawn.** To promote efficient review and timely decisions, and to mitigate unreasonable delays or barriers to entry caused by chronically incomplete applications, any application governed under this Policy will be automatically deemed withdrawn by the applicant when the applicant fails to tender a substantive response to the approval authority within sixty (60) calendar days after the approval authority deems the application incomplete in a written notice to the applicant. As used in this subsection (b), a “substantive response” must include the materials identified as incomplete in the approval authority's notice.
- (c) **Batched Applications.** Applicants may submit applications individually or in a batch; provided, that the number of small wireless facilities in a batch should be limited to five and all facilities in the batch should be substantially the same with respect to equipment, configuration, and support structure. Applications submitted as a batch shall be reviewed together, provided that each application in the batch must meet all the requirements for a complete application, which includes without limitation the application fee for each application in the batch. If any individual application within a batch is deemed incomplete, the entire batch shall be automatically deemed incomplete. If any application is withdrawn or deemed withdrawn from a batch, all other applications in the same batch shall be automatically deemed withdrawn. If any application in a batch fails to meet the required findings for approval, the entire batch shall be denied.
- (d) **Additional Procedures.** The City Council authorizes the approval authority to establish other reasonable rules and regulations for duly filed applications, which may include without limitation regular hours for appointments with applicants, as the approval authority deems necessary or appropriate to organize, document and manage the application intake process. All such rules and regulations must be in written form and publicly stated to provide all interested parties with prior notice.
- (e) **Federal Shot Clocks.** Applications shall be processed in compliance with the following federally established timelines:
 - (1) Subject to tolling provisions in this subsection “e”, the City shall have sixty (60) days from the date of receipt of an application for a small wireless facility permit to collocate one or more small wireless facilities on a structure, within which to act on the application. The foregoing period shall be ninety (90) days for applications to install one or more small wireless facilities involving no collocation, or where small wireless facilities identified in the application will be both collocated and not collocated.
 - (2) Unless otherwise agreed upon in writing by the applicant and City, for an initial application to install one or more small wireless facilities, if the City notifies the applicant on or before the 10th day after submission that the application is materially incomplete, and identifies the missing documents or information and the specific rule or regulation creating the obligation to

submit such documents or information, the time for the City to act on the application is tolled, and the shot clock date calculation shall restart at zero on the date on which the applicant submits all the documents and information identified by the City to render the application complete.

- (3) For any resubmitted application following the City's notice of deficiency, the time for the City to act on the application shall be tolled for the number of days from:
 - (A) The day after the date when the City notifies the applicant in writing that the applicant's supplemental submission was not sufficient to render the application complete and identifies the missing documents or information that need to be submitted based on the City's original request under subsection "(e)(2)", above, until;
 - (B) The date when the applicant submits all the documents and information identified by the City to render the application complete, provided the notice pursuant to subsection "(e)(3)(A)", above is served on or before the 10th day after the date when the applicant makes a supplemental submission in response to the City's request under subsection "(e)(2)", above.
- (4) The "shot clock date" or starting date for a small wireless facility application is determined by counting forward, beginning on the day after the date when the application was submitted, by the number of calendar days of the shot clock period identified in this subsection "e", provided, that if the date calculated in this manner is a local, State, or federal holiday within the City or State ("legal holiday"), the shot clock date is the next business day after such date. The term "business day" means any week day that is not a legal holiday of the City or State.
- (5) Timelines for processing applications for installation on any utility owned pole, including poles owned by the Banning Electric Utility, shall be governed by applicable FCC, CPUC, and/or SCJPC rules.

SECTION 2.4. APPROVALS AND DENIALS

- (a) **Review by Approval Authority.** The approval authority shall review a complete and properly filed application for a small wireless facility and may act on such application without prior notice or a public hearing.
- (b) **Required Findings.** The approval authority may approve or conditionally approve a complete and duly filed application for a small wireless facility permit when the approval authority finds:
 - (1) The proposed project meets the definition for a "small wireless facility" as defined by the FCC;

- (2) The proposed facility would be in the most preferred location within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred location(s) within 500 feet would be technically infeasible;
 - (3) The proposed facility would not be located on a prohibited support structure identified in this Policy;
 - (4) The proposed facility would be on the most preferred support structure within 500 feet from the proposed site in any direction or the applicant has demonstrated with clear and convincing evidence in the written record that any more-preferred support structure(s) within 500 feet would be technically infeasible;
 - (5) The proposed facility complies with all applicable design standards in this Policy;
 - (6) The applicant has demonstrated that the proposed project will be in planned compliance with all applicable FCC regulations and guidelines for human exposure to RF emissions.
- (c) **Conditional Approvals; Denials without Prejudice.** Subject to any applicable federal or California laws, nothing in this Policy is intended to limit the approval authority's ability to conditionally approve or deny without prejudice any small wireless facility permit application as may be necessary or appropriate to ensure compliance with this Policy.
- (d) **Decision Notices.** Within five calendar days after the approval authority acts on a small wireless facility permit application or before the applicable FCC Shot Clock expires (whichever occurs first), the approval authority shall notify the applicant by written notice. If the approval authority denies the application (with or without prejudice), the written notice must contain the reasons for the decision.
- (e) **Appeals.** Any decision by the approval authority shall be final and not subject to any administrative appeals.

SECTION 2.5. STANDARD CONDITIONS OF APPROVAL

- (a) **General Conditions.** In addition to all other conditions adopted by the approval authority, permits issued under this Policy shall be automatically subject to the conditions in this subsection (a).
- (1) **Permit Term.** The permit will automatically expire ten (10) years and one day from its issuance unless California Government Code § 65964(b) or other state or federal law authorizes the City to establish a shorter term for public safety or other reasons. Any other permits or approvals issued in connection with any collocation, modification or other change to this wireless facility, which includes

without limitation any permits or other approvals deemed-granted or deemed-approved under federal or state law, will not extend this term limit unless expressly provided otherwise in such permit or approval or required under federal or state law.

- (2) **Permit Renewal.** Within one (1) year before the expiration date of this permit, the permittee may submit an application for permit renewal. To be eligible for renewal, the permittee must demonstrate that the subject wireless facility is in compliance with all the conditions of approval associated with this permit and all applicable provisions in the Banning Municipal Code and this Policy that exist at the time the decision to renew the permit is rendered. The approval authority shall have discretion to modify or amend the conditions of approval for permit renewal on a case-by-case basis as may be necessary or appropriate to ensure compliance with this Policy. Upon renewal, this permit will automatically expire ten (10) years and one day from its issuance, except when California Government Code § 65964(b), as may be amended or superseded in the future, or other state or federal law, authorizes the City to establish a shorter term for public safety reasons.
- (3) **Post-Installation Certification.** Within sixty (60) calendar days after the permittee commences full, unattended operations of a small wireless facility approved or deemed-approved, the permittee shall provide the approval authority with documentation reasonably acceptable to the approval authority that the small wireless facility has been installed and/or constructed in strict compliance with the approved construction drawings and photo simulations. Such documentation shall include without limitation as-built drawings, and site photographs.
- (4) **Build-Out Period.** Each small wireless facility permit will automatically expire six (6) months from the approval date unless the permittee obtains all other permits and approvals required to install, construct and/or operate the approved small wireless facility, which includes without limitation any construction or other permits or approvals required by the any federal, state or local public agencies with jurisdiction over the subject property, the small wireless facility or its use. If this build-out period expires, the City will not extend the build-out period, but the permittee may resubmit a complete application, including all application fees, for the same or substantially similar project.
- (5) **Site Maintenance.** The permittee shall keep the site, which includes without limitation any and all improvements, equipment, structures, access routes, fences and landscape features, in a neat, clean and safe condition in accordance with the approved construction drawings and all conditions of this small wireless facility permit. The permittee shall keep the site area free from all litter and debris at all times. The permittee, at no cost to the City, shall remove and remediate any graffiti or other vandalism at the site

within 48 hours after the permittee receives notice or otherwise becomes aware that such graffiti or other vandalism occurred.

- (6) **Compliance with Laws.** The permittee shall maintain compliance at all times with all federal, state and local statutes, regulations, orders or other rules that carry the force of law ("laws") applicable to the permittee, the subject property, the small wireless facility or any use or activities in connection with the use authorized in this small wireless facility permit, which includes without limitation any laws applicable to human exposure to RF emissions. The permittee expressly acknowledges and agrees that this obligation is intended to be broadly construed and that no other specific requirements in these conditions are intended to reduce, relieve or otherwise lessen the permittee's obligations to maintain compliance with all laws. No failure or omission by the City to timely notice, prompt or enforce compliance with any applicable provision in the Banning Municipal Code, this Policy any permit, any permit condition or any applicable law or regulation, shall be deemed to relieve, waive or lessen the permittee's obligation to comply in all respects with all applicable provisions in the Banning Municipal Code, this Policy, any permit, any permit condition or any applicable law or regulation.
- (7) **Adverse Impacts on Other Properties.** The permittee shall use all reasonable efforts to avoid any and all unreasonable, undue or unnecessary adverse impacts on nearby properties that may arise from the permittee's or its authorized personnel's construction, installation, operation, modification, maintenance, repair, removal and/or other activities on or about the site. The permittee shall not perform or cause others to perform any construction, installation, operation, modification, maintenance, repair, removal or other work that involves heavy equipment or machines except during normal construction work hours authorized by the Banning Municipal Code. The restricted work hours in this condition will not prohibit any work required to prevent an actual, immediate harm to property or persons, or any work during an emergency declared by the City or other state or federal government agency or official with authority to declare a state of emergency within the City. The approval authority may issue a stop work order for any activities that violates this condition in whole or in part.
- (8) **Inspections; Emergencies.** The permittee expressly acknowledges and agrees that the City's officers, officials, staff, agents, contractors or other designees may enter onto the site and inspect the improvements and equipment. City's officers, officials, staff, agents, contractors or other designees may, but will not be obligated to, enter onto the site area without prior notice to support, repair, disable or remove any improvements or equipment in emergencies or when such improvements or equipment threatens actual, imminent harm to property or persons. The permittee expressly waives any claims and releases the City in advance from any and all liabilities for such actions taken by the City as authorized

herein. The permittee, if present, may observe the City's officers, officials, staff, contractors or other designees while any such inspection or emergency action occurs.

- (9) **Permittee's Contact Information.** Within ten (10) days from the final approval, the permittee shall furnish the City with accurate and up-to-date contact information for a person responsible for the small wireless facility, which includes without limitation such person's full name, title, direct telephone number, 24/7 emergency telephone number, facsimile number, mailing address and email address. The permittee shall keep such contact information up-to-date at all times and promptly provide the City with updated contact information if either the responsible person or such person's contact information changes.
- (10) **Indemnification and assumption of risk.** To the maximum extent permitted by law, the permittee shall defend, indemnify and hold the City, City Council and the City's boards, commissions, agents, officers, officials, employees and volunteers (collectively, the "indemnitees"), harmless with respect to any and all (i) damages, liabilities, injuries, losses, costs and expenses and from any and all claims, stop notices, demands, lawsuits, writs and other actions proceedings ("claims") brought against any of the indemnitees to challenge, attack, seek to modify, set aside, void or annul the City's approval of this permit, and (ii) other claims of any kind or form, whether for personal injury, death or property damage, that arise from or in connection with the permittee's or its agents', directors', officers', employees', contractors', subcontractors', licensees' or customers' acts or omissions in connection with this small wireless facility permit or the small wireless facility. In the event the City becomes aware of any claims, the City will use best efforts to promptly notify the permittee who shall reasonably cooperate in the defense. The permittee expressly acknowledges and agrees that the City shall have the right to approve, which approval shall not be unreasonably withheld, the legal counsel providing the City's defense, and the permittee shall promptly reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. The permittee expressly acknowledges and agrees that the permittee's indemnification obligations under this section are a material consideration that motivates the City to approve this small wireless facility permit, and that such indemnification obligations will survive the expiration, revocation or other termination of this small wireless facility permit.

The permittee understands and agrees that by locating its small wireless facility in the public rights-of-way, there is a real risk that some or all its facility may be damaged or destroyed. By accepting the small wireless facility permit and locating its facility in the public right-of-way, the permittee nevertheless expressly and knowingly assumes all such potential risks, including all costs of repair and replacement, to the extent such damage or

destruction is caused by the acts or omissions of any third party, or by City agents when acting pursuant to Section 2.5 (a)(8), above.

- (11) **Performance bond required for small wireless facilities within public rights-of-way.** Before the City issues any permits required to commence construction in connection with this permit, the permittee shall post a performance bond from a surety in a form acceptable to the approval authority in an amount reasonably necessary to cover the cost to remove the improvements and restore all affected areas based on a written estimate from a qualified contractor with experience in wireless facilities removal. The written estimate must include the cost to remove all equipment and other improvements, which includes without limitation all antennas, radios, batteries, generators, utilities, cabinets, mounts, brackets, hardware, cables, wires, conduits, structures, shelters, towers, poles, footings and foundations, whether above ground or below ground, constructed or installed in connection with the wireless facility, plus the cost to completely restore any areas affected by the removal work to a standard compliant with applicable laws and substantially to their original condition. In establishing or adjusting the bond amount required under this condition, and in accordance with California Government Code § 65964(a), the approval authority shall take into consideration any information provided by the permittee regarding the cost to remove the wireless facility to a standard compliant with applicable laws. The performance bond shall expressly survive the duration of the permit term to the extent required to effectuate a complete removal of the subject wireless facility in accordance with this condition.
- (12) **Permit Revocation.** The approval authority may recall this approval for review at any time due to complaints about noncompliance with applicable laws or any approval conditions attached to this approval after notice and an opportunity to cure the violation is provided to the permittee. If the noncompliance thereafter continues, the approval authority may, following notice and an opportunity for the permittee to be heard (which hearing may be limited to written submittals), revoke this approval or amend these conditions as the approval authority deems necessary or appropriate to correct any such noncompliance.
- (13) **Records retention requirements for all small wireless facilities within public rights-of-way.** The permittee must maintain complete and accurate copies of all permits and other regulatory approvals issued in connection with the permitted wireless facility, which includes without limitation this approval, the approved plans and photo simulations incorporated into this approval, all conditions associated with this approval and any ministerial permits or approvals issued in connection with this approval. In the event that the permittee does not maintain such records as required in this condition, any ambiguities or uncertainties that would be resolved through an inspection of the missing records will be

construed against the permittee. The permittee may keep electronic records; provided, however, that hard copies or electronic records kept in the City's regular files will control over any conflicting provisions in the permittee's electronic copies, and complete originals will control over all other copies in any form.

- (14) **Abandoned Wireless Facilities.** A small wireless facility shall be deemed abandoned if not operated for any continuous six-month period. Within 90 days after a small wireless facility is abandoned or deemed abandoned, the permittee shall completely remove the small wireless facility and all related improvements and shall restore all affected areas to a condition compliant with all applicable laws, which includes without limitation the Banning Municipal Code. In the event that the permittee does not comply with the removal and restoration obligations under this condition within said 90-day period, the City shall have the right (but not the obligation) to perform such removal and restoration with or without notice, and the permittee shall be liable for all costs and expenses incurred by the City in connection with such removal and/or restoration activities.
- (15) **Landscaping.** The permittee shall replace any landscape features damaged or displaced by the construction, installation, operation, maintenance or other work performed by the permittee or at the permittee's direction on or about the site. If any trees are damaged or displaced, the permittee shall hire and pay for a licensed arborist to select, plant and maintain replacement landscaping in an appropriate location for the species. Only workers under the supervision of a licensed arborist shall be used to install the replacement tree(s). Any replacement tree must be substantially the same size, and same species, as the damaged tree unless otherwise approved by the approval authority. The permittee shall, at all times, be responsible to maintain any replacement landscape features.
- (16) **Cost reimbursement applicable to small wireless facilities within public rights-of-way.** The permittee acknowledges and agrees that (i) the permittee's request for authorization to construct, install and/or operate the wireless facility will cause the City to incur costs and expenses; (ii) the permittee shall be responsible to reimburse the City for all costs incurred in connection with the permit, which includes without limitation costs related to application review, permit issuance, site inspection and monitoring, and any other recurring and non-recurring costs reasonably related to or caused by the request for authorization and the permit to construct, install and/or operate the wireless facility; (iii) any application fees required for the application may not cover all such reimbursable costs and that the permittee shall have the obligation to reimburse City for all such costs ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs; and (iv) the City shall have the right to withhold any permits or other approvals

in connection with the wireless facility until and unless any outstanding costs have been reimbursed to the City by the permittee. The recurring and non-recurring fees charged to the permittee pursuant to this subsection and this Policy shall be no less than the “presumed reasonable” fees stated by the FCC in the Small Wireless Facilities Order.

If the City Council has, by resolution, adopted recurring and non-recurring fees applicable to small wireless facility permits, then those fees shall be paid in lieu of the fees set forth above in this subsection (16).

- (17) **Future undergrounding programs applicable to small wireless facilities within public rights-of-way.** Notwithstanding any term remaining on any small wireless facility permit, if other utilities or communications providers in the public rights-of-way underground their facilities in the segment of the public rights-of-way where the permittee's small wireless facility is located, the permittee must also underground its equipment, except the antennas and any approved electric meter, at approximately the same time, and in compliance with all applicable CPUC orders, rules, and regulations. Accessory equipment such as radios and computers that require an environmentally controlled underground vault to function shall not be exempt from this condition. Small wireless facilities installed on wood utility poles that will be removed pursuant to the undergrounding program may be reinstalled on a streetlight that complies with the City's standards and specifications. Such undergrounding shall occur at the permittee's sole cost and expense except as may be reimbursed through tariffs approved by the CPUC for undergrounding costs.
- (18) **Electric meter upgrade requirements applicable to small wireless facilities within public rights-of-way.** If the Banning Electric Utility or other commercial electric utility provider adopts or changes its rules obviating the need for a separate or ground-mounted electric meter and enclosure, the permittee on its own initiative and at its sole cost and expense shall remove the separate or ground-mounted electric meter and enclosure. Prior to removing the electric meter, the permittee shall apply for any encroachment and/or other ministerial permit(s) required to perform the removal. Upon removal, the permittee shall restore the affected area to its original condition that existed prior to installation of the equipment.
- (19) **Rearrangement and relocation requirements applicable to small wireless facilities within public rights-of-way.** The permittee acknowledges that the City, in its sole discretion and at any time, may: (i) change any street grade, width or location; (ii) add, remove or otherwise change any improvements in, on, under or along any street owned by the City or any other public agency, which includes without limitation any sewers, storm drains, conduits, pipes, vaults, boxes, cabinets, poles and

utility systems for gas, water, electric or telecommunications; and/or (iii) perform any other work deemed necessary, useful or desirable by the City (collectively, "City work"). The City reserves the rights to do any and all City work without any admission on its part that the City would not have such rights without the express reservation in this small wireless facility permit. If the Public Works Director determines that any City work will require the permittee's small wireless facility located in the public rights-of-way to be rearranged and/or relocated, the permittee shall, at its sole cost and expense, do or cause to be done all things necessary to accomplish such rearrangement and/or relocation. If the permittee fails or refuses to either permanently or temporarily rearrange and/or relocate the permittee's small wireless facility within a reasonable time after the Public Works Director's notice, the City may (but will not be obligated to) cause the rearrangement or relocation to be performed at the permittee's sole cost and expense. The City may exercise its rights to rearrange or relocate the permittee's small wireless facility without prior notice to permittee when the Public Works Director determines that the City work is immediately necessary to protect public health or safety. The permittee shall reimburse the City for all costs and expenses in connection with such work within ten (10) days after a written demand for reimbursement and reasonable documentation to support such costs is mailed to the permittee.

SECTION 2.6. LOCATION REQUIREMENTS

- (a) **Preface to Location Requirements.** To better assist applicants and decision makers understand and respond to the community's aesthetic preferences and values, subsections (b) and (c) set out listed preferences for locations and support structures to be used in connection with small wireless facilities in an ordered hierarchy. Applications that involve less-preferred locations or structures may be approved so long as the applicant demonstrates that either (1) no more preferred locations or structures exist within 500 feet from the proposed site; or (2) any more preferred locations or structures within 500 feet from the proposed site would be technically infeasible as supported by clear and convincing evidence in the written record. Subsection (d) identifies "prohibited" support structures on which the City shall not approve any small wireless facility permit application for any competitor or potential competitor.
- (b) **Locational Preferences.** The City prefers small wireless facilities to be installed in locations, **ordered from most preferred to least preferred**, as follows:
 - (1) any location in a non-residential zone or non-residential Specific Plan designation;
 - (2) any location in a residential zone 250 feet or more from any structure approved for a residential use;

- (3) If located in a residential area, a location that is as far as possible from any structure approved for a residential use.
- (c) **Support Structures in Public Rights-of-Way.** The City prefers small wireless facilities to be installed on support structures in the public rights-of-way, **ordered from most preferred to least preferred**, as follows:
 - (1) Existing or replacement streetlight poles;
 - (2) New, non-replacement streetlight poles;
 - (3) New or replacement traffic signal poles;
 - (4) New, non-replacement poles;
 - (5) Existing or replacement wood utility poles.
- (d) **Prohibited Support Structures in Public Rights-of-Way.** The City prohibits small wireless facilities to be installed on the following support structures:
 - (1) Decorative poles;
 - (2) Signs;
 - (3) Any utility pole scheduled for removal or relocation within 12 months from the time the approval authority acts on the small wireless facility permit application;
 - (4) New, non-replacement wood poles.

SECTION 2.7. DESIGN STANDARDS

(a) General Standards.

- (1) **Noise.** Noise emitted from small wireless facilities and all accessory equipment and transmission equipment must comply with all applicable City noise control standards.
- (2) **Lights.** Small wireless facilities shall not include any lights that would be visible from publicly accessible areas, except as may be required under Federal Aviation Administration, FCC, other applicable regulations for health and safety. All equipment with lights (such as indicator or status lights) must be installed in locations and within enclosures that mitigate illumination impacts visible from publicly accessible areas. The provisions in this subsection (a)(2) shall not be interpreted or applied to prohibit

installations on streetlights or luminaires installed on new or replacement poles as may be required under this Policy.

- (3) **Landscape Features.** Small wireless facilities shall not displace any other existing landscape features unless: (A) such displaced landscaping is replaced with native and/or drought-resistant plants, trees or other landscape features approved by the approval authority and (B) the applicant submits and adheres to a landscape maintenance plan. The landscape plan must include existing vegetation, and vegetation proposed to be removed or trimmed, and the landscape plan must identify proposed landscaping by species type, size and location. Landscaping and landscape maintenance must be performed in accordance with all applicable provisions of the Banning Municipal Code.
- (4) **Site Security Measures.** Small wireless facilities may incorporate reasonable and appropriate site security measures, such as locks and anti-climbing devices, to prevent unauthorized access, theft or vandalism. The approval authority shall not approve any barbed wire, razor ribbon, electrified fences or any similarly dangerous security measures. All exterior surfaces on small wireless facilities shall be constructed from or coated with graffiti-resistant materials.
- (5) **Signage; Advertisements.** All small wireless facilities must include signage or a tamper proof tag not to exceed one (1) square feet in sign area that accurately identifies the site owner/operator, the owner/operator's site name or identification number and a toll-free, 24/7 emergency number to the owner/operator's network operations center. Small wireless facilities may not bear any other signage or advertisements unless expressly approved by the City, required by law or recommended under FCC, Occupational Safety and Health Administration or other United States governmental agencies for compliance with RF emissions regulations.
- (6) **Compliance with Health and Safety Regulations.** All small wireless facilities shall be designed, constructed, operated and maintained in compliance with all generally applicable health and safety regulations, which includes without limitation all applicable regulations for human exposure to RF emissions and compliance with the federal Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*).
- (7) **CPUC and SCJPC Rules, Regulations, and Orders.** Small wireless facilities must comply with all applicable rules, regulations and orders of the CPUC. Such CPUC rules, regulations and orders include, but are not limited to, General Order 95 and 128, which establish minimum separation from electrical lines. Small wireless facilities proposed to be attached to poles owned or operated by the Banning Electrical Utility, must also comply with all applicable rules and regulations of the SCJPC. In the event

of any conflict between any provision of this Policy and the provisions of the CPUC or SCJPC rules, regulations and orders, the rules, regulations and/or orders shall govern.

(b) **Small Wireless Facilities within Public Rights-of-Way.**

(1) **Antennas.**

- (A) **Concealment.** All antennas and associated mounting equipment, hardware, cables or other connectors must be completely concealed within an opaque antenna shroud or radome. The antenna shroud or radome must be painted a flat, non-reflective color to match the underlying support structure.
- (B) **Antenna Volume.** Each individual antenna may not exceed three cubic feet in volume.

(2) **Accessory Equipment.**

- (A) **Installation Preferences.** All non-antenna accessory equipment shall be installed in accordance with the following preferences, ordered from most preferred to least preferred: (i) underground in any area in which the existing utilities are primarily located underground; (ii) on the pole or support structure; or (iii) integrated into the base of the pole or support structure. Applications that involve lesser-preferred installation locations may be approved so long as the applicant demonstrates that no more preferred installation location would be technically feasible as supported by clear and convincing evidence in the written record.
- (B) **Undergrounded Accessory Equipment.** All undergrounded accessory equipment must be installed in an environmentally controlled vault that is load-rated to meet the City's standards and specifications. Underground vaults located beneath a sidewalk must be constructed with a slip-resistant cover. Vents for airflow shall be flush-to-grade when placed within the sidewalk and may not exceed two feet above grade when placed off the sidewalk. Applicants shall not be permitted to install an underground vault in a location that would cause any existing tree to be materially damaged or displaced.
- (C) **Pole-Mounted Accessory Equipment.** All pole-mounted accessory equipment must be installed flush to the pole to minimize the overall visual profile. If any applicable health and safety regulations prohibit flush-mounted equipment, the maximum separation permitted between the accessory equipment and the

pole shall be the minimum separation required by such regulations. All pole-mounted equipment and required or permitted signage must be placed and oriented away from adjacent sidewalks and structures. Pole-mounted equipment may be installed behind street, traffic or other signs to the extent that the installation complies with applicable public health and safety regulations. All cables, wires and other connectors must be routed through conduits within the pole, and all conduit attachments, cables, wires and other connectors must be concealed from public view. To the extent that cables, wires and other connectors cannot be routed through the pole, applicants shall route them through a single external conduit or shroud that has been finished to match the underlying support structure. Exposed cables or wires are prohibited.

- (D) **Base-Mounted Accessory Equipment.** All base-mounted accessory equipment must be installed within a shroud, enclosure or pedestal integrated into the base of the support structure. All cables, wires and other connectors routed between the antenna and base-mounted equipment must be concealed from public view.
 - (E) **Ground-Mounted Accessory Equipment.** The approval authority shall not approve any ground-mounted accessory equipment including, but not limited to, any utility or transmission equipment, pedestals, cabinets, panels or electric meters, unless specific and unique conditions of the site would make ground mounting less aesthetically and visually intrusive to public view, than an otherwise preferred location, as set forth in a written finding by the approval authority.
 - (F) **Accessory Equipment Volume.** All accessory equipment associated with a small wireless facility installed above ground level shall not cumulatively exceed: (i) nine (9) cubic feet in volume if installed in a residential district; or (ii) seventeen (17) cubic feet in volume if installed in a non-residential district. The volume calculation shall include any shroud, cabinet or other concealment device used in connection with the non-antenna accessory equipment. The volume calculation shall not include any equipment or other improvements placed underground.
- (3) **Streetlights.** The City may require applicants that propose to install small wireless facilities on an existing streetlight to remove and replace the existing streetlight with one substantially similar to the design(s) for small wireless facilities on streetlights described in any and all applicable City and/or Banning Electric Utility policies and standards, as applicable. To mitigate any material changes in the streetlighting patterns, the replacement pole must: (A) be located as close to the removed pole as possible; (B) be aligned with the other existing streetlights; and (C) include

a luminaire at substantially the same height and distance from the pole as the luminaire on the removed pole. All antennas must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.

- (4) **Wood Utility Poles.** To the extent permitted or allowed by the SCJPC pole attachment rules or regulations, applicants that propose to install small wireless facilities on an existing wood utility pole must install all antennas in a radome above the pole unless the applicant demonstrates that mounting the antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record. Side-mounted antennas on a stand-off bracket or extension arm must be concealed within a shroud. All cables, wires and other connectors must be concealed within the radome and stand-off bracket. The maximum horizontal separation between the antenna and the pole shall be the minimum separation required by applicable health and safety regulations.
- (5) **New, Non-Replacement Poles.** Applicants that propose to install a small wireless facility on a new, non-replacement pole must install a new streetlight substantially similar to the City's and/or Banning Electric Utility's standards and specifications but designed to accommodate wireless antennas and accessory equipment located immediately adjacent to the proposed location. If there are no existing streetlights in the immediate vicinity, then, subject to approval of the Banning Electric Utility, if applicable, the applicant may install a metal or composite pole capable of concealing all the accessory equipment either within the pole or within an integrated enclosure located at the base of the pole. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches. All antennas, whether on a new streetlight or other new pole, must be installed above the pole within a single, canister style shroud or radome that tapers to the pole.
- (6) **Encroachments over Private Property.** Small wireless facilities may not encroach onto or over any private or other property outside the public rights-of-way without the property owner's express written consent.
- (7) **Backup Power Sources.** Fossil-fuel based backup power sources shall not be permitted within the public rights-of-way; provided, however, that connectors or receptacles may be installed for temporary backup power generators used in an emergency declared by federal, state or local officials.
- (8) **Obstructions; Public Safety and Circulation.** Small wireless facilities and any associated equipment or improvements shall not physically interfere with or impede access to any: (A) worker access to any above-ground or underground infrastructure for traffic control, streetlight or

public transportation, including without limitation any curb control sign, parking meter, vehicular traffic sign or signal, pedestrian traffic sign or signal, barricade reflectors; (B) access to any public transportation vehicles, shelters, street furniture or other improvements at any public transportation stop; (C) worker access to above-ground or underground infrastructure owned or operated by any public or private utility agency; (D) fire hydrant or water valve; (E) access to any doors, gates, sidewalk doors, passage doors, stoops or other ingress and egress points to any building appurtenant to the rights-of-way; or (F) access to any fire escape. Above ground improvements must be setback a minimum of 2 feet from existing or planned sidewalks, trails, curb faces or road surfaces.

- (9) **Utility Connections.** All cables and connectors for telephone, data backhaul, primary electric and other similar utilities must be routed underground in conduits large enough to accommodate future collocated wireless facilities. Undergrounded cables and wires must transition directly into the pole base without any external doghouse. All cables, wires and connectors between the underground conduits and the antennas and other accessory equipment shall be routed through and concealed from view within: (A) internal risers or conduits if on a concrete, composite or similar pole; or (B) a cable shroud or conduit mounted as flush to the pole as possible if on a wood pole or other pole without internal cable space. The approval authority shall not approve new overhead utility lines or service drops merely because compliance with the undergrounding requirements would increase the project cost.
- (10) **Spools and Coils.** To reduce clutter and deter vandalism, excess fiber optic or coaxial cables shall not be spooled, coiled or otherwise stored on the pole outside equipment cabinets or shrouds.
- (11) **Electric Meters.** Small wireless facilities shall use flat-rate electric service or other method that obviates the need for a separate above-grade electric meter. If flat-rate service is not available, applicants may install a shrouded smart meter. The approval authority shall not approve a separate ground-mounted electric meter pedestal unless required by Banning Electric Utility or other utility company.
- (12) **Street Trees.** To preserve existing landscaping in the public rights-of-way, all work performed in connection with small wireless facilities shall not cause any street trees to be trimmed, damaged or displaced. If any street trees are damaged or displaced, the applicant shall be responsible, at its sole cost and expense, to plant and maintain comparably sized replacement trees approved by the approval authority at the site for the duration of the permit term.
- (13) **Lines of Sight.** No wireless facility shall be located so as to obstruct pedestrian or vehicular lines-of-sight or sight distance, or in any other

location determined by the City's traffic engineer as creating any risk to the public health and safety.

(c) **Small Wireless Facilities Outside of Public Rights-of-Way**

- (1) **Setbacks.** Small wireless facilities on private property may not encroach into any applicable setback for structures in the subject zoning district.
- (2) **Backup Power Sources.** The Director shall not approve any fossil fuel generators or other similarly noise or odor producing generators in or within 250 feet from any residence; provided, however, the Director may approve sockets or other connections used for temporary backup generators.
- (3) **Parking; Access.** Any equipment or improvements constructed or installed in connection with any small wireless facilities must not reduce any parking spaces below the minimum requirement for the subject property. Whenever feasible, small wireless facilities must use existing parking and access rather than construct new parking or access improvements. Any new parking or access improvements must be the minimum size necessary to reasonably accommodate the proposed use and comply with all applicable development standards.
- (4) **Freestanding Small Wireless Facilities.** All new poles or other freestanding structures that support small wireless facilities must be made from a metal or composite material capable of concealing all the accessory equipment, including cables, mounting brackets, radios, and utilities, either within the support structure or within an integrated enclosure located at the base of the support structure. All antennas must be installed above the pole in a single, canister-style shroud or radome. The support structure and all transmission equipment must be painted with flat/neutral colors that match the support structure. The pole diameter shall not exceed twelve (12) inches and any base enclosure diameter shall not exceed sixteen (16) inches.
- (5) **Small Wireless Facilities on Existing Buildings.**
 - (A) All components of building-mounted wireless facilities must be completely concealed and architecturally integrated into the existing facade or rooftop features with no visible impacts to or visibility from any publicly accessible areas. Examples include, but are not limited to, antennas and wiring concealed behind existing parapet walls or facades replaced with RF-transparent material and finished to mimic the replaced materials.

- (B) If the applicant demonstrates with clear and convincing evidence that integration with existing building features is technically infeasible, the applicant may propose to conceal the wireless facility within a new architectural element designed to match or mimic the architectural details of the building including length, width, depth, shape, spacing, color, and texture.

(6) Small Wireless Facilities on Existing Lattice Tower Utility Poles

- (A) Antennas must be flush-mounted to the side of the pole and designed to match the color and texture of the pole. If technologically infeasible to flush-mount an antenna, it may be mounted on an extension arm that protrudes as little as possible from the edge of the existing pole provided that the wires are concealed inside the extension arm. The extension arm shall match the color of the pole.
- (B) Wiring must be concealed in conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
- (C) All accessory equipment must be placed underground unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above-ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the structures on which they are mounted. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
- (D) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.
- (E) The installation must otherwise comply with the SCJPC pole attachment rules, and rules and regulations of the Banning Electric Utility or other utility pole owner.

(7) Small Wireless Facilities on Existing Wood Utility Poles.

- (A) All antennas must be installed within a cylindrical shroud (radome) above the top of the pole unless the applicant demonstrates that mounting antennas above the pole would be technically infeasible as supported by clear and convincing evidence in the written record.
- (B) All antennas must be concealed within a shroud (radome) designed to match the color of the pole, except as described in (7) (E).

- (C) No antenna or accessory equipment shall be attached to a utility line, cable or guy wire.
- (D) If it is technically infeasible to mount an antenna above the pole it may be flush-mounted to the side of the pole. If it is technically infeasible to flush-mount the antenna to the side of the pole it may be installed at the top of a stand-off bracket/extension arm that protrudes as little as possible beyond the side of the pole. Antenna shrouds on stand-off brackets must be a medium gray color to blend in with the daytime sky.
- (E) Wires must be concealed within the antenna shroud, extension bracket/extension arm and conduit that is flush-mounted to the pole. The conduit and mounting hardware shall match the color of the pole.
- (F) All accessory equipment must be placed underground, unless undergrounding would be technically infeasible as supported by clear and convincing evidence in the written record. Above ground accessory equipment mounted on a pole, if any, shall be enclosed in a cabinet that matches the color and finish of the pole. Above-ground cabinets not mounted on a structure, if any, shall be dark green in color.
- (G) The installation must otherwise comply with the SCJPC pole attachment rules, and rules and regulations of the Banning Electric Utility or other utility pole owner.

SECTION 2.8 ADMINISTRATIVE VARIANCE. An administrative variance from the strict locational or physical requirements of this Policy may be granted by the approval authority in his or her discretion, when it is shown to the approval authority's satisfaction based on substantial evidence that, because of special, unique circumstances applicable to the proposed location, the strict application of the requirements of this Policy would deprive the applicant of privileges enjoyed by other permittees in the vicinity operating a similar facility. Any administrative variance granted shall be subject to such conditions as will assure that the adjustment thereby authorized shall not constitute a grant of special privileges inconsistent with the limitations upon other wireless providers seeking to locate any small wireless facility in the area where such property is situated.

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Doug Schulze, ICMA-City Manager

PREPARED BY: Tom Miller, Electric Utility Director

MEETING DATE: May 14, 2019

SUBJECT: Revision and update of Electric Rule #10 – Adjustments for Customer Billing

RECOMMENDED ACTION:

Staff recommends discussion and possible action to replace and revise **Electric Rule #10 – Disputed or Erroneous Bills**, adopted by City Council on June 26, 1975 by Resolution 1975-23.

Action: Approve City Council Resolution 2019-____ Adopting the replacement, revision, and renaming of Electric Rule #10 – Adjustment for Customer Billing.

GOAL STATEMENT:

To provide guidance to staff for addressing customer electric billing concerns.

COMMITTEE RECOMMENDATION:

Staff did not seek any Committee input on Electric Rule #10.

BACKGROUND:

Banning Electric Utility is a not-for-profit publicly-owned load serving retail electrical energy distribution utility for end-use customers. The Utility is locally governed by the City Council of the City of Banning and has the sole rights and authorities to resolve, declare, direct, approve, adopt, and establish rules and regulation of the Utility, including amending or revising utility rules and regulations from time-to-time.

In this case, staff has caused Electric Rule #10 to be reviewed and is recommending the replacement and revision of the rule as a matter of sound business practice.

JUSTIFICATION:

Electric Rule #10 – Disputed or Erroneous Bills was last approved by City Council in June of 1975. Since that time, a number of laws have been changed and the regulations updated that should be considered today. Additionally, the First Missionary Baptist Church made an inquiry that prompted a review of their past and current billing. Upon review it was discovered that the demand readings were incorrect. Staff was able to pinpoint the problem and recommended a refund of significant overcharges. A portion of the proposed refund is outside the timeframe of the rule. Also, the rule does not provide for refund when there is a mutual agreement to do so. This prompted staff to review and propose replacement and modernization of a new **Electric Rule #10 – Adjustments for Customer Billing**.

The staff collaborated with the city attorney in updating the rule being proposed.

FISCAL IMPACT:

Should electric billing adjustments arise under the course of normal operations, the overall impact is negligible. However, if a billing adjustment crosses fiscal years, the impact to current revenues may increase or decrease revenues according to the specific case.

OPTIONS:

1. Approve as recommended
2. Approve with amendments
3. Provide alternative direction
4. Do not approve

ATTACHMENTS:

1. Old Electric Rule #10 – Dispute or Erroneous Bills
2. New Electric Rule #10 – Adjustment for Customer Billing
3. Jim Steffens' Memorandum of April 26, 2019 regarding First Missionary Baptist Church billing adjustment

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-____)

RESOLUTION 2019-____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE REPLACEMENT AND REVISION OF ELECTRIC RULE #10 – ADJUSTMENTS FOR CUSTOMER BILLING.

WHEREAS, Banning Electric Utility is a not-for-profit publicly-owned retail electrical energy distribution provider and load serving entity; and,

WHEREAS the City Council of the City of Banning has the sole rights and authorities to resolve, declare, direct, approve, adopt, and establish rules and regulations of the Utility, including amending or revising utility rules and regulations from time-to-time; and,

WHEREAS, the electric utility director is responsible for implementing and administering the Utility's rules and regulations as resolved by City Council, and

WHEREAS, customers of the Utility agree to abide by the rules and regulation as a condition of service.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning declares, determines, and orders as follows:

SECTION 1. Approves the revised Electric Rule #10 – Adjustments for Customer Billing and directs the electric utility director to implement the rule immediately.

SECTION 2. Recognizes the new Electric Rule #10, supports staff's billing adjustment for the First Missionary Baptist Church, and accepts staff's exception report for the church's billing adjustment.

SECTION 3. The City Clerk shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book or original resolutions.

PASSED, APPROVED, AND ADOPTED this 14th day of May, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

CERTIFICATION

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-_____ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: May 14, 2019

SUBJECT: Resolution amending the Classification and Compensation Plan to Delete the Position of Community Services Director, Create a new position of Parks & Recreation Director, and approving the Parks & Recreation Director job description

RECOMMENDED ACTION:

Adopt a Resolution amending the Classification and Compensation Plan to delete the position of Community Services Director, create a new position of Parks & Recreation Director, and approving a job description for the Parks & Recreation Director (attached).

BACKGROUND:

The Community Services Director position will become vacant in mid-June due to the retirement of Director Heidi Meraz. The Community Services Department is currently responsible for parks, recreation and community transit services. However, transit services is planned to be assigned to Fleet Maintenance within the Public Works Department when Pass Transit is dissolved on July 1, 2019. As a result, the Community Services Department will focus its resources on parks and recreation programs. The Community Services Department will then be renamed, Parks and Recreation Department.

Banning Municipal Code Section 2.08.080 (B) authorizes the City Manager to consolidate or combine offices, positions, departments or units under his or her direction; provided, however, that any major administrative reorganization affecting city finances shall be subject to concurrence by a formal vote of the City Council. While shifting transit responsibilities to the Public Works Department is not considered a major administrative reorganization and will have minimal impact on city finances, the City Council may wish to determine if formal action on the administrative reorganization is desired by a majority of members.

The classification of the Parks and Recreation Director position is proposed to remain at the D92 level, which is the current classification of the Community Services Director position.

FISCAL IMPACT:

The proposed reorganization and approval of the Parks & Recreation Director job description is cost neutral because of the concurrent deletion of the Community Services Director position. However, costs will be shifted from Community Services (Parks & Recreation) to Public Works in connection with the shifting of an Executive Assistant position that will move from Community Services to Public Works.

ATTACHMENTS:

1. Resolution amending the Classification and Compensation Plan to eliminate the Community Services Director position and add the Parks & Recreation Director position;
2. Parks and Recreation Director Job Description

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-_____

RESOLUTION NO. 2019-_____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AMENDING THE CLASSIFICATION & COMPENSATION PLAN FOR THE CITY OF BANNING TO DELETE THE COMMUNITY SERVICES DIRECTOR POSITION AND ADD THE POSITION OF PARKS AND RECREATION DIRECTOR AND APPROVE A JOB DESCRIPTION IN CONNECTION THEREWITH

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

WHEREAS, the Classification and Compensation Plan has been updated to reflect changes in job descriptions; and

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

WHEREAS, the City Manager has recommended the deletion of the Community Services Director position and the creation of a new Director of Parks and Recreation position.

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

SECTION 1. The City Council approves the following position update and changes to the City's Classification and Compensation Plan:

- A. Delete the position of Community Services Director; and
- B. Create the position of Parks and Recreation Director; and
- C. Set the salary level for the new Parks and Recreation Director position at the same level as the former Community Services Director Position.

SECTION 2. The City Council hereby approves the new job description, classification and compensation for the Parks and Recreation Director position as provided on **Exhibit "A,"** attached hereto to this Resolution.

SECTION 3. That the City Council approve the Classification and Compensation plan – Schedule "A" as provided on "Exhibit B," attached hereto to this Resolution.

SECTION 4. 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 14th day of May, 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-____, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

CITY OF BANNING
CLASSIFICATION & COMPENSATION PLAN
REVISED MAY 14, 2019
RESOLUTION 2019-___ (AMENDING RESOLUTION 2019-45)

MATRIX BY CLASS SERIES/JOB CODE

Class Series/Occupational Job Group	Job Code	Classification/Position	Salary Range	Bargaining Unit
1000 – CITY ADMINISTRATION SERIES				
City Administration Group	1010	City Manager	D13	Council Contract
	1013	City Attorney	D11	Contract
	1015	Public Information Officer	G68	Gen/Confidential
	1606	Deputy City Clerk	G62	Gen/Confidential
Financial Services Group	1105	Administrative Services Director	D00	Contract
	1115	Deputy Finance Director	T87	Mgmt/Confidential
	1160	Purchasing Manager	T77	TEAMSTERS
	1165	Buyer	G54	IBEW-G
	1170	Purchasing Assistant	G48	IBEW-G
	5028	Utility Financial Analyst	T76	TEAMSTERS
	1125	Accountant II	G59	IBEW-G
	1140	Accountant	G56	IBEW-G
	1136	Accounting Specialist	G53	IBEW-G
	1130	Financial Services Specialist	G47	IBEW-G
Human Resources Group	1215	Human Resources Manager	T83	Mgmt/Confidential
	1230	Human Resources Technician	G54	Gen/Confidential
	1235	Senior Human Resources Technician	G58	Gen/Confidential
Utility Billing Group	1310	Customer Service & Billing Manager	T71	TEAMSTERS
	1335	Lead Customer Service Representative	G46	IBEW-G
	1340	Senior Utility Billing Rep	G48	IBEW-G
	1350	Utility Billing Representative	G43	IBEW-G
	1340	Lead Field Service Representative	U55	IBEW-U
	1325	Field Service Representative	U51	IBEW-U

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

2000 – POLICE SERIES

Police Group	2010	Police Chief	D03	Contract
	2016	Police Captain	P92	Police Mgmt
	2025	Police Lieutenant	P87	Police Mgmt
	2030A	Police Staff/Master Sergeant	P78	POA
	2040	Police Corporal	P71	POA
	2050	Police Officer	P67	POA
	2060	Police Recruit/Trainee	N/A	At-Will
Police Support Group	2143	Lead Public Safety Dispatcher	G56	IBEW-G
	2110	Public Safety Dispatcher	G52	IBEW-G
	2130	Community Services Officer	P48	POA
	2151	Police Assistant II	G48	IBEW-G
	2152	Police Assistant I	G44	IBEW-G

3000-COMMUNITY DEVELOPMENT SERIES

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

3300-COMMUNITY SERVICES GROUP

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

4000-PUBLIC WORKS SERIES

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

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

5000 ELECTRIC UTILITIES SERIES

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

ATTACHMENT 2

Parks and Recreation Director Job Description



JOB DESCRIPTION

TITLE: Parks & Recreation Director	JOB CODE:
DEPARTMENT: Parks & Recreation	EFFECTIVE DATE:
REPORTS TO: City Manager	FLSA STATUS: Exempt
SUPERVISES: Recreation Manager, Program Coordinator, and Parks Maintenance Workers	UNION STATUS: Unrepresented

JOB PURPOSE/SUMMARY

The Parks & Recreation Director is responsible for overall leadership and management of the Parks & Recreation Department. The Director manages, plans, organizes, directs and administers various recreation programs and special events for the community, including the maintenance of parks and related facilities; plans, directs, and supervises the work of full- and part-time staff; manages the Department budget; provides staff support to City Commissions and Committees; facilitates the use of all City parks and athletic resources to community sports organizations; coordinates assigned activities with other City Departments, outside organizations, and the general public; provides highly-responsible and complex administrative support to the City Manager.

ABOUT THE CITY OF BANNING

The City of Banning is located in the San Geronio Pass area of Southern California. The community of over 30,000 people is diverse with income levels slightly lower than other areas of Riverside County. However, growth and development is occurring rapidly, which will create new jobs, increase the population and raise income levels. Our employees are the most important asset in preserving our Proud History, Creating a Prosperous Tomorrow, and in responding to the community's needs. The City provides competitive salaries, outstanding benefits and professional growth opportunities.

CITY VISION

The City of Banning promotes and supports a high quality of life that ensures a safe and friendly environment, fosters new opportunities and provides responsible, fair treatment to all and is the pride of its citizens.

CORE VALUES

- Customer Service Excellence: We excel in what we do by staying responsive, flexible, patient, effective, and professional.
- Integrity: We are ethical, accountable and compliant with our responsibility to the public and community.
- Teamwork: We work together and maintain great communication and respect and foster a fun and enjoyable atmosphere to take pleasure in what we do.
- Yes-Minded: We recognize diversity and maintain a positive attitude to do all we can to serve the community in the safest and most responsible manner.

PERFORMANCE EXPECTATIONS

- **Leadership:** Contributes to a positive work culture consistent with the City of Banning Leadership Philosophy, actively welcomes new approaches to public service and supports change and process improvements at all levels within the organization.
- **Management:** Able to independently assess and organize personal work performance while contributing to the overall organization.
- **Teamwork:** Demonstrates ability and willingness to work collaboratively with a team.
- **Communication:** Communicates effectively with peers, supervisors, subordinates, and individuals to who service is provided.

ESSENTIAL FUNCTIONS

- Functions as a member of the City's management team and works closely with the City Manager, Department Directors, and City Council on activities related to strategic planning and the development of City vision, mission and values.
- Assume management responsibility for all services and activities of the Parks & Recreation Department within limits prescribed by law and in accordance with established guidelines.
- Assume management responsibility for the maintenance of all parks and related facilities.
- Ensures that the Department's programs are implemented in a manner consistent with the City's goals and policies; determines major departmental policies, performs short- and long-range planning activities, and sets direction, goals, objectives and priorities for the department.
- Supervise, promote, implement, coordinate, and evaluate various recreational programs for children and adults including the annual 4th of July Celebration, senior center, Stagecoach Days, Holiday Tree Lighting, summer youth camp, annual Disaster Expo, and specialized one-day sports events and programs.
- Participate in the negotiation, development, planning, design and implementation of related City Capital Improvement Projects as well as capital improvements to existing facilities.
- Continuously monitor and evaluate the efficiency and effectiveness of Department methods, procedures and programs; assess and monitor workload; identify and implement opportunities for improvement; review with City Manager where appropriate.
- Facilitate use of all City athletic resources to community sports organizations; supervise operations of all City athletic facilities.
- Prepares a variety of complex analytical and statistical reports and presentations.
- Coordinates Departmental activities with City sports organizations and other City departments.
- Respond to and resolve sensitive and difficult public inquiries and complaints.
- Develop, prepare, and administer Department budget, including preparing cost estimates and justifications for budget recommendations, researching and recommending Capital Improvement Projects, and monitoring and controlling expenditures.
- Develop and implement Department policies, procedures, and fee schedules; evaluate equity and adequacy of policy and fee schedules on an on-going basis; make revision recommendations as needed.
- Oversee Recreation Department Customer Relations Program.
- Work closely with the School District regarding joint-use and capital improvements of facilities.
- Maintain close contact with school officials and community groups regarding program offerings and coordination of services.
- Promote and publicize recreation programs and activities; prepare and coordinate the development of program and event publicity, including flyers, brochures, news releases, etc.
- Review and approve manuals, reports, flyers, press releases, etc., produced by subordinate staff.
- Prepare and maintain records and evaluation reports on new and on-going program offerings.
- Provide staff support to the City's Parks and Recreation Commission.
- Provides managerial assistance and supervision to subordinates in planning and implementing programs; selects, trains, motivates, coaches and evaluates staff; establishes and monitors employee performance objectives; reviews employee performance evaluations completed by the department management team; provides or coordinates staff training.
- Meets regularly with staff to discuss and resolve priorities, workload and technical issues.
- Facilitates problem solving in the department and encourages a high degree of communication and feedback between employees and supervisors; leads by example by maintaining high standards of behavior and performance.

- Maintains timely and regular attendance.
- Performs other duties as assigned.

KNOWLEDGE OF:

- City organization, operations, policies and procedures.
- Structure, organization and interrelationships of City departments, agencies and related governmental agencies and offices affecting assigned functions.
- Modern principles of park planning and design.
- Organizational and management practices as applied to the analysis and evaluation of programs, policies and operational needs.
- Modern principles and practices for developing and implementing a wide variety of recreation, social, and leisure activities for children and adults.
- Rules and regulations governing public meetings.
- Sources of information related to a broad range of municipal programs, services and administration.
- Pertinent Federal, State and local laws, codes, regulations, and guidelines affecting recreation programs and activities.
- Principles of human resource management, supervision, training, and performance evaluation.
- Program and project management techniques and principles.
- Recreational, social, and cultural needs of the community.
- Principles of facility supervision, facilitation, and maintenance.
- Research methods and report preparation and presentation.
- Management practices in a union environment.
- Correct English usage, grammar, spelling, punctuation and vocabulary.

ABILITY TO:

- Develop short- and long-range goals, and plan, assign, coordinate and evaluate the work of subordinates.
- Analyze issues, evaluate alternatives and make logical recommendations based on findings.
- Administer program goals and objectives; implement initiatives and recommendations in support of department and City goals.
- Foster cooperative group processes and efficiently use resources; delegate tasks and workload assignments.
- Develop and monitor departmental and program/project operating budgets, costs and schedules.
- Assess and prioritize multiple tasks, projects and demands.
- Supervise, lead, coach and use best management practices to improve staff performance.
- Effectively administer a variety of city-wide programs.
- Interpret and apply city policies, procedures, laws and regulations.
- Support and model the identified vision, values and behaviors of the organization.
- Establish and maintain effective working relationships.
- Assess and monitor community needs; identify opportunities for improving service delivery methods and procedures for development and implementation of new program areas.
- Maintain administrative systems for facility and program scheduling, calendaring, and other functions.
- Operate a personal computer utilizing a variety of standard and specialized software.
- Communicate effectively both orally and in writing.

PREFERRED QUALIFICATIONS

A Bachelor's Degree from an accredited college or university with major course work in recreation, public administration, physical education, or a related field is required. A Master's degree is preferred.

Five years of increasingly responsible experience in the administration of recreational programming and social and cultural programs and services, including three years of management and supervisory experience. Experience in park facilities planning and design, as well as developing, planning, implementing, and facilitating sports programs is required.

LICENSE AND CERTIFICATION REQUIREMENTS

- Must obtain a valid California Driver License within thirty (30) days after employment.
- An acceptable driving record.
- CPR and First Aid certificates.

- Successful completion of a pre-employment background check.
- Certified Park and Recreation Professional (CPRP) as granted by the National Recreation and Park Association (NRPA) is preferred.

WORKING CONDITIONS

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee occasionally works in outside weather conditions. The employee is occasionally exposed to wet and/or humid conditions, high temperatures and toxic or caustic chemicals.

The regular work schedule is generally Monday through Friday, 8 am to 5 pm, but may include some weekends for special events. Work is primarily performed in an office which is busy, oriented to public service and subject to occasional work interruptions. Noise level in the work environment is usually quiet while in the office and moderately loud when in the field. Occasional attendance at meetings before or after regular work hours is required.

PHYSICAL REQUIREMENTS

The physical demands described here represent those that must be met by an employee to successfully perform the essential functions of this job. Reasonable accommodation may be made to enable individuals with disabilities to perform the essential functions.

While performing the duties of this job, the employee is frequently required to walk, sit, talk, and hear. The employee is occasionally required to use hands to finger, handle, feel or operate objects, tools, or controls and reach with hands and arms. The employee is occasionally required to climb, balance, stoop, kneel, crouch, or crawl.

The employee must occasionally lift and/or move up to 50 pounds. Specific vision abilities required by this job include close vision, color vision, and the ability to adjust focus

The City of Banning is an equal opportunity employer. All employees and candidates for employment will be recruited, selected, trained, promoted, compensated and, if necessary, disciplined or terminated without regard to sex/gender, race, national origin, religion, creed, color, marital status, veteran status, age, national origin, pregnancy, sexual orientation, gender identity, disability, genetic information or any other basis prohibited by law.

While requirements may be representative of minimum levels of knowledge, skills and abilities to perform this job successfully, the incumbent will possess the abilities or aptitudes to perform each duty proficiently. This job description does not constitute an employment agreement between the Employer and Employee and is subject to change as the needs of the Employer and requirements of the job change.

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**CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT**

TO: BANNING UTILITY AUTHORITY

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works

MEETING DATE: May 14, 2019

SUBJECT: Adopt Resolution of the Utility Authority, Approving a Professional Services Agreement in the Amount of \$102,464 with U.S. Geological Survey for the Continued Implementation of a Stream Flow Monitoring Program Related to the San Gorgonio Flume

RECOMMENDED ACTION:

Adopt Resolution 2019-____ UA:

1. Approving a Professional Services Agreement with U.S. Geological Survey for the continued implementation of a stream flow monitoring program related to the San Gorgonio Flume in an amount not to exceed \$102,464.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement.
3. Authorizing the City Manager to execute the Professional Services Agreement with U.S. Geological Survey.

BACKGROUND:

The City continues working with Banning Heights Mutual Water Company and the San Gorgonio Pass Water Agency, referred to as the Participating Entities (PE), as they have for several years, to secure control of the San Gorgonio Flume once SCE's Surrender Application has been accepted by the Federal Energy Regulatory Commission (FERC).

Because a portion of the Flume is located on federal land, once SCE's Surrender Application is accepted by FERC, the PE's must obtain approval of a Special Use Permit (SUP), from the Forest Service for those parts of the San Gorgonio Flume system that are not currently covered by an existing right-of-way. As part of the SUP approval process the SUP applicant, in this case the City of Banning, must conduct and provide to the Forest Service several studies and analysis to comply with National Environmental Policy Act (NEPA) requirements which includes water diversion volumes.

JUSTIFICATION:

Approval of Resolution 2019-____ UA would allow for continuation of the stream monitoring program put in place in 2015 at the request of the Forest Service in order to provide supporting data that will be incorporated into technical studies submitted to the Forest Service.

The request to collect water diversion data by the Forest Service is in line with Senate Bill (SB) 88, signed June 24, 2015 and approved by the Office of Administrative Law March 21, 2016. SB 88 puts forth measurement and reporting requirements for all water right holders that divert more than 10 acre-feet of water per year. Additionally, SB 88 requires that systems that divert over 1,000 acre-ft. per year must have hourly reading of the water being diverted. The Flume system diverts, on average, 2,000 acre-feet per year. Approval of 2019-____ UA would provide the required diversion data to comply with SB 88.

Additionally, the stream flow monitoring program will provide real-time data which provides staff the opportunity to detect obstructions in the conveyance system allowing staff to be dispatched to make the necessary repairs in a timely manner.

FISCAL IMPACT:

If approved, the Professional Service Agreement in the amount of \$102,464, will be funded by the Water Operations Fund Account 660-6300-471.90-78 (Flume Consultant Costs) which is budgeted to cover the term of the agreement.

It is expected that the cost of the services to be provided by the USGS will be shared by the City of Banning, Banning Heights Mutual Water Company, San Gorgonio Pass Water Agency and Southern California Edison:

City of Banning:	\$36,814
San Gorgonio Pass Water Agency:	\$30,000
Banning Heights Mutual Water Co.:	\$20,000
Southern California Edison:	<u>\$15,650</u>
	\$102,464

ALTERNATIVES:

Reject Resolution 2019-____ UA. Rejection of staff's recommendation will make it difficult to comply with SB88 and may not provide sufficient data to support technical studies.

ATTACHMENTS:

1. Resolution 2019-____ UA
2. U.S. Geological Survey Agreement

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-____ UA)

RESOLUTION 2019-__ UA**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF BANNING, CALIFORNIA, APPROVING THE PROFESSIONAL SERVICES AGREEMENT IN THE AMOUNT OF \$102,464 WITH U.S. GEOLOGICAL SURVEY FOR THE CONTINUED IMPLEMENTATION OF A STREAM FLOW MONITORING PROGRAM RELATED TO THE SAN GORGONIO FLUME**

WHEREAS, the City of Banning along with the Banning Heights Mutual Water Company ("Banning Heights") and the San Gorgonio Pass Water Agency, collectively known as the Participating Entities (PE) have been working together with the United States Forest Service ("Forest Service") to facilitate the transfer of the San Gorgonio Whitewater River Water Conveyance System ("Flume") pending Southern California Edison (SCE) surrender application before the Federal Energy Regulatory Commission (FERC) for its hydropower project known as the San Gorgonio Hydroelectric Project No. 344; and

WHEREAS, a Forest Service issued Special Use Permit (SUP) must be obtained for those parts of the Flume that are not covered by an existing right-of-way originally dedicated for the operation of the Flume and which lay on Forest Service lands; and

WHEREAS, the Forest Service must follow a National Environmental Policy Act (NEPA) process prior to the issuance of an SUP which includes the preparation of several environmental studies necessary to support the Forest Service's NEPA determination. The cost for the preparation of said studies is burdened on the applicant, which in this case is the City of Banning; and

WHEREAS, the Forest Service has requested that flow diversion data be collected; and

WHEREAS, Senate Bill 88 puts forth measurement and reporting requirements for all water right holders that divert more than 10 acre-feet of water per year. Additionally, SB 88 requires that systems that divert over 1,000 acre-ft per year must have hourly reading of the water being diverted. The Flume system diverts, on average, 2,000 acre-feet per year; and

WHEREAS, the Professional Service Agreement in the amount of \$102,464, will be funded by the Water Operations Fund Account 660-6300-471.90-78 (Flume Consultant Costs); and

WHEREAS, the cost of the services to be provided by USGS will be shared by the City of Banning, San Gorgonio Pass Water Agency (SGPWA) and Southern California Edison (SCE) as follows: City of Banning: \$36,814, SGPWA: \$30,000, Banning Heights Mutual Water Company: \$20,000 and SCE: \$15,650.

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

SECTION 1. The Banning Utility Authority adopts Resolution 2019-____ UA approving the Professional Services Agreement with U.S. Geological Survey in the amount of \$102,464.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement.

SECTION 3. The City Manager is authorized to execute the Professional Services Agreement with the U.S. Geological Survey for the continued implementation of a stream flow monitoring program related to the Flume.

SECTION 4. The Deputy Secretary of the Banning Utility Authority shall certify to the adoption of this resolution and shall cause a certified resolution to be filed in the book of original resolutions.

PASSED, ADOPTED AND APPROVED this 14th day of May, 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, Esq., 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-____ UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy Secretary
Banning Utility Authority

ATTACHMENT 2

(U.S. Geological Survey Agreement)



United States Department of the Interior

U.S. GEOLOGICAL SURVEY

California Water Science Center
6000 J Street, Placer Hall
California State University
Sacramento, California 95819-6129
Phone: (916) 278-3000 Fax: (916) 278-3070
<https://ca.water.usgs.gov>

May 7, 2019

Art Vela
City of Banning
P.O. Box 998
176 E. Lincoln Street
Banning, CA 92220

Attn: Perry Gerdes

Dear Mr. Vela:

This letter confirms discussions between our respective staffs, concerning the continuation of a cooperative water resources program between the City of Banning (Banning) and the U.S. Geological Survey (USGS) for the period November 1, 2018 to October 31, 2019.

The proposed program, which consists of the operation and maintenance of the below listed streamgaging stations and associated costs, is as follows:

<u>Station number and name</u>		<u>Banning Funds</u>	<u>USGS Funds</u>	<u>Total Funds</u>
Streamflow Site – Full Operation and Maintenance				
340229116510601	Burnt Canyon Creek above Diversion Dam near Banning ¹	\$ 15,650	\$-0-	\$ 15,650
Streamflow Sites – Seasonal Operation and Maintenance				
10255890	East Fork Whitewater River Diversion near Banning	15,650	-0-	15,650
10255895	South Fork Whitewater River near Banning ¹	15,650	-0-	15,650
10255897	South Fork Whitewater River Diversion near Banning	15,650	-0-	15,650
340242116492901	Whitewater River Diversion Flume in Upper Burnt Canyon near Banning	15,650	-0-	15,650

¹ Streamflow data will be limited to the low flow range, estimated as less than 100 cfs. Regular operation and maintenance work, however, no attempt will be made to measure high flow events and any discharge above the approximate maximum will not be estimated or published. Indirect determinations of high flow will not be attempted.

Mr. Art Vela, Public Works Director - City of Banning

<u>Station number and name</u>		<u>Banning Funds</u>	<u>USGS Funds</u>	<u>Total Funds</u>
Miscellaneous Measurement Sites				
10255900	Black Wheel Creek Diversion near Banning	1,992	-0-	1,992
340339116490901	Black Wheel Creek above Diversion Dam near Banning	1,992	-0-	1,992
340340116490101	South Fork Whitewater River below Diversion in Canyon near Banning	1,992	-0-	1,992
340344116490902	South Fork Whitewater River below Diversion near Banning	1,992	-0-	1,992
340346116482901	East Fork Whitewater River Leakage near Banning	1,992	-0-	1,992
340347116482901	East Fork Whitewater River below Diversion in Canyon near Banning	1,992	-0-	1,992
340347116483001	East Fork Whitewater River above Diversion Dam near Banning	1,992	-0-	1,992
10	Miscellaneous Discharge Measurements ²	3,320	-0-	3,320
	Credit for 4 Miscellaneous Discharge Measurements WY18	-1,300	-0-	-1,300
	Difficulty Factor	8,250	-0-	8,250
TOTAL		\$102,464	-0-	\$102,464

Total cost of the proposed program is \$102,464. Federal matching funds are not available for this program, so the entire cost of this program will be the responsibility of the City of Banning.

This program letter does serve as certification that the U.S. Geological Survey, as an agency of the United States Federal Government, is a self-insured agency. All Federal Government employees, acting within the scope of their employment, are covered for personal injury by the Federal Employees Compensation Act (5 U.S.C. 8101 et seq.). All Federal Government employees are covered for liability resulting from negligence, wrongful acts, or omissions while performing duties within the scope of their employment, by the Federal Tort Claims Act (28 U.S.C. 2671 et seq.). Please maintain this program letter for your records on this subject.

Enclosed are two originals of Joint Funding Agreement (JFA) 19ZGJFA60416600, signed by our agency, for your approval. If you are in agreement with this proposed program, please return one fully executed JFA to our office. Work performed with funds from this agreement will be conducted on a fixed-price basis. Billing for this agreement will be rendered quarterly.

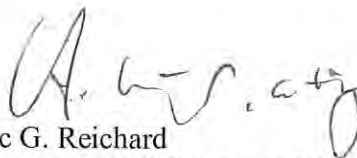
² Timing and location of these measurements are to be made at the discretion of Banning personnel with input by USGS Redlands Field Office personnel. If fewer measurements are made a credit will be given in the 2020 water year at the 2019 rate.

Mr. Art Vela, Public Works Director - City of Banning

The USGS is required to have an agreement in place prior to any work being performed on a project. We request that a fully executed JFA be returned prior to May 20, 2019. If it is not received by May 20, 2019, we will be required to suspend operations until an agreement is received.

If you have any questions concerning this program please contact Al Caldwell, Deputy Data Program Chief, at (619) 225-6103. If you have any administrative questions please contact Tammy Seubert in our Sacramento Office at (916) 278-3040.

Sincerely,

A handwritten signature in black ink, appearing to read "Eric G. Reichard".

Eric G. Reichard
Director, USGS California Water Science Center

Enclosures

cc: Al Caldwell, USGS CAWSC

Form 9-1366
(May 2018)

Page 1 of 2

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer#: 6000004166
Agreement#: 19ZGJFA60416600
Project #: ZG00GZV
TIN #: 95-6000674

Fixed Cost Agreement YES[X] NO[]

THIS AGREEMENT is entered into as of the November 1, 2018, by the U.S. GEOLOGICAL SURVEY, California Water Science Center, UNITED STATES DEPARTMENT OF THE INTERIOR, party of the first part, and the CITY OF BANNING party of the second part.

1. The parties hereto agree that subject to the availability of appropriations and in accordance with their respective authorities there shall be maintained in cooperation for cooperative water resources investigations in the City of Banning area as outlined in the USGS program letter dated May 7, 2019 (Scope of Work), herein called the program. The USGS legal authority is 43 USC 36C, 43 USC 50, and 43 USC 50b.

2. The following amounts shall be contributed to cover all of the cost of the necessary field and analytical work directly related to this program. 2(b) include In-Kind-Services in the amount of \$0.00

- (a) \$0.00 by the party of the first part during the period
November 1, 2018 to October 31, 2019
- (b) \$102,464.00 by the party of the second part during the period
November 1, 2018 to October 31, 2019
- (c) Contributions are provided by the party of the first part through other USGS regional or national programs, in the amount of : \$0.00

Description of the USGS regional/national program:
Not Applicable

- (d) Additional or reduced amounts by each party during the above period or succeeding periods as may be determined by mutual agreement and set forth in an exchange of letters between the parties
- (e) The performance period may be changed by mutual agreement and set forth in an exchange of letters between the parties.

3. The costs of this program may be paid by either party in conformity with the laws and regulations respectively governing each party.

4. The field and analytical work pertaining to this program shall be under the direction of or subject to periodic review by an authorized representative of the party of the first part.

5. The areas to be included in the program shall be determined by mutual agreement between the parties hereto or their authorized representatives. The methods employed in the field and office shall be those adopted by the party of the first part to insure the required standards of accuracy subject to modification by mutual agreement.

6. During the course of this program, all field and analytical work of either party pertaining to this program shall be open to the inspection of the other party, and if the work is not being carried on in a mutually satisfactory manner, either party may terminate this agreement upon 60 days written notice to the other party.

7. The original records resulting from this program will be deposited in the office of origin of those records. Upon request, copies of the original records will be provided to the office of the other party.

8. The maps, records or reports resulting from this program shall be made available to the public as promptly as possible. The maps, records or reports normally will be published by the party of the first part. However, the party of the second part reserves the right to publish the results of this program and, if already published by the party of the first part shall, upon request; be furnished by the party of the first part; at cost, impressions suitable for purposes of reproduction similar to that for which the original copy was prepared. The maps, records or reports published by either party shall contain a statement of the cooperative relations between the parties. The Parties acknowledge that scientific information and data developed as a result of the Scope of Work (SOW) are subject to applicable USGS review, approval, and release requirements, which are available on the USGS Fundamental Science Practices website (<https://www2.usgs.gov/fsp/>).

Form 9-1366
(May 2018)

Page 2 of 2

U.S. Department of the Interior
U.S. Geological Survey
Joint Funding Agreement
FOR
Water Resource Investigations

Customer#: 6000004166
Agreement#: 19ZGJFA60416600
Project #: ZG00GZV
TIN #: 95-6000674

9. Billing for this agreement will be rendered quarterly. Invoices not paid within 60 days from the billing date will bear Interest, Penalties, and Administrative cost at the annual rate pursuant the Debt Collection Act of 1982, (codified at 31 U.S.C § 3717) established by the U.S. Treasury.

USGS Technical Point of Contact

Name: Al Caldwell
Deputy Associate Director for Data
Address: 4165 Spruance Road, Suite 200
San Diego, CA 92101-0812
Telephone: (916) 225-6103
Fax:
Email: lacald@usgs.gov

Customer Technical Point of Contact

Name: Perry Gerdes
Water/Wastewater Superintendent
Address: P.O. Box 998
Banning, CA 92220
Telephone: (951) 849-3273
Fax:
Email: pgerdes@ci.banning.ca.us

USGS Billing Point of Contact

Name: Tamara Seubert
Budget Analyst
Address: Placer Hall 6000 J Street
Sacramento, CA 95819
Telephone: (916) 278-3040
Fax: (916) 278-3070
Email: tseubert@usgs.gov

Customer Billing Point of Contact

Name:
Address:
Telephone:
Fax:
Email:

U.S. Geological Survey
United States
Department of Interior

CITY OF BANNING

Signature

By Eric G. Reichard Date: 5/7/2019
Name: Eric G. Reichard
Title: Director, USGS California Water Science
Center

Signatures

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
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Form 9-1366
(May 2018)

Page 1 of 2

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Form 9-1366
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Telephone: (951) 849-3273
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USGS Billing Point of Contact

Name: Tamara Seubert
Budget Analyst
Address: Placer Hall 6000 J Street
Sacramento, CA 95819
Telephone: (916) 278-3040
Fax: (916) 278-3070
Email: tseubert@usgs.gov

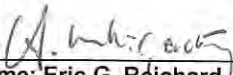
Customer Billing Point of Contact

Name:
Address:
Telephone:
Fax:
Email:

U.S. Geological Survey
United States
Department of Interior

CITY OF BANNING

Signature

By  Date: 5/7/2019
Name: Eric G. Reichard
Title: Director, USGS California Water Science Center

Signatures

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

By _____ Date: _____
Name:
Title:

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**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

MEETING DATE: May 14, 2019

SUBJECT: Adopt Resolution 2019-__ UA, Awarding a Professional Services Agreement to Woodard & Curran of Los Angeles, CA for Grant Application Preparation Services for the Proposition 1, Round 1, Integrated Regional Water Management Implementation Grant Program in the amount of \$86,230

RECOMMENDED ACTION:

Staff recommends that the Banning Utility Authority adopt Resolution 2019-__ UA:

- I. Awarding a Professional Services Agreement to Woodard & Curran of Los Angeles, CA for the preparation of the Proposition 1, Round 1, Integrated Regional Water Management Implementation Grant application in the amount of \$86,230.
- II. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the completion of the Grant application.
- III. Authorizing the City Manager or his designee to execute a Professional Services Agreement with Woodard & Curran in the amount of \$86,230.

BACKGROUND:

The City of Banning along with Banning Heights Water District, High Valleys Water District, Cabazon Water District, Riverside County Flood Control and Water Conservation District (RCFC&WCD) and San Geronio Pass Water Agency (SGPWA) recently received approval from the Department of Water Resources (DWR) of an Integrated Regional Water Management (IRWM) plan. An approved IRWM plan

provides the San Gorgonio Pass Region with the opportunity to apply for grant funding from the State, under Proposition 1.

The City of Banning and Cabazon Water District have identified projects in need of funding and will be submitting these projects in a combined grant application for the San Gorgonio Pass Region, which is a requirement of the IRWM program.

On March 22, 2019, an RFP was published on PlanetBids, notifying qualified firms of the opportunity to submit a proposal to provide the City with On-Call Grant Writing Services. Four (4) consultants submitted proposals by the April 10, 2019 deadline.

A three-person evaluation committee consisting of City of Banning and RCFC&WCD staff evaluated the proposals based on qualifications, price, experience, professional references, and their approach and methodology.

Listed below are the responsive bidders and their evaluation scores.

<u>Consultant</u>	<u>Total Score</u>
Woodard & Curran	93.1
Dudek	80.7
Carollo Engineers, Inc.	62.2
Michael Baker International	61.9

The Colorado River Funding Area will have \$8,088,265 available for Round 1 implementation projects. Because not all of the Regions in the Funding Area could agree on a pre-determined funding split, the State will award funding on a competitive basis.

JUSTIFICATION:

The San Gorgonio Pass Region is new to the IRWM program and will be competing for grant funding directly with other Regions in the Colorado River Funding Area such as the Coachella Valley and Mojave, which have the benefits of experience and larger staff resources. To put forth a grant application with the best chance for funding, assistance from a grant-writing firm with experience in the IRWM program was deemed necessary. Woodard & Curran has extensive experience completing grant applications as part of the IRWM program and demonstrable success being awarded funding as a result.

FISCAL IMPACT:

The contract agreement will initially be funded by the Water Fund, Contract Services/Professional Services account number 660-6300-471.33-11 in the amount of \$86,230. Although not submitting projects for Round 1, RCFC&WCD and the SGPWA have verbally agreed to share in the expense of the contract. Cabazon Water District is expected to pay a fair share, based on the number of projects included in the grant application. Therefore, the total cost will be split among four agencies. Upon receipt of the final invoice, the City will bill RCFC&WCD, SGPWA, and Cabazon Water District to

recover some of the cost. The precise cost split is still being negotiated although it is expected to be near an equal split amongst the four parties.

If a grant is awarded to the San Geronio Pass Region, the expenditure to prepare the implementation grant application can be used towards the local grant match.

ALTERNATIVE:

Reject Resolution 2019-__ UA and provide direction to staff.

ATTACHMENTS:

1. Resolution 2019-__ UA
2. RFP and Sample Agreement
3. Proposal

Approved by:

Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-__ UA)

RESOLUTION 2019-__ UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE AWARD OF A PROFESSIONAL SERVICES AGREEMENT TO WOODARD & CURRAN OF LOS ANGELES, CA FOR GRANT APPLICATION PREPARATION SERVICES FOR THE PROPOSITION 1, ROUND 1, INTEGRATED REGIONAL WATER MANAGEMENT IMPLEMENTATION GRANT PROGRAM IN THE AMOUNT OF \$86,230.

WHEREAS, the San Gorgonio Integrated Regional Water Management (SGIRWM) Group consisting of the City of Banning, Banning Heights Water District, High Valleys Water District, Cabazon Water District, Riverside County Flood Control and Water Conservation District and the San Gorgonio Pass Water Agency (SGPWA) submitted a regional water management Plan to the Department of Water Resources (DWR); and

WHEREAS, the SGIRWM Plan was approved by DWR, affording the San Gorgonio Pass Region the opportunity to apply for State grant funding under the IRWM program; and

WHEREAS, DWR has issued a 2018 IRWM, Proposition 1 Grant Program that will be funded in two rounds; and

WHEREAS, the City of Banning and Cabazon Water District have identified projects in need of State funding from Round 1; and

WHEREAS, the two agencies need grant-writing assistance to submit a joint application requesting funding for projects; and

WHEREAS, on March 22, 2019, a Request for Proposals was published on PlanetBids, notifying qualified firms of the opportunity to submit a proposal to provide the City with On-Call Grant Writing Services. Four (4) consultants submitted proposals by the deadline and of the four consultants Woodard and Curran of Los Angeles, CA was rated the highest by an evaluation committee.

NOW, THEREFORE, BE IT RESOLVED, by the Banning Utility Authority of the City of Banning a follows:

SECTION 1. The Banning Utility Authority approves awarding a Professional Services Agreement for the completion of a DWR IRWM Implementation grant program application on behalf of the San Gorgonio Pass Region in the amount of \$86,230.

SECTION 2. The Deputy Administrative Director is authorized to make necessary budget adjustments and appropriations and transfers related to the grant application.

SECTION 3. The City Manager or his designee is authorized to execute the Professional

Services Agreement with Woodard & Curran of Los Angeles, CA in the amount of \$86,230 on a form approved by the City Attorney.

SECTION 4. The Deputy Secretary of the Banning Utility Authority 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 14th day of May, 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 No. 2019-____UA was duly adopted by the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 14th day of May, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur,
Deputy Secretary
City of Banning, California

ATTACHMENT 2

(Request for Proposals and Sample Agreement)



**REQUEST FOR PROPOSALS
FOR PROFESSIONAL SERVICES
FOR
IRWM PROP 1 GRANT APPLICATION PREPARATION SERVICES
RFP No. 19-036**

Issued by the City of Banning Purchasing Department for:

**Public Works Department
99 East Ramsey Street
Banning, California 92220**

REQUEST FOR PROPOSALS (RFP) NO. 19-036**IRWM PROP 1 GRANT APPLICATION PREPARATION SERVICES**

Dear Proposers:

The City of Banning (hereinafter referred to as the “City”) is requesting proposals from a qualified public entity or private firm, to establish a contract for the scope of services outlined in this request for proposals.

NOTICE IS HEREBY GIVEN that online price and document submittals must be uploaded to the online bidding system in accordance with the instructions included herein, on or before the time and date set forth in the schedule of events. It shall be the responsibility of the proposer to upload their proposal before the announced time. However, responses may be submitted at any time prior to the deadline. (Submitted proposals may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

SOLICITATION DOCUMENTS: To obtain a copy of the solicitation documents, please visit <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. If you are not currently registered with the City of Banning through Planet Bids, please click on the “New Vendor Registration” button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view current bid opportunities. Find an active project of interest on the list to double-click on, and then click “Place e-Bid” to download solicitation documents for that project and become a prospective bidder. Proposals may only be submitted by companies who are listed as a prospective bidder on the electronic bidding website for each project that they wish to submit a response to. Firms must also check the web site periodically for addenda information as failure to download and acknowledge any and all addenda in the submittal will result in proposer disqualification.

RESPONSIVE PROPOSALS: Once listed on the prospective bidders list, companies may submit their proposals on the Planet Bids electronic bidding system. The City will not accept proposals submitted by companies who are not on the prospective bidders list, or from companies who have submitted a proposal via facsimile, email, mail, or any other format not permitted by this solicitation. Further instructions for submitting proposals are explained in this solicitation. Companies are to adhere to all of the submittal instructions and requirements outlined in this solicitation in order to be considered responsive to this request for proposals.

Request for Proposals

Table of Contents

Sections

1. Introduction/Purpose
2. Schedule of Events
3. Background
4. Prerequisites
5. Scope of Services
6. General Terms and Conditions
7. Inquiries
8. Completion of Proposal
9. Delivery/Submission of Proposals
10. Alternative Proposals
11. Proposal Format and Content
12. Examination of RFP and Sites of Work
13. Addenda
14. Withdrawal of Proposal
15. Public Records
16. Evaluation of Proposals
17. Conflict of Interest
18. Rejection of Proposals
19. Protest Procedures
20. Contract Term
21. Contract Documents
22. Execution of Agreement
23. Failure to Execute Agreement
24. Cancellation

Exhibits

- A. Proposal Forms (to be filled out and submitted with, and as part of proposal response)
- B. Scope of Services
- C. Sample Professional Consultant Service Agreement

Supplemental documentation

1. Draft 2018 Implementation grant proposal solicitation package (sample grant application requirements)

1. INTRODUCTION/PURPOSE

The City of Banning (“City”) is seeking a qualified entity or individual (“Company”) to provide Grant Application Preparation Services and post-reward support for the Department of Water Resources’ (DWR) Proposition 1 Integrated Regional Water Management Program. The City anticipates selecting one firm to perform the services.

Proposals are requested from Companies that have a demonstrated ability to perform the tasks identified in this Request for Proposal (“RFP”).

2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following tentative schedule. All dates are subject to change at the discretion of the City.:

Event	Date	Time
Request for Proposals Released	03/22/2019	N/A
Final Questions Due	03/28/2019	Before 5:00pm PST
Responses to Questions Released	04/02/2019	N/A
Proposals Due	April 10, 2019	Before 3:00pm PST
Tentative City Council Meeting to Consider Awarding Contract	05/14/2019	5:00pm

3. BACKGROUND

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Geronio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Geronio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

4. PREREQUISITES

Proposals will only be considered from Companies that meet the following prerequisites:

- Have at least three (3) years of experience, within the past five (5) years under a legally registered business name, in providing services of a similar type and scope as described in the Scope of Services (“Services”) (Exhibit “B”). Have not filed for bankruptcy under any business name over the past five (5) years.
- Have registered as a “Prospective Bidder” on the City’s electronic Current Prospective Bidders List. Companies can register at:

<http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>

- Once registered, Companies must download this RFP by clicking “Place eBid” under their name in order to appear on the Bidder’s List as a “Prospective Bidder.” Companies that fail to specifically download this RFP will not appear on the Bidders’ List and will be unable to participate or be considered for this RFP.
- If applicable, Company and/or its key personnel, shall hold an appropriate license for the Company’s discipline and the Services on the date the Proposal is submitted.
- If applicable, Company shall have registered with the Department of Industrial Relations and any other required organizations.

5. SCOPE OF WORK

The City is seeking proposals for Grant Application Preparation Services, as well as pre and post application submittal support for the DWR Proposition 1 Implementation Grant. The selected Company shall provide the services required in Exhibit B, Scope of Services, attached hereto and incorporated herein.

6. GENERAL TERMS AND CONDITIONS

The successful company will be required to execute a Professional Services (“Agreement”). A sample is attached as Exhibit “C”. The successful company must meet all insurance requirements in the Agreement. All terms and conditions of the Agreement are non-negotiable. Companies must possess valid City of Banning Business License throughout the term on the contract. Failure to execute the Agreement and furnish the required insurance within the required time period shall be just cause for the rescission of the award. If any of the successful Companies refuse or fail to execute the Agreement, the City may award the Agreement to the next most qualified Company.

7. INQUIRIES

If prior to the date fixed for submission of Proposals, a prospective Company discovers any ambiguity, conflict, discrepancy, omission or other errors in this RFP or any of its appendices or exhibits, the Company shall immediately notify the City of such error in writing and request modification or clarification of the document. Modifications shall be made by written Addenda to the RFP.

If a Company fails to notify the City, prior to the date fixed for submissions of Proposals, of an error in the RFP known to the Company, or an error that reasonably should have been known to the Company, the Company shall submit its Proposal at its own risk, and if the Company is awarded a Contract, it shall not be entitled to additional compensation or time by reason of the error or its later correction.

All communications regarding technical, scope, and/or project related questions and requests for clarifications, changes, exceptions, and deviations to the terms and conditions set forth in this RFP **shall be submitted via “Q&A”** through the City’s Electronic Bidding System, PlanetBids Vendor Portal before the deadline and according to these specifications herein. Any and all other bidding communications shall only be with **Shiloh A. Rogers, Purchasing Manager**, at (951) 922-3121.

The Final day for receipt of questions from the Proposer shall be on or before the due date indicated in the schedule of events section. To ensure fairness and avoid misunderstandings, **all communications must be in written format** and submitted **only** in the format set forth above. Any verbal communications will not be considered or responded to. All questions received by the due date will be logged and reviewed and if required, a response will be provided via an addendum to the RFP that will be posted on the City’s website. **Any communications, whether written or verbal, with any City Councilmember, City staff, or RFP evaluation panel member other than the individual indicated above, prior to award of a contract by City Council, is strictly prohibited and the Proposer shall be disqualified from consideration.**

8. COMPLETION OF PROPOSAL

Proposals shall be completed in all respects as required by this RFP. A proposal may be rejected if conditional or incomplete, or if it contains any alterations or other irregularities of any kind, and will be rejected if any such defect or irregularity can materially affect the quality of the proposal. Proposals which contain false or misleading statements may be rejected. If, in the opinion of the City’s Selection Committee, such information was intended to mislead the City in its evaluation of the proposal, and the attribute, condition, or capability is a requirement of this RFP, the proposal will be rejected. Statements made by a Company shall also be without ambiguity, and with adequate elaboration, where necessary, for clear understanding.

Unauthorized conditions, exemptions, limitations, qualifications, or provisions attached to a Proposal will render it non-responsive and will cause its rejection.

The Company, in responding to this RFP, must submit Proposals in the format identified in this RFP. The Proposal must address all requirements of the RFP even if a “no response” is appropriate.

Costs for developing Proposals are entirely the responsibility of the Company and shall not be chargeable to the City. The City shall not be liable for any costs incurred in response to this RFP, including but not limited to, costs for any interviews, presentations, or other follow-up information necessary as part of the selection process. All costs shall be borne by the Company responding to this RFP. The Company responding to this RFP shall hold the City harmless from any liability, claim, and expense whatsoever incurred by or on behalf of the Company

9. DELIVERY/SUBMISSION OF PROPOSALS

The Final day for submission of proposals shall be on or before the due date indicated in the schedule of events section.

Companies shall register on the City’s Electronic Bidding System, <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Once registered, Companies must **download the RFP by clicking “Place eBid” while logged in** under their own name and identification number to appear on the Current Prospective Bidders List as a “Prospective Bidder.” Companies that fail to download the RFP by clicking “Place eBid” will not appear on the Current Prospective Bidders List and their proposals will be considered non-responsive. If a Company is unable to register or download the RFP from the bidding website, a representative may contact Planet Bids at (818) 992-1771.

All proposal documents and supplementary documents must be uploaded using the City’s bidding website prior to event date and time as instructed in this solicitation. Once file(s) have been uploaded and the Submission Status shows as “Submitted” the submission is complete. At that point respondents will receive an email confirmation from the bidding website.

The City reserves the right to reject any and all proposals and to waive information and minor irregularities in any proposal received.

Acceptance of Terms and Conditions - Submission of a proposal pursuant to this RFP shall constitute acknowledgment and acceptance of all terms and conditions hereinafter set forth in this RFP.

The time and date are fixed, and extensions will not be granted unless specifically stated by the City in an addendum to this RFP. Proposals not received before the bid event time will not be accepted.

10. ALTERNATIVE PROPOSALS

Only one proposal is to be submitted by each Company for this RFP. Multiple simultaneous proposals will result in rejection of all Proposals submitted by Company. A Company may, prior

to the proposal due date and time, withdraw a proposal and submit a new proposal, so long as the new proposal is submitted before the proposal due date and time.

11. PROPOSAL FORMAT AND CONTENT

Proposals should be prepared in such a way as to provide a straightforward, concise delineation of capabilities to satisfy the requirements of this RFP. Responses should emphasize the Company's demonstrated capability to perform work of this type. Emphasis should be concentrated on completeness and clarity of content.

Proposals shall adhere to the following format for organization and content. Proposals must be typed and arranged/divided in the following sequence to facilitate evaluation:

- Cover Letter
- Statement of Understanding and Approach
- Company Information
- Company Personnel
- Experience and References
- Evidence of Insurance
- Financial Capability
- Disclosure
- Price Proposal
- Proposal Forms ("Exhibit A" - to be filled out and submitted with, and as part of proposal)

a. Cover Letter

The cover letter shall include a brief general statement of intent to perform the services and confirm that all elements of the RFP have been reviewed and understood. The letter shall include a brief summary of Company's qualifications and Company's willingness to enter into a contract under the terms and conditions prescribed by this RFP and in the Sample Agreement. The letter must identify a single person for contact during the RFP review process.

b. Statement of Understanding and Approach

This section must demonstrate an understanding of the Services. It should describe the general approach, organization and staffing required for the Services requested. If necessary, preliminary investigations, due diligence, and research shall be discussed in this section.

This section should include the following:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or

implementation strategies or techniques that the respondent intends to employ in carrying out the work.

2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. Detailed project schedule, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.
6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

c. Company Information

This section shall include contact person information, address and telephone number of the company main office and branch offices. Each Company shall identify itself as to the type of organizational entity (corporation, sole proprietorship, partnership, joint venture, etc.). Any supplemental information that Company believes may be pertinent to the selection process may be provided.

The Proposal shall identify any litigation, mediation, or arbitration, regarding the performance of any services similar to the Services, in which the Company has been involved in the past five (5) years. If the Services require a license or certification, the Proposal shall include any claims or disciplinary action taken against Company or any of Company's key personnel within the past five years.

d. Company Personnel

This section shall contain names, contact numbers and description of experience, including licenses and/or certifications, of all key personnel who would be assigned to perform the Services. Members of the Company's professional team (managers, contact person, etc.) should be identified by name, title, phone number, and description of the portion of work they will be assigned to perform under this Agreement. Also include major subcontractors (if any) and their degree of involvement in this program. If the Company is including any subcontractors, the Company shall identify how long the Company has worked with the subcontractor.

e. Experience and References

The Proposal must demonstrate that the Company, or its key personnel, has at least three (3) years of experience, within the past five (5) years with a legally registered business name, that provides services of a similar type and scope as described in the Scope of Services (Exhibit "B"). A Company shall not have filed for bankruptcy under any business name over the past five (5) years.

Company shall provide at least three (3) references, within the past five (5) years, of clients for whom services have been performed that are comparable in quality and scope to that specified in this RFP. The references shall include client names, addresses, telephone numbers and e-mail addresses of the clients for whom prior work was performed and include an explanation of the services provided along with project start and end dates.

f. Evidence of Insurance

In addition, the Company shall provide evidence of possession of insurance in the coverage and amounts listed in the Sample Agreement (Exhibit C).

City requires that licensees, lessees, and vendors have an *approved* Certificate of Insurance (not a declaration or policy) or proof of legal self-insurance on file with the City for the issuance of a permit or contract. Within ten (10) consecutive calendar days of award of contract, successful Proposer must furnish the City with the Certificates of Insurance proving coverage as specified in contract sample.

g. Financial Capacity

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

h. Disclosure

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. *Any past or current business relationship may not disqualify the firm from consideration*

i. Price Proposal

All Proposers are required to use the online rate form to submit pricing as specified for their proposal. Pricing instructions should be clearly defined to ensure fees proposed can be compared and evaluated. Additional pricing information can be submitted within your proposal. Proposals shall be valid for a minimum of 180 days following submission.

j. Proposal Forms (Exhibit “A”)

As a convenience to Proposers, the following is a list of the Proposal Forms (Exhibit “A”), enclosed with this RFP. All forms shall be filled out and submitted with, and as part of the proposal response:

1. Ex Parte Communications Certificate

Proposers and Proposers’ representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers’ representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf.

2. Disqualifications Questionnaire

Proposers shall complete and submit, under penalty of perjury, a standard form of questionnaire inquiring whether a Proposer, any officer of a proposer, or any employee of a Proposer who has a proprietary interest in the Proposer, has ever been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local government project because of a violation of law or safety regulation and if so, to explain the circumstances. A proposal may be rejected on the basis of a Proposer, any officer or employee of such Proposer, having been disqualified, removed, or otherwise prevented from proposing on, or completing a federal, state, or local project because of a violation of law or a safety regulation.

3. Disclosure of Government Positions

In order to analyze possible conflicts that might prevent a Proposer from acting on behalf of the City, the City requires that all Proposers disclose in their proposals any positions that they hold as directors, officers, or employees of any governmental entity. Additional disclosure may be required prior to contract

award or during the term of the contract. Each Proposer shall disclose whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months.

4. Price Proposal Form

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., and include a Grand Total Amount to complete this project and fulfill the entire scope of services herein.

12. EXAMINATION OF RFP AND SITES OF WORK

The Company shall carefully examine the RFP and all sites, if applicable, of the work contemplated. The submission of a Proposal shall be conclusive evidence that the Company has investigated and is satisfied as to the conditions to be encountered, as to the character, quality, and quantities of work to be performed and materials to be furnished, the difficulties to be encountered, and to the requirements of the Proposal, RFP, and other Contract Documents.

By submitting a Proposal, the Company hereby certifies that it has: examined the local conditions, read each and every clause of this RFP, included all costs necessary to complete the specified work in its proposed prices, and agrees that if it is awarded the Contract it will make no claim against the City based upon ignorance of local conditions or misunderstanding of any provision of the Contract. Should the conditions turn out otherwise than anticipated by it, the Company agrees to assume all risks incident thereto.

13. ADDENDA

Unless otherwise specified, any addenda issued during the time of bidding must be acknowledged electronically via the City's Bidding Website, which will be made part of the proposal. Addenda notifications will be provided to those listed on the Electronic Prospective Bidder's List via email.

14. WITHDRAWAL OF PROPOSAL

All proposals shall be firm offers and may not be withdrawn for a period of one hundred twenty (120) days following the deadline date for submission of proposals noted herein. Submitted Proposals may be withdrawn at any time prior to the submission deadline.

15. PUBLIC RECORDS

All Proposals submitted in response to this RFP become the property of the City and pursuant to the Public Records Act (Gov. Code, § 6250 et seq.) are public records, and as such may be subject to public review at least 10 days before selection.

The Company must notify the City in advance of any proprietary or confidential materials contained in the Proposal and provide justification for not making such material public. The City shall have sole discretion to disclose or not disclose such material subject to any protective order that the Company may obtain. Note that under California law, price proposal to a public agency is not a trade secret.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

The City reserves the right to make use of any information or idea contained in the Proposal. All materials, ideas and formats submitted in response to this RFP will become the property of the City upon receipt.

16. EVALUATION OF PROPOSALS

The City reserves the right to amend, withdraw, and cancel this RFP. The City also reserves the right to reject all responses to this RFP at any time prior to agreement execution. Furthermore, the City reserves the right to request additional information about any and all Proposals, that in City's opinion, is necessary to assure that the Company's competence, number of qualified employees, business organization, experience, and financial resources are adequate to perform the Services.

All Proposals shall be reviewed to verify that the Company has met the minimum requirements as stated in this RFP. Proposals that have not followed the rules, do not meet minimum content and quality standards, and/or do not provide references will be rejected as non-responsive.

Responsive proposals will be evaluated on the basis of the following criteria:

- a. Qualifications (35%)
- b. Pricing (10%)
- c. Experience (Projects of similar size and scope) (30%)
- d. Professional References (15%)
- e. Approach and Methodology (10%)

If needed, interviews will be scheduled during or after the week indicated in the "Schedule of Events" section.

If needed, interviews will be conducted by the same members on the proposal evaluation panel. Dates, times, and a location will be coordinated at that time if interviews are deemed necessary after the evaluation of responsive proposals. If interviews are deemed necessary, candidates who have submitted the highest scoring proposals within a competitive range as determined by the City will be invited to participate in the interview process.

The selected Company shall then enter into exclusive negotiations with the City to formalize the Scope of Service and Compensation. Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If the City is unable to obtain a fair and reasonable price or cannot reach agreement regarding the terms for the Scope of Services, then the City will end negotiations with that Company and begin negotiations with the next Company which best meets the needs of the City, and so on until a City and the Company reach agreement.

The City intends to select the Company that offers the best value to the City based on the criteria outlined above.

17. CONFLICT OF INTEREST

The Proposer warrants and represents that it presently has no interest and agrees that it will not acquire any interest which would present a conflict of interest under California Government Code sections 1090 et seq., or sections 87100 et seq., during the performance of services under any Agreement awarded. The Proposer further covenants that it will not knowingly employ any person having such an interest in the performance of any Agreement awarded. Violation of this provision may result in any Agreement awarded being deemed void and unenforceable.

18. REJECTION OF PROPOSALS

The City may reject any/or all Proposals and may waive any immaterial deviation in a Proposal. The City's waiver of an immaterial defect shall in no way modify this RFP or excuse the Company from full compliance with this RFP and/or the Contract Documents if awarded the Contract. Proposals that include terms and conditions other than City's terms and conditions may be rejected as being non-responsive. The City may make investigations as deemed necessary to determine the ability of the Company to perform the work, and the Company shall furnish to the City all such information and data for this purpose as requested by the City. The City reserves the right to reject any proposal if the evidence submitted by, or investigation of, such Company fails to satisfy the City that such Company is properly qualified to carry out the obligations of the Agreement and to complete the work described herein.

19. PROTEST PROCEDURES

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of

proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

20. CONTRACT TERM

The initial term of the Agreement shall be from May 2019 through May 2020 with the option to extend for one (1) additional one-year term not to exceed two (2) years based upon acceptable performance by the Company, acceptable fees and subject to the same terms and conditions of the Agreement.

Pricing is to remain firm for the initial contract term. Should the option to renew for additional years be exercised, City and Company may negotiate any and all price modifications.

21. CONTRACT DOCUMENTS

In submitting a Proposal, the Company agrees to enter into an Agreement with the City *without exceptions to the City's standard agreement*. The City's standard agreement is **non-negotiable**, and a copy of the standard agreement is attached hereto as Exhibit "C". **Any change to the standard agreement will deem the Proposal non-responsive.** In the event of a conflict exists between documents the following order of precedence shall apply:

- Agreement
- City of Banning's Request For Proposals
- Company's Response to the Request For Proposals

22. EXECUTION OF AGREEMENT

After contract award, the following shall be signed and returned to the City within fourteen (14) calendar days from the date the City mails, or by other means delivers said documents to the Company:

- Three (3) original copies of the Agreement in the form included herein, properly executed by the Company.
- Certificates of Insurance and Additional Insured Endorsement evidencing coverage as specified in the sample agreement.

- Confirmation of current business tax certificate.
- Bonds, if required.

In any event that day fourteen (14) of calendar days falls on Saturday, Sunday, a legal holiday for the State of California, or on days when the City is closed, the Contract Documents shall be delivered by the following working day.

No Agreement shall be binding upon the City until all documents are fully executed by the Company and the City.

23. FAILURE TO EXECUTE THE AGREEMENT

Failure to execute the Agreement and furnish the required insurance and business tax certificate, within the required time period shall be just cause for the rescission of the award. If bonds are also required, failure to furnish sufficient bonds shall cause rescission of the award. If the successful Company refuses or fails to execute the Agreement, the City may award the Agreement to the next qualified Company.

24. CANCELLATION

The City retains the right to cancel this RFP at any time, should it be deemed to be in the best interest of the City. No obligation either expressed or implied exists on the part of the City to make an award based on the submission of any proposals.

EXHIBIT A

Proposal Forms (to be submitted with, and as part of proposal)

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EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. 19-036 Grant Application Preparation Services RFP at any time after March 22, 2019.

OR

I certify that Proposer or Proposer's representatives have communicated after March 22, 2019 with a City Councilmember concerning the RFP No. 19-036 Grant Application Preparation Services RFP. A copy of all such communications is attached to this form for public distribution.

DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No _____

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

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

PRICE PROPOSAL FORM

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., and include a Grand Total Amount to complete this project and fulfill the entire scope of services herein.

Job Title / Employee (required)	Hourly rate
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$
	\$

Grand Total Amount: \$ _____

Authorized Signature: _____ Date: _____

EXHIBIT B
Scope of Services

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SCOPE OF SERVICES:**Task 1 – Project Management**

- Work with the lead agency on behalf of the San Geronio Regional Water Management Group (RWMG) to coordinate and complete all tasks associated with the successful submission of the grant application in accordance with DWR's Proposal Solicitation Package (PSP).
- Prepare and manage a schedule for the grant application process to ensure all agencies participating remain on task.
- Coordinate and conduct meetings with RWMG members.

Task 2 – Project Selection and Pre-Application Workshop Coordination

- Depending on the timing of DWR publishing the final PSP, consultant may assist the RWMG with prioritizing and selecting projects in accordance with the program guidelines. Once projects are identified, the consultant will assist in the preparation of the pre-application workshop presentation.
- Consultant shall attend the DWR Pre-Application Workshop and document DWR's workshop and post-workshop feedback.

Task 3 - Application preparation and Submittal

- Identify all application requirements and coordinate with each agency to ensure requirements are met.
- Prepare application, project summaries and all supporting documents for participating agencies to review and comments.
- Submit application and all required documents via DWR's GRanTS portal.

Task 4 – Grant Agreement and Funding Award Support

- Track results of funding award, review preliminary funding award and prepare comment letter if necessary.
- If funding is awarded, review draft funding agreement and provide comments to RWMG members.

EXHIBIT C
Sample Agreement

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PROFESSIONAL SERVICES AGREEMENT (C00###)
FOR [INSERT DESCRIPTION OF SERVICES HERE]

By and Between

THE CITY OF BANNING

and

[INSERT COMPANY NAME HERE]

AGREEMENT FOR PROFESSIONAL SERVICES (C00###) FOR [INSERT DESCRIPTION OF SERVICES HERE] BY AND BETWEEN CITY OF BANNING AND [INSERT COMPANY NAME HERE]

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this ____ day of _____, 2019 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **VENDOR NAME, a California corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids (RFP/IFB No. ##-###), the performance of the services for the **Insert Type of Work to be Completed** prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

OPERATIVE PROVISIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

ARTICLE 1. SERVICES OF CONSULTANT

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as **Exhibit "A"** and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the **Insert Type of Work to be Completed** prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and

talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

1.2 Consultant’s Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids (“Contract Documents”) and the Scope of Service shall include the Consultant’s scope of work or in Consultant’s accepted bid proposal (“Accepted Bid”) shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City’s risk until written instructions are received from the Contract Officer.

1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.

1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the “Special Requirements” attached hereto as Exhibit “B” and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit “B” and any other provisions of this Agreement, the provisions of Exhibit “B” shall govern.

ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.

2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the “Schedule of Compensation” attached hereto as Exhibit “C” and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed **WRITTEN AMOUNT IN DOLLARS (\$0.00)** (the “Contract Sum”), unless additional compensation is approved pursuant to Section 1.8.

2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant’s rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City’s Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

ARTICLE 3. PERFORMANCE SCHEDULE

3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding **one (1) year from the date hereof**, except as otherwise provided in the Schedule of Performance (Exhibit “D”). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<div style="background-color: yellow; height: 1.2em; width: 100%;"></div>	
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by the City

Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) **COMMERCIAL GENERAL LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for “bodily injury,” “property damage” and “personal and advertising injury” with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate

(ii) **COMMERCIAL AUTOMOBILE LIABILITY** insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) **WORKERS’ COMPENSATION** insurance as required under the California Labor Code.

(iv) **EMPLOYERS’ LIABILITY** insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) **PROFESSIONAL LIABILITY** Professional Liability (Errors and Omissions) insurance appropriate to Consultant’s profession, with limits of liability of \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be "primary and non-contributory" and will not seek contribution from the City's insurance or self-insurance and shall be at least as broad as CG 20 01 04 13. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.

5.3 Indemnification, Hold Harmless, and Duty to Defend.

A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith. Contractor shall agree that their defense and indemnification obligations are in addition to, and are not limited by, the Insurance obligations in the agreement.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers’ compensation law regarding Consultant and Consultant’s employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers’ compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant’s failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive

negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the

estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or sub-consultant of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be

present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon

sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

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

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager

and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

SAMPLE

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

~~CALIFORNIA ALL-PURPOSE ACKNOWLEDGEMENT~~

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, 20__ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	SIGNER(S) OTHER THAN NAMED ABOVE
SIGNER IS REPRESENTING:		
(NAME OF PERSON(S) OR ENTITY(IES))		

EXHIBIT “A”
SCOPE OF SERVICES

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

- L. AutoCAD Files of the Final Plans (2014 Version)
- III.** In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City apprised through periodic status reports regarding the performance of the services under this Agreement by the following means:
- A. In-person meetings.
 - B. Email updates/questions to applicant team and City while reviews are underway.
 - C. Conference calls.
- IV.** All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.
- V.** Consultant will utilize the following personnel to accomplish the services:
- A. Dilesh Sheth, Program Manager
 - B. Lin McCaffrey, Senior Engineer
 - C. Nick Lowe, Associate Engineer
 - D. Michael Johnson, Director
 - E. Nick Keller, Senior Designer

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

SAMPLE

EXHIBIT “C”
SCHEDULE OF COMPENSATION

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

TASK	DESCRIPTION	SUB-BUDGET
1.	Meetings and Presentations	\$9,012.00
2.	Plans, Specifications and Estimates (PS&E)	\$87,728.00
3.	Final Plans and Specifications	\$3,996.00
4.	Bidding Phase Assistance	\$3,720.00
5.	Construction Phase Assistance	\$5,440.00
6.	Federal/State Documentation Assistance	\$8,768.00
7.	Traffic Circle Plans	\$9,032.00
	TOTAL	\$127,696.00

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.

- V. The total compensation for services shall not exceed **\$127,696.00** as provided in Section 2.1 of this Agreement.
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.

EXHIBIT "C-1"
CONSULTANT'S BILLING RATE AND TASK SCHEDULE

SAMPLE

EXHIBIT “D”
SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City’s request for services, unless otherwise agreed to by the Contract Officer.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
 - A. Proposed Project Schedule – Attached as Exhibit D-1.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

EXHIBIT “D-1”
PROPOSED PROJECT SCHEDULE

SAMPLE

SUPPLEMENTAL ATTACHMENTS

Draft 2018 Implementation grant proposal solicitation package

---Document is Publicly Available Online---

https://water.ca.gov/-/media/DWR-Website/Web-Pages/Work-With-Us/Grants-And-Loans/IRWM-Grants/Files/Prop-1-Implementation/Draft_2018_Prop1_Round1_ImplementationPSP.pdf?la=en&hash=FBC0E5F9DCB4DD83A98C21FCFBA25860E57126C8

ATTACHMENT 3

(Proposal)

April 10, 2019

Art Vela
Public Works Director
City of Banning
99 E. Ramsey Street
Banning, CA 92220

Proposal for San Gorgonio IRWM Region Prop 1 Round 1 IRWM Implementation Grant Support

Dear Mr. Vela:

Woodard & Curran is pleased to provide our proposal to the City of Banning, as contracting agency for the San Gorgonio Integrated Regional Water Management (IRWM) Region, to provide grant application preparation services for the Proposition 1 (Prop 1) IRWM Program. This proposal is in response to RFP No. 19-036 and subsequent Addendum No. 1. The San Gorgonio IRWM Plan was funded by a Prop 1 IRWM planning grant in the amount of \$1,000,000 that Woodard & Curran helped the region secure. As a result of our extensive experience in preparing past IRWM implementation grant applications, the Woodard & Curran team is well positioned to provide the San Gorgonio IRWM Region and its stakeholders with the highest quality of support for the Prop 1 IRWM grant program. This support would include assisting the Region in selecting projects for inclusion in the grant application, preparing and submitting workshop and application materials, and supporting post-application coordination with DWR. Based upon the requirements of your Request for Proposals (RFP), we are providing all requested information and materials in the following sections:

- A. Cover Letter
- B. Statement of Understanding and Approach
- C. Company Information
- D. Company Personnel
- E. Experience and References
- F. Evidence of Insurance
- G. Financial Capability
- H. Disclosure
- I. Price Proposal
- J. Proposal Forms

We greatly appreciate this opportunity to offer our funding services and hope to continue to support the San Gorgonio IRWM Region in achieving its important funding goals. California law defines the standard of care for design professionals and this is the standard by which professional liability policies are written. As such, Woodard & Curran cannot accept contract language that elevates the standard of care. To do so would expand our risk and potentially render our insurance coverage unresponsive to a claim. Persephene St. Charles will serve as the Principal-in-Charge and Sally Johnson will serve as Project Manager (sjohnson@woodardcurran.com, 858-875-7427). Sally is the point of contact for this proposal.

Sincerely,



Sally Johnson
Project Manager
Woodard & Curran
10509 Vista Sorrento Parkway, Ste. 205
San Diego, CA 92121



Persephene St. Charles
Principal in Charge
Woodard & Curran
888 South Figueroa St. #1700
Los Angeles, CA 90017

B. STATEMENT OF UNDERSTANDING AND APPROACH

B.1 Understanding of Project

The San Gorgonio Integrated Regional Water Management (IRWM) Region is seeking consultant support to prepare the Region's Proposition 1, Round 1 Implementation Grant Application (Prop 1) and provide support for pre-application and post-application support to coordinate with California Department of Water Resources (DWR).

With Woodard & Curran support, the San Gorgonio IRWM Region developed its IRWM Plan to comply with the Prop 1 IRWM Guidelines released by DWR in 2016. Woodard & Curran helped secure a Prop 1 IRWM planning grant in the amount of \$1,000,000 to fund the Region's IRWM planning effort. In August 2018, the San Gorgonio Regional Water Management Group (RWMG) responded to DWR's comments on their preliminary review of the Plan and anticipates receiving notification from DWR that the Plan is consistent with Prop 1 Guidelines before the end of year, making the Region eligible for IRWM implementation grant funding through Prop 1. A project selection process is outlined in the IRWM Plan, and implementation projects must be consistent with the goals and objectives of an IRWM Plan.

DWR released a Draft Proposal Solicitation Package (PSP) for the Prop 1 Round 1 IRWM implementation grant solicitation in October 2018, which details the application requirements, project and applicant eligibility requirements, anticipated timeline, and other details related to the upcoming round of grant funding. This round will be administered somewhat differently than past IRWM program implementation grant rounds in that DWR is requiring IRWM regions within a Funding Area to meet with DWR and other regions during a pre-application workshop to discuss the regions' critical needs and proposed projects for inclusion in the grant applications. Prior to the pre-application workshop, regions must submit Project Information Forms (PIFs) and a Proposal Summary presenting projects they plan to include in their competitive grant application. Pre-application workshops are expected to occur sometime in Spring and Summer 2019, however, the timing of the Colorado River Funding Area (CRFA) workshop will be dependent on the readiness and coordination of the four regions within the CRFA (San Gorgonio, Coachella Valley, Imperial, and Mojave).

B.2 Implementation Plan

This proposal would be implemented by Woodard & Curran staff following standard project management practices. As described in Task 1: Project Management, monthly invoicing and progress reporting will be completed, which is used by the Project Manager to confirm progress is on budget and schedule. Additionally, during grant writing efforts, the Project Manager will manage Woodard & Curran staff through regular team meetings and weekly budget checks using Woodard & Curran's timesheet and controls program, Deltek Vision. The proposed Project Manager is experienced with managing grant applications, including large IRWM implementation grant applications. Input on draft deliverables will be solicited via email or sharepoint files, with all comments provided in track changes and compiled for discussion via teleconference as appropriate. As appropriate, stakeholder comments are typically compiled into a tracking sheet that documents the commenter, comment, and how the comment has been addressed.

B.3 Technical Approach

The City of Banning's RFP Scope of Services and how Woodard & Curran would address them is summarized below. The process proposed by Woodard & Curran is based on the City's Scope of Services, DWR's Draft Prop 1 IRWM Implementation Grant PSP, and the project selection process included in the San Gorgonio IRWM Plan. For the purposes of this proposal, we are assuming four projects will be included in the Prop 1 implementation grant application.

Task 1: Project Management

Woodard & Curran will assist the City of Banning on behalf of the San Gorgonio RWMG to coordinate, complete, and submit the Prop 1 implementation grant application in accordance with DWR's Final Proposal Solicitation Package (PSP). Woodard & Curran will prepare and manage a schedule for the grant application process to ensure all agencies participating remain on task and will coordinate and conduct meetings with RWMG members.

Task 1 includes all project management and project coordination activities that may occur between the estimated start date of May 2019 through the completion of Task 4 (estimated to be complete within one year of project start, or May 2020). Woodard & Curran will prepare monthly invoices and progress reports and conduct ongoing schedule and budget management. Woodard & Curran will coordinate with the City throughout completion of Tasks 2 through 4.

Task 1 Deliverables:

- *Grant application process schedule*
- *Agendas, meeting materials, and notes for monthly RWMG meetings*
- *Monthly progress reports and invoices*

Task 2: Project Selection and Pre-Application Workshop Coordination

This proposal assumes the City of Banning and RWMG will initiate the project solicitation process without the assistance of Woodard & Curran, and that Woodard & Curran would begin involvement with the project selection process once the Call for Projects closes, if applicable.

Woodard & Curran assumes that project selection would occur during an in-person RWMG meeting in the City of Banning, and be based on the feedback from the Project Review Subcommittee. Woodard & Curran will provide information about DWR's scoring criteria and priorities to the Project Review Subcommittee, and attend the Subcommittee meeting via teleconference for the purpose of answering questions that might arise about DWR's process. Woodard & Curran would not be involved with making recommendations to the RWMG regarding project selection. Following the Subcommittee's meeting, Woodard & Curran will prepare for and facilitate an in-person RWMG meeting, where the RWMG reviews the recommendation of the Project Review Subcommittee and makes the final selection of projects for inclusion in the grant application. Woodard & Curran anticipates this RWMG meeting will be 2 hours, longer than the normal 1-hour RWMG meetings. Once projects are identified, Woodard & Curran will assist in the preparation of the pre-application workshop presentation.

Project proponents and RWMG representatives will be required to attend the DWR pre-application workshop conducted within the CRFA. Woodard & Curran will assist the San Gorgonio workshop attendees with preparing for the workshop. Work will include preparing the Proposal Summary, coordinating preparation of the PIFs by project proponents, and revising the PIFs, as necessary. DWR is requiring a Proposal Summary to summarize each project the applicant intends to submit as part of the application. Woodard & Curran will prepare the draft Proposal Summary and provide it to the RWMG and/or project proponents for review. Woodard & Curran will incorporate comments to prepare the final Proposal Summary.

PIFs are required for each project to be included in the application. Woodard & Curran will partially complete the PIFs based on the information provided during the Call for Projects. PIFs will then be emailed to the project proponents for completion, along with questions about the project needed for the Workshop presentation. Revisions to the forms may be recommended in order to demonstrate eligibility, maximize benefits, and increase competitiveness. Woodard & Curran will provide final Proposal

Summary and PIFs to the City of Banning for submittal to DWR two weeks prior to the pre-application workshop date.

Woodard & Curran will prepare a presentation for the San Gorgonio IRWM Region's portion of the DWR Workshop, in Microsoft PowerPoint. A draft presentation will be circulated to the RWMG, and project-specific slides circulated to the project proponents. Woodard & Curran will incorporate comments and provide a final screencheck presentation for RWMG approval before finalizing for the workshop. This proposal assumes all comments will be addressed via email, unless a regularly-schedule RWMG meeting occurs that coincides with this task.

Woodard & Curran will attend the DWR Pre-application Workshop in-person to support the San Gorgonio RWMG, and will document DWR's workshop and post-workshop feedback. This proposal assumes that no additional supplemental materials will be required for the Pre-Application Workshop beyond the presentation, Proposal Summary, and PIFs.

Task 2 Deliverables:

- *Project list for inclusion in grant application*
- *Draft and final Proposal Summary*
- *Up to Four PIFs*
- *Draft and Final Workshop presentation*
- *Pre-application workshop notes*

Task 3: Application Preparation and Submittal

Woodard & Curran will coordinate with each project proponent to receive the necessary project information and data to prepare the grant application. Woodard & Curran will prepare a data request for project proponents and distribute it via email. A one-hour workshop will be held with project proponents to review the data request and answer questions about the requested information and the application.

The grant application is expected to consist of up to nine attachments, including the following, as well as a grant application checklist:

- Attachment 1: Authorization and Eligibility Requirements
- Attachment 2: Final Proposal Summary
- Attachment 3: Final Project Information Forms
- Attachment 4: Work Plan
- Attachment 5: Budget
- Attachment 6: Schedule
- Attachment 7: Disadvantaged Community (DAC)
- Attachment 8: Economically Distressed Area (EDA)
- Attachment 9: Tribe

Attachments 7, 8, and 9 are only required for projects that benefit DACs, EDAs, or tribal communities. For the purposes of this proposal, it is assumed that all attachments will be required, as there is a high possibility of a project being located in or benefitting a DAC, EDA, or tribe, given the nature of the San Gorgonio IRWM Region.

Woodard & Curran will prepare draft versions of Attachments 1 through 9 and the grant application checklist to ensure all requirements are met. While Attachments 2 and 3 consist of the Proposal Summary

and PIFs prepared in Task 3, it is assumed revisions to these attachments will be required based on either minor modifications to the projects and/or input from DWR at or following the pre-application workshop. This task includes coordination calls with project proponents and the RWMG as necessary. RWMG and/or project proponents will be provided up to two weeks to review the draft application materials. Woodard & Curran will then prepare final versions of all attachments. The RWMG and/or project proponents will be given the opportunity to review the final screen check versions prior to submittal. Woodard & Curran will submit the final attachments to DWR via its online GRanTS system, using the City of Banning's access. Electronic versions of the application will be provided to the RWMG and/or project proponents in MS Word, Excel, and PDF format.

Task 3 Deliverables:

- *Data request in MS Word and Excel format*
- *Draft and final attachments*
- *Final electronic files of attachments in MS Word, Excel, and PDF format*
- *Confirmation final attachments successfully uploaded to DWR's GRanTS system*

Task 4: Grant Agreement and Funding Award Support

Woodard & Curran will also provide post-submittal support. This will include reviewing DWR's draft grant awards and scores and preparing a comment letter for submittal to DWR should the Region not be funded. If awarded funding, Woodard & Curran will review the draft funding agreement and provide comments to the RWMG regarding the requirements and recommended adjustments to project scope of work, budgets, and schedule. This task assumes up to 14 hours of Woodard & Curran time.

Task 4 Deliverables:

- *Draft and final comment letter on Draft Awards*
- *Comments on Draft Agreement, if awarded*

B.4 Schedule

Woodard & Curran can begin work immediately following receipt of a Notice to Proceed (NTP). The application timeline provided by DWR is as follows:

- DWR and IRWM Regions Workshop – Spring and Summer 2019
- PIFs and Proposal Summary due to DWR - 2 weeks before Workshop
- DWR provides written comments on projects - 4 weeks after Workshop
- Applications due - 12 weeks after Workshop (overlaps with DWR comments)
- DWR review/notification of award - No timeline provided

Woodard & Curran has provided a schedule as Exhibit A assuming an NTP is issued on May 1, 2019. For purposes of this proposal, the schedule assumes the DWR pre-application workshop will occur July 15, 2019. All other deadlines stem from the workshop date; thus, if the workshop occurs on another date, the schedule would be adjusted accordingly. Based on the assumptions included in the schedule, the grant application would be due to DWR in early October 2019, Draft Awards would be expected early January 2020, and Final Awards in late February 2020. The entire duration of this scope of work is assumed to run from May 2019 through April 2020.

B.5 Assumptions and Understandings

The following assumptions and understandings apply to the scope of work, schedule, and budget described herein. If the scope of work changes, or these assumptions change, Woodard & Curran will prepare and submit to the City of Banning an Amendment Request. If the City or RWMG request a change that will affect the Scope of Work or associated level of effort, Woodard & Curran will notify the City of Banning prior to completing any additional work.

- The proposal is based on the Draft Prop 1 Round 1 implementation grant PSP released by DWR in early October 2018. Should DWR make edits to the PSP when the final is released, modifications to this proposal may be required.
- The City of Banning would be the Prop 1 Round 1 implementation grant applicant (on behalf of the San Geronio IRWM Region).
- Four projects would be included in the Prop 1 Round 1 implementation grant application.
- City of Banning and the RWMG would initiate the Call for Projects prior to issuing the NTP for this proposal.
- Woodard & Curran is not responsible for selecting the projects included in the application but will provide support to the RWMG during their project selection process at an in-person RWMG meeting in Banning (Task 2) and no additional coordination between Woodard & Curran and the RWMG would be required to approve the project list.
- Woodard & Curran will provide teleconference facilities for any meetings held via teleconference
- City of Banning will provide in-person meeting facilities for RWMG meetings or project proponent meetings, as necessary
- City of Banning will review draft deliverables as noted in this Scope of Work in a manner consistent with the planned schedule

B.6 Innovative/Creative Approach

Woodard & Curran will use teleconference and Skype-enabled screensharing for most meetings, which will allow for remote attendance at meetings while still allowing all attendees to follow along with presentations or discussion of relevant materials. The use of Skype will also save time and budget by avoiding the need for travel to meeting spaces.

B.7 City-Owned Facilities

This proposal assumes that in-person meetings would be held at City-owned facilities, except for the Pre-Application Workshop, which will be held at a facility coordinated by the CRFA representative from the Coachella Valley Water District. If meeting rooms are not equipped with computers or projectors, Woodard & Curran is prepared to bring a projector, screen, and computer, as necessary.

C. COMPANY INFORMATION

C.1 General Information

Woodard & Curran is an integrated engineering, science, and operations corporation with offices located throughout the nation.

C.2 Contact Information

Project Contact

Project Manager: Sally Johnson

Phone Number: 858-875-7427

Email: sjohnson@woodardcurran.com

Address: 10509 Vista Sorrento Parkway, Ste. 205
San Diego, CA 92121

Main Office

Chief Executive Officer: Douglas McKeown

Office Phone Number: 207-558-3800

Email: dmckeown@woodardcurran.com

Address: 41 Hutchins Drive
Portland, ME 04102

Branch Office Contact Information

Principal-In-Charge: Persephene St. Charles

Phone Number: 213-223-9466

Email: pstcharles@woodardcurran.com

Address: 888 South Figueroa #1700
Los Angeles, CA 90017

C.3 Disclosure of Litigation

Enclosed as **Exhibit B** is a disclosure of litigation in which Woodard & Curran has been involved in the past five years. No claims or disciplinary action has been taken against Woodard & Curran or its key personnel within the past five years.

D. COMPANY PERSONNEL

Woodard & Curran has provided support for the San Gorgonio Integrated Regional Water Management (IRWM) Region since 2016. With the support of Woodard & Curran, the IRWM Region developed an IRWM Plan to comply with the Proposition 1 (Prop 1) IRWM Guidelines. Woodard & Curran has put together a team with a depth of experience in preparing IRWM implementation grant applications for both the San Gorgonio IRWM Region and other IRWM regions in Southern California.

Woodard & Curran has developed an internal team organization that allows for division of labor amongst team members to ensure application materials are completed in a timely manner while ensuring a cohesive, quality application is completed. Sally Johnson has prepared and managed Prop 1 implementation grant applications for the San Diego IRWM Region and will serve as Project Manager. As Principal-in-Charge, Persephene St. Charles will provide general project guidance and contract management. George Valenzuela is an environmental planner who has experience working on technical documents and grant administration.

D.1 Key Member Contacts

Project Manager	Sally Johnson	(858) 875-7427	sjohnson@woodardcurran.com
Principal-in-Charge	Persephene St. Charles	(213) 223-9466	pstcharles@woodardcurran.com
Planner	George Valenzuela	(408) 831-4818	gvalenzuela@woodardcurran.com

D.2 Key Team Member Qualifications

Sally Johnson: Project Manager

Sally is a water resources planner with six years of experience in federal and state funding programs; integrated water resource management planning; urban water management planning; and California Environmental Quality Act (CEQA) compliance. She is experienced in managing grant applications and meeting application deadlines for a variety of funding programs, including IRWM implementation grants. She has written three successful IRWM implementation grants, a Disadvantaged Community Involvement Grant, and IRWM Planning Grant under Prop 84 and Prop 1 for the San Diego IRWM Region, and previously assisted in writing two successful Prop 84 Implementation Grants for the Coachella Valley IRWM Region. Her funding experiences include grant and loan applications for a variety of federal and state programs including U.S. Bureau of Reclamation WaterSMART, Proposition 84 IRWM grants, and State Revolving Fund grants and loans. Sally currently serves as the program manager for the San Gorgonio IRWM Program, and helped with final approval of the IRWM Plan from DWR, coordination with the Colorado River Funding Area, and review of the Draft PSP for the RWMG.

Persephene St. Charles: Principal-in-Charge

Persephene brings 18 years of extensive experience managing local, regional, and watershed-scale planning projects involving water quality, recycled water, habitat enhancement, stormwater, flood protection and watershed issues. Persephene is a leader in orchestrating local and regional planning involving multiple stakeholders and project partnerships; her experience development and implementing IRWM programs has provided her with a unique understanding of the program and how to effectively craft projects to achieve regional objectives while maximize funding competitiveness.

George Valenzuela: Planner

George Valenzuela is an environmental planner with experience in integrated water resources management. He has provided project support for a wide range of integrated regional water studies and plans, technical analyses, and groundwater management plans. George has supported development of grant applications for the Coachella Valley Water District, including the U.S. Bureau of Reclamation Water Infrastructure for Improvements to the Nation (WIIN) grant application. He also provided support for the development of the Fremont Basin IRWM Salt and Nutrient Management Plan and corresponding Groundwater Management Plan.

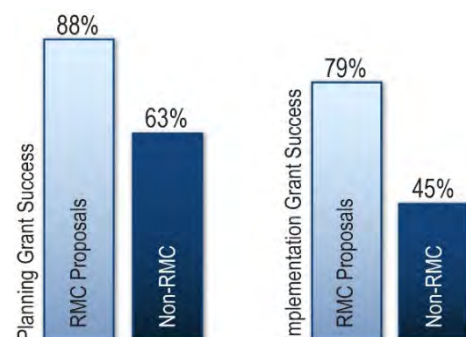
E. EXPERIENCE AND REFERENCES

E.1 Experience and Related Projects

Woodard & Curran is an engineering and planning firm formed to assist clients in tackling their water supply, water quality, wastewater, and stormwater challenges. We have become a statewide leader in IRWM – working directly with Department of Water Resources (DWR) and 24 regions throughout the state to help achieve IRWM technical, policy, and financial goals. The proposed team's experience working directly with the San Geronio IRWM Program will enable us to seamlessly support the Region as it embarks on the next phase of the IRWM Implementation Grant Program.



In total, Woodard & Curran has worked to secure more than \$1.1 billion from a variety of local, state and federal programs to help our clients' fund water resources projects and programs. Woodard & Curran's grant expertise and funding success is most clearly demonstrated by its success in the IRWM grant program. Woodard & Curran is the leader in IRWM planning and grant application preparation and administration in California. Woodard & Curran has helped build and lead more IRWM planning efforts than any other consulting firm. To date, we have prepared 19 IRWM plans and over 40 IRWM funding applications to secure more than \$557 million in grants from Proposition 50, 84, and 1. Woodard & Curran's Funding Committee works collaboratively to track relevant funding mechanisms (such as Proposition 1) and disseminates program information company-wide - allowing our proposed task mangers to assist the Region in positioning projects for a



Woodard & Curran's 88% success rate with IRWM planning grant applications and 79% of IRWM implementation grant applications speaks to our high standards and quality of work.

wide range of funding opportunities. Through these experiences, we have developed internal strategies for highlighting project components to demonstrate multiple benefits and make them competitive for funding, facilitating coordination of material from multiple entities, and managing and resolving inconsistent datasets and information such that a cohesive final application can be submitted to a funding agency on time.

Greater Los Angeles County (GLAC) IRWM Program Support

Woodard & Curran has been involved in supporting the GLAC IRWM Region since 2005. During that time, we have worked with hundreds of stakeholders to conduct comprehensive regional and subregional planning, identify and develop hundreds of multi-benefit projects, and bring \$104 million in IRWM grant funds to implement collaborative projects throughout the region.

- **Funding Support:** Woodard & Curran has mastered the preparation of the Region's massive implementation grant applications that typically include a wide range of projects, local project sponsors, supporting documents, and benefits. Our planning and engineering expertise allowed us to articulate projects with objectives ranging from water supply improvements to water quality enhancement to flood risk reduction to ecosystem restoration. As part of this work, Woodard & Curran developed methods and tools to calculate additional benefits to ensure projects demonstrated multiple benefits. Our grant experience also allowed for detailed review of work plans, budgets and schedules to determine whether they were reasonable, and follow-up with project sponsors to ensure information was correct. Woodard & Curran has successfully submitted all applications through DWR's online GRanTS portal, and therefore is very familiar with using the website. For the past four years, Woodard & Curran has also provided grant administration services to the IRWM Program through Los Angeles County Department of Power and Water.

In addition to funding support, Woodard & Curran has developed a strong familiarity with the Region's water resources and stakeholders by providing support to the Region in the following areas:

- **IRWM Planning:** Woodard & Curran worked with the Region to develop the 2013 Update of the GLAC IRWM Plan. Our team facilitated discussions within Subregional and plan update committees as well as the Leadership Committee to develop/revisit key planning strategies. We led the development of supporting technical studies that examined the Region's issues and needs related to water supplies, water quality, flood, habitat and recreation.
- **Data Management:** Woodard & Curran worked with the Region to develop the OPTI project database to provide a web-based user interface that could be accessible to all interested parties and stakeholders.
- **Meeting Facilitation and DAC Involvement:** Woodard & Curran supported the North Santa Monica Bay and South Bay Subregions to facilitate regular and specialized meetings that involved project development and selection, subregional governance and participation, DAC involvement, and related IRWM topics. Woodard & Curran worked with the Subregions to develop strategies to include in an initial DAC outreach plan while under development. During the 2013 Plan Update process, Woodard & Curran helped to conduct tribal outreach as well as collaborated with the existing DAC Coordinator under contract separately by the Region.

San Diego IRWM Program Support

Woodard & Curran has been supporting the City of San Diego, County of San Diego, and San Diego County Water Authority (SDCWA) in developing an integrated, balanced, and consensus-based approach to ensuring the long-term viability of San Diego's water supply, water quality, and natural resources since 2007. Part of this support has included grant support starting with Round 2 of Proposition 50 in 2007. Woodard & Curran completed (and submitted through the GRanTS portal) 6 successful IRWM

applications for the Region resulting in over \$90M for nearly 60 projects. During each cycle of IRWM funding, Woodard & Curran holds integration workshops with stakeholders that focus on providing technical assistance to stakeholders, including disadvantaged communities, and are geared towards finding ways to promote collaboration, integrate projects, and maximize overall project benefits. During each round of funding, Woodard & Curran also develops a detailed set of project scoring criteria based on both the region's IRWM plan and the requirements of each grant program. Woodard & Curran then scores all projects submitted, and facilitates meetings with the project review subcommittee to select projects for inclusion in the grant application.

San Gorgonio Integrated Regional Water Management Program Support

Woodard & Curran worked with agencies in the San Gorgonio Valley to develop a new IRWM region and program beginning in 2016. This work included facilitating discussions on RWMG organization and management, and draft regional boundaries. As part of this work, Woodard & Curran successfully prepared both the application required for the Region Acceptance Process and a planning grant application for the development of the new IRWM Plan plus necessary technical studies. Woodard & Curran was responsible for facilitating stakeholder and RWMG meetings, developing technical studies to identify the region's needs, and drafting the IRWM Plan. Woodard & Curran currently serves as the program manager.

Upper Santa Margarita Watershed IRWM Program Support

Woodard & Curran has served as the Region's program manager since 2015, and is responsible for coordinating stakeholder meetings, coordinating RWMG meetings, ensuring ongoing project inclusion in the IRWM Plan, and development of outreach materials. Woodard & Curran has been responsible for preparing Prop 84 implementation grant applications that have provided the Region with \$3.8 million to implement projects and \$800,000 to support planning efforts. This work includes preparing a call for projects, reviewing existing and new projects for inclusion in the plan, preparing scoring criteria to be used by the region to prioritize projects for inclusion in grant applications, and coordinating with project sponsors to obtain additional project information, if needed.

As part of this work, Woodard & Curran has worked to encourage stakeholder involvement in the IRWM Program, particularly DAC and Tribal involvement, through individual communications with representatives, working with stakeholders such as the Ramona Band of Cahuilla and Meadowview HOA to develop projects and identify potential partners to facilitate project implementation. To encourage integrated, regional projects, Woodard & Curran has facilitated project integration workshops that allow project sponsors to discuss their projects, obtain feedback from stakeholders, and look for opportunities to engage partners or enhance the project.

Coachella Valley IRWM Program Support

In 2010, Woodard & Curran was hired by the Coachella Valley Regional Water Management Group (CVRWMG), which is a group of six water and wastewater agencies, to prepare a Proposition 84 Planning Grant, develop the Region's first IRWM Plan, and pursue Proposition 84 IRWM Implementation Grant funding. Since that time, Woodard & Curran has continued to provide grant funding and ongoing program management support to the CVRWMG. Woodard & Curran helped the region secure a \$1 million Planning Grant and \$500k DAC Involvement Grant, and completed an update of the 2011 Plan to adhere to revised 2012 IRWM Plan Standards, implement outreach activities, complete technical studies, and conduct targeted outreach to DACs to ultimately increase DAC participation in the IRWM process. In addition to the Planning Grant and DAC Involvement Grant, Woodard & Curran completed (and submitted through the GRanTS portal) four additional Proposition 84 Implementation Grant applications, ultimately securing over \$18 million for the Region through the IRWM grant program. In addition, Woodard & Curran helped

secure IRWM funding for DAC planning projects that were able to leverage the IRWM funding to secure additional grant funding from the USDA for implementation. Woodard & Curran also facilitated the local project solicitation and selection process in support of all four of the region's successful Implementation Grant applications.

E.2 References

San Diego IRWM Program Management, Plan Development and Grant Preparation

San Diego County Water Authority

Mr. Mark Stadler, Principal Water Resources Specialist

4677 Overland Avenue

San Diego, CA 92123

858.522.6735, mstadler@sdewa.org

Responsibility and relationship to project: IRWM Program Manager

Project Description: Woodard & Curran has been supporting the San Diego Region developing and implementing an integrated, balanced, and consensus-based approach to ensuring the long-term viability of San Diego's water supply, water quality, and natural resources since 2007. Woodard & Curran was initially selected in 2007 to assist the San Diego Region in revising and updating its preliminary draft IRWM Plan to more fully address the IRWM Plan standards. In addition, we worked with the Water Authority, the city and the county to implement a robust stakeholder process, consisting of a 34-member Regional Advisory Committee. Through this project, Woodard & Curran assisted the San Diego Region in enhancing its stakeholder coordination, strengthening its IRWM Plan, and preparing a successful \$25 million implementation grant application for Proposition (Prop) 50 Round 2. Since then, we have prepared the successful Region Acceptance Process Application, developed an MOU for the RWMG, supported RWMG and stakeholder meetings, updated the IRWM Plan to meet Proposition 1 requirements, and prepared all Prop. 84 planning and implementation grant applications.

Dates: 2007-2019 (multiple contracts)

Key personnel involved: *Sally Johnson* (Deputy Project Manager, IRWM Plan update support, IRWM grant writing support and management), *Rosalyn Prickett* (Project Manager, program management support, IRWM Plan update management, IRWM grant writing management), *Persephone St. Charles* (technical study lead and IRWM Plan update support)

Greater Los Angeles County IRWM Program

Los Angeles County Department of Public Works

Mr. Russ Bryden, Senior Civil Engineer

900 South Fremont Ave., Alhambra, CA 91803

626-458-5100; rbryden@ladpw.org

Responsibility and relationship to project: Project manager/LACFCD representative

Project Description: Woodard & Curran worked with over a number of agencies, municipalities, and stakeholder groups since 2005 on the Region's IRWM development process. Our team members have provided overall guidance during formation and have consistently been involved in the Region since 2005. In 2011, we were selected to prepare the IRWM Plan Update that re-evaluated regional water resource targets and involved additional planning to meet DWR guidelines to prepare more funding. We have also been responsible for developing the last five implementation grant applications (under Prop. 50 and Prop. 84) that has led to the Region being awarded over \$104 million for project implementation. We also host and support the Region's OPTI database which houses all project information and provide grant

management services. Woodard & Curran is currently on the GLAC IRWM Region's On-Call Consultant Support list.

Dates: 2005–current (multiple contracts)

Key personnel involved: Dawn Flores (IRWM Plan Update and grant application support), *Persephone St. Charles* (IRWM Plan Update Project Manager and lead grant application reviewer), Brian Dietrick (grant application project manager), Brenda Ponton (grant writer), Romy Sharafi (grant writer)

Upper Santa Margarita Watershed IRWM Program Management, Plan Development and Grant Preparation

Riverside County Flood Control and Water Conservation District

Mr. Jason Uhley, General Manager-Chief Engineer

1995 Market Street, Riverside, CA 92501

951.955.1250, juhley@rivco.org

Responsibility and relationship to project: RWMG member

Project Description: Woodard & Curran was selected in 2012 to complete an update of the Upper Santa Margarita Watershed IRWM Plan. Since then, Woodard & Curran has served as the Region's program manager since 2015, and is responsible for coordinating stakeholder meetings, coordinating RWMG meetings, ensuring ongoing project inclusion in the IRWM Plan, and development of outreach materials. Woodard & Curran has been responsible for preparing Prop 84 implementation grant applications that have provided the Region with \$3.8 million to implement projects and \$800,000 to support planning efforts.

Dates: 2012-2019 (multiple contracts)

Key personnel involved: Dawn Flores (IRWM Program Manager and Grant Application Project Manager), *Persephone St. Charles* (IRWM Plan Update Project Manager and PIC), Brenda Ponton (grant writer), Vanessa De Anda (project support)

F. EVIDENCE OF INSURANCE

Woodard & Curran has insurance that meets the coverage amounts listed in the Sample Agreement of the RFP, as demonstrated in **Exhibit C** of this proposal.

G. FINANCIAL CAPACITY

Woodard & Curran's latest audited financial statement is included as **Exhibit D** to this proposal.

H. DISCLOSURE

Woodard & Curran currently works with the City of Banning as the Program Manager for the San Geronio IRWM Program.

I. PRICE PROPOSAL

Woodard & Curran's fee estimate for this project is included as **Exhibit E** of this proposal, along with a standard rate sheet. Additionally, Woodard & Curran has completed the required price proposal form. Woodard & Curran proposes to complete this scope of work for a total fee of \$86,230.

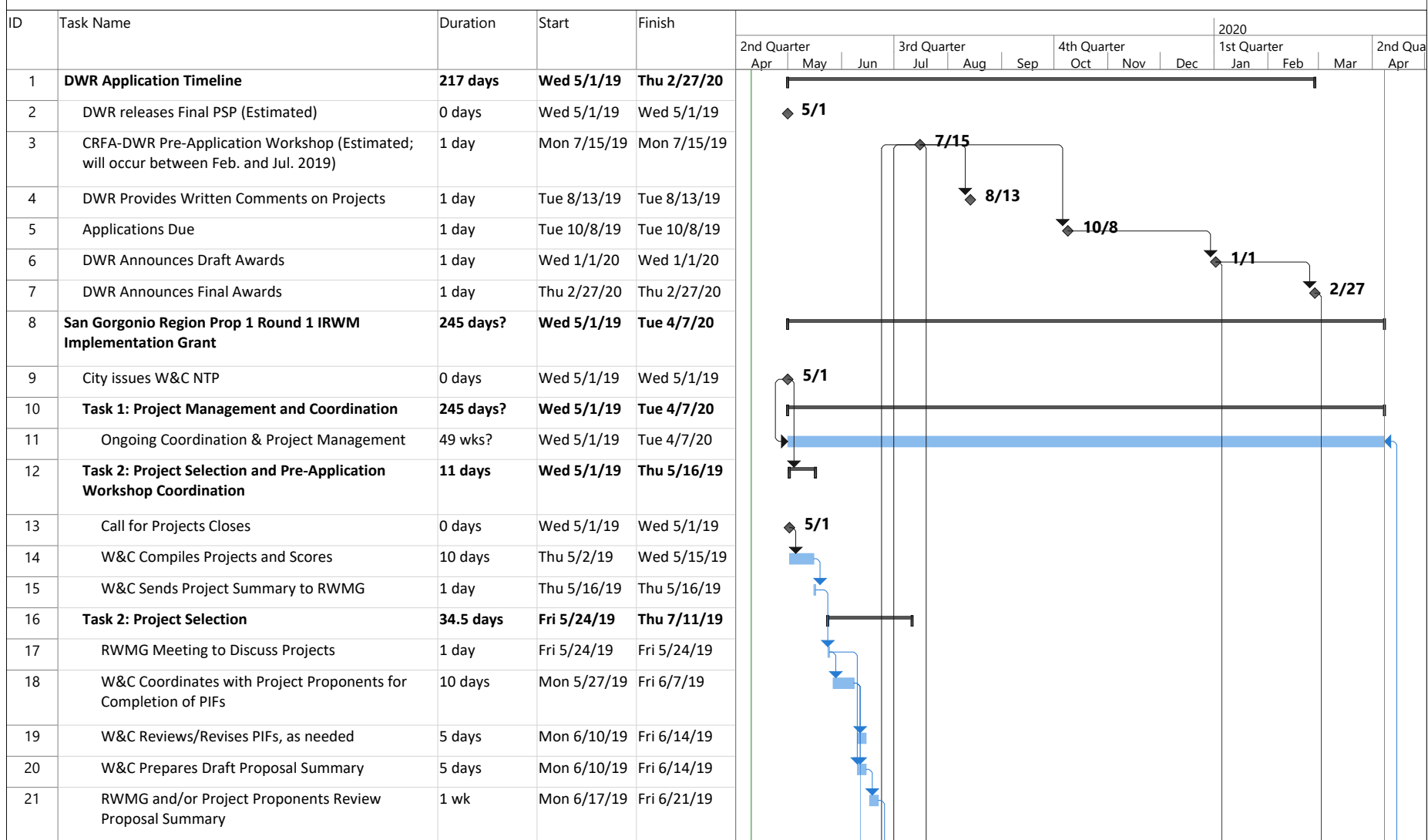
J. PROPOSAL FORMS

The required proposal forms are included as **Exhibit F** to this proposal, and include:

- Ex Parte Communications Certificate
- Disqualifications Questionnaire
- Disclosure of Government Positions
- Price Proposal Form

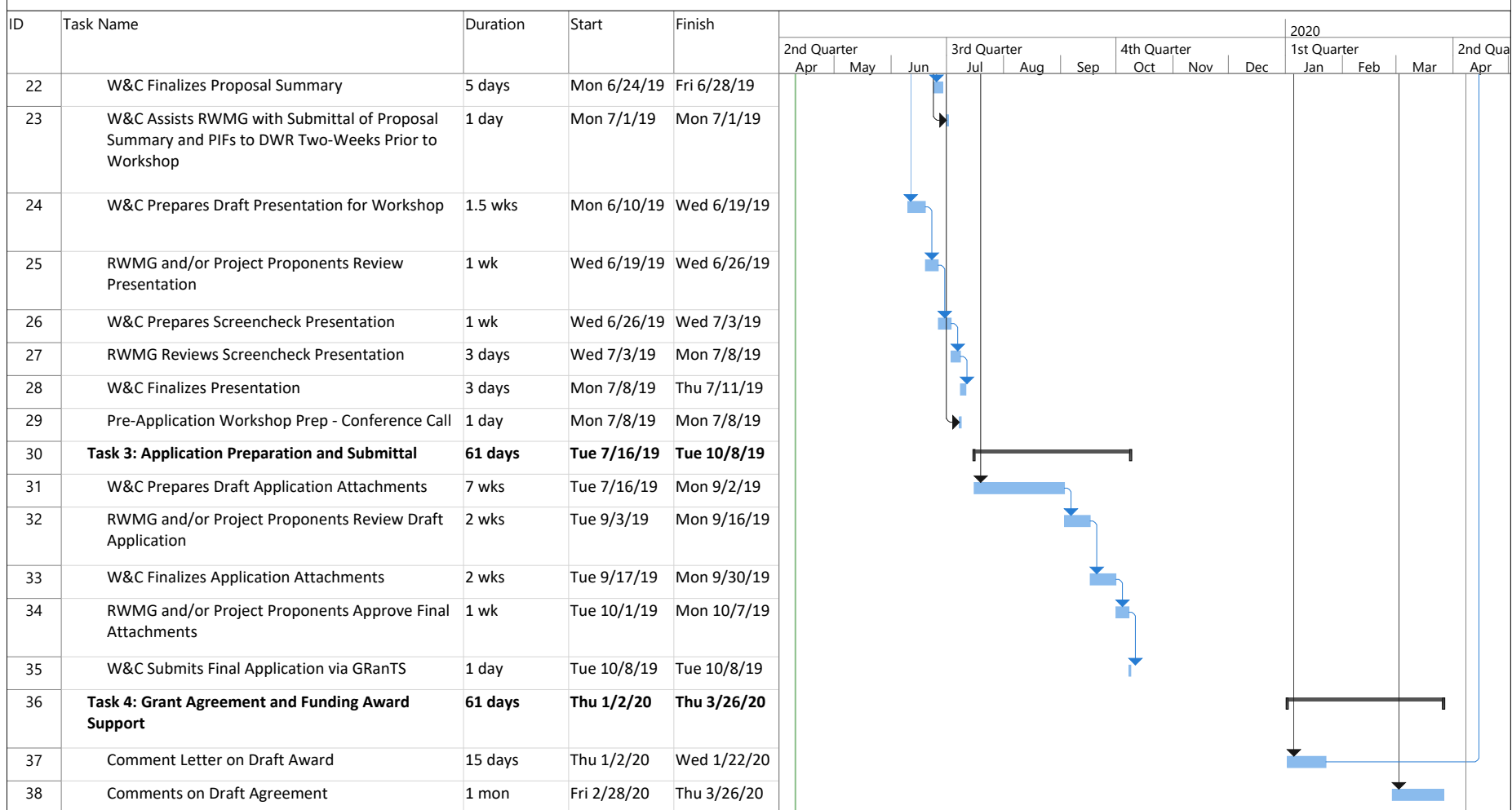
EXHIBIT A: SCHEDULE

EXHIBIT A - SCHEDULE



Project: SGIRWM P1R1 Imp Gra Date: Wed 4/10/19	Task		Inactive Task		Manual Summary Rollup		External Milestone	
	Split		Inactive Milestone		Manual Summary		Deadline	
	Milestone		Inactive Summary		Start-only		Progress	
	Summary		Manual Task		Finish-only		Manual Progress	
	Project Summary		Duration-only		External Tasks			

EXHIBIT A - SCHEDULE



Project: SGIRWM P1R1 Imp Gra
Date: Wed 4/10/19

Task		Inactive Task		Manual Summary Rollup		External Milestone	
Split		Inactive Milestone		Manual Summary		Deadline	
Milestone		Inactive Summary		Start-only		Progress	
Summary		Manual Task		Finish-only		Manual Progress	
Project Summary		Duration-only		External Tasks			

EXHIBIT B: LITIGATION DISCLOSURE

The Proposal Shall identify any litigation, mediation, or arbitration, regarding the performances of any services similar to the Services, in which the Company has been involved in the past five (5) years.

- Town of Peterborough. v. Woodard & Curran, NH, Civil No. 16-cv-198-LM. The Town of Peterborough, NH initiated this lawsuit asserting a claim for funding-related damages in connection with an engineering project at the Town's Wastewater Treatment facility. The matter is resolved.

EXHIBIT C: EVIDENCE OF INSURANCE



WOOD&CU-01

477 CMURPHY

DATE (MM/DD/YYYY)

2/27/2019

CERTIFICATE OF LIABILITY INSURANCE

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 Ames & Gough 859 Willard Street Suite 320 Quincy, MA 02169	CONTACT NAME:	
	PHONE (A/C, No, Ext): (617) 328-6555	FAX (A/C, No): (617) 328-6888
	E-MAIL ADDRESS: boston@amesgough.com	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A: Continental Casualty Company (CNA) A, XV 20443	
INSURED Woodard & Curran, Inc. 41 Hutchins Drive Portland, ME 04102	INSURER B: Continental Insurance Company A(XV) 35289	
	INSURER C: American Casualty Co of Reading, PA A(XV) 20427	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES**CERTIFICATE NUMBER:****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	X COMMERCIAL GENERAL LIABILITY CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: POLICY <input checked="" type="checkbox"/> PROJECT <input checked="" type="checkbox"/> LOC OTHER:			6014561812	2/23/2019	2/23/2020	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 15,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COM/OP AGG \$ 2,000,000
A	X AUTOMOBILE LIABILITY ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY			6014561843	2/23/2019	2/23/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
B	X UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input checked="" type="checkbox"/> RETENTION \$ 0			6014561826	2/23/2019	2/23/2020	EACH OCCURRENCE \$ 1,000,000 AGGREGATE \$ 1,000,000
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) <input checked="" type="checkbox"/> Y / N If yes, describe under DESCRIPTION OF OPERATIONS below		N / A	6076061262	2/23/2019	2/23/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	Professional Liab			114135520	2/23/2019	2/23/2020	Per Claim/Aggregate 1,000,000
A	Pollution Liability			114135520	2/23/2019	2/23/2020	Per Claim/Aggregate 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 If AI box is checked, GL Endorsement Form# CNA75079XX, Auto Endt Form# CNA71527XX to the extent provided therein applies and all coverages are in accordance with the policy terms and conditions.

Proof of Insurance

CERTIFICATE HOLDER**CANCELLATION**

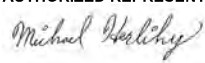
Woodard & Curran, Inc.	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

EXHIBIT E: DETAILED PRICE PROPOSAL



EXHIBIT E - FEE ESTIMATE

Fee Estimate

City of Banning
San Gorgonio Region Prop 1 Round 1 Implementation Grant

February 9, 2019

Tasks	Labor				Total Hours	Total Labor Costs (2)	ODCs		Total Estimated Fee
	Persephone St. Charles	Sally Johnson	George Valenzuela	Jen Sindermann			ODCs	Total ODCs (3)	
	PIC/PM	PM	Planner	Project Assistant					
	\$310	\$221	\$162	\$110					
Task 1: Project Management									
Ongoing PM and Coordination	1	12		10	23	\$4,062	\$0	\$0	\$4,062
Conduct Meetings with RWMG members		24	12		36	\$7,248	\$0	\$0	\$7,248
Subtotal Task 1:	1	36	12	10	59	\$11,310	\$0	\$0	\$11,310
Task 2: Project Selection and Pre-Application Workshop Coordination									
Prepare for & Conduct RWMG Meeting to Select Projects		6	8		14	\$2,622	\$150	\$165	\$2,787
Prepare Proposal Summary (Draft & Final)		2	6		8	\$1,414	\$0	\$0	\$1,414
Draft Project Information Forms (PIFs) and Coordination with Project Proponents		10	24		34	\$6,098	\$0	\$0	\$6,098
Revise PIFs prior to Workshop		8	12		20	\$3,712	\$0	\$0	\$3,712
Prepare Workshop Presentation (Draft & Final)	1	6	12		19	\$3,580	\$0	\$0	\$3,580
Workshop Prep Call		2	2		4	\$766	\$0	\$0	\$766
CRFA Pre-Application Workshop		10	4		14	\$2,858	\$150	\$165	\$3,023
Subtotal Task 2:	1	44	68	0	113	\$21,050	\$330	\$330	\$21,380
Task 3: Application Preparation and Submittal									
Prepare Draft Grant Application	6	48	120		174	\$31,908	\$0	\$0	\$31,908
Prepare Final Grant Application	2	24	60		86	\$15,644	\$0	\$0	\$15,644
Submit via GGrants & CDs for City and Project Proponents		2	8	1	11	\$1,848	\$0	\$0	\$1,848
Subtotal Task 3:	8	74	188	1	271	\$49,400	\$0	\$0	\$49,400
Task 4: Post-Submittal Support									
Comment Letter on Draft Awards		4	6		10	\$1,856	\$0	\$0	\$1,856
Review and Comment on Draft Agreement	1	6	4		11	\$2,284	\$0	\$0	\$2,284
Subtotal Task 4:	1	10	10	0	0	\$4,140	\$0	\$0	\$4,140
Total	11	164	278	11	443	\$85,900	\$330	\$330	\$86,230

1. Assumes 4 projects included in grant application.

2. The individual hourly rates include salary, overhead and profit.

3. Other direct costs (ODCs) such as reproduction, delivery, mileage (rates will be those allowed by current IRS guidelines), and travel expenses, will be billed at actual cost plus 10%.

4. Woodard & Curran reserves the right to adjust its hourly rate structure and ODC markup at the beginning of the calendar year for all ongoing contracts.

EXHIBIT F: PROPOSAL FORMS

EX PARTE COMMUNICATIONS CERTIFICATION

Please indicate by signing below one of the following two statements. **Only sign one statement.**

I certify that Proposer and Proposer's representatives have not had any communication with a City Councilmember concerning the RFP No. 19-036 Grant Application Preparation Services RFP at any time after March 22, 2019.



OR

I certify that Proposer or Proposer's representatives have communicated after March 22, 2019 with a City Councilmember concerning the RFP No. 19-036 Grant Application Preparation Services RFP. A copy of all such communications is attached to this form for public distribution.

DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes _____ No X _____

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

DISCLOSURE OF GOVERNMENT POSITIONS

Each Proposer shall disclose below whether any owner or employee of the firm currently hold positions as elected or appointed officials, directors, officers, or employees of a governmental entity or held such positions in the past twelve months. List below or state "None."

None.

PRICE PROPOSAL FORM

All proposals submitted shall have a stated dollar bid amount for providing the services outlined in the Scope of Services. All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to hourly rates, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, etc., and include a Grand Total Amount to complete this project and fulfill the entire scope of services herein.

Job Title / Employee (required)	Hourly rate
<i>Sally Johnson, Project Manager (Project Panner 1)</i>	\$ 221
<i>Persephene St. Charles, Principal in Charge (Senior Technical Practice Lead)</i>	\$ 310
<i>George Valenzuela (Planner 1)</i>	\$ 162
<i>Jen Sindermann (Project Assistant)</i>	\$ 110
	\$
	\$
	\$
	\$
	\$
	\$
	\$

Grand Total Amount: \$ 86,230

Authorized Signature:  Date: 4/10/19

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