

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

April 9, 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 LABOR NEGOTIATOR  
Pursuant to Government Code Section 54957.6  
Agency Designated Representative: Doug Schulze, City Manager  
Unrepresented Employees: Department Directors
- 2. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION  
(Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9) (One Case)

**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**

April 9, 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
- Pledge of Allegiance
- Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

**II. AGENDA APPROVAL**

**III. PRESENTATION**

**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:

1. Appointment to Parks & Recreation Commission ..... 10

## **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 – 3/26/2019 Minutes (Closed Session) ..... 31
2. Approval of Special Meeting – 3/26/2019 Minutes (Workshop) ..... 34
3. Approval of Regular Meeting – 3/26/2019 Minutes ..... 37
4. Contracts Approved Under City Manager Authority for March, 2019 ..... 48
5. Approval of Measure A Five-Year Capital Improvement Program.  
**Recommendation: that the City Council Adopt Resolution, Approving Measure “A” Five-Year Capital Improvement Plan Project List and Authorize the City Manager to Execute the Maintenance of Effort Certification Statement (“MOE Certification”).**..... 52
6. Approval of the SB-1 Projects.  
**Recommendation: that the City Council Adopt Resolution, Adopting a List of Projects to be Funded by SB 1, “The Road Repair and Accountability Act of 2017.”** ..... 70
7. Resolution, Approving an Agreement with Pyro Spectaculars, Inc. for production of the Fourth of July Aerial Fireworks Display.  
**Recommendation(s) 1) Approve Production Agreement with Pyro Spectaculars, Inc. of Rialto, CA. in the Amount of \$27,000 for the Aerial Fireworks Show; and 2) Authorize the City Manager to Execute the Agreement.**..... 81

## **VII. PUBLIC HEARINGS**

1. Resolution 2019-03; General Plan Amendment 18-2501; Ordinance No. 1541 approving Zone Change 18-3501 and making findings pursuant to CEQA; Design Review 18-7001; and Environmental Assessment 18-1501 for the Proposed Development of a 146,890 Square Foot Industrial Building within the General Commercial (GC) Land Use District Located on Developed and Undeveloped Property Located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1617 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) ..... 93  
*(Staff Report – Adam Rush, Community Development Director)*

**Recommendation(s):** 1) Continue the public hearing to Tuesday, April 23 based upon the applicant's request; and 2) Applicant's request attached herein.

2. Resolution No. 2019-04 and Ordinance No. 1542, Approving Zoning Text Amendment 19-97501 amending chapter 17.53 of Title 17 of the Banning Municipal Code to reduce the separation requirements between commercial cannabis cultivation, manufacturing, and testing laboratory uses and residentially zoned property and amending the definition of "Canopy Space."..99  
(Staff Report – Adam Rush, Community Development Director)

**Recommendation(s):** 1) Open the public hearing, receive public comment, and close the public hearing; 2) Adopt Resolution 2019-04, which is a Resolution of the City of Banning, California recommending that the Council make a determination under CEQA Guidelines Section 15060(c)(3) and 15061(b)(1) that the project is exempt from CEQA and approval of Zoning Text Amendment 19-97501 amending Chapter 17.53 of Title 17 of the Banning Municipal Code to Reduce the separation requirements between commercial cannabis businesses and residentially zoned property and amending the definition of "canopy space"; 3) Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378, and further that under CEQA Guidelines Section 15061(b)(1) the project is exempt from CEQA as it is exempt by statute (Business and Professions Code Section 26055(h)); and 4) Recommending that the City Council approve Zoning Text Amendment 19-97501 to amend Chapter 17.53 of the Municipal Code to reduce the separation requirement between commercial cannabis cultivation, manufacturing, and testing laboratory uses and residentially zoned property from 600 to 300 feet, and to amend the definition of canopy space.

**Mayor asks the City Clerk to read the title of Ordinance 1542**

*"Ordinance 1542, an Ordinance of the City of Banning, California, Amending Chapter 17.53 of Title 17 of the Banning Municipal Code to reduce the separation requirements between commercial cannabis cultivation, manufacturing, and testing laboratory uses and residentially zoned property and amending the definition of "Canopy Space", and making a determination pursuant to CEQA."*

**Motion:** I move to waive further reading of Ordinance 1542  
(Requires a majority vote of the Council)

**Motion:** I move that Ordinance No. 1542 pass its first reading

**VIII. ANNOUNCEMENTS AND REPORTS**

CITY COUNCIL COMMITTEE REPORTS  
REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORT OF OFFICERS

1. Proposed Memorandum of Understanding from Banning Chamber of Commerce ..... 128  
(*Staff Report – Douglas Schulze, City Manager*)

**Recommendation: Staff Recommends the City Council Review, Discuss and Provide Direction Regarding the Proposed Memorandum of Understanding (MOU) with the Banning Chamber of Commerce.**

2. 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. .... 141  
(*Staff Report – Douglas Schulze, City Manager*)

**Recommendation: That 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.**

3. Adopt Resolution, Approving the Maximum Compensation and Benefits for City Executive Department Directors..... 164  
(*Staff Report – Douglas Schulze, City Manager*)

**Recommendation(s): 1) Adopt Resolution, Approving the Maximum Compensation and Benefits in City Executive Department Director Employment Contracts, Including the City Manager, Administrative Services Director/Deputy City Manager, Community Development Director, Community Services Director, Electric Utility Director, Police Chief, and Public Works Director/City Engineer, Approving a Minimum Cost of Living Adjustment (“COLA”) Increase of One Percent (1%) and Maximum of Two Percent (2%) Based on Annual Consumer Price Index for Urban Wage Earners (CPI-W), and Approving Benefits; 2) Authorize the Administrative Services Director to Make the Necessary Budget Adjustments, Appropriations and Transfers.**

4. Adopt Resolution, Awarding a Professional Services Agreement to Webb Municipal Finance, LLC for the Financial Analysis and Redevelopment of Landscape Maintenance District No. 1 in the amount of \$74,789, which includes a 10% Contingency. .... 181  
(*Staff Report – Art Vela, Director of Public Works/City Engineer*)

**Recommendation(s): 1) Awarding a Professional Services Agreement for the Financial Analysis and Redevelopment of Landscape Maintenance District**

(LMD) No. 1 to Webb Municipal Finance, LLC in the amount of \$67,990 and authorize an additional 10% contingency (\$6,799) for a total amount of \$74,789; 2) Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement for the Financial Analysis and Redevelopment of LMD No.1; 3) Authorizing the City Manager or his designee to execute the Professional Services Agreement with Webb Municipal Finance, LLC of Riverside, California in the amount of \$74,789; and 4) Authorizing the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.

**IX. DISCUSSION ITEM**

None

**BANNING UTILITY AUTHORITY (BUA)** – Next Meeting, April 23, 2019, 5:00 p.m.

**X. ITEMS FOR FUTURE AGENDAS**

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

**XI. ADJOURNMENT**

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

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

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

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

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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

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

**MEETING DATE:** April 9, 2019

**SUBJECT:** Parks & Recreation Commission Appointment

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### **RECOMMENDATION:**

Discuss and consider selecting a candidate from the list provided, to fill the remainder of the term vacated by former Parks and Recreation Commissioner Richard Sanchez.

### **BACKGROUND:**

On February 20, 2019, (*Attachment 1*) Richard Sanchez informed the Community Services Director, Heidi Meraz that he was resigning from service on the Parks & Recreation Commission after thirty-years of service. Therefore, there is currently a vacancy to fill the remainder of Mr. Sanchez's term, which ends on January 18, 2021. The person so appointed will serve a partial term ending in January 18, 2021.

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

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



**OPTIONS:**

The City Council may:

1. Make a selection from the list provided; or
2. Direct the Deputy City Clerk to re-advertise the vacancy and go through a new recruitment process

**ATTACHMENTS:**

1. Email from Mr. Sanchez Resigning from Parks & Recreation Commission dated February 20, 2019
2. Parks and Recreation Commission Applications from the February 5, 2019 interview process
3. Chapter 2.40 of the Banning Municipal Code
4. Appointing Resolution

Approved by:

  
\_\_\_\_\_  
Douglas Schulze, City Manager

# **ATTACHMENT 1**

## **Email From Mr. Sanchez**

## Daryl Betancur

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**From:** Heidi Meraz  
**Sent:** Thursday, March 14, 2019 4:56 PM  
**To:** Daryl Betancur  
**Subject:** Resignation

**From:** Heidi Meraz  
**Sent:** Wednesday, February 20, 2019 12:14 PM  
**To:** 'Richard Sanchez' <rfsan@verizon.net>  
**Subject:** RE: Upcoming Parks & Recreation Commission meeting

Hi Richard,

Thank you for your many years of service on the Parks and Recreation Commission, it was a pleasure working with you. I truly appreciate your devotion to not just the Community Services Department, but to our City.

I will present your resignation to the City Clerk and will begin the process of filling your spot on the commission.

-Heidi

*Heidi Meraz*

Community Services Director  
City of Banning  
951-922-3241

**From:** Richard Sanchez [<mailto:rfsan@verizon.net>]  
**Sent:** Wednesday, February 20, 2019 9:33 AM  
**To:** Heidi Meraz <[hmeraz@banningca.gov](mailto:hmeraz@banningca.gov)>  
**Subject:** RE: Upcoming Parks & Recreation Commission meeting

Good Morning Heidi

With regret I would like to inform you that after Thirty + years serving on the Parks And commission I will be resigning From my position on the commission. It has been a pleasure to work with you and staff and the City of Banning witch I Love very much  
Thank you  
Richard Sanchez

**From:** [hmeraz@ci.banning.ca.us](mailto:hmeraz@ci.banning.ca.us) [<mailto:hmeraz@ci.banning.ca.us>]  
**Sent:** Thursday, February 14, 2019 1:21 PM  
**To:** [rfsan@verizon.net](mailto:rfsan@verizon.net)  
**Subject:** Upcoming Parks & Recreation Commission meeting

Hi Richard,

At their meeting on February 12<sup>th</sup> the Council appointed three new members to the Parks and Recreation Commission, giving us a full board once again. Our next meeting will be on Wednesday, February 20<sup>th</sup> at 6:00pm in the Council Chambers.

Please respond to this email and let me know if you will be attendance.

Thanks !

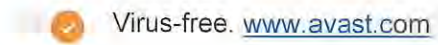
-Heidi

*Heidi Mera*

Community Services Director

City of Banning

951-922-3241



# **ATTACHMENT 3**

## **Chapter 2.28 of the Banning Municipal Code**

## Chapter 2.40

### PARKS AND RECREATION COMMISSION

#### Sections:

#### 2.40.010 Established—Purpose.

#### 2.40.020 Advisory agency designated— Powers and duties.

#### 2.40.030 Appointment of members.

#### 2.40.040 Conduct of meetings.

#### 2.40.010 Established—Purpose.

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

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

#### 2.40.020 Advisory agency designated— Powers and duties.

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

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

#### 2.40.030 Appointment of members.

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

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

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

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

E. To be excused from any such meeting, a member shall notify the community services department, at least forty-eight hours prior to any such meeting. If a member is unable to attend due to illness, injury or family matters, a statement by the member at the next regular meeting of the commission shall constitute an excused absence. (Code 1965, § 15-3; Ord. No. 1438, § 1.A., B., 6-14-11)

#### 2.40.040 Conduct of meetings.

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

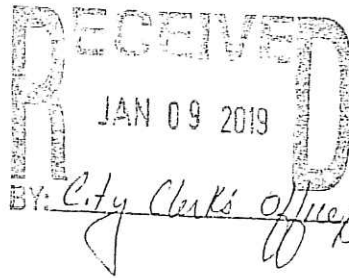
B. Additional meeting may occur if deemed necessary by the city council or commission chairperson.

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

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

# **ATTACHMENT 2**

## **Parks & Recreation Commission Applications**



COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: FRANK DIAZ

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers: Home \_\_\_\_\_ Cell \_\_\_\_\_

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

Fountain Valley School District - Operation Supervisor

Length of residence in Banning 2y 3 months

Are you a registered voter in Banning? Yes x No \_\_\_\_\_

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

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

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

- \* Education - High School Diploma with 38 units of college.
- \* Work Experience - 25 yrs in Facilities, Maintenance & Operations. 17 yrs experience leading school departments of 25 - 280 employees. 17 yrs experience developing budgets, working with contractors, and supervising projects of \$1,000 - 6 million.
- \* Civic Involvement - Banning SD (DPAC) District Agent Advisory Committee officer, community volunteer with Habitat for Humanity.



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

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

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

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

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

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

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

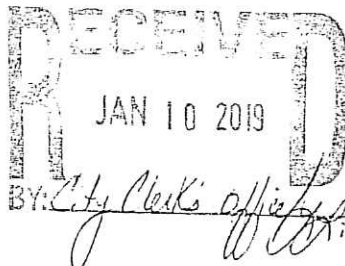
Please return to: City Clerk's Office  
City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY:**

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

Thank you for your willingness to serve your local government.

Date: 1/8/19 Signed: Frank Diaz



## COMMITTEE/BOARD APPLICATION FORM

*Parks / Recreation*

Name of Committee or Board you are applying for:

PLANNING COMMISSION

Name: Laura L. Leindecker

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers: Home \_\_\_\_\_

Cell \_\_\_\_\_

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

LLLeindecker & Associates, proprietor

Length of residence in Banning 14 years

Are you a registered voter in Banning? Yes X No \_\_\_\_\_

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

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

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

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

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

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

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

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


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

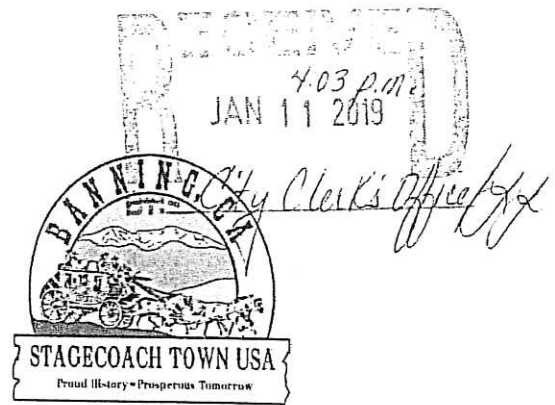
Please return to: City Clerk's Office  
City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

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

Thank you for your willingness to serve your local government.

Date: 1/10/2019

Signed: 



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Vickie A Sellers

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers: Home \_\_\_\_\_

Cell \_\_\_\_\_

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

Banning High School - Banning HS principals secretary

Length of residence in Banning 63 years

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

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

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

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

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JAN 11 2019  
4:03 p.m.  
BY: City Clerk's Office

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

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

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

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

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

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

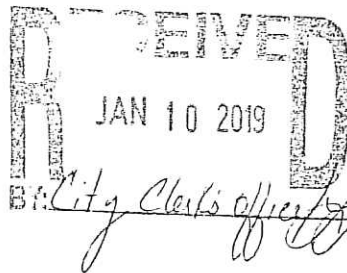
Please return to: City Clerk's Office  
City of Banning  
99 E. Ramsey Street  
P. O. Box 998  
Banning, CA 92220

**RETURN BY:**

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

Thank you for your willingness to serve your local government.

Date: 1/11/2019 Signed: Vickie A. Sellers



## COMMITTEE/BOARD APPLICATION FORM

Name of Committee or Board you are applying for:

PARKS AND RECREATION

Name: Robert G Ybarra III

Email Address: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Numbers: Home \_\_\_\_\_ Cell \_\_\_\_\_

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

Precision Material Handling INC.  
CEO/owner

Length of residence in Banning 5 years

Are you a registered voter in Banning? Yes X No \_\_\_\_\_

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

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

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

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

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

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

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

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

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

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

**RETURN BY:**

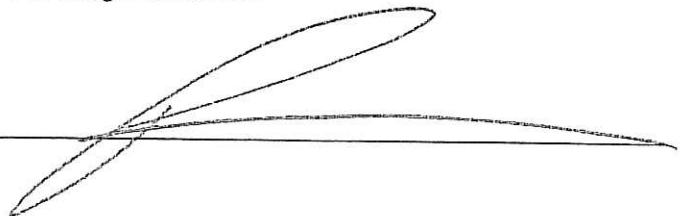
**January 11, 2019  
5:00 p.m.**

Thank you for your willingness to serve your local government.

Date:

1/10/19

Signed:



# **ATTACHMENT 4**

## **Appointing Resolution**



**RESOLUTION 2019-\_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
MAKING AN APPOINTMENT TO THE PARKS AND RECREATION COMMISSION TO  
FILL A VACANCY SET TO EXPIRE JANUARY 18, 2021**

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

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

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

**WHEREAS**, upon the resignation of Richard Sanchez on February 20, 2019 a vacancy was consequently created; and

**WHEREAS**, the City Council wishes to make an appointment to the Parks & Recreation Commission from the list of applicants who were interviewed by the Council on February 5, 2019.

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

**SECTION 1.** \_\_\_\_\_, was interviewed by the full Council on February 5, 2019, and has been deemed, as a successful applicant.

**SECTION 2.** \_\_\_\_\_, is hereby appointed as Parks and Recreation Commissioner for the City of Banning for a term beginning on April 9, 2019 and expiring January 18, 2021.

**PASSED, APPROVED AND ADOPTED** this 9<sup>th</sup> 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 G. Ennis, City Attorney  
Richards, Watson & Gershon

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2019-\_\_\_\_\_, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9<sup>th</sup> day of April 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager  
Rochelle Clayton, Deputy City Manager  
Kevin Ennis, City Attorney  
Daryl A. Betancur, Deputy City Clerk

**I. CALL TO ORDER**

A special meeting of the Banning City Council was called to order by Mayor Welch on March 26, 2019, at 3:02 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

**II. CLOSED SESSION**

Mayor welch opened the closed session items for public comments.

Kevin Ennis, City Attorney read the closed session items into the record.

There were no public comments.

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to paragraph (1) of subdivision (d) of Section 54956.9) Name of cases: Sierra Club v. City of Banning, Case RIC 1900544 and Golden State Environmental Justice Alliance v. City of Banning Case RIC 1900654. **Status report was provided. No final conclusion.**
2. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 – City Designated Representative: Doug Schulze, City Manager, Kevin Ennis, City Attorney, Banning Police Officer Association (BPOA). **Direction given to City Negotiator.**
3. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 – Agency Designated Representative: Deputy City

Manager Rochelle Clayton. Employee Organizations: International Brotherhood of Electric Workers (IBEW) General, IBEW Utility, and Teamsters. **Direction given to City Manager and Deputy City Manager.**

The Meeting convened to closed session at 3:02 p.m. and reconvened to open session at 4:10 p.m.

#### ADJOURNMENT

By consensus, the meeting adjourned at 4:10 p.m.

Minutes Prepared by:

---

Daryl Betancur, Deputy City Clerk

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

COUNCIL MEMBERS ABSENT: Councilmember Peterson

OTHERS PRESENT: Doug Schulze, City Manager  
Rochelle Clayton, Deputy City Manager  
Kevin Ennis, City Attorney  
Daryl A. Betancur, Deputy City Clerk  
Matthew Hamner, Police Chief  
Tom Miller, Electric Utility Director  
Heidi Meraz, Community Services Director  
Art Vela, Public Works Director  
Adam Rush, Community Development Director  
Suzanne Cook, Deputy Finance Director  
Laurie Sampson, Executive Assistant

## **I. CALL TO ORDER**

A special meeting of the Banning City Council was called to order by Mayor Welch on March 26, 2019 at 4:14 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

## **II. WORKSHOP**

Mid-Cycle Budget Review.

Rochelle Clayton, Deputy City Manager/Finance Director presented the staff report and answered Council's questions.

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

Don Smith – Stated that it was prudent to get a history of the triple flip, which was not never replenished by the State; in agreement with the 10%, in agreement with reducing electric rates to state competitive and attract businesses.

Paul Perkins – Spoke about Cannabis stating that projected revenues were too optimistic.



**ACTION:**

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

**IV. ADJOURNMENT**

By consensus, the meeting adjourned at 4:45 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: <http://banning.ca.us/ArchiveCenter/ViewFile/Item/2047> or by requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

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MINUTES  
CITY COUNCIL

03/26/2019  
REGULAR MEETING

COUNCIL 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  
Rochelle Clayton, Deputy City Manager  
Daryl Betancur, Deputy City Clerk  
Matthew Hamner, Police Chief  
Heidi Meraz, Community Services Director  
Tom Miller, Electric Utility Director  
Carla Young, Management Analyst  
Art Vela, Public Works Director/City Engineer  
Suzanne Cook, Deputy Finance Director  
Adam Rush, Community Development Director  
Laurie Sampson, Executive Assistant  
Leila Lopez, Office Specialist

**I. CALL TO ORDER**

A regular meeting of the Banning City Council was called to order by Mayor Welch on March 26, 2019, at 5:00 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Merle Malland, Chaplain, Banning Police Department offered the invocation.

Councilmember David Happe led the audience in the Pledge of Allegiance.

Mayor Welch requested that item No. 10 be pulled from the consent calendar for further discussion.

**II. APPROVAL OF AGENDA**

A motion was made by Councilmember Wallace, seconded by Mayor Pro Tem Andrade, to approve the agenda with the amendment to pull item No. 10. Electronic roll call vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
NOES: None  
ABSTAIN: None  
ABSENT: None

### III. PRESENTATION

Police Chief Matthew Hamner Oath of Office Ceremony

Superior Court of Riverside County, Judge Jorge C. Hernandez, administered the oath of office to the new Police Chief Matthew Hamner.

Chief Hamner introduced his family, and made brief comments about his decision to come to Banning as Police Chief; he thanked City Manager Schulze, members of the community, police chiefs of the Cities of Indio, Desert Hot Springs, and Riverside County Sheriff's personnel present for their support.

### IV. REPORT ON CLOSED SESSION

1. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Pursuant to paragraph (1) of subdivision (d) of Section 54956.9) Name of cases: Sierra Club v. City of Banning, Case RIC 1900544 and Golden State Environmental Justice Alliance v. City of Banning Case RIC 1900654. **Status report was provided. No final conclusion.**
2. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 – City Designated Representative: Doug Schulze, City Manager, Kevin Ennis, City Attorney, Banning Police Officer Association (BPOA). **Direction given to City Negotiator.**
3. CONFERENCE WITH LABOR NEGOTIATORS Pursuant to Government Code Section 54957.6 – Agency Designated Representative: Deputy City Manager Rochelle Clayton. Employee Organizations: International Brotherhood of Electric Workers (IBEW) General, IBEW Utility, and Teamsters. **Direction given to City Manager and Deputy City Manager.**

### V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

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

Inge Schuler made comments relative to being the subject of a Public Records Request for emails by Mr. Schulze's wife.

Marty Jackson spoke about identify theft; also mentioned that property owners and renters alike should be informed of the quality of the water in Banning because due to his bladder condition he must be careful that the water he drinks is clean water.

David Ellis made brief comments about Public Records Requests that he too was included in.

Diego Rose stated that he continues his quest to speak about beautifying Banning; spoke about beginning with planting of trees; made comments about issues related to the police audit and how that matter was handled.

City Attorney Kevin Ennis in response to a question raised by a member of the public, clarified that according to the rules of procedure on page 24, applauding was allowed during ceremonial events or occasions because it was not prohibiting the legislative body proceeding with its agenda or was considered disruptive.

#### CORRESPONDENCE:

There was no correspondence.

#### APPOINTMENTS:

##### 1. Downtown Ad-Hoc Committee Appointment.

A brief discussion ensued relative to which Councilmember ought to be part of the Downtown Ad-Hoc Committee. Mr. Peterson expressed his desire to have himself and Councilmember Happe as business owners/property owners in the Downtown core to be on the Ad-Hoc Committee due to their business experience.

There were several comments made about the potential conflict of interest associated with Councilmembers who were also business/property owners serve on the Committee.

Mayor Welch proposed to appoint Mayor Pro Tem Andrade to serve on the Downtown Ad-Hoc Committee.

A motion was made by Councilmember Peterson, seconded by Councilmember Happe, to approve the nominations as discussed. Electronic roll call vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

#### **Public Comment**

The following individuals commented on the matter of appointments to the Downtown Ad-Hoc Committee, Don Smith, Davis Ellis, Diego Rose, and Paul Perkins.

Council reaffirmed its decision by the following motion:

A motion was made by Councilmember Peterson, seconded by Councilmember Happe, to approve the nominations as discussed. Electronic roll call vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

## **VI. CONSENT ITEMS**

Mayor Welch asked if the Council wished to pull any items; and stated that item No. 10 had been moved from the consent calendar to the regular calendar to be discussed.

### **Public Comment**

Inga Schuler commended the folks who worked on item No. 9, the General Plan Annual Progress Report, which was very detailed and informative.

A motion was made by Councilmember Peterson, seconded by Mayor Pro Tem Andrade to approve the consent calendar as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	Peterson
ABSENT:	None

1. Approval of Special Meeting – 3/12/19 Minutes (Closed Session)

**Action:      Approved by Minute Order No. 2019-041**

2. Approval of Special Meeting - 3/12/19 Minutes (Workshop)

**Action:      Approved by Minute Order No. 2019-042**

3. Approval of Regular Meeting – 3/12/19 Minutes (Regular Meeting)

**Action:      Approved by Minute Order No. 2019-043**

4. Receive and File Cash, Investments, and Reserve Report for the month of February, 2019.

**Action:      Received and Filed by Minute Order No. 2019-044**

5. Approval and Ratification of Accounts Payable and Payroll Warrants, issued in the month of February 2019.

**Action: Approved by Minute Order No. 2019-045**

6. Capital Improvement Project Update for the month of February 2019.

**Action: Received and Filed by Minute Order No. 2019-046**

7. Receive and File Police Statistics for January 2019 Revised.

**Action: Received and Filed by Minute Order No. 2019-047**

8. Receive and File Police Statistics for February 2019.

**Action: Received and Filed by Minute Order No. 2019-048**

9. General Plan Annual Progress Report for Calendar Year 2018.

**Action: Received and Filed by Minute Order No. 2019-049**

10. Adopt Resolution, Approving the Maximum Compensation and Benefits for City Executive Department Directors. (Pulled)

Rochelle Clayton, Deputy City Manager/Finance Director presented the staff report and answered Council's questions.

There was a brief discussion relative to fairness of pay when compared to more recent hires, loyalty due to years of service, and pay equity.

A consensus was reached to allow staff more time to analyze Council's feedback and bring this item back at the next Council meeting.

### **Public Comment**

The following individuals commented on this item: Don Smith, Diego Rose, and Jim Price.

A motion was made by Councilmember Happe, seconded by Councilmember Peterson, to place this on Closed Session as well as include a placeholder in open session for April 9<sup>th</sup>.

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Received and Filed by Minute Order No. 2019-050**

**VII. ANNOUNCEMENTS AND REPORTS**

CITY COUNCIL COMMITTEE REPORTS

Councilmember Peterson – none

Councilmember Happe – none

Mayor Pro Tem Andrade reported on having attended the student of the month ceremony, visited the site for Habitat for Humanity, attended the pinball museum, attended the Veteran's Awards Ceremony, and the employee appreciation recognition event.

Mayor Welch spoke about the Veteran's event, which was well attended.

Councilmember Wallace – none

REPORT BY CITY ATTORNEY - None

REPORT BY CITY MANAGER

City Manager Douglas Schulze addressed a comment made at the last Council meeting in relation to taxes. He pointed out that the City does not have a utility user's tax, an authorized additional sales tax, or parcel tax, which are opportunities for revenue generation that the City has chosen not to pursue.

Mr. Schulze announced the two additional coffee with the City Manager events upcoming in Councilmembers Wallace and Andrade's Districts, and offered to have additional events in Councilmembers Happe and Peterson's Districts; spoke about the Electric Utility Cost of Service Study and that in concurrence with the Utility Electric Director an Ad-Hoc Committee or Steering Committee was recommended, which will be comprised of Council representatives and community members to help in that process.

City Manager Douglas Schulze also addressed the issue of public records requests stating that there are no public records requests with the City that were made by neither him nor his wife.

**REPORT OF OFFICERS**

1. Receive and File Police Department Audit Report.  
(*Staff Report – Douglas Schulze, City Manager*)

**Recommendation: Receive and File Report.**



There was an extensive discussion relative to the Police Audit with City Manager Douglas Schulze presenting the staff report and addressing Council's questions, and issues raised during public comment. There were several issues raised by Councilmember Peterson with respect to the intent, purpose, and goal of the audit.

### **Public Comment**

The following individuals spoke about the Police Audit item: Don Smith, Diego Rose, David Ellis, and Jerry Westholder

A motion was made by Mayor Pro Tem Andrade, seconded by Councilmember Wallace to receive and file the Police Audit Report. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
NOES:	None
ABSTAIN:	None
ABSENT:	None

**Action: Received and Filed by Minute Order No. 2019-051**

### **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. Time: 6:57 p.m.

### **VIII. REPORTS OF OFFICERS**

1. Adopt Resolutions Authorizing the FY 2018-19 Mid-Year Budget Adjustments.

*(Staff Report – Rochelle Clayton, Deputy City Manager)*

**Recommendation: 1) City Council approve the Resolutions authorizing the recommended mid-year budget adjustments and continued appropriations for the FY 2018-19 adopted budget.**

Rochelle Clayton, Deputy City Manager/Finance Director presented the staff report and answered Council's questions on a number of topics related to the budget such as: revenue projections, cannabis, and budget adjustments.

**There were no public comments.**

A motion was made by Councilmember Peterson, seconded by Mayor Pro Tem Andrade, to approve the item as presented. Electronic vote was taken as follows:

AYES:	Happe, Peterson, Wallace, Andrade, & Welch
-------	--

NOES: None  
ABSTAIN: None  
ABSENT: None

**Action: Adopted Resolution No. 2019-036, Authorizing the Mid-Year City Budget**  
**Action: Adopted Resolution No. 2019-01 UA, Authorizing the Mid-Year UA Budget**

2. Adopt Resolutions Authorizing the Submittal of an Application for Grant Funds from the Bureau of Reclamation WaterSMART: Water and Energy Efficiency Grants Program for FY 2019, and Provide Local Match if Awarded.

*(Staff Report – Art Vela, Public Works Director)*

**Recommendation: 1) Adopt Resolutions authorizing the City to apply for grant funds from the Bureau of Reclamation WaterSMART: Water and Energy Efficiency Grants Program for FY 2019, and provide the required local match, if awarded; and 2) Authorize the City Manager or his designee to accept and receive grant funding and to make necessary budget adjustments and appropriations related to these resolutions.**

Art Vela, Director of Public Works/City Engineer presented the report and answered questions from the Council and the public.

#### **Public Comment**

Paul Perskins inquired as to whether or not this was going to be compatible with the electric system that they had, meaning set up as two systems or one.

A motion was made by Councilmember Peterson, seconded by Councilmember Happe, to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
NOES: None  
ABSTAIN: None  
ABSENT: None

**Action: Adopted Resolution No. 2019-037**  
**Action: Adopted Resolution No. 2019-02 UA**

3. Adopt Resolution Awarding a Services Agreement to Prominent Systems, Inc. of City of Industry, CA for “Iron Sponge Media Replacement” in the Amount of \$36,760.84 and Establishing a Total Project Budget of \$40,436.92.

*(Staff Report – Art Vela, Public Works Director)*

**Recommendation: 1) Adopt Resolutions awarding a Services Agreement for “Iron Sponge Media Replacement” to Prominent Systems, Inc. of City of Industry, CA for an amount of \$36,760.84 and authorize an additional 10%**

contingency in the amount of \$3,675.08 to cover any unforeseen conditions; and 2) Authorizing the Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the “Iron Sponge Media Replacement”; and 3) Authorizing the City Manager or his designee to execute the Services Agreement with Prominent Systems, Inc. in the amount of \$36,760.84.

Art Vela, Director of Public Works/City Engineer presented the report and answered questions Council’s questions.

**There were no public comments.**

A motion was made by Councilmember Peterson, seconded by Councilmember Happe, to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
NOES: None  
ABSTAIN: None  
ABSENT: None

4. Adopt Resolution Approving a Professional Services Agreement for Geographic Information System (GIS) Maintenance and Hosting Services with Nobel Systems, Inc. of San Bernardino, CA in the Amount of \$180,000 for a Three (3) Year Period.

*(Staff Report – Art Vela, Public Works Director)*

**Recommendation: Adopt Resolution approving an Agreement with Nobel Systems, Inc. of San Bernardino, CA for Geographic Information Systems (GIS) Maintenance and Hosting Services, with an annual cost of \$60,000, for a three (3) year period not to exceed \$180,000; and 2) Authorizing the City Manager or his designee to execute the Agreement with Nobel Systems, Inc. and to make necessary budget adjustments, appropriations and transfers.**

Art Vela, Director of Public Works/City Engineer presented the report and answered questions from the Council.

**There were no public comments.**

A motion was made by Councilmember Peterson, seconded by Councilmember Happe, to approve the item as presented. Electronic vote was taken as follows:

AYES: Happe, Peterson, Wallace, Andrade, & Welch  
NOES: None  
ABSTAIN: None  
ABSENT: None

**RECESS THE JOINT MEETING OF THE CITY COUNCIL AND UTILITY AUTHORITY  
AND RECONVENE THE REGULAR MEETING OF THE BANNING CITY COUNCIL:  
Time: 7:17 p.m.**

**IX. DISCUSSION ITEM None**

**BANNING UTILITY AUTHORITY (BUA) – Next Meeting, April 9, 2019,  
5:00 p.m.**

**BANNING FINANCING AUTHORITY (BFA) – no meeting.**

**X. ITEMS FOR FUTURE AGENDAS**

1. Mills Act Update
2. Fee Suspension Update
3. Website Redesign
4. Street Naming Policy to Honor Land Owners
5. Contingency Plan for Residents During Emergencies
6. Appraisals Update
7. Honor Banning High School Senior Aliyah Amis
8. Golf Carts
9. Empty Lots Clean Up
10. Enterprise Zone
11. Police Audit

**XI. ADJOURNMENT**

By consensus, the meeting was adjourned at 7:17 P.M.

Minutes Prepared by:

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Daryl Betancur, Deputy City Clerk

**These Minutes reflect actions taken by the City Council. The entire discussion of this meeting can be found by visiting the following website:**

**<http://banning.ca.us/ArchiveCenter/ViewFile/Item/2044> 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:** April 9, 2019

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

---

**RECOMMENDATION:**

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

**BACKGROUND:**

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

**ATTACHMENT:**

- 1) List of Contracts approved by City Manager

Approved by:

Douglas Schulze  
City Manager



# **ATTACHMENT 1**

## **List of Contracts**

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

City Manager Approval	Vendor Name	Description of Item/Service	Contact Award		Comments
			Total	Department/Division	
3/8/2019	Wildlife Control Services	Gopher & Ground Squirrel Control (IFB 19-022)	\$ 9,790.00	Community Services	C00485
		Grant Writing Services (RFP 19-002) for the California Department of Parks and Recreation (Prop 68) Statewide Park Development a Community Revitalization Program (SPP)			
3/27/2019	Blais & Associates	Lion's Park Soccer Field application	\$ 10,414.00	Public Works	C00502



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## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Doug Schulze, City Manager

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

**MEETING DATE:** April 9, 2019

**SUBJECT:** Adopt Resolution 2019, Approving the Measure "A" Five Year Capital Improvement Plan Project List and Authorizing the City Manager to Execute the Maintenance of Effort Certification Statement

---

### **RECOMMENDATION:**

That City Council adopt Resolution, approving the Measure "A" Five Year Capital Improvement Plan Project List and authorizing the City Manager to execute the Maintenance of Effort Certification Statement ("MOE Certification").

### **BACKGROUND:**

Voters in Riverside County approved Measure "A" in 1988, which authorized the RCTC to impose an additional one-half percent (0.5%) sales tax for the next 20 years to be used for improvements of state highways, public transit systems, and local streets. In 2002, voters in Riverside County approved a 30-year extension of the one-half percent sales tax for transportation improvements.

Each City in Riverside County is required by the RCTC to submit a Five Year CIP, as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years. The list of street locations recommended for inclusion in the Five Year Measure "A" CIP is attached hereto.

In 2012, the City completed a data collection and mapping project of the City's street network and in the process collected pavement surface distress data such as cracking, roughness, rutting, raveling/weathering, bleeding/flushing and deflection. The information is utilized to prioritize pavement rehabilitation projects.

As part of the yearly Measure “A” CIP list submittal, the City is required to submit a Project Status Report for projects previously approved by City Council in previous fiscal years that have not been completed. Attached hereto is the Project Status Report for FY 2017/2018 – 2018/2019.

The Measure “A” Ordinance also requires annual certification that discretionary General Fund expenditures for transportation-related construction and maintenance activities for Fiscal Year 2019/2020 will meet or exceed the Maintenance of Effort (MOE) Certification base year amount and commitment to expending Measure “A” funds to projects identified in the City’s Five Year CIP. The MOE base year amount has been set to \$164,325. The MOE, attached hereto, must be signed by the City Manager and submitted to RCTC along with the Five-Year CIP.

**JUSTIFICATION:**

The City of Banning (“City”) is required to submit a Five Year Capital Improvement Plan (CIP) along with an executed MOE Certification annually to the Riverside County Transportation Commission (RCTC) in order to receive Measure “A” funds.

**FISCAL IMPACT:**

RCTC has estimated that the City of Banning will receive Measure “A” Funds totaling \$3,296,000 as follows for the next five years:

<u>Year</u>	<u>Estimated Amount</u>
2019/2020	\$627,000
2020/2021	\$643,000
2021/2022	\$659,000
2022/2023	\$675,000
2023/2024	\$692,000

**ALTERNATIVE:**

The City Council may choose not to adopt Resolution No. 2019-XX, which would result in the City losing its Measure “A” entitlements.

**ATTACHMENTS:**

1. Resolution
2. 5-Year Measure “A” CIP
3. Project Status Report
4. Maintenance of Effort Certification Statement

Approved by:



Doug Schulze,  
City Manager

# ***ATTACHMENT 1***

(Resolution No. 2019-\_\_\_\_)

## RESOLUTION 2019-\_\_\_\_

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE MEASURE "A" FIVE YEAR CAPITAL IMPROVEMENT PLAN AND AUTHORIZING THE CITY MANAGER TO EXECUTE THE MAINTENANCE OF EFFORT CERTIFICATION STATEMENT**

**WHEREAS**, in 1988, Riverside County voters approved a 0.5% sales tax (Measure "A") over a 20-year span to be used toward improvements of state highways, local transit systems, and public streets; and

**WHEREAS**, in 2002, Riverside County voters approved a 30-year extension of the Measure "A" 0.5% sales tax; and

**WHEREAS**, each City in Riverside County is required by the Riverside County Transportation Commission (RCTC) to submit a Five Year Capital Improvement Plan, attached hereto, as approved by its governing board, to indicate how Measure "A" funding is to be utilized over the next five years; and

**WHEREAS**, the RCTC has estimated that the City of Banning will receive a total of \$3,296,000 in Measure "A" funds over the next five years; and

**WHEREAS**, the program is intended to support local transit systems, street pavement rehabilitation and public street improvements; and

**WHEREAS**, the Measure "A" Ordinance requires annual certification that discretionary General Fund expenditures for transportation-related construction and maintenance activities for Fiscal Year 2019/2020 will meet or exceed the Maintenance of Effort Certification (MOE) base year amount and commitment to spending Measure "A" funds to projects identified in the City's Five Year CIP; and

**WHEREAS**, the priority list of street locations can be changed by the City Council by submitting a written request to RCTC.

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

SECTION 1. City Council adopts Resolution 2019-\_\_\_\_ approving the Measure "A" Five Year Capital Improvement Plan.

SECTION 2. The City Manager is authorized to execute the Maintenance of Effort Certification Statement.

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 9<sup>th</sup> day of April, 2019.

---

Art Welch, Mayor  
City of Banning

ATTEST:

---

Daryl Betancur, Deputy City Clerk

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

---

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

**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_ was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 9<sup>th</sup> of April, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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



# ***ATTACHMENT 2***

(5-Year Measure "A" CIP)

**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**FY 2019/20**

Agency: BANNING  
Prepared by: Kevin Sin  
Phone #: (951) 922-3140  
Date: 3/19/2019

<b>FY 2017/18 Audited Measure A Balance:</b>	\$ 2,201,513
<b>FY 2018/19 (Revised) Measure A Revenue:</b>	618,000
<b>FY 2018/19 Project Status Report expenses:</b>	708,968
<b>Estimated Prior Year Measure A Balance:</b>	2,110,545
<b>Estimated FY 2019/20 Measure A Allocation:</b>	627,000
<b>Estimated Measure A Available for FY 2019/20 Projects:</b>	\$ 2,737,545

Item No.	Project Name / Limits	Project Type	Total Project Cost	Measure A Funds
<b><u>2019/20</u></b>				
2020-01	Indian School Lane: 8th St to San Geronio Ave	AC Overlay	\$ 200,000	\$ 200,000
2020-02	Lincoln Street, San Geronio Ave to Hargrave St	AC Overlay	300,000	300,000
2020-03	City-wide Slurry Seal	Slurry Seal	91,000	91,000
2020-04	Ramsey & Sunset Imp. (Constr.)	Rehabilitation	100,000	100,000
2020-05	Ramsey St: 4th St to 12th St	AC Overlay/Rehab	\$ 300,000	\$ 300,000
2020-06	Cottonwood Rd: 8th St to 12th St	AC Overlay	100,000	100,000
2020-07	George St: 8th St to 12th St	AC Overlay	100,000	100,000
2020-08	10th St: Williams St to George St	AC Overlay	115,000	115,000
		<b>TOTAL</b>	<b>\$ 1,306,000</b>	<b>\$ 1,306,000</b>

**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**FY 2020/21**

Agency: BANNING  
Prepared by: Kevin Sin  
Phone #: (951) 922-3140  
Date: 3/19/2019

**Estimated Prior Year Measure A Balance:** \$ 1,431,545  
**Estimated FY 2020/21 Measure A Allocation:** 643,000  
**Estimated Measure A Available for FY 2020/21 Projects:** \$ 2,074,545

Item No.	Project Name / Limits	Project Type	Total Project Cost	Measure A Funds
<b><u>2020/21</u></b>				
2021-01	Monroe St: 22nd St to Jefferson St	AC Overlay/Rehab	\$ 100,000	\$ 100,000
2021-02	Jefferson St: Monroe St to 22nd St	AC Overlay/Rehab	90,000	90,000
2021-03	Lincoln St: Sunset Ave to 22nd St	AC Overlay	180,000	180,000
2021-04	George St: Hargrave to Hathaway	AC Overlay	140,000	140,000
2021-05	Sun Lakes Boulevard Extension: Highland Home Road to Sunset	Document and PS&E only	1,200,000	1,200,000
2021-06	Ramsey Street: 12th St to 16th St	AC Overlay/Rehab	\$ 200,000	\$ 200,000
2021-07				
2021-08				
		<b>TOTAL</b>	<b>\$ 1,910,000</b>	<b>\$ 1,910,000</b>

**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**FY 2021/22**

Agency: BANNING  
Prepared by: Kevin Sin  
Phone #: (951) 922-3140  
Date: 3/19/2019

Estimated Prior Year Measure A Balance: \$ 164,545  
Estimated FY 2021/22 Measure A Allocation: 659,000  
Estimated Measure A Available for FY 2021/22 Projects: \$ 823,545

Item No.	Project Name / Limits	Project Type	Total Project Cost	Measure A Funds
<b><u>2021/22</u></b>				
2022-01	City-wide Slurry Seal	Slurry Seal	120,000	120,000
2022-02	First St: Livingston St to Williams St	AC Overlay	85,000	85,000
2022-03	Second St: Hays St to Williams St	AC Overlay	13,000	13,000
2022-04	Third St: Hays St to Williams St	AC Overlay	30,000	30,000
2022-05	Fourth St: Livingston St to George	AC Overlay	85,000	85,000
2022-06	Second St: Nicolet St to George	AC Overlay	35,000	35,000
2022-07	Omar Street & Ramsey St Int	AC Overlay/Rehab	50,000	50,000
2022-08	Improvement			
		<b>TOTAL</b>	<b>\$ 418,000</b>	<b>\$ 418,000</b>

**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**FY 2022/23**

Agency: BANNING  
Prepared by: Kevin Sin  
Phone #: (951) 922-3140  
Date: 3/19/2019

Estimated Prior Year Measure A Balance: \$ 405,545  
Estimated FY 2022/23 Measure A Allocation: 675,000  
Estimated Measure A Available for FY 2022/23 Projects: \$ 1,080,545

Item No.	Project Name / Limits	Project Type	Total Project Cost	Measure A Funds
<b><u>2022/23</u></b>				
2023-01	Ramsey Street: 16th St to 22nd St	AC Overlay/Rehab	225,000	225,000
2023-02	City-wide Slurry Seal	Slurry Seal	440,000	440,000
2023-03				
2023-04				
2023-05				
2023-06				
2023-07				
2023-08				
		<b>TOTAL</b>	<b>\$ 665,000</b>	<b>\$ 665,000</b>

**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**FY 2023/24**

Agency: BANNING  
Prepared by: Kevin Sin  
Phone #: (951) 922-3140  
Date: 3/19/2019

Estimated Prior Year Measure A Balance: \$ 415,545  
Estimated FY 2023/24 Measure A Allocation: 692,000  
Estimated Measure A Available for FY 2023/24 Projects: \$ 1,107,545

Item No.	Project Name / Limits	Project Type	Total Project Cost	Measure A Funds
<b><u>2023/24</u></b>				
2024-01	Ramsey Street: 22nd St to Sunset Avenue	AC Overlay/Rehab	\$ 800,000	\$ 800,000
2024-02				
2024-03				
2024-04				
2024-05				
2024-06				
2024-07				
2024-08				
		<b>TOTAL</b>	<b>\$ 800,000</b>	<b>\$ 800,000</b>

# ***ATTACHMENT 3***

(Project Status Report)



**MEASURE A  
LOCAL STREETS  
AND ROADS PROGRAM**

**PROJECT STATUS REPORT FY 2018/19**

Agency: BANNING  
 Prepared by: Kevin Sin  
 Phone #: (951) 922-3140  
 Date: 3/19/2019

Item No.	Project Name / Limits	Project Type	Total Cost	Anticipated Measure A Funds Expended (Est thru 6/30/2019)	Estimated/ Actual Completion	Status
1	Cottonwood Rd: 8th St to 12th St	AC Overlay		\$ -	5/1/2020	moved to FY 19/20
2	George St: 8th St to 12th St	AC Overlay			5/1/2020	moved to FY 19/20
3	10th St: Williams St to George St	AC Overlay			5/1/2020	moved to FY 19/20
4	12th St: Williams to George St	AC Overlay	122,000		12/1/2019	Preparing PS&E
5	14th St: Williams to George St	AC Overlay	120,000		12/1/2019	Preparing PS&E
6	Sun Lakes Boulevard Extension: Highland Home Road to Sunset Avenue	Document and PS&E only			12/1/2021	moved to FY 20/21
7	Ramsey & Sunset Imp. (Design)	PS&E	40,000	40,000	6/1/2019	Advertising RFP/Awarding
8	City-Wide Various Streets Improvements	AC Overlay	668,968	668,968	4/18/2019	Completed
<b>TOTAL</b>			<b>\$ 950,968</b>	<b>\$ 708,968</b>		



# ***ATTACHMENT 4***

(Maintenance of Effort Certification Statement)

**FY 2019/2020 MEASURE A PROGRAM  
MAINTENANCE OF EFFORT  
CERTIFICATION STATEMENT**

The undersigned agrees and certifies for the CITY OF BANNING (the "Agency") that sales tax transportation funds received pursuant to Ordinance No. 02-001 of the Riverside County Transportation Commission (Measure "A") shall be used in compliance with the Commission's Maintenance of Effort Guidelines and a base year amount of \$164,325.00, approved by the Commission at its July 11, 2012 meeting, and that the Agency shall not use such funds to replace discretionary Local Funds previously expended by the Agency for local transportation purposes. The Agency hereby acknowledges that the failure of the Agency to continue such local expenditure shall result in a reduction or loss of Measure "A" funds. Additionally, the Agency commits to expending Measure A Local Streets and Roads funds for projects listed in the Five Year Capital Improvement Plan as approved by Riverside County Transportation Commission.

Dated: \_\_\_\_\_, 2019

\_\_\_\_\_  
Doug Schulze, City Manager

Attest:

\_\_\_\_\_  
Secretary

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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Doug Schulze, City Manager

**PREPARED BY:** Art Vela, Public Works Director/City Engineer  
Kevin Sin, Senior Civil Engineer

**MEETING DATE:** April 9, 2019

**SUBJECT:** Adopt Resolution 2019, Approving a List of Projects to be Funded for Fiscal Year 2019-20 by SB 1 "The Road Repair and Accountability Act of 2017"

---

### **RECOMMENDED ACTION:**

That the City Council Adopt Resolution 2019-\_\_\_\_ adopting a list of projects to be funded by SB 1, "The Road Repair and Accountability Act of 2017."

### **BACKGROUND:**

Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation shortfalls statewide.

SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year. The City must include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1, in the City budget, which must include a description and the location of each proposed project, a proposed schedule for the project's completion, and the estimated useful life of the improvement.

The City will receive and estimated \$517,768 in RMRA funding in Fiscal Year 2019-20 from SB 1. The City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used in an efficient and cost-effective manner.

**JUSTIFICATION:**

Local agencies are required to submit a list of projects to be funded by RMRA funds to the California Transportation Commission (CTC) by May 1, 2019 in order to receive funding for Fiscal Year 2019-20.

**FISCAL IMPACT:**

The State Department of Finance estimates that the City of Banning will receive \$517,768 in RMRA funding in FY 2019-20 from the SB 1. This revenue nearly doubles the City's pre-SB 1 annual budget for street rehabilitation projects.

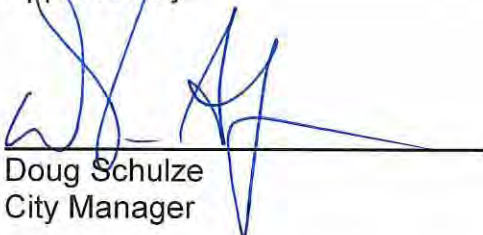
**ALTERNATIVE:**

The City Council may choose not to adopt Resolution No. 2019-XX at this time, which as a result the City will not be eligible to receive SB 1 funding for the Fiscal Year 2019-20.

**ATTACHMENTS:**

1. Resolution No. 2019-\_\_\_\_\_
2. Exhibit "A" FY 2019-20 SB 1 Proposed Projects List
3. SB 1 Projects Previously Approved

Approved by:



Doug Schulze  
City Manager

# ATTACHMENT 1

(Resolution No. 2019-\_\_\_\_)

## RESOLUTION 2019-\_\_\_\_\_

### **A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, ADOPTING A LIST OF PROJECTS FOR FISCAL YEAR 2019-20 TO BE FUNDED BY SB 1 “THE ROAD REPAIR AND ACCOUNTABILITY ACT OF 2017”**

**WHEREAS**, Senate Bill 1 (SB 1), the Road Repair and Accountability Act of 2017 (Chapter 5, Statutes of 2017) was passed by the Legislature and Signed into law by the Governor in April 2017 in order to address the significant multi-modal transportation funding shortfalls statewide; and

**WHEREAS**, SB 1 includes accountability and transparency provisions that will ensure the residents of our City are aware of the projects proposed for funding in our community and which projects have been completed each fiscal year; and

**WHEREAS**, the City must include a list of all projects proposed to receive funding from the Road Maintenance and Rehabilitation Account (RMRA), created by SB 1 by resolution, which must include a description and the location of each proposed project, a proposed schedule for the project’s completion, and the estimated useful life of the improvement; and

**WHEREAS**, the City, will receive and estimated \$517,768 in RMRA funding in Fiscal Year 2019-20 from SB 1; and

**WHEREAS**, this is the third year in which the City is receiving SB 1 funding and will enable the City to continue essential road maintenance and rehabilitation projects, safety improvements, repairing and replacing aging bridges, and increasing access and mobility options for the traveling public that would not have otherwise been possible without SB1; and

**WHEREAS**, the City used a Pavement Management System to develop the SB 1 project list to ensure revenues are being used in an efficient and cost effective manner; and

**WHEREAS**, the funding from SB 1 will help the City maintain and rehabilitate five streets, add active transportation infrastructure throughout the City this year and hundreds of similar projects into the future; and

**WHEREAS**, the 2018 California Statewide Local Streets and Roads Needs Assessment found that the City’s streets and roads are in at-risk condition and this revenue will help increase the overall quality of our road system and over the next decade will bring our streets and roads into a good condition; and

**WHEREAS**, maintaining and preserving the local street and road system in good condition will increase safety and reliability for emergency response agencies, reduce drive times and traffic congestion, improve bicycle safety, and make the pedestrian



experience safer and more appealing, which leads to reduce vehicle emissions helping the State achieve its air quality and greenhouse gas emissions reductions goals; and

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

SECTION 1. The foregoing recitals are true and correct.

SECTION 2. City Council adopts Resolution 2019-\_\_\_\_, adopting a List of Projects to be Funded by SB 1: The Road Repair and Accountability Act of 2017.

SECTION 3. City Council authorizes the City Manager or his designee to make necessary budget adjustments and to receive and record SB 1 funding in a manner necessary to comply with the requirements of SB 1.

SECTION 4. The Fiscal Year 2019-20 list of projects planned to be funded with Road Maintenance and Rehabilitation Account revenues is attached hereto as Exhibit "A".

SECTION 5. 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 9<sup>th</sup> day of April, 2019.

\_\_\_\_\_  
Art Welch, Mayor  
City of Banning

ATTEST:

\_\_\_\_\_  
Daryl Betancur, Deputy City Clerk

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

\_\_\_\_\_  
Kevin G. Ennis, Esq., City Attorney  
Richards, Watson & Gershon



**CERTIFICATION:**

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-\_\_\_\_\_ was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on the 9<sup>th</sup> of April, 2019.

AYES:

NOES:

ABSENT:

ABSTAIN:

---

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

# **ATTACHMENT 2**

**(Exhibit “A”: FY 2019-20 SB 1 Proposed Projects List)**

City of Banning  
Public Works Department  
Engineering Division  
**FY 2019-2020 SB 1 Projects**

3/21/2019

Proposed Projects List

Project Title	Project Description	Project Location	Estimated Useful Life	Anticipated Year of Construction
Lincoln Street AC Overlay/Rehabilitation	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; remove and replace deteriorated ac to subbase; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Lincoln Street from Hargrave Avenue to Florida Street	10 to 15 years	2020
Hathaway Street AC Overlay	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Hathaway Street from Williams Street to George Street	10 to 15 years	2020
Florida Street AC Overlay	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Florida Street from Theodore Street to North End	10 to 15 years	2020
Hargrave Avenue AC Overlay	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Hargrave Avenue from Williams Street to Hoffer Street	10 to 15 years	2020
Murray Street Slurry Seal	Crack seal and slurry seal existing asphalt concrete pavement; remove and replace deteriorated ac pavement to subbase; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Murray Street from Hays Street to Nicolet Street	5 to 7 years	2020

# **ATTACHMENT 3**

**(SB 1 Projects Previously Approved)**

City of Banning  
Public Works Department  
Engineering Division  
**Approved SB 1 Projects Status Report**

4/1/2019

Approved Projects List

Project Title	Project Description	Project Location	Estimated Useful Life	Anticipated Year of Construction
Williams Street AC Overlay	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Williams Street from 8th Street to 16th Street	10 to 15 years	2019
8th Street AC Overlay	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	8th Street from Ramsey Street to Nicolet Street	10 to 15 years	2019
Jacinto View Road AC Overlay/Rehabilitation	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; remove and replace deteriorated ac to subbase; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Jacinto View Road from Omar Street to Winchester Drive	10 to 15 years	2019
Indian School Lane AC Overlay/Rehabilitation	Grind and construct 2" asphalt concrete; adjust water valve and sewer manhole covers; remove and replace deteriorated ac to subbase; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Indian School Lane from San Geronio Avenue to Blanchard Street	10 to 15 years	2019
Jacinto View Road Slurry Seal	Crack seal and slurry seal existing asphalt concrete pavement; remove and replace deteriorated ac pavement to subbase; repair concrete curb and gutter, sidewalk, access ramps and cross gutter; and reinstall all existing striping and pavement markers.	Jacinto View Road from Winchester Drive to Sunset Avenue	5 to 7 years	2019
Hargrave Avenue AC Overlay	Grind and construct 2" asphalt concrete (AC); adjust water valves and sewer manhole covers.	Hargrave Avenue from Hoffer Street to Indian School Lane in the City of Banning	10 to 15 years	Completed
First Street AC Overlay	Grind and construct 2" AC; adjust water valves and sewer manhole covers.	First Street from Livingston Street to Williams Street in the City of Banning	10 to 15 years	Completed
Second Street AC Overlay	Grind and construct 2" AC; adjust water valves and sewer manhole covers.	Second Street from Hays Street to Williams Street in the City of Banning	10 to 15 years	Completed

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## **CITY OF BANNING CITY COUNCIL REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulz, City Manager

**PREPARED BY:** Heidi Meraz, Community Services Director

**MEETING DATE:** April 9, 2109

**SUBJECT:** Resolution 2019, Approving an Agreement with Pyro Spectaculars, Inc., for production of the Fourth of July Aerial Fireworks Display

---

### **RECOMMENDATION:**

That the City Council approves the following for the 2019 Fourth of July aerial fireworks display:

1. Production Agreement with Pyro Spectaculars, Inc. of Rialto, CA in the amount of \$27,000 for the aerial fireworks show.
2. Authorize the City Manager to execute the agreement.

### **JUSTIFICATION:**

This project was formally/publically bid out as "IFB No. 19-033," and Community Services is therefore requesting award to Pyro Spectaculars, Inc. under the authority of the "Procurement Policy B-30 section 3, subsection 3-105 (6) – When no bids are received on formal or informal solicitations" due to the circumstances of "no responses received for IFB 19-033 through PlanetBids". Pyro Spectaculars, who has provided this service to the City for the past two years, submitted pricing through an informal request.

### **BACKGROUND:**

The City of Banning annually hold a Fourth of July event, consisting of games and activities for kids, food vendors, music and culminates with an aerial fireworks show. Pyro Spectaculars has produced the fireworks display for the past two years and provided that shows were done very well and received favorable reviews from the community.

**OPTIONS:**

1. Adopt Resolution, Approving the Agreement with Pyro Spectaculars, Inc. for production of the fireworks display at the July 4<sup>th</sup> Celebration.
2. Reject Resolution 2019-XX, resulting in no fireworks display for the July 4<sup>th</sup> Celebration.

**FISCAL IMPACT:**

None, as sufficient funding is available between accounts 001-5400-446.41-58 and 001-5400-446.41-86

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. Production agreement with Pyro Spectaculars, Inc.

Approved by:



Douglas Schulze  
City Manager



# **ATTACHMENT 1**

## *Resolution 2019*

**RESOLUTION 2019-\_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,  
APPROVING AGREEMENT WITH PYRO SPECTACULARS, INC., FOR PRODUCTION OF  
THE FOURTH OF JULY AERIAL FIREWORKS DISPLAY**

**WHEREAS**, The City desires to hold a community event with an aerial fireworks display on July 4, 2019;

**WHEREAS**, Formal bids for an aerial fireworks display were sought in accordance with the City's Purchasing Policy and no responses were received;

**WHEREAS**, Pyro Spectaculars, Inc., of Rialto, CA provided submitted pricing of \$27,000 through an informal request;

**WHEREAS**, Pyro Spectaculars, Inc., of Rialto, CA has provided such services for the City in the past and has proved to perform to set expectations;

**WHEREAS**, sufficient funding for the Fourth of July Celebration is available between accounts 001-5400-446.41.58 and 001-5400-446.41-86 for FY 2019;

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

**SECTION 1.** That the City Manager is authorized to execute the Production Agreement with Pyro Spectaculars, Inc. in the amount of \$27,000

**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 9<sup>th</sup> 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 A 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 no. 2019-\_\_\_\_\_ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9<sup>th</sup> day of April, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# **ATTACHMENT 2**

## **Production Agreement**

## PRODUCTION AGREEMENT

This agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2019 by and between **Pyro Spectaculars, Inc.**, a California corporation, hereinafter referred to as ("PYRO"), and **City of Banning**, hereinafter referred to as ("CLIENT"). PYRO and CLIENT are sometimes referred to as "Party" or collectively as "Parties" herein.

1. **Engagement** - CLIENT hereby engages PYRO to provide to CLIENT one fireworks production ("Production"), and PYRO accepts such engagement upon all of the promises, terms and conditions hereinafter set forth. The Production shall be substantially as outlined in Program "**A-Revised**", attached hereto and incorporated herein by this reference.

1.1 **PYRO Duties** - PYRO shall provide all pyrotechnic equipment, trained pyrotechnicians, shipping, pyrotechnic products, application for specific pyrotechnic permits (the cost of which, including standby fees, shall be paid by CLIENT) relating to the Production, insurance covering the Production and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work ("Scope of Work"), attached hereto, incorporated herein by this reference, and made a part of this Agreement as though set forth fully herein.

1.2 **CLIENT Duties** - CLIENT shall provide to PYRO a suitable site ("Site") for the Production, security for the Site as set forth in Paragraph 6 hereof, access to the Site, any permission necessary to utilize the Site for the Production, and the other things on its part to be performed as more specifically set forth below in this Agreement and in the Scope of Work. All Site arrangements are subject to PYRO's reasonable approval as to pyrotechnic safety, suitability, and security. All other conditions of the Site shall be the responsibility of CLIENT, including, but not limited to, access, use, control, parking and general safety with respect to the public, CLIENT personnel and other contractors.

2. **Time and Place** - The Production shall take place on **July 4, 2019**, at approximately **9:00 p.m.**, at **Nicolet Middle School Baseball Field, 101 E. Nicolet St., Banning, CA**, Site.

3. **Fees, Interest, and Expenses** -

3.1 **Fee** - CLIENT agrees to pay PYRO a fee of **\$27,000.00 USD (TWENTY SEVEN THOUSAND DOLLARS)** ("Fee") for the Production. CLIENT shall pay to PYRO **\$13,500.00 USD (THIRTEEN THOUSAND FIVE HUNDRED DOLLARS)** of the Fee plus estimated permit and standby fees, specified production costs, and other regulatory costs approximated at **\$00.00 OR an amount to be determined**, for a total of **\$13,500.00**, as a deposit ("Deposit") upon the execution of this Agreement by both parties but no later than **April 19, 2019**. The balance of the Fee shall be paid no later than **July 5, 2019**. CLIENT authorizes PYRO to receive and verify credit and financial information concerning CLIENT from any agency, person or entity including but not limited to credit reporting agencies. The "PRICE FIRM" date, the date by which the executed Agreement must be delivered to Pyro, is set forth in paragraph 20.

3.2 **Interest** - In the event that the Fee is not paid in a timely manner, CLIENT will be responsible for the payment of 1.5% interest per month or 18% annually on the unpaid balance. If litigation arises out of this Agreement, the prevailing party shall be entitled to reasonable costs incurred in connection with the litigation, including, but not limited to attorneys' fees.

3.3 **Expenses** - PYRO shall pay all normal expenses directly related to the Production including freight, insurance as outlined, pyrotechnic products, pyrotechnic equipment, experienced pyrotechnic personnel to set up and discharge the pyrotechnics and those additional items as outlined as PYRO's responsibility in the Scope of Work. CLIENT shall pay all costs related to the Production not supplied by PYRO including, but not limited to, those items outlined as CLIENT's responsibility in this Agreement and Scope of Work.

4. **Proprietary Rights** - PYRO represents and warrants that it owns all copyrights, including performance rights, to this Production, except that PYRO does not own CLIENT-owned material or third-party-owned material that has been included in the Production, and as to such CLIENT-owned and third-party-owned material, CLIENT assumes full responsibility therefore. CLIENT agrees that PYRO shall retain ownership of, and all copyrights and other rights to, the Production, except that PYRO shall not acquire or retain any ownership or other rights in or to CLIENT-owned material and third-party-owned material and shall not be responsible in any way for such material. If applicable, CLIENT consents to the use of CLIENT-owned material and represents that it has or will obtain any permission from appropriate third parties sufficient to authorize public exhibition of any such material in connection with this Production. PYRO reserves the ownership rights in its trade names that are used in or are a product of the Production. Any reproduction by sound, video or other duplication or recording process without the express written permission of PYRO is prohibited.

5. **Safety** - PYRO and CLIENT shall each comply with applicable federal, state and local laws and regulations and employ safety programs and measures consistent with recognized applicable industry standards and practices. At all times before and during the Production, it shall be within PYRO's sole discretion to determine whether or not the Production may be safely discharged or continued. It shall not constitute a breach of this Agreement by PYRO for fireworks to fail or malfunction, or for PYRO to determine that the Production cannot be discharged or continued as a result of any conditions or circumstances affecting safety beyond the reasonable control of PYRO.

6. **Security** - CLIENT shall provide adequate security personnel, barricades, and Police Department services as may be necessary to preclude individuals other than those authorized by PYRO from entering an area to be designated by PYRO as the area for the set-up and discharge of the Production, including a fallout area satisfactory to PYRO where the pyrotechnics may safely rise and any debris may safely fall. PYRO shall have no responsibility for monitoring or controlling CLIENT's other contractors, providers or volunteers; the public; areas to which the public or contractors have access; or any other public or contractor facilities associated with the Production.

7. **Cleanup** - PYRO shall be responsible for the removal of all equipment provided by PYRO and clean up of any live pyrotechnic debris made necessary by PYRO. CLIENT shall be responsible for any other clean up which may be required of the Production or set-up, discharge and fallout areas including any environmental clean-up.

8. **Permits** - PYRO agrees to apply for permits for the firing of pyrotechnics only from the **Riverside County Fire Department**, FAA, and USCG, if required. CLIENT shall be responsible for any fees associated with these permits including standby fees. CLIENT shall be responsible for obtaining any other necessary permits, paying associated fees, and making other appropriate arrangements for Police Departments, other Fire Departments, road closures, event/activity or land use permits or any permission or permit required by any Local, Regional, State or Federal Government.

9. **Insurance** - PYRO shall at all times during the performance of services herein ensure that the following insurance is maintained in connection with PYRO's performance of this Agreement: (1) commercial general liability insurance, including products, completed operations, and contractual liability under this Agreement; (2) automobile liability insurance, (3) workers' compensation insurance and employer liability insurance. Such insurance is to protect CLIENT from claims for bodily injury, including death, personal injury, and from claims of property damage, which may arise from PYRO's performance of this Agreement, only. The types and amounts of coverage shall be as set forth in the Scope of Work. Such insurance shall not include claims which arise from CLIENT's negligence or willful conduct or from failure of CLIENT to perform its obligations under this Agreement, coverage for which shall be provided by CLIENT.

The coverage of these policies shall be subject to reasonable inspection by CLIENT. Certificates of Insurance evidencing the required general liability coverage shall be furnished to CLIENT prior to the rendering of services hereunder and shall include that the following are named as additionally insured: CLIENT; Sponsors, Landowners, Barge Owners, if any; and Permitting Authorities, with respect to the operations of PYRO at the Production. Pyrotechnic subcontractors or providers, if any, not covered under policies of insurance required hereby, shall secure, maintain and provide their own insurance coverage with respect to their respective operations and services.

10. **Indemnification** - PYRO represents and warrants that it is capable of furnishing the necessary experience, personnel, equipment, materials, providers, and expertise to produce the Production in a safe and professional manner. Notwithstanding anything in this Agreement to the contrary, PYRO shall indemnify, hold harmless, and defend CLIENT and the additional insureds from and against any and all claims, actions, damages, liabilities and expenses, including but not limited to, attorney and other professional fees and court costs, in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of PYRO, their officers, agents, contractors, providers, or employees. CLIENT shall indemnify, hold harmless, and defend PYRO from and against any and all claims, actions, damages, liability and expenses, including but not limited to, attorney and other professional fees and court costs in connection with the loss of life, personal injury, and/or damage to property, arising from or out of the Production and the presentation thereof to the extent such are occasioned by any act or omission of CLIENT, its officers, agents, contractors, providers, or employees. In no event shall either party be liable for the consequential damages of the other party.

11. **Limitation of Damages for Ordinary Breach** - Except in the case of bodily injury and property damage as provided in the insurance and indemnification provisions of Paragraphs 9 and 10, above, in the event CLIENT claims that PYRO has breached this Agreement or was otherwise negligent in performing the Production provided for herein, CLIENT shall not be entitled to claim or recover monetary damages from PYRO beyond the amount CLIENT has paid to PYRO under this Agreement, and shall not be entitled to claim or recover any consequential damages from PYRO including, without limitation, damages for loss of income, business or profits.

12. **Force Majeure** - CLIENT agrees to assume the risks of weather, strike, civil unrest, terrorism, military action, governmental action, and any other causes beyond the control of PYRO which may prevent the Production from being safely discharged on the scheduled date, which may cause the cancellation of any event for which CLIENT has purchased the Production, or which may affect or damage such portion of the exhibits as must be placed and exposed a necessary time before the Production. If, for any such reason, PYRO is not reasonably able to safely discharge the Production on the scheduled date, or at the scheduled time, or should any event for which CLIENT has purchased the Production be canceled as a result of such causes, CLIENT may (i) reschedule the Production and pay PYRO such sums as provided in Paragraph 13, or (ii) cancel the Production and pay PYRO such sums as provided in Paragraph 14, based upon when the Production is canceled.

13. **Rescheduling Of Event** - If CLIENT elects to reschedule the Production, PYRO shall be paid the original Fee plus all additional expenses made necessary by rescheduling plus a 15% service fee on such additional expenses. Said expenses will be invoiced separately and payment will be due in full within 5 days of receipt. CLIENT and PYRO shall agree upon the rescheduled date taking into consideration availability of permits, materials, equipment, transportation and labor. The Production shall be rescheduled for a date not more than 90 Days subsequent to the date first set for the Production. The Production shall not be rescheduled to a date, or for an event, that historically has involved a fireworks production. The Production shall not be rescheduled between June 15th and July 15th unless the original date was July 4th of that same year, or between December 15th and January 15th unless the original date was December 31st of the earlier year unless PYRO agrees that such rescheduling will not adversely affect normal business operations during those periods.

14. **Right To Cancel** - CLIENT shall have the option to unilaterally cancel the Production prior to the scheduled date. If CLIENT exercises this option, CLIENT agrees to pay to PYRO, as liquidated damages, the following percentages of the Fee as set forth in Paragraph 3.1. 1) 50% if cancellation occurs 30 to 90 days prior to the scheduled date, 2) 75% if cancellation occurs 15 to 29 days prior to the scheduled date, 3) 100% thereafter. In the event CLIENT cancels the Production, it will be impractical or extremely difficult to fix actual amount of PYRO's damages. The foregoing represents a reasonable estimate of the damages PYRO will suffer if CLIENT cancels the Production.

15. **No Joint Venture** - It is agreed, nothing in this Agreement or in PYRO's performance of the Production shall be construed as forming a partnership or joint venture between CLIENT and PYRO. PYRO shall be and is an independent contractor with CLIENT and not an employee of CLIENT. The Parties hereto shall be severally responsible for their own separate debts and obligations and neither Party shall be held responsible for any agreements or obligations not expressly provided for herein.

16. **Applicable Law** - This Agreement and the rights and obligations of the Parties hereunder shall be construed in accordance with the laws of California. It is further agreed that the Central Judicial District of San Bernardino County, California, shall be proper venue for any such action. In the event that the scope of the Production is reduced by authorities having jurisdiction or by either Party for safety concerns, the full dollar amounts outlined in this Agreement are enforceable.

17. **Notices** - Any Notice to the Parties permitted or required under this Agreement may be given by mailing such Notice in the United States Mail, postage prepaid, first class, addressed as follows: PYRO - Pyro Spectaculars, Inc., P.O. Box 2329, Rialto, California, 92377, or for overnight delivery to 3196 N. Locust Avenue, Rialto, California 92377. CLIENT - City of Banning, P.O. Box 998, Banning, CA 92220-0665.

Pyro Spectaculars, Inc.  
P.O. Box 2329  
Rialto, CA 92377  
Tel: 909-355-8120 : Fax: 909-355-9813

City of Banning  
Program A-Revised  
July 4, 2019  
Page 3 of 4

18. **Modification of Terms** – All terms of the Agreement are in writing and may only be modified by written agreement of both Parties hereto. Both Parties acknowledge they have received a copy of said written Agreement and agree to be bound by said terms of written Agreement only.

19. **Severability** – If there is more than one CLIENT, they shall be jointly and severally responsible to perform CLIENT's obligations under this Agreement. This Agreement shall become effective after it is executed and accepted by CLIENT and after it is executed and accepted by PYRO at PYRO's offices in Rialto, California. This Agreement may be executed in several counterparts, including faxed and emailed copies, each one of which shall be deemed an original against the Party executing same. This Agreement shall be binding upon the Parties hereto and upon their heirs, successors, executors, administrators and assigns.

20. **Price Firm** – If any changes or alterations are made by CLIENT to this Agreement or if this Agreement is not executed by CLIENT and delivered to PYRO on or before the PRICE FIRM date shown below, then the price, date, and scope of the Production are subject to review and acceptance by PYRO for a period of 15 days following delivery to PYRO of the executed Agreement. In the event it is not accepted by PYRO, PYRO shall give CLIENT written notice, and this Agreement shall be void.

**PRICE FIRM through April 19, 2019**  
EXECUTED AGREEMENT MUST BE DELIVERED TO PYRO BY THIS DATE.  
See PRICE FIRM conditions, paragraph 20, above.

EXECUTED as of the date first written above:

PYRO SPECTACULARS, INC.

By: 

Its: President

City of Banning

By: \_\_\_\_\_

Its: \_\_\_\_\_

\_\_\_\_\_  
Print Name

SHOW PRODUCER: Jeff Martin



**SCOPE OF WORK**  
**PYRO SPECTACULARS, INC. ("PYRO")**  
**and**  
**City of Banning ("CLIENT")**

Pyro shall provide the following goods and services to CLIENT:

- One Pyro Spectaculars, Inc., Production on July 4, 2019, at approximately 9:00 p.m., at Nicolet Middle School Baseball Field, 101 E. Nicolet St., Banning, CA.
- All pyrotechnic equipment, trained pyrotechnicians, shipping, and pyrotechnic product.
- Application for specific pyrotechnic permits relating to the Production.
- Insurance covering the Production as set forth in the Agreement with the following limits:

<u>Insurance Requirements</u>	<u>Limits</u>	
<u>Commercial General Liability</u>	\$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Business Auto Liability- Owned, Non-Owned and Hired Autos</u>	\$5,000,000.00	Combined Single Limit- Each Occurrence (Bodily Injury & Property Damage)
<u>Workers' Compensation</u>	Statutory	
<u>Employer Liability</u>	\$1,000,000	Per Occurrence

CLIENT shall provide to PYRO the following goods and services:

- All on-site labor costs, if any, not provided or performed by PYRO personnel including, but not limited to, local union requirements, all Site security, Police and Fire Dept. standby personnel, stagehands, electricians, audio and fire control monitors, carpenters, plumbers, clean-up crew. All these additional personnel and services shall be fully insured and the sole responsibility of CLIENT.
- Coordination and any applicable non-pyrotechnic permitting with the local, state or federal government that may hold authority within the Production.
- Costs of all permits required for the presentation of the Production and the event as a whole.
- Provision of a Safety Zone in accordance with applicable standards and all requirements of the authorities having jurisdiction throughout the entire time that the pyrotechnics are at the Site or the load site (if different) on the date of the Production and all set-up and load-out dates, including water security to keep unauthorized people, boats, etc. from entering the Safety Zone.
- General Services including, but not limited to, Site and audience security, fencing, adequate work light, dumpster accessibility, a secure office for PYRO personnel within the venue, secure parking for PYRO vehicles, access to washrooms, tents, equipment storage, hazmat storage, electrical power, fire suppression equipment, access to worksites, necessary credentialing, etc., will be required as necessary.

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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:** April 9, 2019

**SUBJECT:** Resolution 2019-03; General Plan Amendment 18-2501; Ordinance No. 1541 approving Zone Change 18-3501 and making findings pursuant to CEQA; Design Review 18-7001; and Environmental Assessment 18-1501 for the Proposed Development of a 146,890 Square Foot Industrial Building within the General Commercial (GC) Land Use District Located on Developed and Undeveloped Property Located at 1897 West Lincoln Street, 1661 West Lincoln Street, 1617 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)

**RECOMMENDED ACTION:**

Staff recommends that the City Council:

1. Continue the public hearing to Tuesday, April 23<sup>rd</sup>, based upon the applicant's request.
2. Applicant's request attached herein.

**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 22<sup>nd</sup> Street and 8<sup>th</sup> 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

### **PLANNING COMMISSION RECOMMENDATION:**

At its January 16, 2019 meeting, the Planning Commission considered the proposed Project and unanimously adopted Resolution No. 2019-01, recommending approval of a General Plan Amendment and Zone Change to change the General Plan land use designation and zoning classification of 19.69 partially developed acres from General Commercial (GC) to Business Park (BP) and recommending Design Review approval for the construction of a new 146,890 square foot industrial warehouse building on 6.7 vacant acres located to the east, adjacent to the existing development at 1897 West Lincoln Street.

### **BACKGROUND:**

February 26, 2019: Prior to the City Council Public Hearing, the City Clerk's Office received a correspondence, dated January 30, 2019, from the Law Offices of Lozeau and Drury. The correspondence is entitled as "CEQA and Land Use Notice Request for Lawrence Equipment Industrial Warehouse". The document was provided to the City Council, the applicant, and staff for their review and records. Upon receipt, the applicant requested a continuance of their public hearing to the March 12, 2019 City Council Public Hearing. As the Council concurred with staff's recommendation, and the applicant's request, the project was continued to a "date certain" and no additional public notice or legal advertisement is required by CEQA or the California Public Resources Code. Based upon the applicant's response, and staff's review, the recommendation referenced herein remains consistent with the Planning Commission recommendation, dated January 16, 2019.

In 2010, Lawrence Equipment, a family owned business purchased the site and shortly thereafter began manufacturing machinery used to make tortillas, flatbreads and similar products. Over the years, the business expanded to include general warehousing and incidental retail sales.

The site is surrounded by the single-family residential developments to the south and west. The Southern Pacific Railroad line and Interstate 10 to the north of the property. Table 1 lists the land uses surrounding the site. To the east of the existing warehouse buildings is vacant property once used as residential lots and recently used for cattle grazing.

The applicant proposes to construct a single story, 146,890 square-foot light manufacturing and warehouse building for the expansion of the existing manufacturing

business. The proposed building would include 73,445 square-feet of light manufacturing, and 73,445 of industrial warehousing. An additional 174 parking spaces are proposed, which exceeds the parking requirement of 173 spaces as well as 12 loading spaces.

A conceptual fencing and planting plan depicts perimeter landscaping with a variety of ground cover, shrubs and trees, which will provide fence/wall screening and soften the effects while enhancing the neighborhood character. The planting plan will coordinate with the photometric lighting plan per the requirements in the Municipal Code.

The expansion is expected to employ approximately 25 employees each use for both the warehousing and manufacturing additions, for a total of approximately 50 employees. Many of the current employees live in Banning. The company has an existing internship-training program in another facility, which they are looking into implementing in Banning with the expansion.

On January 16, 2019, the City Planning Commission considered Resolution No. 2019-01 and received public comments in favor of the project as well as comments expressing preferred design themes. The Planning Commission recommended unanimously that the City Council approve the subject applications for the construction of a 146,890 square foot industrial warehouse building. The Planning Commission staff report is attached as Attachment 3.

### **JUSTIFICATION**

The proposed General Plan Amendment (GPA 18-2501) to change the General Plan land use designation for the site from General Commercial to Business Park and Zone Change (ZC 18-3501) to change the zoning classification of the site from General Commercial to Business Park, would be consistent with uses permitted within the Business Park land use designation. The proposed Project will complement the adjoining light industrial manufacturing and warehouse facility to the west and allow the expansion of the existing facility and bring additional jobs to the City.

The request for Design Review approval of the proposed single-story industrial warehouse structure includes site and circulation layout design in such a way that the Project will enhance the existing character of the surrounding neighborhood by the addition of a well-designed landscape plan. The project design and landscape are consistent with the standards of the Banning Zoning Code.

Additional details, including findings for approval of GPA 18-2501, ZC 18-3501, and DR 18-7001, are provided in the Planning Commission staff report attached as Attachment 3.

### **ENVIRONMENTAL DETERMINATION:**

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. 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.

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 11, 2019, and expired on January 31, 2019. Copies of the documents were provided for public review and inspection. Comments received during the 20-day review period are incorporated into the Final MND, along with the City's responses to each comment.

The MND was prepared in compliance with CEQA and with the incorporation of mitigation measures; there is no substantial evidence that the Project will have a significant effect on the environment. The project will be conditioned to comply with the mitigation measures imposed under the approved Mitigation Monitoring and Reporting Program (MMRP).

### **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. Applicant's Request Communication

Approved by:

A handwritten signature in blue ink, appearing to read 'D. Schulze', is written over a horizontal line.

Douglas Schulze  
City Manager

Environmental Regulatory Compliance, LLC  
Wade Riddering, REPA  
1145 E. Orange Show Road, Suite K  
San Bernardino, CA 92408  
888-553-5186  
[wade@erc-llc.us](mailto:wade@erc-llc.us)  
[www.erc-llc.us](http://www.erc-llc.us)



May 26, 2019

Art Welch, Mayor  
Daniela Andrade, Mayor Pro Tem  
Don M. Peterson, Council Member  
Colleen Wallace, Council Member  
David Happe, Council Member  
City of Banning  
99 E Ramsey Street  
Banning, CA 92220

**RE: Lawrence Equipment Project, Resolution 2019-03; General Plan Amendment 18-2501;  
Ordinance No. 1541 approving Zone Change 18-3501 and making findings pursuant to CEQA;  
Design Review 18-7001; and Environmental Assessment 18-1501**

Dear Mayor Welch and Honorable Members of the City Council,

I am writing as a part of the environmental consulting team and on behalf of Lawrence Equipment. We are requesting a continuance of our project, noted above, until the April 23, 2019 city council meeting.

We take our project and our relationship with the city very seriously. It is because of our relationship with the city that we have asked for the continuance to respond to the untimely comment by the Supporters Alliance for Environmental Responsibility.

Though we are confident in the original assessments presented to the city, we have hired another consultant to look again at the items in question. This is being done so that the Council can rest assured that the Environmental Initial Study they are being asked to approve protects both the City of Banning and the residents of the city.

Sincerely,

Wade Riddering, REPA

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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Adam B. Rush, AICP, Community Development Director

**MEETING DATE:** April 9, 2019

**SUBJECT:** Resolution 2019-04 and Ordinance No. 1542 approving Zoning Text Amendment 19-97501 amending chapter 17.53 of Title 17 of the Banning Municipal Code to reduce the separation requirements between commercial cannabis cultivation, manufacturing, and testing laboratory uses and residentially zoned property and amending the definition of "canopy space".

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### **RECOMMENDED ACTION:**

Staff recommends that the City Council:

1. Open the public hearing, receive public comment, and close the public hearing;
2. Adopt Resolution 2019-04, which is a Resolution of the City of Banning, California recommending that the Council make a determination under CEQA Guidelines Section 15060(c)(3) and 15061(b)(1) that the project is exempt from CEQA and approval of Zoning Text Amendment 19-97501 amending Chapter 17.53 of Title 17 of the Banning Municipal Code to Reduce the separation requirements between commercial cannabis businesses and residentially zoned property and amending the definition of "canopy space".
3. Making a determination under CEQA Guidelines Section 15060(c)(3) that the Zoning Text Amendments are not subject to CEQA because the amendments are not a "project" as defined by the CEQA Guidelines Section 15378, and further that under CEQA Guidelines Section 15061(b)(1) the project is exempt from CEQA as it is exempt by statute (Business and Professions Code Section 26055(h)).
4. Recommending that the City Council adopt Ordinance No. 1541 approving Zoning Text Amendment 19-97501 to amend Chapter 17.53 of the Municipal Code to reduce the separation requirement between commercial cannabis cultivation, manufacturing, and testing laboratory uses and residentially zoned property from 600 to 300 feet, and to amend the definition of canopy space.

## **PROJECT/APPLICANT INFORMATION:**

Project Applicant: City of Banning  
99 E. Ramsey Street  
Banning, CA 92220

## **PROJECT BACKGROUND AND DESCRIPTION:**

On July 10, 2018, the City Council adopted Ordinance No. 1523, which added Chapter 17.53 (Cannabis Conditional Use Permits) to the Banning Municipal Code to establish a conditional use permit process for cannabis cultivation, manufacturing, and testing laboratory facilities (collectively, “commercial cannabis businesses”) in the Industrial Zoning District. A draft of Ordinance No. 1523 was considered by the Planning Commission at its June 6, 2018 meeting and recommended to the City Council for its approval. Ordinance 1523 provided that it would become effective January 1, 2019, but only if the Banning voters approved a tax on commercial cannabis businesses (Measure N) at the November 2018 election. Measure N was subsequently approved by the Banning voters and since the beginning of the year, staff has been receiving inquiries from commercial cannabis businesses that are interested in establishing operations in the City. Staff has received multiple inquiries about two separate issues that are now the basis of the proposed Zoning Text Amendments.

## **PROPOSAL / ANALYSIS:**

As Zoning Code Amendments fall within the purview of the Planning Commission, a duly noticed public hearing was held on March 12, 2019 before the City of Banning Planning Commission. The Planning Commission opened the public hearing, accepted public testimony, and made a recommendation to the City Council to make the appropriate CEQA findings, approve the zoning text amendment and proposed resolution. The Commission provided this recommendation by a vote of 4 ayes and 0 nays with one Commissioner absent. The Banning Municipal Code requires that Zoning Text Amendments are subject to review by the City Council, after the Planning Commission recommendation. After receiving the Planning Commission's recommendation, the City Council will make a final determination on the proposed amendments to Chapter 17.53 of the Municipal Code.

### **Canopy Space Definition**

Section 17.53.160(A) mandates that the canopy space within a cannabis cultivation facility must be between 10,001 and 22,000 square feet in size. Since the Council's action in July of 2018, and subsequent from the passage of Measure N, City staff has received numerous requests for clarification as to how the City will be calculating canopy space. Specifically, prospective applicants have inquired as to whether they will be permitted to stack cannabis plants and whether the canopy space must be contiguous. Canopy space is currently defined as the designated

areas at a cultivation facility that will contain mature plants at any point in time. Staff is proposing that this definition be revised so that it conforms with the newly released California Department of Food and Agriculture regulations regarding how “canopy” is calculated. The draft ordinance amends Section 17.53.010(F) to add the following language to the definition of “canopy space,” with additions shown in underlined text:

“Canopy space” means the designated areas at a cultivation facility that will contain mature plants at any point in time, as follows:

(1) Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

(2) Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary that includes, but is not limited to, interior walls, and shelves; and

(3) If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.”

This change will make the City’s definition consistent with State law and will provide clarity to applicants seeking to operate cannabis cultivation facilities within the City.

### Separation Requirements

State law provides that cannabis businesses shall not be located within a 600-foot radius of a school providing instruction in kindergarten, or any grades 1 through 12, day care center, or youth center that is in existence at the time that the business is issued a license by the State, unless a local jurisdiction specifies a different radius. Section 17.53.040 provides that cannabis businesses must comply with this 600-foot separation requirement, and also extends the separation requirement to apply to parks and to residentially zoned property. Prospective commercial cannabis businesses have expressed concern that the 600-foot separation requirement from residentially zoned property greatly limits the locations where these businesses can be located. This is particularly true for cannabis cultivation facilities since they must contain a minimum of 10,001 square feet of canopy space, which necessarily requires that they be located in larger buildings. Since the Industrial Zone is located adjacent to a residential zone, this 600-foot separation requirement only allows for approximately three (3) properties with existing buildings to be improved with any commercial cannabis businesses and their availability is undetermined. Most of the available properties are unimproved lots which would require a considerable amount of time for a prospective commercial cannabis business to purchase or lease, submit an application and have the project approved and built.

City staff mapped two options in all of the Industrial areas, a 300-foot and 450-foot separation from residential zones. Staff examined potential sites with structures and researched existing uses and which sites may be appropriate for commercial cannabis businesses. It was determined that the 300-foot separation would provide the best options for use of existing structures which may be available. The City would like businesses to have the opportunity to make improvements in a short term time frame and be open for business as soon as possible. Two additional factors were considered in reducing the setback from residential zones requirement. The State has no separation requirement from residential property and the City has stringent conditions for odor control.

Staff is therefore recommending that the 600-foot separation requirement from residentially zoned property be reduced to 300 feet. The distance is measured from the property line of the lot on which the commercial cannabis business is located to the nearest property line of the residentially zoned property. Therefore, the separation from the building where the commercial cannabis business will conduct its operations and the residence will actually be greater than 300 feet.

#### **ENVIRONMENTAL DETERMINATION:**

##### **A. California Environmental Quality Act (CEQA)**

Planning Division staff has determined that the proposed Zoning Text Amendments are 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. Approval of the proposed Zoning Text Amendments does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to the proposed Zoning Text Amendments will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA. Planning Division staff has further determined that the proposed Zoning Text Amendments are exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1), which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code Section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the cannabis conditional use permits are subject to discretionary review by both the Planning Commission and the City Council.

B. Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to the proposed Zoning Text Amendments will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 97501.

**Finding No. 1:** Ordinance No. 1541 proposing Zone Text Amendment No. 97501 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 97501 is consistent with the goals and policies of the General Plan. Commercial cannabis businesses will be paying voter-approved local taxes that will generate money for the City's general fund, and are also anticipated to generate employment opportunities for City residents. Additionally, unregulated commercial cannabis activity can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. It is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

**Land Use Element:**

**Industrial Goal**

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.



## **Economic Development Element:**

### Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

### Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

### Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Ordinance No. 1541proposing Zone Text Amendment No. 19-97501 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. Chapter 17.53 of the Municipal Code authorizes the City to issue conditional use permits to commercial cannabis businesses. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, and degradation of the natural environment.

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

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to 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 this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this

Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment No. 19-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA “does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity”, provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the cannabis conditional use permits are subject to discretionary review by both the Planning Commission and the City Council.

**PUBLIC COMMUNICATION:**

This hearing was advertised in the Record Gazette newspaper on March 29, 2019, and notices were mailed to all property owners within the Industrial zone of the City **and** within a 300-foot radius of the Industrial zone in compliance with the City’s noticing requirements for public hearings.

Prepared by:



Adam B. Rush, AICP  
Community Development Director

Approved by:



Douglas Schulze, City Manager

**PC Attachments:**

1. PC Resolution No. 2019-04
2. Draft City Council Ordinance No. 1541
3. Public Hearing Notice (PHN)



[illegible]

Project Boundary

600-ft setback

300-ft setback

300-ft setback from SFR





## Setback Analysis (Cont'd):



### Legend:

- Project Boundary
- 600-ft setback
- 300-ft setback
- 300-ft setback from SFR

# Attachment 1

Resolution No. 2019-04

## RESOLUTION 2019-04

### A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA MAKING A FINDING OF EXEMPTION FROM CEQA FOR ZONING TEXT AMENDMENT 19-97501 AMENDING CHAPTER 17.53 OF TITLE 17 OF THE BANNING MUNICIPAL CODE TO REDUCE THE SEPARATION REQUIREMENTS BETWEEN COMMERCIAL CANNABIS BUSINESSES AND RESIDENTIALLY ZONED PROPERTY AND AMENDING THE DEFINITION OF “CANOPY SPACE”, AND MAKING A DETERMINATION PURSUANT TO CEQA

**WHEREAS**, on October 9, 2015 Governor Brown signed Assembly Bill 243, Assembly Bill No. 266, and Senate Bill 643 into law, which collectively were known as the Medical Cannabis Regulation and Safety Act (hereinafter “MCRSA”). The MCRSA established a State regulatory and licensing scheme for commercial medical cannabis businesses.

**WHEREAS**, on November 8, 2016, California voters approved the Control, Regulate and Tax Adult Use of Marijuana Act (“AUMA”). The AUMA made it lawful under State and local law for persons 21 years of age or older to possess and cultivate limited quantities of cannabis for personal use. The AUMA also established a State regulatory and licensing scheme for commercial adult-use cannabis businesses.

**WHEREAS**, on June 27, 2017, the Governor signed into law Senate Bill 94 which repealed the MCRSA, included certain provisions of the MCRSA in the licensing provisions of the AUMA, and created a single regulatory scheme for both medicinal and adult-use cannabis known as the Medicinal and Adult-Use Cannabis Regulation and Safety Act (“MAUCRSA”). The MAUCRSA retains the provisions in the MCRSA and the AUMA that granted local jurisdictions control over whether cannabis businesses could operate in a particular jurisdiction. Specifically, California Business and Professions Code section 26200 provides that the MAUCRSA shall not be interpreted to supersede or limit authority of a local jurisdiction to adopt and enforce local ordinances to regulate businesses licensed under the MAUCRSA including, but not limited to, local zoning and land use requirements, business license requirements, and requirements related to reducing exposure to secondhand smoke, or to completely prohibit the establishment or operation of one or more businesses licensed by the State, within that local jurisdiction.

**WHEREAS**, on July 10, 2018, the City Council adopted Ordinance 1523 which added Chapter 17.53 (Cannabis Conditional Use Permits) to the Banning Municipal Code to establish a conditional use permit process for cannabis cultivation, manufacturing and testing laboratory facilities (collectively, “commercial cannabis businesses”); and



**WHEREAS**, Ordinance 1523 provides that commercial cannabis businesses must be located at least 600-feet away from residentially zoned property; and

**WHEREAS**, this 600-foot separation requirement from residentially zoned property greatly reduces the number of eligible properties that can be improved with a commercial cannabis business since these commercial cannabis businesses can only be located in the Industrial zone and this zone is directly adjacent to residential zones; and

**WHEREAS**, the City has received a number of inquiries pertaining to the calculation of canopy space for cannabis cultivation facilities and seeks to amend the definition of canopy space to clarify the definition and conform with changes in State regulations; and

**WHEREAS**, the City Council desires to recommend the reduction of the separation requirement between commercial cannabis businesses and residentially zoned property from 600 feet to 300 feet and to amend the definition of canopy space; and

**WHEREAS**, the City Council has authority pursuant to Section 17.116.010 (Zoning Ordinance Amendments) of the City of Banning Municipal Code to make amendments to the provisions of the Banning Municipal Code for the public health, environmental protection, safety, general welfare and aesthetic harmony of the City.

**WHEREAS**, the City has reviewed the proposed Zoning Text Amendment for compliance with the California Environmental Quality Act (CEQA) and it is determined that Zone Text Amendment 19-97501 is not a "project" under CEQA Guidelines section 15061(b)(3) and has further determined that the Zoning Text Amendment is further exempt from CEQA pursuant to CEQA Guidelines section 15061(b)(1); and

**WHEREAS**, on March 29, 2019, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning Zone Text Amendment 19-97501 and the environmental findings, and also mailed notice of the public hearing to all property owners within the industrial zone and within a 300-foot radius of the industrial zone; and

**WHEREAS**, on March 13, 2019, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the Zoning Text Amendment and at which the Planning Commission considered the Categorical Exemption and Zone Text Amendment 19-97501.

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

## **SECTION 1. ENVIRONMENTAL FINDINGS.**

The following environmental findings are made and supported by substantial evidence on the record before the Planning Commission, including and incorporating all evidence in the staff report and attendant attachments thereto:

### **California Environmental Quality Act (CEQA)**

The Planning Commission 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 this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code Section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the cannabis conditional use permits are subject to discretionary review by both the Planning Commission and the City Council.

### **Multiple Species Habitat Conservation Plan (MSHCP)**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

## **SECTION 2. ADDITIONAL REQUIRED FINDINGS.**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 19-97501.

**Finding No. 1:** Proposed Zone Text Amendment No. 19-97501 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97501 is consistent with the goals and policies of the General Plan. Commercial cannabis businesses will be paying voter-approved local taxes that will generate money for the City's general fund, and are also anticipated to generate employment opportunities for City residents. Additionally, unregulated commercial cannabis activity can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. It is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

**Land Use Element:**

Industrial Goal

A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

**Economic Development Element:**

Goal

A balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection.

Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities,

increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 19-97501 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, degradation of the natural environment, and indoor electrical fire hazards.

**Finding No. 3:** The Planning Commission has independently reviewed and considered the requirements of the California Environmental Quality Act.

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the Planning Commission finds and determines that this Ordinance is not subject to 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 this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The Planning Commission has analyzed proposed Zone Text Amendment No. 19-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the cannabis conditional

use permits are subject to discretionary review by both the Planning Commission and the City Council.

**SECTION 3. CITY COUNCIL ACTION.**

Based on the foregoing, the City Council hereby finds the project exempt from CEQA and adopts the first reading of Ordinance No. 1542 approving Zone Text Amendment 19-97501.

**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.

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**PASSED, APPROVED AND ADOPTED this 9th day of April, 2019.**

---

Arthur L. Welch, Mayor  
City of Banning

**ATTEST:**

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Daryl Betancur, Deputy City Clerk  
City of Banning

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

---

Kevin 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 No. 2019-04 was duly adopted at a regular meeting of the City Council of the City of Banning held on the 9<sup>th</sup> day of April, 2019 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

# Attachment 2

Draft City Council Ordinance

## **ORDINANCE NO. 1542**

### **AN ORDINANCE OF THE CITY OF BANNING AMENDING CHAPTER 17.53 OF TITLE 17 OF THE BANNING MUNICIPAL CODE TO REDUCE THE SEPARATION REQUIREMENTS BETWEEN COMMERCIAL CANNABIS CULTIVATION, MANUFACTURING AND TESTING LABORATORY USES AND RESIDENTIALLY ZONED PROPERTY AND AMENDING THE DEFINITION OF “CANOPY SPACE”, AND MAKING A DETERMINATION PURSUANT TO CEQA**

WHEREAS, on July 10, 2018, the City Council adopted Ordinance 1523 which added Chapter 17.53 (Cannabis Conditional Use Permits) to the Banning Municipal Code to establish a conditional use permit process for cannabis cultivation, manufacturing and testing laboratory facilities (collectively, “commercial cannabis businesses”); and

WHEREAS, Ordinance 1523 provides that commercial cannabis businesses must be located at least 600-feet away from residentially zoned property; and

WHEREAS, this 600-foot separation requirement from residentially zoned property greatly reduces the number of eligible properties that can be improved with a commercial cannabis business since these commercial cannabis businesses can only be located in the Industrial zone and this zone is directly adjacent to a residential zone; and

WHEREAS, the City has received a number of inquiries pertaining to the calculation of canopy space for cannabis cultivation facilities and seeks to amend the definition of canopy space to clarify the definition and conform with changes in State regulations; and

WHEREAS, on March 13, 2019, the Planning Commission of the City of Banning held a public hearing regarding this Ordinance, at which time all persons interested in the contents of this Ordinance had the opportunity and did address the Planning Commission on these matters. Following the receipt of public testimony, the Planning Commission closed the public hearing. At the conclusion of the Planning Commission hearing, and after due consideration of the testimony, the Planning Commission adopted Resolution No. 19-97501 recommending that the City Council adopt this Ordinance to reduce the separation requirement between commercial cannabis businesses and residentially zoned property and to amend the definition of canopy space; and

WHEREAS, on April 9, 2019, the City Council of the City of Banning held a public hearing on the proposed Ordinance, at which time all persons interested in this Ordinance had the opportunity and did address the City Council on these matters. Following the receipt of public testimony, the City Council closed the public hearing.

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

**Section 1. ENVIRONMENTAL FINDINGS**

**A. California Environmental Quality Act (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. Further projects subject to the Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council further finds and determines that this Ordinance is exempt from review under the CEQA and the State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code Section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code. Additionally, the cannabis conditional use permits are subject to discretionary review by both the Planning Commission and the City Council.

The City Council hereby adopts a categorical exemption for this Ordinance and directs staff to file a Notice of Exemption.

**B. Multiple Species Habitat Conservation Plan (MSHCP)**

The amendments to the Zoning Ordinance do not relate to any one physical project and are not subject to the MSHCP. Further, projects that may be subject to this Ordinance will trigger individual project analysis and documentation related to the requirements of MSHCP including mitigation through payment of the MSHCP Mitigation Fee.

**Section 2. ADDITIONAL REQUIRED FINDINGS**

The California Government Code and Section 17.116.050 (Findings) of the City of Banning Municipal Code require that Zoning Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zoning Text Amendment No. 19-97501.

**Finding No. 1:** Proposed Zone Text Amendment No. 19-97501 is consistent with the goals and policies of the General Plan.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97501 is consistent with the goals and policies of the General Plan. Commercial cannabis businesses will be paying voter-approved local taxes that will generate money for the City's general fund, and are also anticipated to generate employment opportunities for City residents. Additionally, unregulated commercial cannabis activity can adversely affect the health, safety and well-being of City residents. The unregulated cultivation and processing of cannabis can damage buildings through improper and dangerous electrical alterations and use, and inadequate ventilation leading to mold and mildew. Additionally, unregulated cultivation and processing of cannabis can also lead to an increase in the frequency of robberies and similar crimes. Cannabis cultivation or other concentration of cannabis in any location or premises without adequate regulations increases the risk that surrounding homes or businesses may be negatively impacted. It is in the public interest to regulate cannabis, to allow for responsible and lawful commercial cannabis cultivation, manufacturing, and testing laboratories in the City. With adequate regulation and oversight, these limited categories of commercial cannabis activity are consistent with the following General Plan goals and policies:

**Land Use Element:**

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A balanced mix of non-polluting industrial land uses which provide local jobs for the City's residents.

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Policy 1

General Plan land use designations and allocations will facilitate a broad range of residential, commercial, industrial and institutional development opportunities.

Policy 2

The City shall take a proactive role in the retention of existing businesses and the recruitment of new businesses, particularly those that generate and broaden employment opportunities, increase discretionary incomes, and contribute to City General Fund revenues.

**Finding No. 2:** Proposed Zone Text Amendment No. 19-97501 is internally consistent with the Zoning Ordinance.

**Findings of Fact:** Proposed Zone Text Amendment No. 19-97501 is consistent with the purpose and objective of the Zoning Ordinance to ensure orderly development of uses and lands within the City to protect the public health, safety, and welfare. The proposed amendments will protect the public health, safety, and welfare of the residents of the City by reasonably regulating cannabis cultivation, manufacturing, and testing laboratory facilities so as to avoid the risks of criminal activity, malodorous smells, degradation of the natural environment, and indoor electrical fire hazards.

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

**Findings of Fact:** In accordance with the requirements of the California Environmental Quality Act ("CEQA"), the City Council finds and determines that this Ordinance is not subject to 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 this Ordinance does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. Further projects subject to this Ordinance will require a discretionary permit and CEQA review, and will be analyzed at the appropriate time in accordance with CEQA.

The City Council has analyzed proposed Zone Text Amendment No. 19-97501 and has determined that, pursuant to California Business and Professions Code Section 26055(h), CEQA "does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity", provided that said law, ordinance, rule, or regulations shall include any applicable environmental review pursuant to Division 13 of the Public Resources Code. Pursuant to that exemption, Chapter 17.53 of the Banning Municipal Code provides that applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the

Public Resources Code. Additionally, the cannabis conditional use permits are subject to discretionary review by both the Planning Commission and the City Council.

**Section 3. Code Amendment.** The City Council hereby amends Subsection “F” of Section 17.53.010 (Definitions.) of Chapter 17.53 (Cannabis Conditional Use Permits) of Title 17 (Zoning) to revise the definition of “Canopy space” as follows (additions shown in underlined text), with all other provisions of Section 17.53.010 remaining unchanged:

“F. “Canopy space” means the designated areas at a cultivation facility that will contain mature plants at any point in time, as follows:

(1) Canopy shall be calculated in square feet and measured using clearly identifiable boundaries of all area(s) that will contain mature plants at any point in time, including all of the space(s) within the boundaries;

(2) Canopy may be noncontiguous but each unique area included in the total canopy calculation shall be separated by an identifiable boundary that includes, but is not limited to, interior walls, and shelves; and

(3) If mature plants are being cultivated using a shelving system, the surface area of each level shall be included in the total canopy calculation.”

**Section 4. Code Amendment.** The City Council hereby amends Subsection “D” of Section 17.53.040 (Cannabis Conditional Use Permit Application Requirements.) of Chapter 17.53 (Cannabis Conditional Use Permits) of Title 17 (Zoning) to read as follows (deletions shown in strikethrough text, additions shown in underlined text), with all other provisions of Section 17.53.040 remaining unchanged:

“D. Neighborhood Context Map. An accurate straight-line drawing depicting the boundaries of the premises, the boundaries of all other properties within 600 feet of the premises, and the uses of those properties, specifically including, but not limited to, any use identified in Business and Professions Code section 26054(b), and any park, ~~and any residentially zoned parcel~~ located within 600 feet of the premises. The map shall also identify all residentially zoned properties that are located within 300 feet of the premises. The distances specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection. The map must be professionally prepared by a licensed civil engineer or architect.”

**Section 5. Code Amendment.** The City Council hereby amends Subsection “B” of Section 17.53.080 (Premises.) of Chapter 17.53 (Cannabis Conditional Use Permits) of Title 17 (Zoning) to read as follows (deletions shown in strikethrough text, additions shown in underlined text), with all other provisions of Section 17.53.010 remaining unchanged:



"B. No cannabis business shall be located within a 600-foot radius of any ~~residentially zoned property~~, park, day care center, or youth center, or public or private school providing instruction in kindergarten or any of grades 1-12, that is in existence at the time the cannabis conditional use permit is issued. The 600-foot distance requirement does not include any private school in which education is primarily conducted in a private home or a family day care home. No cannabis business shall be located within a 300-foot radius of any residentially zoned property. The distances specified in this subsection shall be the horizontal distance measured in a straight line without regard to intervening structures, from the property line of the lot on which the cannabis business is located to the nearest property line of those uses described in this subsection. Outdoor storage on the premises shall be prohibited."

**Section 6.** 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 7.** 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 8.** Certification. The City Clerk shall certify to the adoption of this Ordinance and shall cause it to be published in the manner required by law.

**PASSED, APPROVED and ADOPTED** by the City Council of the City of Banning on this 9<sup>th</sup> day of April, 2019.

---

Art Welch, Mayor  
City of Banning

**ATTEST:**

---

Daryl Betancur, Deputy City Clerk  
City of Banning, California

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

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

# Attachment 3

Public Hearing Notice

Record Gazette  
218 N. Murray St.  
**Proof of Publication**  
(2015.5 C.C.P.)

162786 ZTA 19-97501

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 1, 2019

Executed on: 03/01/2019

At Banning, CA

I certify (or declare) under penalty of perjury that the foregoing is true and correct.



Signature

NOTICE OF INTENT TO ADOPT A CATEGORICAL EXEMPTION AND NOTICE OF PUBLIC HEARING FOR ZONING TEXT AMENDMENT (ZTA) NO. 19-97501 AMENDING CHAPTER 17.53 CANNABIS CONDITIONAL USE PERMITS OF TITLE 17 ZONING OF THE BANNING MUNICIPAL CODE TO REDUCE THE SEPARATION REQUIREMENT BETWEEN CANNABIS BUSINESSES AND RESIDENTIALLY ZONED PROPERTY AND TO AMEND THE DEFINITION OF CANOPY SPACE

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission to be held on Wednesday, March 13, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider proposed Zoning Text Amendment (ZTA) No. 19-97501 to amend Chapter 17.53 Cannabis Conditional Use Permits of Title 17 Zoning of the Banning Municipal Code to reduce the 600-foot separation requirement between cannabis businesses and residentially zoned property. Additionally ZTA No. 19-97501 will amend Section 17.53.010 of the Municipal Code to amend the definition of canopy space.

City staff has determined that the proposed Zoning Text Amendment 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 Zoning Text Amendment 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 Zoning Text Amendment is also exempt from review under the CEQA under State CEQA Guidelines Section 15061(b)(1) which exempts a project from CEQA if the project is exempt by statute. Business and Professions Code section 26055(h) provides that Division 13 (commencing with Section 21000) of the Public Resources Code does not apply to the adoption of an ordinance, rule, or regulation by a local jurisdiction that requires discretionary review and approval of permits, licenses, or other authorizations to engage in commercial cannabis activity. The Zoning Text Amendment provides that discretionary review for applications for cannabis conditional use permits will be required to include any applicable environmental review pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

Information regarding the Categorical Exemption, Zoning Text Amendment, and all relevant materials can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning during regular business hours. You may also go to the City of Banning website at <http://www.ci.banning.ca.us/>. All parties interested in speaking either in support of or in opposition of this item are invited to attend the hearing, or to send their written comments to the Community Development Department, City of Banning at P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its decision on the proposal; or, that 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

Maryann Marks  
Interim Community Development Director  
Dated: 02/26/2019  
Publish: 03/01/2019  
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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**MEETING DATE:** April 9, 2019

**SUBJECT:** Proposed Memorandum of Understanding from Banning Chamber of Commerce

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### **RECOMMENDED ACTION:**

Staff recommends the City Council review, discuss and provide direction regarding the proposed Memorandum of Understanding with the Banning Chamber of Commerce. Suggested tasks to consider:

• A1 – Production of a full-color City map.....	\$ 2,500
• A2 – Coordinate/host “State of the City Address”.....	\$ 2,500
• A4 – Support & Assistance with City Events.....	\$ 8,000
• A6 – City Ex-officio Board Membership.....	\$ 0
• B1 – Business Leaders Roundtable.....	\$ 2,500
• B3 – Banning Business Visits w/ City Manager.....	\$ 2,500
• B4 – Annual Business Expo in Banning.....	\$ 3,000
• B6 – City Sponsored Qrtly Breakfast Meetings.....	\$ 2,000
ANNUAL TOTAL:	\$23,000

### **BACKGROUND:**

An active Chamber of Commerce can provide numerous benefits to a local economy through business attraction, business retention and tourism activities. The reorganized Banning Chamber of Commerce has developed a broad scope of goals and priorities that its Board of Directors and membership want to accomplish.

It is not uncommon for local governments to provide financial assistance to local non-profit organizations that are involved in providing services to the community. This is especially true if the non-profit organization is capable of assisting with accomplishment of the local government’s goals and priorities. In fact, non-profits can, in some cases,

deliver services more cost effectively than local government because of the heavy reliance on volunteers.

The proposal from the Banning Chamber of Commerce seeks to establish a partnership between the City of Banning and the Banning Chamber of Commerce for the purpose of providing a range of business development and tourism related events and activities. If the City Council agrees to the full proposal, the City would pay the Banning Chamber of Commerce an annual fee of \$52,500 for services provided. The City is facing a budget deficit in the upcoming biennium, which has not yet been resolved. As such, adding any expense should be carefully considered. Expenses that can be offset by increased revenue should be considered.

**FISCAL IMPACT:**

This agreement would require a budget adjustment. Fiscal impact of this item is \$0 to \$52,500 annually.

**ATTACHMENTS:**

1. Proposed Memorandum of Understand from Banning Chamber of Commerce.

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager



# **ATTACHMENT 1**

## **Proposed MOU from Banning Chamber of Commerce**





**The City of Banning  
And  
Banning Chamber of Commerce  
Scope of Services 2019-2020 Contract**

The listings itemized below are services that the Chamber performs on behalf of the City of Banning. Many of the items would not be possible to the degree noted if it weren't for the City/Chamber partnership described in the companion agreement.

**A. Banning Marketing**

**Task #1**

The Banning Chamber of Commerce will create and produce full-color City map to be distributed at the Chamber and City Hall. To be paid for by advertisements. This is done on a bi-annual basis every other year.

**Deliverable:**

Chamber to complete new map during this contract.

(With delivery to City and available to public by October 1, 2019)

**Budget:     Task #1     \$2500.00**

**Task #2**

The Banning Chamber of Commerce will work with the City to coordinate and host annual "State of the City Address."

The Banning Chamber of Commerce will assist the City of Banning in producing a professional visual presentation – power point for the State of the City Address.

**Deliverable:**

Chamber to provide signage, prior to and for the State of the City; including notification leading to event; announcements.

**Budget:     Task #2     \$2500.00**

**Task #3**

The Banning Chamber of Commerce to develop an information packet for new residents and businesses.

**Deliverable:**

Prepare and have available for distribution an information packet for new residents and businesses. On-going throughout the year.

**Budget: Task #3 \$2500.00**

**Task #4**

The Banning Chamber of Commerce will participate by providing support, when given ample notice, in City of Banning Special Events including but not limited to the City's Annual Birthday Celebration, Stagecoach Days, and Phineas Christmas Tree Festival of Lights Event, along with Cool Summer Nights.

**Deliverable:**

Chamber of Commerce will provide labor and resources to support and assist with production and delivery of the four events listed above.

**Budget: Task \$8000.00 annually**

**Task #5**

The Chamber and the City will work together in any forthcoming trade show when requested by City.

**Deliverable:**

Chamber will assist the City with marketing and preparatory work associated with the show as requested.

**Budget: Task #5 \$3000.00**

**Task #6**

The Banning Chamber of Commerce will recognize the City as a "Chamber of Commerce Board member" and provide similar benefits to the City including but not limited to advertising and representation.

**Deliverable:**

City to hold a Board of Directors position as an Ex-Office, non-voting member of the Chamber Board and be listed as a Board member on all Chamber publications. From a non-elected official.

**Budget: Task #6 \$0.00**

## **B. Business Retention, Expansion, and Attraction**

### **Task #1**

The Banning Chamber of Commerce will conduct a "Business Leaders Roundtable" discussions. Roundtable discussion will invite business leaders from various industry sectors to meet with City officials discussing business needs and issues associated with the City's general plan and other City services.

#### **Deliverable:**

Chamber will organize and produce the "Business Leaders Roundtable" (tentative: October, January, April, June).

**Budget:      Task #1      \$2500.00**

### **Task#2**

The Banning Chamber of Commerce will conduct an annual survey of members to evaluate items such as Chamber services, city services, business retention, relocation and expansion, development, as well as other critical business sector inquiries. Results will be tabulated and provided to city staff.

#### **Deliverable:**

Chamber to conduct an Annual Survey of all Chamber members (Approx. 250) by March.- April. 2019 and present results to the City and the Community in May 2019.

**Budget:      Task #2      \$2000.00**

### **Task #3**

The Banning Chamber of Commerce teamed with the City Manager's Office will visit up to 20 existing businesses to determine business climate and needs.

#### **Deliverable:**

Chamber will organize and schedule at least four (one per month) business visitations per quarter (sixteen annually). Businesses to be interviewed will be coordinated and approved by the city in advance.

**Budget:      Task      \$2500.00**

#### **Task #4**

The Banning Chamber of Commerce will conduct at least one (1) Business Exposition within the City limits of Banning focused on the Pass area and promote the Exposition to all businesses and the community. All Businesses, members and non-members of the Chamber will be invited to display.

##### **Deliverable:**

One Expo in Banning and partner with the City of Banning, serving the Pass Area.

**Budget:**      **Task#4**      **\$3000.00**

#### **Task #5**

The Banning Chamber of Commerce will promote the City of Banning as well as the Chamber through press releases, news stories to media, attending city council meetings, and general public relations efforts to support the City and the Chamber.

##### **Deliverable:**

Provide media and public relations support to the City as requested.

**Budget:**      **Task #5**      **\$ .00**

#### **Task #6**

The Banning Chamber of Commerce will continue to promote the City of Banning by holding quarterly breakfast meetings for members. The City will be identified as a sponsor of one of the meetings and be given time as a host speaker to update the attendees of City happenings.

##### **Deliverable:**

Produce and host quarterly breakfast meetings (4).

**Budget:**      **Task #6**      **\$2000.00**

#### **Task #7**

The Banning Chamber of Commerce will develop, publish and maintain a Business Directory, which includes a listing of all Chamber members, accompanied with their names, addresses, phone number and business type. The business directory will be provided to all members, copies will be distributed to city staff, and will be distributed in appropriate Chamber mailings.

**Deliverable:**

Develop, publish and maintain a Business Directory, which includes a listing of all Chamber members and provided to City and for general distribution by December 31, 2019.

**Budget: Task#7 \$2000.00**

**Task #8**

The Chamber Newsletter will be emailed quarterly. The Chamber will provide free space, as available, for City information-copy to be submitted by City staff. Distribution to all Chamber members and any other interested parties.

**Deliverable:**

Develop, publish and distribute a Chamber newsletter, mailed Quarterly. The Chamber will provide free space, on a quarterly basis for City information-copy to be submitted by City staff and will include in alternate quarters a copy of the City newsletter as an insert.

**Budget: Task #8 \$3500.00**

**Task #9**

The Banning Chamber of Commerce will promote business growth and development through ribbon cutting ceremonies and groundbreaking ceremonies for new businesses. The Chamber will coordinate with the City Manager's Office on each event,

**Deliverable:**

Chamber to conduct ribbon cutting events and ground-breaking events as calendared throughout the year (Est. 6-12).

**Budget: \$2000.00**

**Task #10**

The Banning Chamber of Commerce will perform mailings and answer phone inquiries of businesses looking to relocate. The Chamber will coordinate those efforts with the City Manager's Department.

**Deliverable:**

Chamber to provide log of contacts to the City for coordination and follow up on a monthly basis.

**Budget:      Task #10      \$2000.00**

**C.      Tourism/City Visitations/Potential New Home Buyers**

**Task #1**

The Banning Chamber of Commerce will develop promotional pieces, along with the City of Banning promoting tourism in Banning.

**Deliverable:**

Chamber to develop and publish a tri fold Tourism brochure and provide 500 hard copies and electronic/digital copy to City by Dec 312019; will provide Chamber Lobby souvenir.

**Budget:      Task #1      \$2500.00**

**Task #2**

The Banning Chamber of Commerce will perform mailings, answer phone inquiries, stock materials, and use other avenues of promotion for the City of Banning.

**Deliverable:**

Chamber to provide log of contacts/mailings to the City for coordination and follow-up on a monthly basis.

**Budget:      Task #2      \$2500.00**

**Task #3**

The Banning Chamber of Commerce will maintain a master community event calendar linked to the City's web page and distribute as needed.

**Deliverable:**

Update event calendar weekly and include City events.

**Budget:      Task#3      \$2500.00**

**D. City/Chamber Partnerships**

**Task #1**

The Banning Chamber of Commerce will work with key city personnel to serve the public. The Chamber will take inquiries, phone calls, referrals, and information dissemination.

**Deliverable:**

Chamber to provide log of contacts/mailings to the City for coordination and follow-up on a monthly basis.

**Budget:      Task #1      \$2500.00**

**Task #2**

The Banning Chamber of Commerce will continue to work with the SBDC by providing office space, phone services, information, referrals, and media space in the Chamber newsletter. The City will be identified as a sponsor of the SBDC on all Chamber material including but not limited to newsletters and signage.

**Deliverable:**

Chamber to provide log of contacts/mailings to the City for coordination and follow-up on a monthly basis. Chamber to make office space available for SBDC meeting with clients monthly.

**Budget:      Task #2      \$2500.00**

**Task #3**

The Banning Chamber of Commerce will maintain a link on their home page that takes visitors directly to [www.ci.banningca.gov](http://www.ci.banningca.gov) (City web page).

Deliverable:

Maintain link on their home page that takes visitors directly to [www.ci.banningca.gov](http://www.ci.banningca.gov) (City web page).

**Budget:      Task #3      \$ .00**

**Documentation**

**A Budget of \$1500,00 will be allocated for contingency from the total amount of \$40,000 for the entire year to align cost of certain deliverables versus the budgeted amount listed above per item.**

**Deliverable & Budget Matrix  
FY 2019-2020**

Deliverable	Budget	Quarter 1	Quarter 2	Quarter 3	Quarter 4	By Years End (Partial Cumulative)
		1 to 9-30	10-1 to 12-31	1 to 3-31	4-1 to 6-30	
A.1	2500.00	1000.00	1000.00	500.00		
A.2	2500.00	1000.00	1000.00	500.00		
A.3	2500.00	625.00	625.00	625.00	625.00	
A.4	8000.00	2000.00	1500.00	2000.00	2500.00	
A.5	3000.00	750.00	750.00	750.00	750.00	
A.6	0.00					
B.1	2500.00	625.00	625.00	625.00	625.00	
B.2	2000.00	500.00	500.00	500.00	500.00	
B.3	2500.00	625.00	625.00	625.00	625.00	
B.4	3000.00	750.00	750.00	750.00	750.00	
B.5	0.00					
B.6	2000.00	500.00	500.00	500.00	500.00	
B.7	2000.00	500.00	500.00	500.00	500.00	
B.8	3500.00	875.00	875.00	875.00	875.00	
B.9	2000.00	500.00	500.00	500.00	500.00	
B.10	2000.00	500.00	500.00	500.00	500.00	
C.1	2500.00	625.00	625.00	625.00	625.00	
C.2	2500.00	625.00	625.00	625.00	625.00	
C.3	2500.00	625.00	625.00	625.00	625.00	
D.1	2500.00	625.00	625.00	625.00	625.00	
D.2	2500.00	625.00	625.00	625.00	625.00	
D.3	0.00					
Contingency		375.00	375.00	375.00	375.00	1500.00
Sub-Total	52500.00	13875.00	13375.00	12900.00	12375.00	
Total	\$52,500.00	\$13,875.00	\$13,375.00	\$12,875.00	\$12,375.00	\$52,500.00





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## CITY OF BANNING CITY COUNCIL REPORT

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Rochelle Clayton, Deputy City Manager  
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.

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### **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 1<sup>st</sup> 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 1<sup>st</sup>.

- 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 19<sup>th</sup> day of September, 2016, by and between the City of Banning (the "City"), the City of Banning City Council (the "City Council") (collectively, the "City Defendants") and Robertson's Ready Mix, Ltd. ("Robertson's") (collectively, "Parties").

### **RECITALS**

WHEREAS, the Banning Quarry ("Quarry") has operated within the City limits since the early 1900s; Robertson's has owned and operated the Quarry since 1997, in part pursuant to vested rights established prior to 1976; the Quarry produces construction aggregates that have historically been used in the City and surrounding communities; and the Quarry is the only surface mining operation within the City limits;

WHEREAS, in response to surface mining activities undertaken in prior years by or on behalf of Robertson's outside the boundaries of the Quarry's approved Reclamation Plan; Robertson's applied for an amendment to the Quarry's Reclamation Plan ("Reclamation Plan Amendment"); and thereafter the City and Robertson's have engaged in discussions over a period of several years relating to: (1) the scope of reclamation activities to be included in the Reclamation Plan Amendment, (2) scope of review pursuant to the California Environmental Quality Act ("CEQA"), (3) the scope of other permitting procedures and entitlements allegedly required for the Reclamation Plan Amendment; (4) potential for mining of additional reserves within or in areas immediately adjacent to the Quarry, and (5) potential for Robertson's and the City to enter into a Development Agreement regarding the above matters;

WHEREAS, in August 2014 the City Council placed on the ballot a proposed tax on surface mining operations within the City limits ("Mining Tax"); in the November 2014 election the voters of the City passed the tax, and the City Council subsequently set the tax rate at \$0.80 per ton of mined aggregate;

WHEREAS, the City and Robertson's have disputed the scope of environmental review and entitlements required for the Reclamation Plan Amendment, the reasonableness of the costs incurred by the City's CEQA consultant to date, who so far has been awarded contracts totaling \$249,050, for CEQA work in connection with the Reclamation Plan Amendment, which work Robertson's believes to be excessive, as well as the necessity and legality of the Mining Tax, such that Robertson's has filed several lawsuits against the City regarding these matters associated with the processing of the Reclamation Plan Amendment and the Mining Tax, including (1) Robertson's v. City of Banning, et al., Case No. RIC 1409037 ("CEQA/1983 case"), (2) Robertson's v. City of Banning, et al., Case No. RIC 1409829 ("Brown Act case"), (3) Robertson's v. City of Banning, Case No. RIC 1500296 ("Public Records Act case"), and (4) Robertson's v. City of Banning, et al., Case No. RIC 1513475 ("Tax Refund case") (collectively, "Actions");



WHEREAS, the status of the Actions is as follows: (1) the Brown Act case, following issuance of a preliminary injunction against the City, has been dismissed; (2) the Public Records Act case has been resolved through issuance of a stipulated judgment against the City, with a motion by Robertson's still pending to determine the amount of attorneys' fees to be awarded to Robertson's; (3) the CEQA/1983 case has been dismissed and the substantive constitutional claims against the City have been refiled by Robertson's against the City in the Tax Refund case, with the City's demurrer still pending in the Tax Refund case, and a tentative ruling having been issued by Judge Trask denying the demurrer on two of the four claims, and granting the demurrer on the other two of the claims, without prejudice to Robertson's amending its complaint with respect to such claims;

WHEREAS, the Parties seek to resolve their disputes, Robertson's wishes to continue to operate the Quarry in an economically sustainable manner for the indefinite future, and the City Defendants wish to secure reliable revenue from the Quarry during its period of operation and provide for the Quarry's suitable end use(s);

WHEREAS, this MOU sets forth the terms and conditions of the settlement and compromise, between and among Robertson's and the City Defendants, including those claims Robertson's has filed against the City Defendants in the Actions, in the manner set forth herein;

NOW, THEREFORE, in consideration of the promises and mutual agreements contained herein, the receipt and sufficiency of which the Parties acknowledge, Robertson's and the City Defendants do hereby agree as follows:

1. **Mining Tax.**

- a. The rate of the City's per-ton aggregate mining tax, enacted by the voters of the City in the November 4, 2014 general election ("Mining Tax"), shall change from \$0.80 to \$0.25 per ton of mined aggregate following: (1) execution of this MOU by all parties, and (2) adoption by the City Council of a City Ordinance suspending the \$0.80 per ton Mining Tax rate.
- b. The effective date of the \$0.25-per-ton Mining Tax rate shall be July 1, 2016 (on the understanding that Robertson's shall waive any further right to seek attorneys' fees in the Public Records Act case, as set forth in Section 9.b., below), and the \$0.25 per-ton Mining Tax rate shall be implemented following thirty (30) days following the "second reading" before the City Council of the City Ordinance that shall suspend the \$0.80-per-ton Mining Tax rate, referenced in Section 1.a., above.
- c. The Mining Tax and its \$0.25-per-ton rate, subject to the CPI escalation below, shall be required to remain in effect until the earlier of the following:
  - (i) Robertson's ceases to operate the Quarry, and completes final reclamation of the Quarry site (although the Mining Tax shall effectively cease when

- actual mining ceases and shall not apply to reclamation of the property), at which time the Mining Tax shall no longer be in effect;
- (ii) Three years from the date an application is submitted by Robertson's for the Development Agreement and related "Entitlements" (as defined below), unless the City approves the Development Agreement and related Entitlements prior to the end of the three-year approval period, or prior to any extension by Robertson's of that three-year approval period, in which case the \$0.25-per-ton Mining Tax rate shall be required to remain in effect until Robertson's ceases to operate the Quarry, as described above in Section 1.c.(1); or
  - (iii) The City takes formal action to issue a final denial, following a public hearing, of the Development Agreement and related Entitlements, at or before the end of the three-year approval period, or any extension by Robertson's of the three-year approval period.
  - (iv) Robertson's shall fail to pay the Revenue Supplement in Section 2 below, when such payment is due, and following notice of, and a period to cure, such failure to pay;
  - (v) Robertson's shall otherwise breach and fail to cure the terms of this MOU.
- d. It is understood that the Ordinance suspending the \$0.80 per ton Mining Tax rate will not contain a clause for automatic revival; but any revival, if permitted thereunder, would require Council adoption of an ordinance lifting the suspension or modifying the rate.
  - e. Under Sections 1.c. (ii) and 1.c. (iii), above, where the City either fails to approve within three years (or within any extension period), or affirmatively denies, the Development Agreement and related Entitlements, the Tax Refund case shall no longer be stayed, but the other Actions will not be revived.
  - f. The \$0.25 per ton Mine Tax rate, during the period of time that it is effective, shall be adjusted annually according to the Consumer Price Index ("CPI").
  - g. Robertson's shall pay taxes pursuant to the Mining Tax on a quarterly basis.

**2. Additional City Revenue Opportunities.**

- a. Sales Tax Revenue.
  - (i) Pursuant to the schedule in Section 7, Robertson's shall submit to the City an application for necessary entitlements to allow for construction of a ready-mix concrete plant ("RMC Plant") within the City limits, as part of

the application requesting the entitlements for additional mining reserves and revised reclamation plan amendment to be identified in the Development Agreement, as described below.

- (ii) The RMC Plant shall constitute a point of sale for ready-mix concrete manufactured at the RMC Plant irrespective of the where the concrete is delivered, whether to job sites within or outside the City limits.
- (iii) The Sales Tax generated from the RMC Plant shall be calculated by Robertson's in the ordinary course of business, and, to the extent feasible, shall be paid by Robertson's to the City on a quarterly basis.

b. Rebate for Ready-Mix Concrete Poured Within City Limits.

- (i) For as long as Robertson's operates the Quarry pursuant to the terms of an approved Development Agreement, Robertson's shall provide the City with a cash rebate ("Rebate") of \$0.15 for every cubic yard of ready-mix concrete poured by Robertson's for construction projects located within the City limits.
- (ii) The Rebate shall apply to ready-mixed concrete poured for both public and private projects.
- (iii) The Rebate shall apply to ready-mix concrete originating from any Robertson's ready-mix plant that is poured within the City limits.
- (iv) The Rebate shall be paid by Robertson's to the City on a quarterly basis.
- (v) Robertson's and the City shall develop an accounting system for the Rebate to be incorporated into a final Development Agreement.
- (vi) The Rebate, during the period of time that it is effective, shall be adjusted annually according to the CPI.

c. Revenue Supplement.

- (i) "Mining Revenue" shall mean the combined revenue of the \$0.25 per ton Mining Tax, plus the additional City revenue from Sales Tax and Rebate for the prior calendar year.
- (ii) "City Revenue Goal" shall mean the total tonnage of aggregate mined by Robertson's at the Banning Quarry in a calendar year multiplied by \$0.40 per ton.

- (iii) Where the Mining Revenue is less than the City Revenue Goal in a calendar year, Robertson's shall provide a monetary supplement to the City ("**Supplement**").
- (iv) The Supplement shall compensate for the difference between the Mining Revenue and the City Revenue Goal, except that in no event shall the Supplement exceed \$125,000 for that calendar year.
- (v) The Supplement shall be paid at the end of the final quarter for the calendar year.
- (vi) The Supplement shall remain fixed, and shall not be adjusted annually according to the CPI.

3. **Additional Mining Reserves/Mining Entitlements.**

- a. As consideration for Robertson's agreeing to pay the Mining Tax, provide the Additional City Revenue Opportunities, described above, and agreeing to stay the Tax Refund case, the City agrees to process an application to be submitted by Robertson's to mine approximately 6 to 8 million cubic yards of additional aggregate mining reserves at the Quarry in the following two areas: (1) all paper street rights-of-way within the mining areas, and (2) an additional 23-acre area directly south of the mining area known as the Matich parcels (collectively, "**Additional Reserves**"). The areas containing the Additional Reserves are shown on the site plan attached hereto, and incorporated herein, as **Exhibit A**.
- b. In addition, the proposed project would combine Robertson's two existing reclamation plans for its overall existing Quarry operation into a single plan and amend and expand the reclamation plan area to include all mining expansion areas.
- c. Addition of the 23-acre expansion area, labeled as "Future Mining" in **Exhibit A**, attached hereto and incorporated herein, shall require either a determination of the full scope of Robertson's vested rights or approval of a conditional use permit for mining within this area.
- d. The City's agreement to process and ultimately approve Robertson's application for the Additional Reserves shall be included in and be material consideration for the Development Agreement discussed below in Section 9. If the City determines ultimately to deny Robertson's application for the Additional Reserves, then the Development Agreement shall fail for lack of consideration and shall not be approved by the City Council.

4. **Reclamation Plan Amendment and End Use.**

- a. In connection with submitting an application for the RMC Plant and the Additional Reserves, Robertson's shall submit an application for a reclamation plan amendment ("**RecPlan Amendment**"), that shall be subject to the following parameters:
  - (i) The Rec Plan Amendment shall comply with SMARA and other applicable reclamation laws and standards;
  - (ii) Robertson's shall allocate a certain percentage of the Quarry site for post-mining public use, although no specific public use will be required;
  - (iv) Robertson's will retain ownership of the Quarry site (and will be able to sell or lease some or all of the site as it sees fit), subject to the end-use requirements in the RecPlan Amendment.
- b. Following the conclusion of mining at the Quarry, including mining of the Additional Reserves, the total usable acreage at the Quarry will be approximately +/- 70-85 acres, as shown on **Exhibit A**, attached hereto and incorporated herein.
- c. Robertson's agrees to allocate 25% of the total usable acreage (25% of 70-85 acres) at the conclusion of mining for post-mining public end use.
- d. The potential range of post-mining public end uses could include the following (which shall not be exclusive):
  - (i) Permanent uses, such as (i) off-road track, (ii) entertainment use, such as concert venue, water park, amusement center, golf course, or adventure park.
  - (ii) Seasonal uses, such as Christmas tree/pumpkin patch area, etc.
  - (iii) Weekend uses such as Farmer's Market, swap meet, etc.
- e. The RMC Plant, Additional Reserves, and RecPlan Amendment, shall be collectively referred to herein as the "**Entitlements**", and shall all be subject to a single application to be submitted by Robertson's to the City.

5. **City Well Site.**

- a. The 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: 9-19-16

ATTEST:

By: Marie A. Calderon  
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By: \_\_\_\_\_  
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: [Signature]

APPROVED AS TO FORM:

DATED: 9/7/16

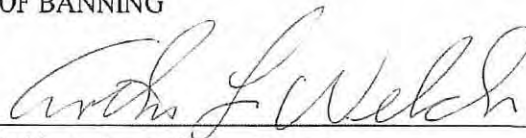
JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: [Signature]

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DATED: 9-19-16

CITY OF BANNING

By:   
Arthur L. Welch, Mayor

DATED: 9-19-16


ATTEST:

By:   
Marie A. Calderon, City Clerk

APPROVED AS TO FORM:

DATED:

BANNING CITY ATTORNEY

By:   
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: 

APPROVED AS TO FORM:

DATED: 9/7/16

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: 

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DATED: 9-19-16

CITY OF BANNING

By: Arthur L. Welch  
Arthur L. Welch, Mayor

DATED: 9-19-16

ATTEST:

By: Marie A. Calderon  
Marie A. Calderon, City Clerk

DATED:

APPROVED AS TO FORM:

BANNING CITY ATTORNEY

By: John C. Cotti  
John C. Cotti, Interim City Attorney

DATED: 9/8/16

ROBERTSON'S READY MIX, LTD.

By: [Signature]

DATED: 9/7/16

APPROVED AS TO FORM:

JEFFER, MANGELS, BUTLER & MITCHELL LLP

By: [Signature]

# **ATTACHMENT 2**

## **Measure J Ballot Language**

SAMPLE BALLOT / BOLETA EJEMPLAR

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 unica 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 study/ing, 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

# **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	Back 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 <sup>(A)</sup>						100.000	100.916
CPI-U, All items, 12-month % change <sup>(B)</sup>							
CPI-W, All items <sup>(C)</sup>						100.000	100.944
CPI-W, All items, 12-month % change <sup>(D)</sup>							

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>



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## **CITY OF BANNING CITY COUNCIL REPORT**

**TO: CITY COUNCIL**

**FROM: Douglas Schulze, City Manager**

**PREPARED BY: Rochelle Clayton, Deputy City Manager**

**MEETING DATE: April 9, 2019**

**SUBJECT: Resolution 2019-\_\_, Approving the Maximum Compensation and Benefits for City Executive Department Directors.**

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### **RECOMMENDED ACTION:**

1. Adoption of Resolution 2019-\_\_ approving the maximum Compensation and Benefits in City Executive Department Director employment contracts, including the City Manager, Administrative Services Director/Deputy City Manager, Community Development Director, Community Services Director, Electric Utility Director, Police Chief and Public Works Director, approving a minimum Cost of Living Adjustment ("COLA") increase of one percent (1%) and maximum of two percent (2%) based on the annual consumer price index for urban wage earners (CPI-W), and approving benefits.
2. Authorize the Administrative Services Director to make the necessary budget adjustments, appropriations and transfers.

### **JUSTIFICATION:**

This item was continued from the regular City Council meeting held on March 26, 2019 based on an alternate recommendation by Councilman Peterson.

The City Council authorized an annual salary increase equivalent to one hundred percent (100%) of the June-to-June CPI-W increase for the duration of the Police Chief contract. This resolution would afford the Executive Staff an annual COLA based on the annual CPI-W, with a minimum of one percent (1%) and a maximum of two percent (2%). Additionally, the Council approved an increase to the Police Chief's salary from Salary Grade 100 to Salary Grade 103.

Councilman Peterson recommended that directors with a salary grade of 92 to be reclassified to salary grade 95 and directors with a salary grade of 100 and 101 to be reclassified to salary grade 103. Additionally, that each of the directors receive

100% of the June to June CPI-W increase and an increase in the education incentive from \$275 per month to \$450 per month (equivalent to the Police Chief).

In order to forecast future salary increases, and to be conservative, staff recommends that a cap is set on any future salary adjustments in relation to CPI-W or cost of living adjustments, at a rate no greater than three percent (3%).

### **BACKGROUND:**

Executive level staff are not in organized labor groups, and have employment contracts. Council approved a minimum of one percent (1%) and maximum of three percent (3%) cost of living adjustment (COLA) to the each of the organized employee groups, including General, Utility, and Management employee groups.

Historically the Department Directors compensation and benefits have been adjusted by resolution, with the last salary increase on July 1, 2017. The adoption of this Resolution would replace Resolution 2017-101.

### **OPTIONS:**

1. Approve Resolution 2019-\_\_\_\_ authorizing a minimum 1% and maximum 2% annual COLA increase and reclassification of the salary grade for the Police Chief.
2. Authorize a minimum 1% and maximum either 2% or 3% annual COLA increase and reclassification of the salary grades for the Police Chief, Administrative Services Director, electric Director and Public Works Director to Salary Grade 103, and the Community Development Director and Community Services Director to Salary Grade 95.
3. Provide alternate direction to staff.

### **FISCAL IMPACT:**

The fiscal impact for a 3% COLA is \$35,000 for FY2019-2020, of which \$16,000 would impact the General Fund.

The fiscal impact for a salary grade reclassification and a 3% COLA is \$101,500 for FY2019-2020, of which \$45,000 would impact the General Fund.

### **ORAL REPORT WITH SUMMARY OF RECOMMENDATION**

The Mayor or another appropriate officer may make the following required announcement:

"Prior to taking action on Executive employee compensation, the Council is required by law to orally report a summary of the recommendation for a final action on the salaries, salary schedules or compensation paid in the form of fringe benefits of executive

employees during the meeting in which final action is to be taken. The recommendation for this action is”:

- “a minimum 1% and maximum 2% cost of living increase in the salaries and salary schedule for City Executive Department Directors; and reclassification of the Police Chief from salary grade 100 to salary grade 103.”

**OR**

- “a minimum 1% and maximum 3% cost of living increase in the salaries and salary schedule for City Executive Department Directors; and reclassification of the Police Chief, Electric Utility Director, Public works Director and Deputy City Manager/Administrative Services Director from salary grades 100/101 to salary grade 103, and Community Development Director and Community Services Director from salary grade 92 to salary grade 95.”

**ATTACHMENTS:**

1. Comparable director salaries for Banning, Colton, Hemet and Corona
2. Salary adjustment calculations
3. Resolution 2019-\_\_\_\_

Approved by:

  
\_\_\_\_\_  
Douglas Schulze  
City Manager

# **ATTACHMENT 1**

Comparable director salaries for  
Banning, Colton, Hemet & Corona

# Banning Director Salary Comparison to Colton, Hemet Corona

Comparison of Director (Maximum) Salaries by Position

CITY:	BANNING	COLTON	HEMET	CORONA
POPULATION:	31,230	54,828	85,160	167,836
City Manager	\$ 244,314	\$ 198,648	\$ 200,000	\$ 249,000
Deputy CM/ Admin. Services Director	\$ 181,660	n/a	n/a	\$ 224,580
Assistant City Manager	n/a	n/a	\$ 180,000	\$ 224,580
Police Chief	\$ 190,858	\$ 181,095	\$ 178,000	\$ 213,000
Public Works Director-CE (Water/WW)	\$ 177,230	\$ 181,095	\$ 155,179	\$ 193,368
Electric Director	\$ 177,230	\$ 181,095	n/a	n/a
Community Development Director	\$ 145,461	\$ 169,196	\$ 148,128	\$ 193,368
Community Services Director	\$ 145,461	\$ 169,196	n/a	n/a
Finance Director	n/a	\$ 169,196	\$ 138,600	n/a
Human Resources Director	n/a	\$ 169,196	\$ 125,124	n/a
NOTES:	*Banning has an Admin Services Director in lieu of a Finance & HR Director	*Colton does not have an ACM or DCM	*Hemet has a Streets Superintendent, Water/WW Superintendent, Refuse Superintendent, Facilities Maint. Mngr., Parks Ranger, Parks Maint. Supv.	*Corona has a DCM/Admin Services Director in lieu of a Finance & HR Director; an ACM over economic development/public relations; and a Parks Superintendent

## SALARY SOURCES:

<http://www.ci.colton.ca.us/documentcenter/view/4192>

<https://cityofhemet.org/DocumentCenter/View/5224>

<https://www.coronaca.gov/government/departments/human-resources/job-descriptions>

# ATTACHMENT 2

## Salary Adjustment Calculations



# EXECUTIVE SALARY ADJUSTMENT CALCULATIONS

Position	GRADE	STEP	FY2019			0%			TOTAL SALARY	COST*	SALARY Increase/ COST to GF
			RATE	BASE	SALARY -	COLA	RATE	BASE			
CITY MANAGER	113	7	100.985	210,048.80	100.985	100.985	210,048.80	210,048.80	256,500.51		
POLICE CHIEF	103	13	91.7586	190,857.89	94.5114	94.5114	196,583.62	196,583.62	244,166.48		
DCM/ADMIN. SERVICES DIRECTOR	101	13	87.3369	181,660.75	87.3369	87.3369	181,660.75	181,660.75	216,090.47		
COMMUNITY DEVELOPMENT DIR.	92	10	64.8439	134,875.31	64.8439	64.8439	134,875.31	134,875.31	159,685.15		
COMMUNITY SERVICES DIRECTOR	92	13	69.9333	145,461.26	69.9333	69.9333	145,461.26	145,461.26	171,607.80		
ELECTRIC UTILITY DIRECTOR	100	11	81.021	168,523.68	81.021	81.021	168,523.68	168,523.68	201,026.11		
PUBLIC WORKS DIRECTOR	100	11	81.021	168,523.68	81.021	81.021	168,523.68	168,523.68	201,916.76		
TOTAL SALARY IMPACT w/3% COLA										1,450,993.31	
CITY MANAGER	113	7	100.985	210,048.80	104.015	104.015	216,350.26	216,350.26	263,962.16	\$ 4,477	.6 GF
POLICE CHIEF	103	13	91.7586	190,857.89	94.5114	94.5114	196,583.62	196,583.62	244,166.48	\$ -	100% GF
DCM/ADMIN. SERVICES DIRECTOR	101	13	87.3369	181,660.75	89.957	89.957	187,110.57	187,110.57	222,339.82	\$ 3,750	.6 GF
COMMUNITY DEVELOPMENT DIR.	92	10	64.8439	134,875.31	66.7892	66.7892	138,921.57	138,921.57	164,242.34	\$ 4,557	100% GF
COMMUNITY SERVICES DIRECTOR	92	13	69.9333	145,461.26	72.0313	72.0313	149,825.10	149,825.10	176,522.67	\$ 2,457	.5 GF
ELECTRIC UTILITY DIRECTOR	100	11	81.021	168,523.68	83.4516	83.4516	173,579.39	173,579.39	206,823.53	\$ -	Electric
PUBLIC WORKS DIRECTOR	100	11	81.021	168,523.68	83.4516	83.4516	173,579.39	173,579.39	207,740.90	\$ 1,165	.2 GF
										1,485,797.89	
										\$ 34,804.58	\$ 16,406
TOTAL SALARY IMPACT w/3% COLA										1,485,797.89	
CITY MANAGER	113	7	100.985	210,048.80	104.015	104.015	216,350.26	216,350.26	263,962.16	\$ 4,477	.6 GF
POLICE CHIEF	103	13	91.7586	190,857.89	94.5114	94.5114	196,583.62	196,583.62	244,166.48	\$ -	100% GF
DCM/ADMIN. SERVICES DIRECTOR	103	13	91.7586	190,857.89	94.5114	94.5114	196,583.62	196,583.62	233,202.62	\$ 10,267	.6 GF
COMMUNITY DEVELOPMENT DIR.	95	10	69.8299	145,246.19	71.9248	71.9248	149,603.58	149,603.58	176,273.17	\$ 16,588	100% GF
COMMUNITY SERVICES DIRECTOR	95	13	75.3106	156,646.05	77.5699	77.5699	161,345.43	161,345.43	189,497.68	\$ 8,945	.5 GF
ELECTRIC UTILITY DIRECTOR	103	11	87.251	181,482.08	89.8685	89.8685	186,926.54	186,926.54	222,128.79	\$ -	Electric
PUBLIC WORKS DIRECTOR	103	11	87.251	181,482.08	89.8685	89.8685	186,926.54	186,926.54	223,116.69	\$ 4,240	.2 GF
										1,552,347.60	
										\$ 34,804.58	\$ 44,517
TOTAL SALARY IMPACT w/3% COLA										1,552,347.60	
										\$ 34,804.58	\$ 44,517



# ATTACHMENT 3

Resolution 2019-\_\_\_\_

## RESOLUTION 2019-\_\_

**A RESOLUTION OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE MAXIMUM COMPENSATION AND BENEFITS IN CERTAIN CITY DEPARTMENT DIRECTOR EMPLOYMENT CONTRACTS AND THE CITY MANAGER EMPLOYMENT CONTRACT, PURSUANT TO SECTIONS 2.08.070(A) AND 2.08.090(C) OF THE BANNING MUNICIPAL CODE.**

**WHEREAS**, City of Banning Executive employees have updates to their compensation and benefits from time to time, in alignment with other City employees; including the City Manager, Administrative Services Director/Deputy City Manager, Community Development Director, Community Services Director, Electric Utility Director, Police Chief, and Public Works Director (hereinafter collectively referred to as "Directors"); and

**WHEREAS**, the City Council has authority to enter into a Contract with the City Manager, pursuant to Banning Municipal Code § 2.08.070;

**WHEREAS**, the City Manager has authority to enter into the Contracts with City Department Directors on behalf of the City, pursuant to Banning Municipal Code § 2.08.090;

**WHEREAS**, Banning Municipal Code Sections § 2.08.070(A) and § 2.08.090(C) requires that the City Council approve, by resolution for City Manager and resolution or ordinance for directors, the maximum compensation and benefits expressly or impliedly included in the Contracts prior to their taking effect; and

**WHEREAS**, on or about January 9, 2018 the City Council of the City of Banning passed Resolution 2017-101, replacing Resolution 2016-112 and changing the maximum level of benefits and other compensation for Directors; and

**WHEREAS**, the City Council wishes to reclassify the Police Chief salary grade from grade one hundred (100) to salary grade one hundred and three (103), an annual salary increase of approximately thirteen thousand six hundred and thirty dollars (\$13,630) as of the approval of the most recent Police Chief Contract effective January 9, 2019; and

**WHEREAS**, the City Council wishes to grant an annual cost of living adjustment (COLA) to Director salaries equivalent to the annual consumer price index for urban wage earners (CPI-W) from March to March of each year, with a minimum increase of one percent (1%) and a maximum increase of two percent (2%) each year, effective July 1<sup>st</sup>; and

**WHEREAS**, the City Council now desires to adopt an amended and restated resolution of salaries, compensation and benefits for Directors, which restates and replaces any and all pre-existing salary and compensation resolutions for the Directors, including, but not limited to, Council Resolution 2017-101.

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

SECTION 1. The City Council hereby approves an annual COLA increase in the amount equal to the March to March CPI-W with a minimum of one percent (1%) and a maximum of two percent (2%) of base salary, effective annually on July 1<sup>st</sup> with adoption of this resolution.

SECTION 2. The City Council hereby approves the Executive Department Director Compensation Table attached as Exhibit "A".

SECTION 3. The City Council hereby approves the maximum level of benefits and other compensation, not including salary, expressly or implied set forth in the Contracts, provided that such level of benefits and other compensation for each Executive Department Director shall not exceed the following levels:

- A. Professional Development. Training as determined appropriate by the City Manager.
- B. Paid Leave. Implementation of accrual caps will not result in loss of existing or vested leave balances as of the date of adoption of this resolution.
  - i. Sick Leave. 96 hours accrued annually with maximum accrual cap of 480 hours.
  - ii. Sick Leave Cash Out. 96 hours may be cashed out annually, provided a minimum balance of 40 hours remains in the sick leave bank at time of cash out. Any sick leave cash out request must be made no later than November 1<sup>st</sup> of each year, and payment of the cash out shall be made in the last check issued in November. Upon termination for any reason, employee shall be entitled to one hundred percent (100%) of the unused sick leave in the leave bank.
  - iii. Vacation Leave. 160 hours accrued annually with maximum accrual cap of 480 hours.
  - iv. Vacation Leave Cash Out. 80 hours may be cashed out annually provided a minimum balance of 80 hours remains in the vacation leave bank at time of cash out. Upon termination for any reason, employee shall be entitled to one hundred percent (100%) of the unused vacation leave in the leave bank.
  - v. Holiday Leave. Effective July 1st, 2017, Directors shall be entitled to the following holidays and paid 10 hours for each holiday:

New Year's Day, Martin Luther King Day, President's Day, Memorial Day, Fourth of July, Labor Day, Veteran's Day, Thanksgiving, Day after Thanksgiving, Christmas Eve, Christmas, New Year's Eve, and One (1) floating holiday

vi. Holiday Leave Cash Out. Leave balances must be used during the fiscal year or they will be cashed out at the end of the fiscal year in June, or at termination for any reason.

vii. Executive Leave. 98 hours annual accrual with maximum accrual cap of 200 hours.

viii. Executive Leave Cash Out. 98 hours may be cashed out annually. Upon termination for any reason, employee shall be entitled to one hundred percent (100%) of the unused executive leave in the leave bank.

ix. Bereavement Leave. 30 hours annually with no accrual or carryover.

x. Promotional Payouts of Leave. Prior to implementation of a promotion to a higher ranking position, the City shall be entitled to cash out, at the Director's current pay rate at the time of said promotion, all vacation, holiday, comp time and executive leave in excess of 100 hours respectively.

C. Cafeteria/Health & Welfare Benefits. Effective the first pay period after July 1, 2018, this benefit for Director's shall be capped at \$20,000 annually. However, the City Manager may increase the benefit annually using CPI or the average of all City health insurance premium increases. Directors may use funds for any of the City's medical plans or, upon proof of coverage under spouse's plan, this amount may be taken as taxable income or converted to a 457 Plan or City sponsored Medical Savings Account.

D. Retirement.

- Miscellaneous and safety employees hired prior to January 1, 2013, remain at 2.5% @55 and 3% @ 50 CalPERS formulas respectively, with single highest year benefit
- Beginning December 2012, the City implemented the 2% @ 60 formula for miscellaneous new hires and 2% @ 50 formula for safety new hires with average three years for calculation of final retirement benefit, which after January 1, 2013 shall only apply to new hires defined and determined by CalPERS to be "classic members."

- Beginning January 1, 2013, new hires defined by CalPERS as "new members" shall receive the newly created 2% @ 62 formula for miscellaneous employees and 2.7% @ 57 for safety employees, with average of three years for calculation of final retirement benefit. (Mandated by the Public Employees' Pension Reform Act of 2013.)
  - The Directors shall pay their full member contribution for their CalPERS retirement plan, from employee's pre-tax compensation.
- E. Management Incentive. There shall be no salary management incentive.
- F. Automobile Allowance. Directors shall receive \$250.00 per month or the use of a take home City Vehicle as determined by the City Manager.
- G. City Flexible Spending Plan. Directors may participate in same program made available to other employees.
- H. Life Insurance. Directors shall be entitled to a \$150,000.00 life insurance policy.
- I. Uniforms. \$0. The Police Chief shall receive \$110 per month uniform allowance.
- J. Business Equipment. The City hereby agrees to finance at no interest the purchase of any job-related tools or equipment that serve the professional development of the Director. Such tools and equipment shall be approved in advance by the City Manager. Repayment to the City by the Director shall be made by payroll deductions until the amount loaned is completely repaid. The maximum period for repayment shall be two (2 years). The amount shall be capped at the value of one month's salary. Should the Director terminate employment, then the remaining loan amount repayment shall be accelerated and become fully due and owing as of the termination date.
- J. Bonding. The City shall bear the full cost of any fidelity or other bonds required for an employee under any law or ordinance.
- K. Education Incentives. Directors may receive \$275.00 maximum per month. The Police Chief may receive \$450.00 per month.
- L. Eyewear/Eye Care Reimbursement. Directors may receive \$300.00 maximum every two fiscal years.
- M. Disability Insurance. Directors shall pay the cost of membership in the

short term and long term disability insurance programs selected by the City and Insurance/Benefits Advisory Committee.

- N. FICA. Directors shall pay the employee's portion of the Federal Insurance Contributions Act tax and the City shall be responsible for payment of the employer's portion.
- O. Other benefits. Directors shall be eligible to participate in employee paid benefit programs that may be offered from time to time.
- P. Performance Evaluations. Upon an annual satisfactory performance evaluation, Directors shall be granted an increase of a minimum of two steps or approximately five percent (5%), or such increase will be automatically implemented retroactive to the due date if employee's supervisor is thirty (30) days late on giving the evaluation to employee.

SECTION 4. Directors are entitled only to the level of salary and benefits contained in their respective Contract or this resolution if no contract exists.

SECTION 5. The position of Police Chief remains entitled to all protections and rights afforded under California law, including but not limited to those set forth in the Public Safety Officers Procedural Bill of Rights Act (Gov't Code 3300-3313)

SECTION 6. The Administrative Services Director is authorized to make the necessary budget adjustments as applicable.

SECTION 7. 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 9<sup>th</sup> 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 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 9<sup>th</sup> day of April, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

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

## Exhibit "A"

### Compensation Table

POSITION	SALARY GRADE
Administrative Services Director/Deputy City Manager	101
City Manager	113
Community Development Director	92
Community Services Director	92
Electric Utility Director	100
Police Chief	103
Public Works Director	100

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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:** April 9, 2019

**SUBJECT:** Adopt Resolution 2019, Awarding a Professional Services Agreement to Webb Municipal Finance, LLC for the Financial Analysis and Redevelopment of Landscape Maintenance District No. 1, in the amount the amount of \$74,789, which includes a 10% contingency

---

**RECOMMENDED ACTION:**

Staff recommends that the City Council adopt Resolution 2019-\_\_\_\_\_:

1. Awarding a Professional Services Agreement for the Financial Analysis and Redevelopment of Landscape Maintenance District (LMD) No. 1 to Webb Municipal Finance, LLC in the amount of \$67,990 and authorize an additional 10% contingency (\$6,799) for a total amount of \$74,789.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement for the Financial Analysis and Redevelopment of LMD No.1.
3. Authorizing the City Manager or his designee to execute the Professional Services Agreement with Webb Municipal Finance, LLC of Riverside, California in the amount of \$74,789.
4. Authorizing the City Clerk to certify the adoption of this resolution and to have said resolution filed in the book of original resolutions.

## **BACKGROUND:**

LMD No. 1 in the City of Banning was established through the adoption of Resolution No. 1990-59 on August 14, 1990 (9 tracts), with another, Tract No. 22913 being annexed into the District in 1992. There are currently Four (4) Zones and 1,015 assessment units. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is included as Attachment 2.

The Public Works Department is recommending to hire a consultant with expertise in the Proposition (Prop) 218 process and assessment districts to determine the proper zones and assessment amounts for each tract; the basis of assessments; hold a Prop 218 Public Hearing; determine the estimated budget for the next 20 years; prepare necessary reports; and community outreach. In essence, a complete overhaul of the LMD No. 1 may be required including the restructuring of the district zones and assessments.

The most significant task involves the financial analysis. During the completion of this task, the consultant shall prepare a detailed analysis and Financial Budget Report for all the existing tracts within the LMD. Key goals in this process include:

- Reviewing the existing budgets and assisting with cost recovery accounting to achieve maximum cost to benefit equity and long term financial stability.
- Ensuring the existing zones and assessment amounts for each tract are appropriate; if not justify and recommend changes.
- Ensuring that the developed budget has adequate funding. Budget estimates will be determined and projected each year over the next 20 years and shall include City staff time, water, electric, operation and maintenance, plant replacement, irrigation repair, etc., incidentals, and capital improvement projects.
- Ensure the LMD can run itself without deficits and have a balanced budget.
- Determine and recommend new assessment unit amounts, new zones, or restructuring of existing zones.
- Ensure that the current method of apportionment and allocation of the net costs provide a reasonable special benefit nexus to all the properties within the affected zones.

The detailed scope of work is outlined in Attachment 3, the Request for Proposals (RFP) and in the attached recommended consultant's proposal (Attachment 4). If approved, it is anticipated that the Prop 218 process would occur in late 2019.

On December 6, 2018, staff released a RFP through the PlanetBids program notifying qualified firms of the opportunity to provide proposals, RFP 19-018, "Financial Analysis and Redevelopment of LMD No. 1". One hundred and twenty (122) firms were sent direct solicitations through PlanetBids. The deadline to submit proposals was February 5, 2019 and three (3) firms responded with submittals.

An evaluation committee consisting of three (3) City staff members, evaluated the three (3) proposals that were received based on qualifications of key personnel (experience in preparing a financial analysis of a LMD and the Prop 218 process), approaches in providing the scope of work services, and price proposals.

Listed below are the three (3) firms that submitted proposals in order of the total combined score received from the three (3) evaluators:

CONSULTANT	TOTAL SCORE
Webb Municipal Finance, LLC	223.1
Willdan Financial Services	214.5
David Taussig & Associates (DTA)	187.22

Webb Municipal Finance, LLC is a reputable qualified firm that has successfully provided services to the City in the past as part of Albert A. Webb Associates, have performed similar Prop 218 services for five municipalities and as a result, staff recommends the contract award to Webb Municipal Finance, LLC in the amount of \$74,789, which includes a 10% contingency.

Staff negotiated a lower contract cost with Webb Municipal Finance, LLC for a savings of about \$4,500 from the original proposal of \$72,474.

#### **JUSTIFICATION:**

Due to the fact the LMD utility expenditures are increasing (e.g. charging a retail water rate instead of a municipal water rate) a deficit is anticipated moving forward. The current assessments have had several Consumer Price Index increase over the years, but there are no funds to pay for capital improvements. Since the tracts are fourteen (14) to over twenty-five (25) years old, significant landscape improvements are now needed. A financial analysis will provide the information needed to ensure the LMD fund can operate with a balance budget.

#### **FISCAL IMPACT:**

An appropriation in the amount of \$74,789 from the LMD No.1 Fund to Account No. 111-4900-432.33-11 (Professional Services) is needed to fund the Professional Services Agreement.

#### **ALTERNATIVE:**

Reject Resolution 2019-\_\_\_\_ and provide direction to staff. Without a reassessment of LMD No.1, it is expected that the LMD fund will operate in a deficit for the near future and lack the funding to make needed improvements.

**ATTACHMENTS:**

1. Resolution 2019-\_\_\_\_\_
2. LMD No.1 Map
3. Request for Proposals
4. Webb Municipal Finance, LLC. Proposal dated February 5, 2019
5. Draft Professional Services Agreement

Approved by:

  
\_\_\_\_\_  
Doug Schulze  
City Manager



# ATTACHMENT 1

*(Resolution 2019-\_\_\_\_\_)*

## **RESOLUTION 2019-\_\_**

### **RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, AWARDING A PROFESSIONAL SERVICES AGREEMENT FOR “FINANCIAL ANALYSIS AND REDEVELOPMENT OF LANDSCAPE MAINTENANCE DISTRICT NO.1” TO WEBB MUNICIPAL FINANCE, LLC IN THE AMOUNT OF \$74,789**

**WHEREAS**, Landscape Maintenance District (LMD) No. 1 in the City of Banning was established through the adoption of Resolution No. 1990-59 on August 14, 1990 (9 tracts), with another Tract, No. 22913, being annexed into the District in 1992. An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005; and

**WHEREAS**, the tracts within LMD No.1 are fourteen (14) to over twenty-five (25) years old, and thus significant landscape improvements are needed. In addition, utility expenditures continue to increase and therefore a Financial Budget Report will be prepared which, amongst other things, will provide recommendations to ensure the LMD fund can operate with a balanced budget; and

**WHEREAS**, the scope of work for this project is to: determine the proper zones and assessment amounts for each tract; basis of assessments; hold a Prop 218 Public Hearing; determine the estimated budget for the next 20 years; prepare necessary reports including a Financial Budget Report; and community outreach; and

**WHEREAS**, on December 6, 2018, staff released a RFP through the PlanetBids program notifying qualified firms of the opportunity to provide proposals, RFP 19-018, “Financial Analysis and Redevelopment of LMD No. 1” with proposals due on February 5, 2019; and

**WHEREAS**, an evaluation committee consisting of three (3) City staff members, evaluated the three (3) proposals that were received based on qualifications of key personnel, approaches in providing the scope of work, and price proposals; and

**WHEREAS**, Webb Municipal Finance, LLC had the highest combined score from the three evaluators and is a reputable qualified firm that has successfully provided services to the City in the past as part of Albert A. Webb Associates, and they have performed similar Prop 218 services for five municipalities and as a result, staff recommends the contract be awarded to Webb Municipal Finance, LLC; and

**WHEREAS**, the expenditure will be funded by the Landscape Maintenance District No. 1 Fund, Account 111-4900-432.33-11 (Professional Services).

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

SECTION 1. The Banning City Council adopts Resolution 2019-XX, awarding a Professional Services Agreement for the Financial Analysis and Redevelopment of LMD No. 1, to Webb Municipal Finance, LLC in the amount of \$74,789, which includes a 10% contingency amount.

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 or his designee is authorized to execute the Professional Services Agreement as to form approved by the City Attorney.

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 9th day of April, 2019.

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Art Welch, Mayor  
City of Banning

**ATTEST:**

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Daryl Betancur, Deputy City Clerk  
City of Banning

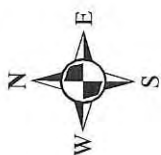
**APPROVED AS TO FORM  
AND LEGAL CONTENT:**

---

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

# ATTACHMENT 2

*(LMD No.1 Map)*

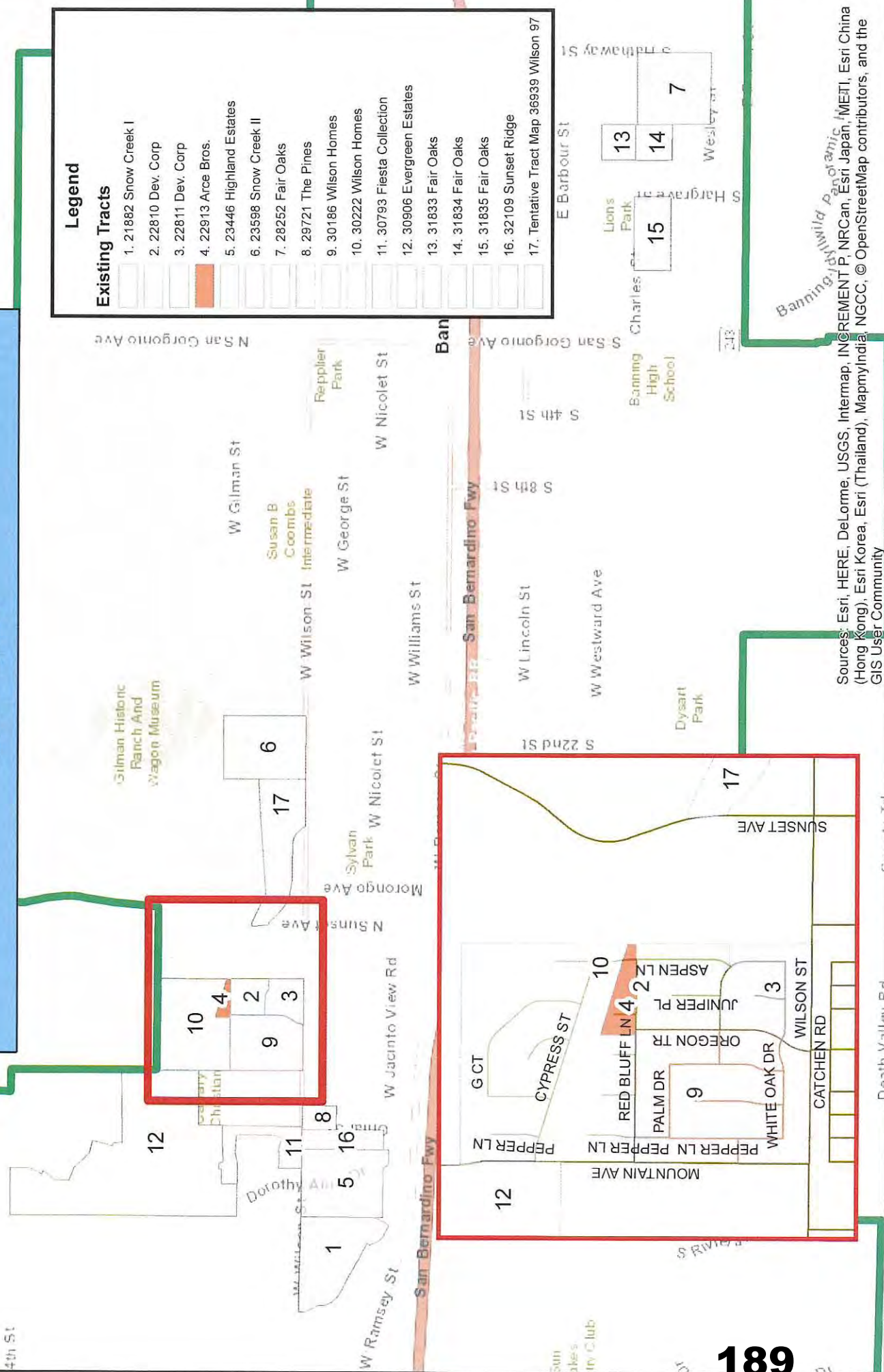


# Map of Landscape Maintenance District No. 1 2019-2020

## Legend

### Existing Tracts

- |  |   |
|--|---|
|  | 1. 21882 Snow Creek I                   |
|  | 2. 22810 Dev. Corp                      |
|  | 3. 22811 Dev. Corp                      |
|  | 4. 22913 Arce Bros.                     |
|  | 5. 23446 Highland Estates               |
|  | 6. 23598 Snow Creek II                  |
|  | 7. 28252 Fair Oaks                      |
|  | 8. 29721 The Pines                      |
|  | 9. 30186 Wilson Homes                   |
|  | 10. 30222 Wilson Homes                  |
|  | 11. 30793 Fiesta Collection             |
|  | 12. 30906 Evergreen Estates             |
|  | 13. 31833 Fair Oaks                     |
|  | 14. 31834 Fair Oaks                     |
|  | 15. 31835 Fair Oaks                     |
|  | 16. 32109 Sunset Ridge                  |
|  | 17. Tentative Tract Map 36939 Wilson 97 |



Sources: Esri, HERE, DeLorme, USGS, Intermap, INCREMENT P, NRCan, Esri Japan, METI, Esri China (Hong Kong), Esri Korea, Esri (Thailand), MapmyIndia, NGCC, © OpenStreetMap contributors, and the GIS User Community

# ATTACHMENT 3

*(Request for Proposals)*



**REQUEST FOR PROPOSAL**

**FOR**

**19-018**

**Financial Analysis and Redevelopment of LMD No. 1**

**CITY OF BANNING**

**Public Works Department**

**99 East Ramsey Street**

**Banning, California 92220**

**Released on December 6, 2018**



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### **Request for Proposals Letter to Proposers**

1. Background
2. Schedule of Events
3. Scope of Work
4. Proposal format Guidelines
5. Process for submitting Proposals
6. Evaluation Criteria
7. Evaluation of Proposals and Selection Process
8. Protest Procedures
9. Confidentiality
10. Conflict of Interest
11. Conditions to agreement, if any
12. Standard Terms and Conditions

### **Attachments**

13. Proposal Pages 1 – 4 (to be filled out and submitted as part of proposal response)
  - a. Ex Parte Communications
  - b. Disqualifications Questionnaire
  - c. Disclosure of Governmental Position
  - d. Price Proposal Form
14. LMD Map 2018-2019
15. LMD No.1 Financial Analysis and Redevelopment RFP Schedule, 10.25.18
16. Sample Professional Services agreement

## **REQUEST FOR PROPOSAL (RFP) NO. 19-018**

### **Financial Analysis and Redevelopment of LMD No. 1**

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 Financial Analysis and Redevelopment of LMD No. 1.

NOTICE IS HEREBY GIVEN that online bid price and document submittal must be uploaded to the online bid system in accordance with the instructions included within bid documents for Financial Analysis and Redevelopment of LMD No. 1, on or before the hour of 3:00 p.m. on February 5, 2019. It shall be the responsibility of the bidder to upload their proposal by the announced time. However, submittals may be submitted at any time prior to the deadline. (Submitted bids may be withdrawn and resubmitted at any time prior to the deadline, and cannot be viewed by City staff until the close date and time.)

**BID DOCUMENTS:** To obtain a copy of the bid documents, please visit <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. If you are not currently registered with the City of Banning through Planet Bids, please click on the "New Vendor Registration" button and then complete the electronic supplier registration. After registering your firm, click on the "Bid Opportunities" button to view and download the bid documents, which include the complete Notice Inviting Bids document. Firms must also check the web site periodically for addenda information as failure to download any and all addenda, and acknowledge in the bid submittal, will result in bid disqualification.

Bids must be submitted electronically by visiting the City of Banning, Planetbids Vendor Portal at <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Click on the "Bid Opportunities" link. Next, "Log In." Enter your User Name and Password. Click "Bid Opportunities" and then select the Request for Proposal (RFP). Click on "Place eBid" and follow the instructions.

## 1. BACKGROUND

The City of Banning is strategically located astride Interstate 10 between the Inland Empire and the Coachella Valley in the San Gorgonio Pass. The City, incorporated in 1913, has a rich and colorful history.

Initially Banning served as a stagecoach and railroad stop between the Arizona territories and Los Angeles. This history has contributed to the present-day spirit of pioneer resourcefulness and "can do" attitude that is so prevalent in the community.

Banning is a friendly and wholesome place to work and raise a family. Desirable executive housing is available, as well as moderate and lower income housing. Clean air, ample water supplies and the memorable and inspiring scenic vistas of both Mt. San Gorgonio and Mt. San Jacinto, the 2 tallest peaks in Southern California, are additional amenities which make the City of Banning a logical choice as a development opportunity in the Southern California area.

## 2. SCHEDULE OF EVENTS

This request for proposal will be governed by the following tentative schedule. All dates are subject to change at the discretion of the City.:

Event	Date	Time
Request for Proposals Released	12/6/18	N/A
Final Questions Due	1/8/19	Before 5:00pm PST
Responses to Questions Released	1/17/19	N/A
<b>Proposals Due</b>	<b>2/5/19</b>	<b>Before 3:00pm PST</b>
Interviews, If Needed	Week of 2/11/19	To be determined
Tentative City Council Meeting to Consider Awarding Contract	3/26/19	5:00 pm

## 3. SCOPE OF WORK

The City of Banning ("City") is requesting proposals from qualified firms to provide a detailed financial analysis of LMD No.1, as outlined below. The work shall be performed in a prompt, professional and workmanlike manner and in accordance with the standards of the profession, the CA Constitution, Landscaping and Lighting Act of 1972 and Prop 218 regulations.

### SCOPE OF WORK FOR FINANCIAL ANALYSIS AND REDEVELOPMENT OF LMD NO.1

Landscape Maintenance District (LMD) No. 1 in the City of Banning was established through the adoption of Resolution No. 1990-59 on August 14, 1990 (9 tracts), with another Tract, No. 22913 being annexed into the District in 1992. There are currently Four (4) Zones and 1,015 assessment units.

An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. A map displaying the District is attached. The City would like to hire a consultant with expertise in the Prop 218 process to: determine if the existing tracts are subject to the laws of Prop 218, the proper zones and assessment amounts for each tract, the basis of assessments, hold a Prop 218 Public Hearing and go through the process to increase the current assessment amounts, determine the estimated budget for the next 20 years to include capital improvement projects, contract maintenance costs and utility budgets, prepare necessary reports, and perform community outreach. In essence, a complete overhaul of the LMD No. 1 may be required including restructuring of the District Zones and assessments. The consultant is encouraged to recommend any additional tasks that are necessary to perform the work.

#### TASK 1. RESEARCH AND REVIEW THE HISTORY OF THE DISTRICT, CURRENT PROCESS FOR PROP 218 COMPLIANCE

Meet with City Staff, research and review past Engineer's Reports, tract maps, budgets and City Council staff reports and resolutions to determine if the tracts originally made a part of the LMD No. 1 (in 1990 and 1992) are subject to Prop 218 or if annual CPI increases can occur without Public Hearings. Review all documents for the past history of the City's Landscape Maintenance District and the impact of Proposition 218. Ensure that the current process, done in house, meets Prop 218 and the Landscaping and Lighting Act of 1972 regulations, including the language of the Resolutions and Engineer's report template used. Meet with City staff and City Attorney to determine the impact of Prop 218 and course of action to meet the City's goals and needs. Prepare meeting Agenda and minutes for all meetings and provide a Draft tentative schedule at the initial meeting to discuss.

#### TASK 2. DATA REVIEW

Collect and review all data related to the formation, annexation, budget and annual levy of the District including, but not limited to;

Prior years' Engineer's Reports and LMD Map with Four Zones,

Prior years' resolutions,

Landscape plans,

Landscape Improvement Plans and Costs for Improvement project in the future, including for 5 Tracts just prepared in the Fall of 2018

Prior years' Operation and Maintenance budgets (done by Contractor)

Prior years' Water and Electric Charges per meter within the District

### TASK 3. PREPARE PROJECT SCHEDULE

Based on the City Council agenda deadlines, legal counsel, staff requirements, and deadlines mandated by the Landscaping and Lighting Act of 1972 and Proposition 218, prepare a project schedule to ensure enrollment of the increased levy charges for FY 2020-2021 in a timely manner. The project schedule will address such key actions including: adoption of resolution of intention for increased assessments, preparation of Engineer's Report, holding of public meeting(s) for increases in existing assessments, and Public Hearing. The City wants the Public Hearing for the Prop 218 vote to be held by mid-November of 2019 at the latest. The consultant must ensure it has the staff to work on this project to meet this deadline. The City shall approve the project schedule and if it deems Task deadlines have to be moved up in time, Consultant shall adhere to the City's direction.

### TASK 4. RECOMMEND BENEFIT ASSESSMENTS AND ZONES, FINANCIAL BUDGET REPORT

The consultant shall prepare a detailed analysis and Financial Budget Report for all the existing tracts within the LMD. Review the existing budgets and assist with cost recovery accounting to achieve maximum cost to benefit equity and long term financial stability. Ensure the existing zones and assessment amounts for each tract are appropriate; if not justify and recommend changes. The budget developed should ensure there is adequate funding. Budget estimates will be determined and projected each year over the next 20 years and shall include City staff time, water, electric, operation and maintenance, plant replacement, irrigation repair, etc., incidentals, and improvement (CIP) cost projections with appropriate escalators. Determine if additional revenue is needed for CIP improvements, such as landscape design, irrigation and plant replacement, water resistant plants, etc. over the next 20 years and how to collect this. A recommendation will be prepared and provide suggestions to ensure the LMD can run itself without deficits and have a balanced budget. Determine and recommend new Assessment Units amounts, new Zones or Zone changes or restructuring. Ensure that the current method of apportionment and allocation of the net costs provide a reasonable special benefit nexus to all the properties within the affected zones. Prepare five copies of the Draft for City comment and review and then one Final Draft incorporating comments. Once staff approves the Final Draft Report, submit 5 copies and an electronic version to the City. Meet with City staff and possibly the City Council to discuss the Financial Budget Report.

### TASK 5. PUBLIC OUTREACH/ CITY COUNCIL MEETINGS AND PRESENTATIONS

Perform up to three (3) community outreach sessions and attend up to five (5) City Council meetings and Hearings as requested by City staff for this project. Prepare all necessary outreach materials, presentation materials, exhibits, boards, PowerPoint presentations, etc. after submitting a Draft and then obtaining Final approval from City staff. Prepare a flyer and Frequently Asked Questions (FAQ) guide to be mailed to affected residents explaining the increased assessments, associated budget and the components of the proposed assessments, Zones, as well as possible assessment options, CIP plans and the assessment balloting process



and proposed improvement changes. Also work with City IT staff to prepare a notice/information/ FAQ page for the City's website.

Prepare and mail to all property owners of record, an invitation/ informational piece that provides general background information and stresses the importance of the property owner's participation in the assessment process, to the scheduled workshop(s), community meetings and Public Hearing. At the workshops, public meetings and Hearings, make presentations and respond to property owners concerns about the District. Answer written and oral questions received during the project by email, phone or mail. Make any necessary adjustments to assessment spreads or as directed by City Council based on these meetings and Public Hearing.

#### TASK 6. INCREASED LEVY ASSESSMENT BALLOTS/ PUBLIC NOTICE AND HEARING/ ASSESSMENT BALLOT PROCEEDINGS

The consultant shall be given a sample ballot and Public Hearing Notice and then prepare a Draft Ballot and Notice of Public Hearing for the City's legal counsel and Engineering staff to review and approve for each Zone. New assessments will have to be justified in the form of a Financial Budget Report, prepared as part of Task 4. The consultant will then prepare the property owner Public Hearing Notices and Ballots in English and Spanish to meet the requirements of Proposition 218 and the California Constitution. The ballot preparation will include: Calculation of benefit for each parcel, Dollar amount of benefit on the ballots, as identified for each parcel, Bar coding on the ballots for ease of tabulation (if the City upgrades to a bar code system), Mail merge, printing, folding, stuffing and stamping of ballots, Obtaining property owner address labels using the latest Riverside County data and prepare labels, Mailing of Ballots, FAQ sheet and Notice of Public Hearing, Remail any undeliverable Notices and Ballots, Creation of an excel spreadsheet to accept bar coded ballot tabulation if the City upgrades to this system and assist the City with Ballot counting. Currently, Ballot tallying is performed manually. However, the Consultant shall assist with the tallying process by preparing the associated spreadsheet of property owners and their response as approved by the City Clerk.

Ballots must be tabulated by an impartial party. The consultant will be present at the Public Hearing to assist with any questions regarding the ballots and process, but cannot collect or tabulate the ballots for the City.

#### TASK 7. PROVIDE DATA AND ALL REPORTS IN COMPATIBLE FORMAT

Upon determination of format needs, consultant shall provide all data and Reports in compatible format for use by appropriate City Staff. Also prepare the Engineer's Report for the County in the appropriate computer software used by Riverside County Assessor's Office. Utilize the County's software to submit the property owners and assessments, the Roll.

#### TASK 8. PROVIDE ALL MAPS AND EXHIBITS

Consultant shall prepare a new LMD NO. 1 map on GIS and in a workable Microsoft Publisher document as well for use in the Report and City's GIS system. Submit Draft, Final Draft and Final version to City staff for review and approval. Collect plans and specifications for the

proposed improvements; prepare assessment diagrams and other exhibits as requested by City staff for use in public meetings or hearings.

#### TASK 9. PRELIMINARY ENGINEER'S REPORT

Prepare preliminary Engineer's Reports (five copies) for Staff review and approval pursuant to Chapter 1, Article 4, of the Landscaping and Lighting Act of 1972 and Proposition 218 incorporating the new assessments. In the event the Prop 218 vote does not pass, a revised Engineer's Report for FY 20/21 will be prepared in house using the property owner information obtained by the Consultant.

#### TASK 10. REPORT REPRODUCTION

Upon approval of preliminary Engineer's Report, the Consultant will prepare 10 copies of each Engineer's Report with any required revisions for use at Public Hearing and council actions. Also provide an electronic version to staff.

#### TASK 11. PUBLIC SERVICE/INFORMATION

At all of the public meetings and Hearings, the Consultant will be available to respond to property owners concerns about the District. Also make any necessary adjustments to assessment spreads or as directed by City Council.

#### TASK 12. ANNUAL LEVY SUBMITTAL.

Submittal of Annual Increased Levies to Riverside County Auditor/Controller in the format they require, if the Prop 218 vote passes and the new assessments are approved.

#### TASK 13. ADDITIONAL/OPTIONAL TASKS

The Consultant shall add any additional, optional task and associated costs that may be necessary under Task 13 for the City to consider.

### **4. PROPOSAL FORMAT GUIDELINES**

Interested entities or Consultants are to provide the City of Banning with a thorough proposal using the following guidelines:

Each proposal will adhere to the following order and content of sections. Proposal should be straightforward, concise and provide "layman" explanations of technical terms that are used. Emphasis should be concentrated on conforming to the RFP instructions, responding to the RFP requirements, and on providing a complete and clear description of the offer. Proposals which appear unrealistic in terms of technical commitments, lack of technical competence or are indicative of failure to comprehend the complexity and risk of this contract may be rejected. The following proposal sections are to be included in the Proposer's response:



- **Vendor Cover Letter**

A cover letter, not to exceed three pages in length, should summarize key elements of the proposal. An individual authorized to bind the consultant must sign the letter. The letter must stipulate that the proposal price will be valid for a period of at least 180 days. Indicate the address and telephone number of the Consultant's office located nearest to Banning, California and the office from which the project will be managed.

- **Background and Project Summary Section**

The Background and Project Summary Section should describe your understanding of the City, the work to be done, and the objectives to be accomplished. Refer to Scope of Work of this RFP.

- **Methodology Section**

Provide a detailed description of the approach and methodology to be used to accomplish the Scope of Work of this RFP. The Methodology Section should include:

1. An implementation plan that describes in detail (i) the methods, including controls by which your firm or entity manages projects of the type sought by this RFP; (ii) methodology for soliciting and documenting views of internal and external stakeholders; (iii) and any other project management or implementation strategies or techniques that the respondent intends to employ in carrying out the work.
2. Detailed description of efforts your firm or entity will undertake to achieve client satisfaction and to satisfy the requirements of the "Scope of Work" section.
3. **Detailed project schedule**, identifying all tasks and deliverables to be performed, durations for each task, and overall time of completion, including a complete transition plan. Include your plan to deal with fluctuation in service needs and any associated price adjustments.
4. Detailed description of specific tasks you will require from City staff. Explain what the respective roles of City staff and your staff would be to complete the tasks specified in the Scope of Work.
5. Proposers are encouraged to provide additional innovative and/or creative approaches for providing the service that will maximize efficient, cost-effective operations or increased performance capabilities. In addition, the City will consider proposals that offer alternative service delivery means and methods for the services desired.
6. Proposers are also requested to identify any City owned facilities or property which Proposer would propose to use or lease, purchase, or rent from the City in connection with the services to be performed, including information about the

terms of any proposed lease, purchase or use of such equipment and facilities, and how this proposed structure affects the overall cost proposal to the City, if applicable.

- **Staffing**

Provide a list of individual(s) who will be working on this project and indicate the functions that each will perform and anticipated hours of service of each individual. Include a resume for each designated individual.

Upon award and during the contract period, if the Consultant chooses to assign different personnel to the project, the Consultant must submit their names and qualifications including information listed above to the City for approval before they begin work.

- **Qualifications**

The information requested in this section should describe the qualifications of the firm or entity, key staff and sub-contractors performing projects within the past five years that are similar in size and scope to demonstrate competence to perform these services. Information shall include:

Names of key staff that participated on named projects and their specific responsibilities with respect to this scope of work.

A summary of your firm's or entity's demonstrated capability, including length of time that your firm has provided the services being requested in this Request for Proposal.

For private Proposers, provide at least three references that received similar services from your firm. The City of Banning reserves the right to contact any of the organizations or individuals listed. Information provided shall include:

- Client Name
- Project Description
- Project start and end dates
- Client project manager name, telephone number, and **e-mail address**.

Any public entity which submits a proposal should describe in detail how it currently performs services like those identified in the scope of work within its or other jurisdictions, including photographs, written policies and/or video of services provided. If you have performed these services under contract for another public entity, please provide references for those entities as set forth above for private Proposers.

- **Financial Capacity**

Provide the Proposer's latest audited financial statement or other pertinent information such as internal unaudited financial statements and financial references to allow the City to reasonably formulate a determination about the financial capacity of the Proposer. Describe any administrative proceedings, claims, lawsuits, or other exposures pending against the Proposer.

- **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.

- **Disclosure**

Please disclose any and all past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or family member of any current Banning elected official, appointed official, or City employee. ***Any past or current business relationship may not disqualify the firm from consideration.***

- **Sample Agreement**

The firm selected by the City will be required to execute an Agreement for Services with the City. The form of the Agreement is enclosed as an online attachment, but may be modified to suit the specific services and needs of the City. If a Proposer has any exceptions or conditions to the Agreement, these must be submitted for consideration with the proposal. Otherwise, the Proposer will be deemed to have accepted the form of Agreement. See Section 13, below.

- **Checklist of Proposal Pages to Submit as part of Proposal**

As a convenience to Proposers, following is a list of the forms, included as online attachments to this RFP, which should be included with proposals:

- 1. Ex Parte Communications Certificate**

Proposers and Proposers' representatives should not communicate with the City Council members about this RFP. In addition, Proposers and Proposers' representatives should not communicate outside the procedures set forth in this RFP with an officer, employee or agent of the City, including any member of the evaluation panel, with the exception of the RFP Facilitator, regarding this RFP until after Contract Award. Proposers and their representatives are not prohibited, however, from making oral statements or presentations in public to one or more representatives of the City during a public meeting.

A "Proposer" or "Proposer's representative" includes all of the Proposer's employees, officers, directors, consultants and agents, any subcontractors or suppliers listed in the

Proposer's proposal, and any individual or entity who has been requested by the Proposer to contact the City on the Proposer's behalf. Proposers shall include the “***Ex Parte Communications Certificate***” form (See Online Attachment) with their proposals certifying that they have not had or directed prohibited communications as described in this section.

## **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. (See Online Attachment, “***Disqualifications Questionnaire***”).

## **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 using the attached “***Disclosure of Government Positions***” form. (See Online Attachment).

## **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.

## **5. PROCESS FOR SUBMITTING PROPOSALS**

### **• Content of Proposal**

The proposal must be submitted using the format as indicated in the proposal format guidelines.



- **Preparation of Proposal**

Each proposal shall be prepared simply and economically, avoiding the use of elaborate promotional material beyond those sufficient to provide a complete, accurate and reliable presentation.

- **Submission of Proposals**

*Complete proposals must be submitted and received **BEFORE** the deadline.*

*Proposals will not be accepted after this deadline.*

*Proposals submitted in paper form, faxed or e-mailed will not be accepted.*

Submit proposals electronically by visiting the City of Banning Planetbids Vendor Portal at <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Click on the “Bid Opportunities” link. Next, “Log In.” Enter your User Name and Password. Click “Bid Opportunities” and then select the Request for Proposal (RFP). Click on “Place eBid” and follow the instructions. Financial Statements only can be delivered separately to the Purchasing Division in a sealed envelope marked confidential if preferred. The Financial Statement shall be to the attention of Shiloh Rogers in a sealed envelope identified on the outside with the Bidder’s Business Name, Proposer Identity— with the RFP number and the due date. Be sure to label and deliver following same deadline requirements.

- **Inquiries**

*Questions about this RFP must be directed in writing, via the City of Banning, Planetbids Vendor Portal:* <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>.

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addenda, responses to questions received, and additional information will be posted to the Banning online bid system. Proposers should check the web page above regularly for new information. The City will endeavor to answer all written questions timely that are received no later than the deadline listed in the schedule of events. The City reserves the right not to answer all questions.

From the date that this RFP is issued until a firm or entity is selected and the selection is announced, firms or public entities are not allowed to communicate outside the process set forth in this RFP with any City employee other than the contracting officer listed above regarding this RFP. The City reserves the right to reject any proposal for violation of this provision. No questions other than written will be accepted, and no response other than written will be binding upon the City.

- **Conditions for Proposal Acceptance**

This RFP does not commit the City to award a contract or to pay any costs incurred for any services. The City, at its sole discretion, reserves the right to accept or reject any or all proposals received as a result of this RFP, to negotiate with any qualified source(s), or to

cancel this RFP in part or in its entirety. The City may waive any irregularity in any proposal. All proposals will become the property of the City of Banning, USA. If any proprietary information is contained in the proposal, it should be clearly identified.

## 6. EVALUATION CRITERIA

The City's evaluation and selection process will be conducted in accordance with the City's Purchasing and Procedures Policy (Policy). The lowest responsible bidder will be determined based on evaluation of qualitative factors in addition to price. At all times during the evaluation process, the following criteria will be used. Sub-criteria are not necessarily listed in order of importance. Additional sub criteria that logically fit within a particular evaluation criteria may also be considered even if not specified below.

### 1. Qualifications of Entity and Key Personnel-----50%

Includes ability to provide the requested scope of services, the Proposer's financial capacity, recent experience conducting work of similar scope, complexity, and magnitude for other public agencies of similar size, references.

Experience with preparing a financial analysis of a LMD, performing public outreach and the Prop 218 vote process for other agencies is highly preferred. Consultant team's overall experience and qualifications to perform the financial analysis and redevelopment of LMD No. 1 tasks.

Qualifications of the project manager, and consultant staff assigned to provide the services mentioned above.

### 2. Approach to Providing the Requested Scope of Services-----35%

Includes an understanding of the RFP and of the project's scope of services, knowledge of applicable laws and regulations related to Prop 218 and Landscape and Maintenance Districts, the Landscaping and Lighting Act of 1972 regulations, the CA Constitution, and how the services will be provided, along with a schedule. Discuss the firm's understanding of the tasks listed above in the "Scope of Work" and how the firm will approach providing services to the City of Banning for this project. Understanding of the Scope of Services and the approach the consultant will take in providing these services.

Each of the Scope of Work/ 13 Tasks listed above shall be addressed in the proposal, with a Fee for each Task.

### 3. Price Proposal-----15%

Price Proposals will be evaluated on the basis of the Grand Total Amount (Not to Exceed) submitted in the Proposal Pages.

Include a Labor Classification and Hourly Fee Schedule sheet for the Firm for FY 18/19 and 19/20, if 19/20 is available.

## 7. **EVALUATION OF PROPOSALS AND SELECTION PROCESS**

In accordance with its Policy, the City will adhere to the following procedures in evaluating proposals. An Evaluation/Selection Committee (Committee), which may include members of the City's staff and possibly one or more outside experts, will screen and review all proposals according to the weighted criteria set forth above. While price is one basic factor for award, it is not the sole consideration.

### A. **Responsiveness Screening**

Proposals will first be screened to ensure responsiveness to the RFP. The City may reject as non-responsive any proposal that does not include the documents required to be submitted by this RFP. At any time during the evaluation process, the City reserves the right to request clarifications or additional information from any or all Proposers regarding their proposals.

### B. **Initial Proposal Review**

The Committee will initially review and score all responsive written proposals based upon the Evaluation Criteria set forth above. The Committee may also contact Proposer's references. Proposals that receive the highest evaluation scores may be invited to the next stage of the evaluation process. The City may reject any proposal in which a Proposer's approach, qualifications, or price is not considered acceptable by the City. An unacceptable proposal is one that would have to be substantially rewritten to make it acceptable. The City may conclude the evaluation process at this point and recommend award to the lowest responsible bidder. Alternatively, the City may elect to negotiate directly with one or more Proposers to obtain the best result for the City prior to making a recommendation or selection.

### C. **Interviews, Reference Checks, Revised Proposals, Discussions**

Following the initial screening and review of proposals, the Proposers included in this stage of the evaluation process may be invited to participate in an oral interview. Interviews, if held, are tentatively scheduled for the week indicated in the schedule of events and will be conducted at City of Banning City Hall, 99 E. Ramsey St., Banning, CA 92220. This date is subject to change. The individual(s) from Proposer's firm or entity that will be directly responsible for carrying out the contract, if awarded, should be present at the oral interview. The oral interview may, but is not required to, use a written question/answer format for the purpose of clarifying the intent of any portions of the proposal.

In addition to conducting an oral interview, the City may during this stage of the evaluation process also contact and evaluate the Proposer's references, contact any Proposer to clarify any response or request revised or additional information, contact any current users of a Proposer's services, solicit information from any available source



concerning any aspect of a proposal, and seek and review any other information deemed pertinent to the evaluation process.

Following conclusion of this stage of the evaluation process, the Committee will again rank all Proposers according to the evaluation criteria set forth above. The Committee may conclude the evaluation process at this point, and make a recommendation for award, or it may request Best and Final Offers from Proposers. The City may accept the proposal or negotiate the terms and conditions of the agreement with the highest ranked firm, which shall be determined to be the lowest responsible bidder. The City may recommend award without Best and Final Offers, so Proposers should include their best proposal with their initial submission.

Recommendation for award is contingent upon the successful negotiation of final contract terms. Negotiations shall be confidential and not subject to disclosure to competing Proposers unless an agreement is reached. If contract negotiations cannot be concluded successfully within a time period determined by the City, the City may terminate negotiations and commence negotiations with the next highest scoring Proposer or withdraw the RFP.

## **8. PROTEST PROCEDURES**

Failure to comply with the rules set forth herein may result in rejection of the protest. Protests based upon restrictive specifications or alleged improprieties in the proposal procedure which are apparent or reasonably should have been discovered prior to receipt of proposals shall be filed in writing with the RFP Facilitator at least 10 calendar days prior to the deadline for receipt of proposals. The protest must clearly specify in writing the grounds and evidence on which the protest is based.

Protests based upon alleged improprieties that are not apparent or which could not reasonably have been discovered prior to submission date of the proposals, such as disputes over the staff recommendation for contract award, shall be submitted in writing to the RFP Facilitator, within forty-eight hours from receipt of the notice from the City advising of staff's recommendation for award of contract. The protest must clearly specify in writing the grounds and evidence on which the protest is based. The RFP Facilitator will respond to the protest in writing at least three days prior to the meeting at which staff's recommendation to the City Council will be considered. Should Proposer decide to appeal the response of the RFP Facilitator, and pursue its protest at the Council meeting, it will notify the RFP Facilitator of its intention at least two days prior to the scheduled meeting.

## **9. CONFIDENTIALITY**

The California Public Records Act (Cal. Govt. Code Sections 6250 et seq.) mandates public access to government records. Therefore, unless information is exempt from disclosure by law, the content of any request for explanation, exception, or substitution, response to this RFP, protest, or any other written communication between the City and Proposer, shall be available to

the public. The City intends to release all public portions of the proposals following the evaluation process at such time as a recommendation is made to the City Council.

If Proposer believes any communication contains trade secrets or other proprietary information that the Proposer believes would cause substantial injury to the Proposer's competitive position if disclosed, the Proposer shall request that the City withhold from disclosure the proprietary information by marking each page containing such proprietary information as confidential. Proposer may not designate its entire proposal as confidential nor designate its Price Proposal as confidential.

Submission of a proposal shall indicate that, if Proposer requests that the City withhold from disclosure information identified as confidential, and the City complies with the Proposer's request, Proposer shall assume all responsibility for any challenges resulting from the non-disclosure, indemnify and hold harmless the City from and against all damages (including but not limited to attorney's fees that may be awarded to the party requesting the Proposer information), and pay any and all costs and expenses related to the withholding of Proposer information. Proposer shall not make a claim, sue, or maintain any legal action against the City or its directors, officers, employees, or agents concerning the disclosure, or withholding from disclosure, of any Proposer information. If Proposer does not request that the City withhold from disclosure information identified as confidential, the City shall have no obligation to withhold the information from disclosure and may release the information sought without any liability to the City.

#### **10. 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.

#### **11. CONDITIONS TO AGREEMENT, IF ANY.**

The selected Proposer will execute an Agreement for Services with the City describing the Scope of Services to be performed, the schedule for completion of the services, compensation, and other pertinent provisions. The contract shall follow the sample form of Agreement provided as (See Online Attachment, "*Professional Services Agreement Sample*"), to this RFP, which may be modified by City. All Proposers are directed to particularly review the indemnification and insurance requirements set forth in the sample Agreement.

The terms of the agreement, including insurance requirements have been mandated by the City and can be modified only if extraordinary circumstances exist. Submittal of a proposal shall be deemed acceptance of all the terms set forth in this RFP and the sample Agreement for Services unless the Proposer includes with its proposal, in writing, any conditions or exceptions requested by the Proposer to the proposed Agreement. In accordance with the Municipal Code, the City

may consider the scope and number of conditions in evaluation proposals and determining the lowest responsible bidder.

## **12. STANDARD TERMS AND CONDITIONS**

### **Addenda**

The City reserves the right to amend or supplement this RFP prior to the proposal due date. All addendums and additional information will be posted to the Banning Procurement Registry, <http://www.planetbids.com/portal/portal.cfm?CompanyID=33077>. Proposers should check this web page daily for new information.

### **Cost for Preparing Proposal**

The cost for developing the proposal is the sole responsibility of the Proposer. All proposals submitted become the property of the City.

### **Insurance Requirements**

Proposers shall adhere to the City's standard insurance requirements outlined in the enclosed Sample Professional Services Agreement.

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.

**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. 19-018 the RFP Financial Analysis and Redevelopment of LMD No.1. at any time after the issuance of this RFP solicitation.

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**OR**

I certify that Proposer or Proposer's representatives have communicated after the issuance of this RFP solicitation with a City Councilmember concerning the RFP No. 19-018 Financial Analysis and Redevelopment of LMD No.1. A copy of all such communications is attached to this form for public distribution.

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## 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 for ALL 13 TASKS (if Firm does NOT have an Additional/Optional Task No. 13, then submit your proposal based on the 12 TASKS). All proposals shall include a full and complete breakdown of all the costs, and proposed fees including but not limited to: hourly rates, staff member name/title, number of hours, reimbursable expenses and/or rates, mileage and/or travel cost, miscellaneous fees, photocopy charges, etc., and include a Grand Total Amount to complete this project and fulfill the entire Scope of Work/Services herein.

<b>Type or description of cost/fee (required)</b>	<b>Title/Classification and Unit price/hourly rate (required)</b>	<b>Quantity (required)</b>	<b>Total Task Price (required)</b>
Task 1. RESEARCH AND REVIEW THE HISTORY OF THE DISTRICT, CURRENT PROCESS FOR PROP 218 COMPLIANCE	EXAMPLE.  Project Manager \$150.00/hour  Financial Analyst \$100.00/hr	10 hrs  20 hrs	\$1,500.00  \$2,000.00  TOTAL FOR TASK: \$3,500.00
Task 2.	\$		\$
Task 3.	\$		\$
Task 4.	\$		\$
Task 5.	\$		\$
Task 6.	\$		\$
Task 7.	\$		\$
Task 8.	\$		\$
Task 9.	\$		\$
Task 10.	\$		\$
Task 11.	\$		\$



Task 12.	\$		\$
Task 13. Additional/Optional Tasks (if applicable)	\$		\$

**Grand Total Amount: \$** \_\_\_\_\_

Authorized Signature: \_\_\_\_\_ Date: \_\_\_\_\_

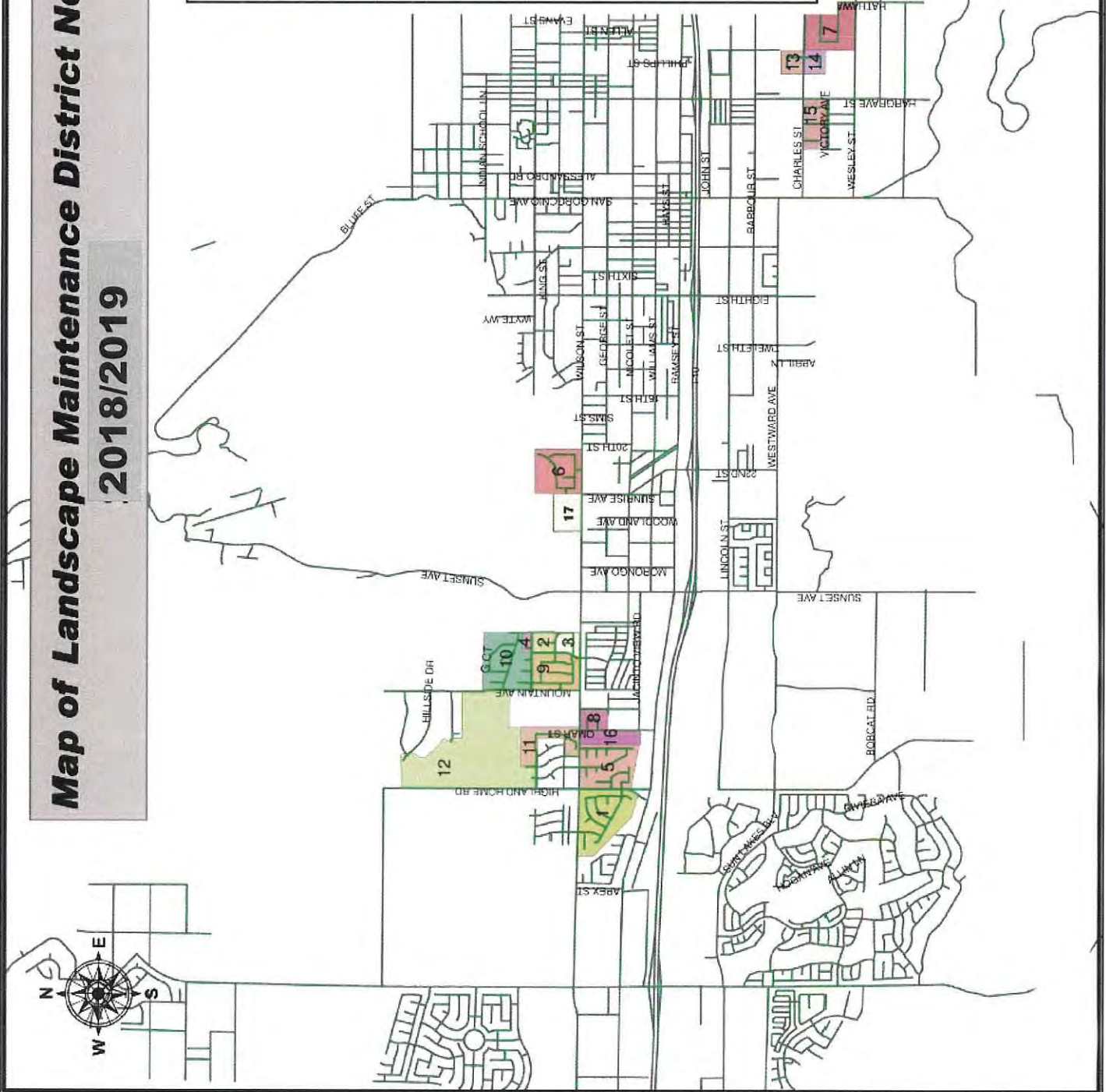
# Map of Landscape Maintenance District No. 1

2018/2019

## Legend

### Existing Tracts

1. 21882 Snow Creek I
2. 22810 Dev. Corp
3. 22811 Dev. Corp
4. 22913 Arce Bros.
5. 23446 Highland Estates
6. 23598 Snow Creek II
7. 28252 Fair Oaks
8. 29721 The Pines
9. 30186 Wilson Homes
10. 30222 Wilson Homes
11. 30793 Fiesta Collection
12. 30906 Evergreen Estates
13. 31833 Fair Oaks
14. 31834 Fair Oaks
15. 31835 Fair Oaks
16. 32109 Sunset Ridge
17. 30642 Diversified Pacific Opportunity Fund



Start Week Dec 6, 2018

Month	December, 2018	January, 2019	February, 2019	March, 2019	April, 2019	May, 2019		Notes
Starting	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	
Ad Due	X							11/27/2018
Publication Release	X							12/6/2018
RFI Deadline		X						1/8/2019
RFI Response		X						1/17/2019
Bids Due			X					2/5/2019
Evaluation Period			X	X	X			Due 2/26/2019
Staff Report Due				X				3/4/2019
CC Meeting				X				3/26/2019
NTP							X	5/28/2019
Comments:								

**PROFESSIONAL SERVICES AGREEMENT**

**By and Between**

**THE CITY OF BANNING**

**and**

**VENDOR**

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

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this 22nd day of May, 2018 by and between the **CITY OF BANNING, a municipal corporation** ("City") and **VENDOR NAME, a California corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids, the performance of the services for the Insert Type of Work to be Completed prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Section 1 of this Agreement and desire that the terms of that performance be as particularly defined and described herein.

**OPERATIVE PROVISIONS**

NOW, THEREFORE, in consideration of the mutual promises and covenants made by the Parties and contained herein and other consideration, the value and adequacy of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1. SERVICES OF CONSULTANT**

**1.1 Scope of Services.**

In compliance with all terms and conditions of this Agreement, the Consultant shall provide those services specified in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by this reference, which services may be referred to herein as the "services" or "work" hereunder and which relate the Insert Type of Work to be Completed prepared in connection therewith. As a material inducement to the City entering into this Agreement, Consultant represents and warrants that it has the qualifications, experience, and facilities necessary to properly perform the services required under this Agreement in a thorough, competent, and



professional manner, and is experienced in performing the work and services contemplated herein. Consultant shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Consultant covenants that it shall follow the highest professional standards in performing the work and services required hereunder and that all materials will be of good quality, fit for the purpose intended. For purposes of this Agreement, the phrase “highest professional standards” shall mean those standards of practice recognized by one or more first-class firms performing similar work under similar circumstances.

#### 1.2 Consultant’s Proposal.

This Agreement shall include the Request for Proposal or Invitation for Bids (“Contract Documents”) and the Scope of Service shall include the Consultant’s scope of work or in Consultant’s accepted bid proposal (“Accepted Bid”) shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the Contract Documents, Accepted Bid, and/or Agreement, the terms of this Agreement shall govern.

#### 1.3 Compliance with Law.

Consultant shall keep itself informed concerning, and shall render all services hereunder in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental entity having jurisdiction in effect at the time service is rendered.

#### 1.4 Licenses, Permits, Fees and Assessments.

Consultant shall obtain at its sole cost and expense such licenses, permits and approvals as may be required by law for the performance of the services required by this Agreement. Consultant shall have the sole obligation to pay for any fees, assessments and taxes, plus applicable penalties and interest, which may be imposed by law and arise from or are necessary for the Consultant’s performance of the services required by this Agreement, and shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against any such fees, assessments, taxes penalties or interest levied, assessed or imposed against City hereunder.

#### 1.5 Familiarity with Work.

By executing this Agreement, Consultant warrants that Consultant (i) has thoroughly investigated and considered the scope of services to be performed, (ii) has carefully considered how the services should be performed, and (iii) fully understands the facilities, difficulties and restrictions attending performance of the services under this Agreement. If the services involve work upon any site, Consultant warrants that Consultant has or will investigate the site and is or will be fully acquainted with the conditions there existing, prior to commencement of services hereunder. Should the Consultant discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Consultant shall immediately inform the City of such fact and shall not proceed except at City’s risk until written instructions are received from the Contract Officer.

#### 1.6 Care of Work.

The Consultant shall adopt reasonable methods during the life of the Agreement to furnish continuous protection to the work, and the equipment, materials, papers, documents, plans, studies and/or other components thereof to prevent losses or damages, and shall be responsible for all such damages, to persons or property, until acceptance of the work by City, except such losses or damages as may be caused by City's own negligence.

#### 1.7 Further Responsibilities of Parties.

Both Parties agree to use reasonable care and diligence to perform their respective obligations under this Agreement. Both Parties agree to act in good faith to execute all instruments, prepare all documents and take all actions as may be reasonable necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither Party shall be responsible for the service of the other.

#### 1.8 Additional Services.

City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to five percent (5%) of the Contract Sum or \$25,000, whichever is less; or in the time to perform of up to one hundred eighty (180) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. It is expressly understood by Consultant that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Consultant hereby acknowledges that it accepts the risk that the services to be provided pursuant to the Scope of Services may be more costly or time consuming than Consultant anticipates and that Consultant shall not be entitled to additional compensation therefor.

#### 1.9 Facilities and Equipment.

Except as otherwise provided, Consultant shall, at its own cost and expense, provide all facilities and equipment necessary to perform the services required by this Agreement. City shall make available to Consultant only physical facilities such as desk, filing cabinets, and conference space ("City Facilities"), as may be reasonably necessary for Consultant's use while consulting with City employees and reviewing records and the information in possession of City. The location, quality, and time of furnishing City Facilities shall be in the sole discretion of City. In no event shall City be required to furnish any facilities that may involve incurring any direct expense, including but not limited to computer, long distance telephone, network data, internet or other communication charges, vehicles and reproduction facilities.



#### 1.10 Special Requirements.

Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

### **ARTICLE 2. COMPENSATION AND METHOD OF PAYMENT.**

#### 2.1 Contract Sum.

Subject to any limitations set forth in this Agreement, City agrees to pay Consultant the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed WRITTEN AMOUNT IN DOLLARS (\$0.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.8.

#### 2.2 Method of Compensation.

The method of compensation may include: (i) a lump sum payment upon completion, (ii) payment in accordance with specified tasks or the percentage of completion of the services, (iii) payment for time and materials based upon the Consultant's rates as specified in the Schedule of Compensation, provided that time estimates are provided for the performance of sub tasks, but not exceeding the Contract Sum or (iv) such other methods as may be specified in the Schedule of Compensation.

#### 2.3 Reimbursable Expenses.

Compensation may include reimbursement for actual and necessary expenditures for reproduction costs, telephone expenses, and travel expenses approved by the Contract Officer in advance, or actual sub-consultant expenses if an approved sub-consultant pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Consultant at all project meetings reasonably deemed necessary by the City. Coordination of the performance of the work with City is a critical component of the services. If Consultant is required to attend additional meetings to facilitate such coordination, Consultant shall not be entitled to any additional compensation for attending said meetings.

#### 2.4 Invoices.

Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-consultant contracts. Sub-consultant charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City may independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City, or as provided in Section 7.3. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute waiver of any rights or remedies provided herein or any applicable law.

### 2.5 Waiver.

Payment to Consultant for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Consultant.

## **ARTICLE 3. PERFORMANCE SCHEDULE**

### 3.1 Time of Essence.

Time is of the essence in the performance of this Agreement.

### 3.2 Schedule of Performance.

Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively.

### 3.3 Force Majeure.

The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the Parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

### 3.4 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall continue in full force and effect until completion of the services but not exceeding three (3) years from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

## **ARTICLE 4. COORDINATION OF WORK**

### 4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

\_\_\_\_\_  
(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 \$2,000,000 policy aggregate.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall “follow form” and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.



Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

## 5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and no contribution shall be required of City. The coverage shall contain no special limitations on the scope of protection afforded to the City and its officers, officials, employees, agents and volunteers. The Workers' Compensation insurance policy shall contain a waiver of subrogation as to City and its officers, officials, employees, agents and volunteers. Should Consultant maintain insurance with broader coverage and/or limits of liability greater than those shown above, City requires and shall be entitled to the broader coverage and/or the higher limits of liability maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City.

If the Professional Liability (Errors and Omissions) insurance policy is written on a claims-made form:

1. The retroactive date must be shown, and must be before the effective date of the Agreement or the commencement of work by Consultant.
2. Insurance must be maintained and evidence of insurance must be provided for at least three years after any expiration or termination of the Agreement or, in the alternative, the policy shall be endorsed to provide not less than a three-year discovery period.

3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Agreement or the commencement of work by Consultant, Consultant must purchase extended reporting coverage for a minimum of three years following the expiration or termination of the Agreement.

4. A copy of the claims reporting requirements must be submitted to City for review.

5. These requirements shall survive expiration or termination of the Agreement.

Consultant shall furnish City with all certificate(s) and applicable endorsements effecting coverage required hereunder. All certificates and applicable endorsements are to be received and approved by the City Manager or his/her designee prior to City's execution of the Agreement and before work commences.

If at any time during the life of this Agreement or any extension, Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, all work under this Agreement shall be discontinued immediately, and all payments due or that become due to Consultant shall be withheld until notice is received by City that the required insurance has been restored to full force and effect and that the premiums therefore have been paid for a period satisfactory to City. Any failure to maintain the required insurance shall be sufficient cause for City to terminate this Agreement. No action taken by City hereunder shall in any way relieve Consultant of its responsibilities under this Agreement.

Upon request of City, Consultant shall immediately furnish City with a complete copy of any insurance policy required under this Agreement, including all endorsements, with said copy certified by the underwriter to be a true and correct copy of the original policy. This requirement shall survive expiration or termination of this Agreement.

The fact that insurance is obtained by Consultant shall not be deemed to release or diminish the liability of Consultant, including, without limitation, liability under the indemnity provisions of this Agreement. The duty to indemnify City and its officers, officials, employees, agents and volunteers shall apply to all claims and liability regardless of whether any insurance policies are applicable. The policy limits do not act as a limitation upon the amount of indemnification to be provided by Consultant. Approval or purchase of any insurance contracts or policies shall in no way relieve from liability nor limit the liability of Consultant, its principals, officers, employees, agents, persons under the supervision of Consultant, vendors, suppliers, invitees, subcontractors, or anyone employed directly or indirectly by any of them.

If Consultant should subcontract all or any portion of the services to be performed under this Agreement, Consultant shall require each subcontractor to provide insurance protection in favor of City and its officers, officials, employees, agents and volunteers in accordance with the terms of each of the preceding paragraphs, except that the subcontractors' certificates and endorsements shall be on file with Consultant and City prior to the commencement of any work by the subcontractor.



### 5.3 Indemnification, Hold Harmless, and Duty to Defend.

#### A. Indemnities.

1) To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively “Indemnitees”), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, expenses, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively “Liabilities”), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Liabilities with counsel of the Indemnitees’ choice, and shall pay all costs and expenses, including all attorneys’ fees and experts’ costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers’ compensation law regarding Consultant and Consultant’s employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers’ compensation laws. City may offset against the amount of any fees due to Consultant under this Agreement any amount due to City from Consultant as a result of Consultant’s failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph A.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnity obligations, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Liabilities at law or in equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant’s subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, consultants or their officers, agents, servants or employees (or any entity or individual that Consultant’s subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees’ active or passive negligence, except for Liabilities arising from the sole negligence or willful misconduct of the Indemnitees as determined by court decision or by the agreement of the Parties.

B. Workers' Compensation Acts not Limiting. Consultant's indemnifications and obligations under this Section, or any other provision of this Agreement, shall not be limited by the provisions of any workers' compensation act or similar act. Consultant expressly waives its statutory immunity under such statutes or laws as to City, its officers, agents, employees and volunteers.

C. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The indemnities in this Section shall apply regardless of whether or not any insurance policies are determined to be applicable to the Liabilities, tax, assessment, penalty or interest asserted against City.

D. Survival of Terms. Consultant's indemnifications and obligations under this Section shall survive the expiration or termination of this Agreement.

## **ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**

### **6.1 Records.**

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

### **6.2 Reports.**

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

### 6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the “documents and materials”) prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City’s sole risk and without liability to Consultant, and Consultant’s guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

### 6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered “voluntary” provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or sub-consultant of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney’s fees, caused by or incurred as a result of Consultant’s conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests

provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

## **ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION**

### **7.1 California Law.**

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

### **7.2 Disputes; Default.**

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

### **7.3 Retention of Funds.**

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.



#### 7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

#### 7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party.

#### 7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

#### 7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

#### 7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon

sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

#### 7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

#### 7.10 Attorneys' Fees.

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

### **ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION**

#### 8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

## 8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

## 8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

## 8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

# ARTICLE 9. MISCELLANEOUS PROVISIONS

## 9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager



and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

#### 9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

#### 9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

#### 9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

#### 9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

#### 9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

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

CITY OF BANNING

CONSULTANT

\_\_\_\_\_  
Rochelle Clayton, Interim City Manager

By: \_\_\_\_\_  
NAME:  
TITLE:

By: \_\_\_\_\_  
NAME:  
TITLE:

ATTEST:

\_\_\_\_\_  
Sonja De La Fuente, Deputy City Clerk

\_\_\_\_\_  
Tax ID No.

APPROVED AS TO FORM:  
Richards, Watson, Gershon

\_\_\_\_\_  
Kevin G. Ennis, Esq., City Attorney

**Two signatures are required if a corporation**

**NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.**

## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose 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	
<div><div>TITLE(S)</div><div><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div><div><input type="checkbox"/> ATTORNEY-IN-FACT</div><div><input type="checkbox"/> TRUSTEE(S)</div><div><input type="checkbox"/> GUARDIAN/CONSERVATOR</div><div><input type="checkbox"/> OTHER _____</div></div>	<div>TITLE OR TYPE OF DOCUMENT</div> <div>NUMBER OF PAGES</div> <div>DATE OF DOCUMENT</div>
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	SIGNER(S) OTHER THAN NAMED ABOVE

**EXHIBIT "A"**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following services 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 (1<sup>st</sup> Notice)
  - C. Prepare to Relocate Notice with Response Form (2<sup>nd</sup> Notice)
  - D. Notice to Relocate (3<sup>rd</sup> Notice)
  - E. Sidewalk, ADA Ramps, Driveway, and Curb & Gutter Improvement Plans
  - F. Bike Lane and Crosswalk Plans (Signing & Striping Plans)
  - G. Right of Entry and Exhibits Documents
  - H. Bid Sheet, Special Provisions, and Cost Estimates
  - I. One Set of Final Plans in Mylar
  - J. Five (5) Sets of Bond Copies of the Final Plans and Specifications After Engineer's Signatures
  - K. Electronic Copy (PDF) of Approved Plans for Bidding Purposes

- L. AutoCAD Files of the Final Plans (2014 Version)
- III. In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City apprised through periodic status reports regarding the performance of the services under this Agreement by the following means:
  - A. In-person meetings.
  - B. Email updates/questions to applicant team and City while reviews are underway.
  - C. Conference calls.
- IV. All work product is subject to review and acceptance by the City, and must be revised by the Consultant without additional charge to the City until found satisfactory and accepted by City.
- V. Consultant will utilize the following personnel to accomplish the services:
  - A. Dilesh Sheth, Program Manager
  - B. Lin McCaffrey, Senior Engineer
  - C. Nick Lowe, Associate Engineer
  - D. Michael Johnson, Director
  - E. Nick Keller, Senior Designer

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**

**None**

**EXHIBIT "C"**  
**SCHEDULE OF COMPENSATION**

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

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

**II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.**

**III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.**

**IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:**

- A.** Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B.** Line items for all materials and equipment properly charged to the services.
- C.** Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D.** Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.



- V. The total compensation for services shall not exceed AMOUNT IN DOLLARS (\$0.00) as provided in Section 2.1 of this Agreement.**
- VI. The Consultant's billing rates for all personnel are attached as Exhibit C-1.**

**EXHIBIT “C-1”**  
**CONSULTANT’S BILLING RATE AND TASK SCHEDULE**

**EXHIBIT “D”**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City’s request for services, unless otherwise agreed to by the Contract Officer.**
- II. Consultant shall deliver the following tangible work products to the City by the following dates.**
  - A. Proposed Project Schedule – Attached as Exhibit D-1.**
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

**EXHIBIT “D-1”**  
**PROPOSED PROJECT SCHEDULE**

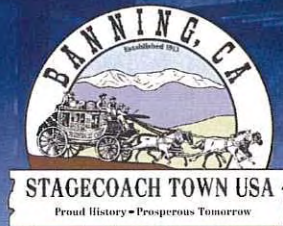
# ATTACHMENT 4

*(Webb Municipal Finance, LLC Proposal dated February 5, 2019)*



# Proposal to Provide Professional Services for RFP 19-018 - Financial Analysis and Redevelopment of LMD No. 1

Prepared for



February 5, 2019



WEBBMFINANCE.COM





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# Section 1. Cover Letter



3750 McCray Street  
Riverside, CA 92506  
951.200.8600  
  
webbmfinance.com

February 5, 2019

Shiloh Rogers  
City of Banning  
99 East Ramsey Street  
Banning, CA 92220

**RE: Request for Proposal for 19-018 - Financial Analysis and Redevelopment of LMD No. 1**

Dear Ms. Rogers:

Webb Municipal Finance, LLC (WMF) has enclosed our Proposal for the Financial Analysis and Redevelopment of LMD No. 1.

Our proposal reflects an experienced technical team who is strong in all consulting engineering services required for your various projects. WMF (*formerly Albert A. Webb Associates' Municipal Finance Department*) is confident we can tailor solutions to meet your needs and provide these services with the utmost quality and accuracy.

WMF's Staff has partnered with cities, counties, water districts, and special districts across California to provide excellent consulting and administration services. We operate as an extension of your staff to become a key resource for the City of Banning (City). WMF's headquarters is located in the City of Riverside, which is where the project will be managed.

As President/Managing Director and Chief Compliance Officer, I offer my personal commitment to provide the City the best resources and services available. If you have the need to talk to me at any time, either before or after your selection decision, please call me at my direct number 951.320.6087, or you can email me at [hschoeppe@webbmfinance.com](mailto:hschoeppe@webbmfinance.com)

Our price proposal is valid for 180 days.

Sincerely,

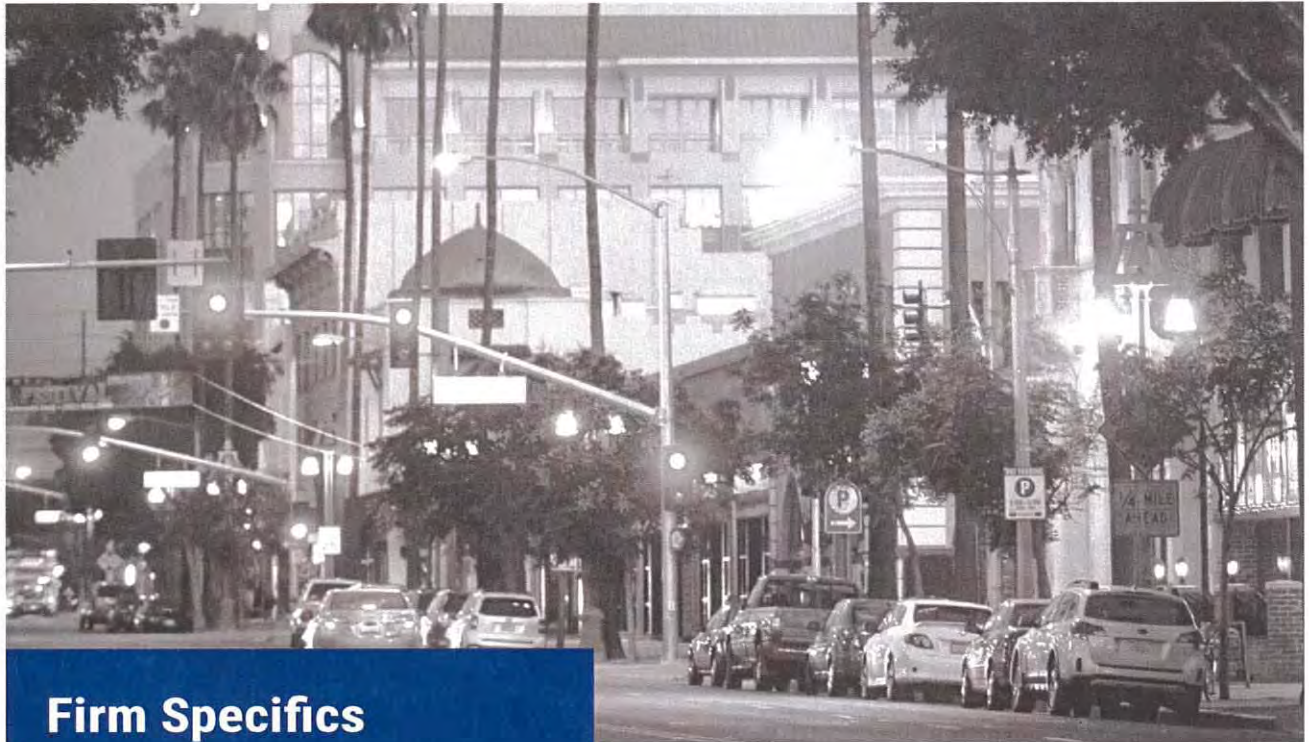
A handwritten signature in blue ink that reads 'Heidi Schoeppe'.

**Heidi Schoeppe** | Registered Municipal Advisor Representative  
President/Managing Director, Chief Compliance Officer  
[hschoeppe@webbmfinance.com](mailto:hschoeppe@webbmfinance.com)  
951.320.6087





## Section 2. Background and Project Summary



### Firm Specifics

**Legal Name:**

Webb Municipal Finance, LLC

**Legal Form:**

Limited Liability Corporation

**Established:**

January 18, 2018

**MSRB ID:**

#K1229

**Authorized to Sign (Main Contact):**

Heidi Schoeppe

**Contact:**

3750 McCray Street

Riverside, CA 92506

951.320.6087

info@webbmfinance.com

webbmfinance.com

**Webb Municipal Finance, LLC (WMF)**, a Municipal Securities Rulemaking Board (MSRB) Registered Municipal Advisor Firm, offers valuable assessment engineering, special tax consulting, and comprehensive program management of special financing districts on behalf of public agencies.

Launched in 2018, our team is comprised of senior level staff, multiple Registered Municipal Advisor Representatives, and experts who have dedicated their careers to assisting communities build the necessary services and infrastructures through special financing districts.

Our robust list of services, proven experience in all areas of municipal finance, and excellent project management approach, coupled with our mission of “integrity in our dealings with clients, staff, public officials, and the public,” is what makes WMF the absolute right choice to provide efficient and fluid management for all projects.



WMF understands the requirements in providing Assessment Engineering Services. We have developed our approach through decades of experience and believe it to be the most appropriate and successful way to form and administer Landscape Maintenance Districts (LMD). Our team believes providing comprehensive services provides the greatest advantage to the City. The critical success factors to successfully provide these district engineering services include:

- Review of existing District and legal documents for Proposition 218 compliance
- Review and revamp, if needed, existing zones and rates
- Prepare detailed analysis of the current budget and all escalating costs to determine new assessment rates and escalator
- Attend Council and property owner meetings
- Prepare preliminary and final engineers report with assessment diagram
- Prepare and mail out ballots and notices

## **Administration Services**

WMF has an understanding of the manner in which a financing district will operate in the real world once formed. Our approach to the administration process has been developed through years of experience, primarily focusing our services within California. We offer technical capabilities, in-depth knowledge of our industry, and responsiveness to the City's needs, as well as annual engineer's report preparation, annual levy enrollment, budget analysis, and annual reporting.

## **Formation Services**

WMF understands the challenges and complexities faced by governmental agencies in administering LMDs. We are skilled in preparing assessment allocations that meet the stringent requirements of Proposition 218 with respect to special benefits, general benefits, and benefits to publicly owned parcels required for Assessment Districts.

## **Annexation Services**

WMF's annexation services include project development review, time line preparation, cost analysis, budget and special tax rate establishment, annexation boundary map preparation, meeting attendance, landowner election assistance, recordation of notice of special tax lien, and general consulting services.

## Section 3. Methodology

WMF has full technical capabilities that are extremely beneficial to the City and City Staff. We use our tools to assist in the classification of properties, in preparing financial analyses, and providing various reports and maps. WMF understands the challenges and complexities faced by governmental agencies in administering LMDs. We are skilled in preparing assessment allocations that meet the stringent requirements of Proposition 218 with respect to special benefits, general benefits, and benefits to publicly owned parcels required for Assessment Districts. WMF has an understanding of the manner in which a financing district will operate in the real world once formed. Our approach to the administration process has been developed through years of experience, primarily focusing our services within California.

### In-House Technology

WebbSTAR™ & GIS

WMF uses our innovative GIS technology and our proprietary software, WebbSTAR™, to ensure accuracy of our work products. WebbSTAR™ was designed as a database management system to provide administrative services for property related fees, assessments, charges, and taxes. Throughout a project we use WebbSTAR™ to store all data including complete parcel information, methodologies, generate levies and reporting, and create assessment diagrams and levy audit maps.

### Schedule & Cost

Regulation

Having worked with numerous public agencies, WMF has a wealth of experience working on special financing district projects which translates to a comprehensive understanding of realistic time frames and appropriate project budgeting. For each project, a preliminary schedule is prepared and adopted. We evaluate and modify the project schedule and milestones to set the final baseline schedule during the initial project kick-off process. The baseline schedule will be monitored and tracked by our team to meet project milestones and manage critical path items.

### Reporting Accuracy & Experience

WMF possesses invaluable institutional knowledge and QA/QC procedures required to ensure all parcels within the City's LMD are assessed accurately and appropriately according to established method of assessment. We provide our clients with various reports such as the Annual Engineer's Reports, Assessment Rolls, and financial budget report. Sample reports as an exhibit of our work can be provided at the City's request.



## Conversion Plan

WMF's Team has a proven record of successfully transitioning district engineering work from other consultants to WMF (*as the formerly established Albert A. Webb Associates' Municipal Finance Department*). As outlined below, we have established a solid procedure of gathering information/documentation, recreating the prior year's levy, and auditing any special financing districts to complete the transition seamlessly.

Our transition process begins by obtaining the special financing district related information while simultaneously setting up the parcel and district information into WebbSTAR™. We have obtained most of the data and information we require from hard copies or electronic data previously provided by the City from the former consultant. If there is any pertinent documentation not available through the stated means, WMF has a knowledgeable and resourceful project team ready to research and attain any remaining missing information. We are confident we will be able to successfully obtain all pertinent information in order to perform the services requested by the City. In fact, the WMF Team has undergone the same process for the City of Temecula, the City of Chino, the City of Desert Hot Springs, Eastern Municipal Water District, and Riverside County Flood Control.

## Required Tasks from City Staff

### Documents Requested from the City

For all documents being transferred, WMF requests the following information for the Fiscal Year 2018-2019 enrollment and two prior years:

- Engineer's Reports in electronic format (i.e., MS WORD, PDF)
- LMD map with four zones
- Resolutions
- Landscape plans
- Landscape improvement plans and costs for improvement project in the future including the five tracts
- Operations and maintenance budgets
- Water and electric charges per meter within the District
- Electronic copies of boundary maps
- Current parcel database in electronic format (i.e., Access, Excel, Text Files):
- Detailed breakdown of costs associated with each zone
- Maintenance contracts (previous five years):
  - » Contract escalation rates
  - » Total payments related to contracts
- Allocation of employee time allotted to LMD administration:

» APN	» Tract
» Land Use Class	» Maximum Assessment
» Acreage	» Assessment Units
» Compensation/benefits per employee	
- Description of current and desired levels of maintenance

### Use of City-Owned Facilities or Property

WMF recommends use of City Hall and/or school facilities local to each group of zones to host Public Outreach/City Council Meetings and presentations in relation to the services requested. The cost to lease/rent those facilities is unknown to WMF and would be in addition to the total fee.

## Quality Assurance/Quality Control

QA/QC is a core value at WMF that shapes our unique project management approach. Reinforced by experience and commitment to best practices, our QA/QC standards provide optimal results. WMF maintains a high level of quality assurance by following the protocols outlined below.

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### Communication

Open Dialogue

Communication between team members and City Staff is critical for project success. WMF coordinates with our clients to set goals, procedures, and expectations, and to be an expert resource for any challenges that may arise. At the start of a project, we evaluate and confirm the preferred methods of communication with your staff. WMF then uses the established methods of communication throughout the project, improving the time it takes to develop quick and efficient resolutions in case an issue arises.

### Compliance

Government  
Codes &  
Regulations

To ensure proper compliance is maintained, WMF stays current and compliant with the California Streets and Highways Code Landscape and Lighting Act of 1972, Proposition 218, the Benefit Assessment Act of 1982, as well as any case laws that affect the formation or administration of these Districts and other state and federal requirements.

### Audits

Internal Audit  
Review

WMF has instituted an internal audit and review policy that requires a minimum of three individuals participating in the preparation and review of any deliverable product. Once a required document is prepared, it will be reviewed and audited by an internal QA/QC Advisor. Any revisions are completed and the deliverable is then reviewed by a technical advisor and/or an assistant project manager. Finally, the product is reviewed and approved by the project manager prior to dissemination to the City.

### Technology

Software Tools

As mentioned previously, our team embraces innovative technology such as GIS and WebbSTAR™ to enhance the quality of the services we provide our clients. Our associates have a keen understanding of the industry and are able to efficiently and effectively provide these services to our clients. The use of these tools assist in the classification of properties so our team can more accurately prepare financial analyses through comparing various reports.





# Get more than everyday solutions.

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## Your Success.

WMF works to serve as an expert resource for your staff to ensure our clients are aware of and are in compliance with all existing legislature & to *proactively* research & inform our clients of new & potential legislature affecting the administration and other aspects of all special financing districts.

We value our relationships with the communities in which we do business and we are equally vested in the success of all our clients. WMF currently provides consulting services to over 20 public agencies.

## Our Solutions.

We are a forward-thinking firm that encourages every associate to look "outside the box" for progressive solutions.

We enthusiastically approach pioneering solutions for our clients by solving clients' challenges regarding project missteps with an innovative answer to the problem. We are pundit in the area of California Government Code and with a collaborative effort, we are able to provide progressive solutions in concert with all laws and regulations within the industry.



## Description of Efforts

The City can be assured of WMF's diligence of staying in compliance with all areas of California Government Code and particularly in the aspects of the scope of services as identified below.

### 1. Research and Review the History of the District, Current Process for Proposition 218 Compliance

WMF will meet with City Staff, research and review past Engineer's Reports, tract maps, budgets and City Council Staff reports and resolutions to determine if the tracts originally made as part of the LMD No. 1 (in 1990 and 1992) are subject to Proposition 218, or if annual CPI increases can occur without public hearings. WMF will review all documents for past history of the City's Landscape Maintenance District and the impact of Proposition 218. WMF will ensure the current process, done in house, meets Proposition 218 and the Landscaping and Lighting Act of 1972 regulations including the language of the Resolutions and Engineer's report template used. WMF will meet with City Staff and the City attorney to determine the impact of Proposition 218 and course of action to meet the City's goals and needs. WMF will prepare meeting agenda and minutes for all meetings and provide a draft tentative schedule at the initial meeting to discuss.

The City should be available for questions general in nature for the history of the District, questions pertaining to the current level of services and ideal level of services, as well as costs associated with each.

### 2. Data Review

WMF understands the City will provide the applied and maximum assessment rates, budget, estimated fund balances, a description of improvements, any proposed modifications to the improvements and service levels from the prior year's Engineer's Reports, electronic copies of the maps to be used in the Engineer's Reports, and staff reports and resolutions. WMF will provide timely deliverables necessary to enable the City to publish the public hearings, post the agenda, and submit the assessment roll to the county.

WMF will compile the data and prepare the Engineer's Reports, prepare the assessment rolls, confirm parcel changes or EBU designations since the last Engineer's Reports, and review the budgets, staff reports, and resolutions. Such documents will be provided in Word or Excel format.

### 3. Prepare Project Schedule

WMF will coordinate with City Staff to establish a project schedule to ensure enrollment of the increased levy charges for Fiscal Year 2020-2021 in a timely manner. WMF will prepare a schedule, based on the City's scheduling requirements, outlining key dates, events, and responsibilities adhering to statute requirements. We will review the schedule with City Staff and make adjustments as needed. We have provided a preliminary project schedule on Page 11.

#### **4. Recommend Benefit Assessment and Zones, Financial Budget Report**

WMF will prepare a detailed analysis and Financial Budget Report for all the existing tracts within the LMD, review the existing budgets and assist with cost recovery accounting to achieve maximum cost to benefit equity and long term financial stability, ensure the existing zones and assessment amounts for each tract are appropriate and, if not, justify and recommend changes. WMF will verify the budget developed will ensure there is adequate funding. WMF will request information related to the current and desired level of maintenance, as well as a detailed breakdown of current cost per zone from the City.

WMF's budget estimates will be determined and projected to include City Staff time, water, electric, operation and maintenance, plant replacement, irrigation repair, etc., incidentals, and improvement (CIP) cost projections with appropriate escalators. Projects will be based upon current costs as provided by the City. WMF will work with City Staff, City engineers, and Albert A. Webb Associates' engineers to determine if additional revenue is needed for CIP improvements such as landscape design, irrigation, and plant replacement, water resistant plants, etc. over the next 20 years and how funding for this can be recovered.

A recommendation will be prepared and provide suggestions to ensure the LMD can run itself without deficits and have a balanced budget. WMF will determine and recommend new assessment units amounts, new zones or zone changes or restructuring, and ensure the current method of apportionment and allocation of the net costs provide the required special benefit nexus to all the properties within the affected zones. WMF will prepare up to five drafts for City comment and review and then one final draft incorporating comments. Once City Staff approves the final draft report, WMF will submit five copies and an electronic version to the City. WMF will meet with City Staff and possibly the City Council to discuss the financial budget report.

#### **5. Public Outreach/City Council Meetings and Presentations**

WMF will perform strategic community outreach sessions in coordination with City Staff and attend City Council meetings and hearings as requested by City Staff for this project. WMF will prepare all necessary outreach materials, presentation materials, exhibits, boards, PowerPoint presentations, etc. for City review. Once approved, WMF will provide a final version. WMF will prepare a general flyer and a Frequently Asked



## **5. Public Outreach/City Council Meetings and Presentations (Continued)**

Questions (FAQ) guide to be mailed to affected residents explaining the increased assessments, associated budget and the components of the proposed assessments, zones, as well as possible assessment options, CIP plans, and the assessment balloting process and proposed improvement changes. WMF will work with City IT Staff to prepare a notice/information/FAQ page for the City's website.

WMF will prepare and mail to all property owners of record, an invitation/informational piece that provides general background information and stresses the importance of the property owner's participation in the assessment process scheduled workshop(s), community meetings, and public hearing. At the workshops, community meetings and public hearing, WMF will make presentations and work with the City to respond to property owners concerns' about the District and answer written and oral questions received by email, phone. or mail. WMF will make any necessary adjustments to assessment spreads as directed by the City Council based on these meetings and public hearing. WMF will attend Council Meetings pertaining to the LMD and will be available to answer any question posed by City Staff, City Council, or the public.

## **6. Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings**

After WMF receives the sample ballot and public hearing notice from the City, WMF will prepare a draft ballot and notice of public hearing for the City's legal counsel and engineering staff to review and approve for each zone. New assessments will have to be justified in the form of a financial budget report, prepared as part of Task 4.

WMF will then prepare the property owner public hearing notices and ballots in English and Spanish to meet the requirements of Proposition 218 and the California Constitution. The ballot preparation will include: calculation of benefit for each parcel, dollar amount of benefit on the ballots, as identified for each parcel, bar coding on the ballots for ease of tabulation (if the City upgrades to a bar code system), mail merge, printing, folding, stuffing and stamping of ballots, obtaining property owner address labels using the latest Riverside County data and prepare labels, mailing of ballots, FAQ sheet and notice of public hearing, re-mail any undeliverable notices and ballots, creation of an excel spreadsheet to accept bar coded ballot tabulation if the City upgrades to this system, and assist the City with ballot counting.

## **6. Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings (Continued)**

WMF will assist with the tallying process by preparing the associated spreadsheet of property owners and their responses as approved by the City clerk. Ballots must be tabulated by an impartial party. WMF will be present at the public hearing to assist with any questions regarding the ballots and process, but cannot collect or tabulate the ballots for the City.

## **7. Provide Data and Reports in Compatible Format**

Upon determination of format needs, WMF will provide all data and reports in compatible format for use by appropriate City Staff. WMF will utilize the County's software to submit the to property owners and assessments, the Roll.

## **8. Provide All Maps and Exhibits**

WMF will prepare a new LMD No. 1 map on GIS and in a workable Microsoft Publisher document as well for use in the report and City's GIS system. WMF will submit draft, final draft, and final version to City Staff for review and approval. WMF will collect plans and specifications for the proposed improvements, and prepare assessment diagrams and other exhibits as requested by City Staff for use in public meetings or hearings.

## **9. Preliminary Engineer's Report**

A preliminary Engineer's Report (five copies) will be prepared for City Staff review and approval pursuant to California Government Code (Chapter 1, Article 4, of the Landscaping and Lighting Act of 1972 and Proposition 218) incorporating the new assessments. In the event the Proposition 218 vote does not pass, a revised Engineer's Report for Fiscal Year 2020-2021 will be prepared in house using the property owner information obtained by WMF.

## **10. Report Reproduction**

Upon approval of the preliminary Engineer's Report, WMF will prepare 10 copies of each Engineer's Report with any required revisions for use at public hearings and council actions. WMF will also provide an electronic version to City Staff.



## 11. Public Service/Information

At all of the public meetings and hearings, WMF will be available to answer any question posed by City Staff, property owners, and other interested parties for inquiries regarding the LMD. WMF will also make any necessary adjustments to assessment spreads as directed by City Council.

## 12. Levy Submittal

WMF will submit annual increased levies to Riverside County Auditor/Controller in the format they require if the Proposition 218 vote passes and the new assessments are approved.

## 13. Additional/Optional Tasks

WMF enthusiastically approaches pioneering solutions for our clients by solving clients' challenges regarding project missteps with innovative answers to the problem.

In relation to the services requested, WMF recommends:

- Grouping public outreach meetings based upon geographical locations
- Limiting the number of zones of each meeting to allow for detailed conversations regarding impact to each zone
- Providing geographic exhibits to property owners so they can visualize what zone they're in and the area being maintained
- City Staff/stakeholders (council members, commissioners, city manager) involvement to show support of the project and to property owners
- Providing graphics of the landscape *with and without* on increase in the assessment
- Comparing the increase in the assessment to nominal everyday items (i.e., cup of coffee, Costco Hot Dog, etc.)

# Project Schedule

## Financial Analysis and Redevelopment of Landscape Maintenance District (LMD) No. 1



WMF = Webb Municipal Finance, LLC    City = City of Banning

DESCRIPTION	DUE DATE	PARTY RESPONSIBLE
Collect and review historical data for Landscape and Lighting Act of 1972 and Proposition 218 compliance	June 2019	WMF
Kick-Off meeting	June 2019	City Staff, WMF
City Staff provides WMF with preliminary cost estimates for each existing zone	June 2019	City Staff
WMF prepares a detailed analysis and Financial Budget Report, determines and recommends if District restructuring is beneficial. WMF will provide five copies to the City for review and approval	July 2019	WMF
WMF prepares a timeline and preliminary maximum assessment amounts for City Staff approval	July 2019	WMF
WMF begins preparation of the Engineer's Report	July 2019	WMF
Flyer with FAQs guide is mailed (after City approval) to property owners stating City's intentions for Proposition 218 Balloting Proceedings with dates, times, and locations for community outreach meetings	August 2019	WMF
City Staff/WMF holds three property owner meetings to educate and answer any questions or concerns. Dates and locations of meetings to be determined	TBD	City Staff, WMF
WMF provides draft copies of the Preliminary Engineer's Report for review by City Staff including assessment diagram and boundaries	August 2019	WMF
WMF prepares ballots and public hearing notice to be reviewed and approved by City Staff and legal counsel	April 2019	City Staff, Legal Counsel
Legal counsel prepares resolutions for the Intent Meeting	April 2019	Legal Counsel
<b>Agenda Deadline</b> - WMF provides Preliminary Engineer's Report for Intent Meeting	September 2019	WMF
<b>Resolution of Intention Meeting</b> - City Council adopts the Resolution of Intention setting the date and time of the public hearing and resolution approving the preliminarily Engineer's Report	September 2019	City Council, City Staff, WMF
WMF mails out ballots	No later than 45 days prior to Public Hearing	WMF
City Clerk publishes the adopted Resolution of Intention in the local newspaper once	At least 14 Days prior to the Public Hearing	City Clerk
<b>Public Hearing</b> – City Council allows the public to ask questions and “hear and be heard.” City Council then reviews and approves the Final Engineer's Report • <i>Impartial party counts the ballots with WMF present</i>	November 2019	City Council, City Staff,
<b>Election</b> – Election results are announced	Next Day	City Council, City Staff



## Section 4. Staffing

Knowledge, experience, and responsiveness are key elements of a strong team required to exceed the City's goals and expectations for this project. WMF's Team of professionals will deliver these key elements. We are experts in the area of California Code and with a collaborative effort, we are able to provide progressive solutions in concert with all laws and regulations within the industry.

Our approach fosters relationship-building with your staff, allows for ease in discussion of any potential issues that may arise, and immediately provides quick resolutions. This improves overall project management, reduces the opportunity for mistakes and delays, and allows our staff to provide effective and efficient services. All WMF Team members are involved in every project and are available for comments, questions, and discussions at any frequency as requested.

### Organizational Chart



#### PRINCIPAL-IN-CHARGE

**Heidi Schoeppe**

President/Managing Director  
& Chief Compliance Officer  
Years of Experience: 14

Assessment Engineer  
**Matthew Webb, PE, TE, LLS**  
*Albert A. Webb Associates*  
Years of Experience: 38

#### PROJECT MANAGER

**Charmaine McCarvel**

Finance Manager  
Years of Experience: 14

#### ASSISTANT PROJECT MANAGER

**Nadia Benali**

Associate Financial Analyst  
Years of Experience: 10

#### PROJECT SUPPORT

Financial Analyst  
**Vincent Nguyen-Cao**  
Assistant Financial Analyst  
Years of Experience: 3

GIS Specialist  
**Nanette Pratini, GISP**  
*Albert A. Webb Associates*  
Years of Experience: 25

CIP Review Specialist  
**Brian Knoll, PE**  
*Albert A. Webb Associates*  
Years of Experience: 17

## Key Personnel Resumes



**Project Role:**  
Principal-in-Charge

**Title:**  
President/Managing Director  
Chief Compliance Officer

**Years of Experience:**  
14 Years

**Education:**  
MS, Finance  
San Diego State University

BS, Business Administration  
California State University, San Marcos

**Affiliations:**  
California Society of Municipal  
Finance Officers  
(Advisor for Professional Standards &  
Recognition Committee)

Government Finance Officers  
Association  
(Member of Planning Committee for  
Woman's Public Finance Network)

Women in Public Finance

Committee on Assessments,  
Special Taxes & Other Financing  
Facilities California Special District  
Association

### HEIDI SCHOEPPE

REGISTERED MUNICIPAL ADVISOR REPRESENTATIVE

Heidi Schoeppe is a leader in the development of innovative solutions for the formation and administration of special financing districts for municipalities throughout California. Due to her technical skills and sound approach, Heidi serves as a professional resource to her clients, associates, and finance teams.

Speaking at conferences throughout California, informing clients on proposed and enacted legislation, and being called upon as an expert consultant to financing teams, allows her the opportunity to provide her clients and team with the most up-to-date information in the field of special financing districts with a focus on the needs of her clients and their constituents.

With nearly 15 years in the field, Heidi has managed infrastructure and services special financing district formations and has executed numerous bond financing and refinancing projects totaling more than \$725M in debt issuance, providing significant savings to her clients and their constituents. Heidi has authored disclosure, debt, and land secured special financing district policies, staying in front of legislative updates to ensure her clients are receiving sound advice. Heidi specializes in providing full program management, administration, annexation, district auditing, constituent relations, and consulting services including Proposition 218, Landscaping and Lighting Act of 1972, Municipal Improvement Act of 1913, Improvement Bond Act of 1915, and Benefit Assessment Act of 1982.

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### Project Experience & References

**Administration & Consulting Services for Special Financing Districts**  
**City of Temecula** - Heidi serves as the Principal-in-Charge and Program Manager for the City of Temecula. She is responsible for the annual administration for all Community Facilities Districts, Assessment Districts, and Landscape and Lighting Maintenance Districts. Services provided in relation to these special financing districts include delinquency management, bond redemption analysis and preparation, annual budget preparation, tracking parcel/district development, preparation of Continuing Disclosure and CDIAC Reports, SB 165 Compliance, coordination of arbitrage rebate calculations, Community Facilities District Annexation and formation consulting services, Community Facilities District and Assessment District Defeasance services, and Community Facilities District Refunding services. Services provided for the City also included Proposition 218 services in which Heidi and the WMF Team provided assessment balloting proceedings for the City's 29 Zones within the City's Community Services Districts.



## HEIDI SCHOEPPE

REGISTERED MUNICIPAL ADVISOR REPRESENTATIVE

**Administration and Consulting Services for Special Districts, City of Chino** - Heidi serves as the Principal-in-Charge for the City of Chino. She is responsible for the annual administration for all Community Facilities District's, Certificates of Participation, Landscape and Lighting Maintenance Districts, and Tax Allocation Bonds for the City of Chino. Services provided in relation to these special financing districts include extensive delinquency management, Proposition 218 consulting services, prepayment calculation and analysis, bond redemption analysis and preparation, annual budget preparation, fund balance analysis, tracking parcel/district development, levy audit map preparation, preparation of Continuing Disclosure and CDIA Reports, SB 165 Compliance, coordination of arbitrage rebate calculations, and various other special projects on an as needed basis.

**Formation, Annexation, and Administration Services for Special Districts, City of Santee** - Heidi serves as the Principal-in-Charge and Program Manager for the City of Santee. WMF recently worked with the City to complete the formation of one maintenance CFD for which future annexations are anticipated and currently performs full administrative services for the maintenance CFD, three Landscape and Lighting Maintenance Districts containing a total of 15 zones, and one fire benefit fee parcel tax for which WMF successfully placed a total of 31,623 charges on the Fiscal Year 2016-17 San Diego County Tax Roll, totaling approximately \$1.85 million in special assessment and special tax revenues. Services provided for the City also include Proposition 218 balloting proceeding services which is currently in process.

**Administration and Program Management Services for Special Financing Districts, Jurupa Community Services District** - Heidi serves as the Principal-in-Charge for the Jurupa Community Services District (JCSD) providing oversight for 51 bonded and non-bonded Community Facility Districts (CFDs) including 17 annexations, and seven Landscaping Maintenance Districts (LMDs) including 124 annexations.

The recent formations of CFDs for JCSD include the design, construction, and acquisition of proposed facilities for JCSD that consist of master plan water system facilities including capacity in existing facilities and sewage treatment and disposal capacity, park and recreation facilities including incidental expenses related to the planning, design, and completion of such facilities, school district facilities that include K-12 public school facility improvements to be owned and operated by the school district, and/or County of Riverside improvements to be owned and operated by the County of Riverside, and/or City of Eastvale Development Impact Fees.

**Formation, Debt Issuance, Administration, & Program Management Services for Community Facilities Districts, Eastern Municipal Water District** - Heidi serves as the Principal-in-Charge and Program Manager for the Eastern Municipal Water District and is responsible for the program management of over 55 Community Facilities Districts comprising 92 separate financing areas, and annual administration for over 67 Community Facilities Districts/Improvement Areas. In addition to formation services and comprehensive administration services for all districts, Heidi and the WMF Team also perform parcel audit services for all newly assumed districts and have taken on the role of Program Manager for EMWD's entire book of CFD work.



**Project Role:**  
Project Manager

**Title:**  
Finance Manager

**Years of Experience:**  
14 Years

**Affiliations:**  
California Society of Municipal  
Finance Officers

## CHARMAINE McCARVEL

Charmaine McCarvel, Finance Manager, assists municipalities with formation, annexation, financing, and annual administration services which includes apportionments and bond payoff calculations for special financing districts. Her efforts help ensure districts continue to receive appropriate tax funding to provide much-needed community services and infrastructure.

Charmaine offers 14 years of expertise in the Landscaping and Lighting Act of 1972, the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, the Mello-Roos Community Facilities Districts Act of 1982, the Benefit Assessment Act of 1982, and Community Services Districts. She has provided a full range of services including Proposition 218 compliance, dynamic client support with the preparation of annual budgets, staff reports, annual Engineer's Reports, annual disclosure reports, and legal documents required for special district formation, annexation, administration, and bond issuance. Charmaine currently serves as Project Manager for the Cities of Desert Hot Springs, Chino, Temecula, Tustin, Redlands, Riverside County Flood Control and Water Conservation District, the Hi-Desert Water District, and the Mission Springs Water District providing service for over 300 special districts.

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### Project Experience & References

**Formation, Administration, and Annexation Services, City of Desert Hot Springs** - Charmaine serves as the Project Manager and is responsible for providing all Special District Services for the City of Desert Hot Springs' Districts. These Districts include the Citywide Landscaping and Lighting District, Drainage Benefit Assessment District containing 17 zones, Landscape Maintenance District containing 18 zones, two Community Facilities Districts, two Public Safety Measure Tax Districts, and three tax roll billings for disposal and nuisance abatement services.

Services provided in relation to these Special Financing Districts include Preliminary and Final Engineer's Reports, Proposition 218 balloting proceedings, delinquency management, prepayment calculation and analysis, bond redemption analysis and preparation, annual budget preparation, fund balance analysis, City Council resolutions and staff report preparation, mapping and exhibits preparation, attendance of City Council meetings, tracking parcel/district development, levy audit map preparation, Continuing Disclosure and CDIAC Reporting preparation and filing, District Audit review, annual reporting, property owner services, and various other special projects on an as needed basis. Annexation services include the review of improvement plans and maintenance quantities, establishment of appropriate maintenance categories, the preparation of cost estimates, and special tax rate per residential unit or acre.



**Administration and Consulting Services for Special Districts, City of Chino** - Charmaine serves as the Project Manager for the annual administration for all Landscape Maintenance (totaling 171 zones) and Community Facilities Districts, Certificates of Participation, and Tax Allocation Bonds for the City of Chino. Services provided in relation to these Special Financing Districts include the preparation of Annual Engineer's Reports, Proposition 218 consulting services, extensive delinquency management, prepayment calculation and analysis, annual budget preparation, fund balance analysis, tracking parcel/district development, Levy Audit map preparation, preparation of Continuing Disclosure and CDIAC Reports, SB 165 and AB 2109 Compliance, coordination of Arbitrage Rebate Calculations, property owner services, and various other special projects on an as needed basis.

**Administration and Consulting Services for Special Districts, City of Temecula** - Charmaine serves as the Project Manager for the City of Temecula's Community Services Districts and one Citywide Parks and Lighting District. Services provided in relation to the City's special financing districts include annual budget preparation, Annual Engineer's Report, annual noticing, meeting attendance, assistance with preparation of staff reports and resolutions, fund balance analysis, tracking parcel/district development, Levy Audit map preparation, property owner services, and various special projects on an as-needed basis. Services provided for the City also included Proposition 218 services in which Charmaine and the WMF Team provided assessment balloting proceedings for the City's 29 Zones within the City's Community Services Districts.

**Administration and Program Management Services for Special Financing Districts, Jurupa Community Services District (JCSD)** - Charmaine serves as an Assistant Project Manager for JCSD, providing oversight for 51 bonded and non-bonded Community Facility Districts (CFDs) including 17 annexations, and seven Landscaping Maintenance Districts (LMDs) including 124 annexations. The recent formations of CFDs for JCSD include the design, construction, and acquisition of proposed facilities for JCSD that consist of master plan water system facilities including capacity in existing facilities and sewage treatment and disposal capacity, park and recreation facilities including incidental expenses related to the planning, design, and completion of such facilities, school district facilities that include K-12 public school facility improvements to be owned and operated by the school district, and/or County of Riverside improvements to be owned and operated by the County of Riverside, and/or City of Eastvale Development Impact Fees.

**Administration and Formation Services for Assessment Districts, Mission Springs Water District (District)** Charmaine serves as the Project Manager and is responsible for the administration of Assessment District No. 13 for the District. Charmaine and the WMF Team recently formed Assessment District No. 15, coordinating with the District to determine which of the needed improvements are authorized by the Municipal Improvement Act of 1913 and developed a comprehensive assessment budget to cover the costs of implementing these improvements. WMF prepared multiple preliminary bond sizing spreads for different grant funding scenarios. Additional services provided in relation to these Special Financing Districts include extensive delinquency management, prepayment calculations analysis, bond call apportionments, annual budget preparation, fund balance analysis, tracking parcel/district development, Levy Audit map preparation, preparation of Continuing Disclosure Reports, coordination of Arbitrage Rebate Calculations, property owner services, and various other special projects on an as needed basis.



## NADIA BENALI

Nadia Benali, an Associate Financial Analyst at WMF, provides administration and consulting services to municipalities throughout Southern California to ensure their special financing districts function smoothly. Nadia, who earned a Master of Business Administration (MBA) with an emphasis in Accounting in 2005, joined WMF with seven years of experience in district administration in the California municipal market. In fact, she has worked as a financial analyst in district administration for cities and municipalities in five different counties in the state. Nadia, who prides herself on providing excellent customer service, has served as lead contact for all of her clients.

### **Project Role:**

Assistant Project Manager

### **Title:**

Associate Financial Analyst

### **Years of Experience:**

10 Years

### **Education:**

MBA, Business Administration -  
Accounting  
University of Phoenix

BS, Hotel & Restaurant Management  
University of Nevada, Las Vegas

### **Affiliations:**

California Society of Municipal  
Finance Officers

She has administered and consulted on the Landscaping and Lighting Act of 1972, Mello-Roos Community Facilities Act of 1982, Municipal Improvement Act of 1913, and Improvement Bond Act of 1915, in addition to special "park tax" districts and those relating to fire services.

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## **Project Experience & References**

**Administration and Consulting Services for Special Districts, City of Chino** - Nadia serves as the Assistant Project Manager for the annual administration for all Landscape Maintenance (totaling 171 zones) and Community Facilities Districts, Certificates of Participation, and Tax Allocation Bonds for the City of Chino. Nadia assists in the preparation of Annual Engineer's Reports, budget preparation, tracking parcel/district development, Levy Audit maps, Continuing Disclosure and CDIAC Reports, SB 165 Compliance, and property owner services.

**Administration and Consulting Services for Special Districts, City of Temecula** - Nadia serves as the Assistant Project Manager for the City's Community Services Districts and one Citywide Parks and Lighting District. Services provided in relation to the City's special financing districts include annual budget preparation, Annual Engineer's Report, annual noticing, meeting attendance, assistance with preparation of staff reports and resolutions, and fund balance analysis. Services provided for the City also included Proposition 218 services in which Nadia and the WMF Team provided assessment balloting proceedings for the City's 29 Zones within the City's Community Services Districts.

**Formation, Administration, and Annexation Services, City of Desert Hot Springs** - Nadia serves as the Assistant Project Manager and is responsible for providing all Special District Services for the City of Desert Hot Springs' Districts. These Districts include the City-wide Landscaping and Lighting District, Drainage Benefit Assessment District containing 17 zones, Landscape Maintenance District containing 18 zones, two Community Facilities Districts, two Public Safety Measure Tax districts, and three tax roll billings for disposal and nuisance abatement services. Services provided include Preliminary and Final Engineer's Reports, delinquency management, levy audit map preparation, staff report preparation, and Proposition 218 balloting proceeding services.





**Project Role:**  
Financial Analyst

**Title:**  
Assistant Financial Analyst

**Years of Experience:**  
3 Years

**Education:**  
BS, Business Administration  
(Finance)  
University of California, Riverside

## VINCENT NGUYEN-CAO

Vincent Nguyen-Cao serves as an Assistant Financial Analyst at WMF, providing district administration services to municipalities throughout California for their special financing districts which includes data collection, report preparation, analysis, levy preparations, and answering property owner questions. Since joining WMF, Vincent has assisted in the administration services for Lighting and Landscaping Maintenance Districts, Community Facilities Districts, and other local improvements.

As a financial analyst with a degree in business administration with a concentration in finance, Vincent's key strengths include analyzing and preparing financial data, and he is experienced in using Microsoft applications to organize information into a standardized format. He leverages his previous experience in a variety of customer service-oriented positions to adapt to changing needs and works effectively as part of the WMF Team.

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### Project Experience & References

**Administration and Consulting Services for Special Districts, City of Chino** - Vincent serves as a Financial Analyst for the annual administration for all Landscape Maintenance (totaling 171 zones) and Community Facilities Districts, Certificates of Participation, and Tax Allocation Bonds for the City of Chino. Vincent assists in the preparation of Annual Engineer's Reports, prepayment calculation and analysis, budget preparation, tracking parcel/district development, Continuing Disclosure and CDIAC Reports, and property owner services.

**Administration and Consulting Services for Special Districts, City of Temecula** - Vincent serves as a Financial Analyst for the City's Community Services Districts and one Citywide Parks and Lighting District. Services provided in relation to the City's special financing districts include annual budget preparation, Annual Engineer's Report, annual noticing, meeting attendance, assistance with preparation of staff reports and resolutions, and fund balance analysis.

**Formation, Administration, and Annexation Services, City of Desert Hot Springs** - Vincent serves as a Financial Analyst for the City of Desert Hot Springs' Districts. These Districts include the City-wide Landscaping and Lighting District, Drainage Benefit Assessment District containing 17 zones, Landscape Maintenance District containing 18 zones, two Community Facilities Districts, two Public Safety Measure Tax Districts, and three tax roll billings for disposal and nuisance abatement services. Services provided include Preliminary and Final Engineer's Reports, delinquency management, levy audit map preparation, and staff report preparation.

# Subconsultant Identification

Albert A. Webb Associates (WEBB), a Corporation, has consistently provided civil engineering services to public sector clients throughout California since 1945. This means their clients receive the benefit of a financially stable firm that has withstood many diverse economic times. WEBB is a mid-size consulting firm with offices in Riverside, Palm Desert, and Murrieta to best meet the needs of all of their clients. WEBB has over 170 associates and the in-house expertise to address the needs of cities, water and special districts, counties, regional agencies, and our partner firms within the industry. WEBB offers a broad range of services to meet the objectives of our clients which include project development, planning, design, entitlement, funding, permitting, construction management, and inspection.

Their office is located within one mile of WMF's office in Riverside. Matthew Webb, PE, TE, LLS, who will serve as the Engineer-of-Record, has nearly 40 years of experience in providing assessment engineering. Nanette Pratini, GISP, who has over 25 years of experience and is a certified Geographic Information Systems Professional, will serve as the City's GIS Analyst.

WMF's close relationship with WEBB allows our team to provide our clients with services seamlessly.

Resumes for Nanette and Matthew are as follows.



## Nanette Pratini, GISP

Albert A. Webb Associates

GIS Specialist

GIS Certification No. 30910

### EDUCATION

MS, Ecology, University of California, Davis

BS, Wildlife & Fisheries Biology, University of California, Davis

### YEARS OF EXPERIENCE

25 Years

### AFFILIATIONS

ESRI Inland User Group

Society for Conservation GIS

Nanette Pratini is an expert in Geographic Information Systems (GIS) at Albert A. Webb Associates (WEBB) with extensive training and experience. She uses state-of-the art GIS technology to prepare maps for presentations and documents, creating 3D visualizations, and performing analyses and modeling of geospatial data, all of which greatly assist the public financing industry by providing real time visual information to clients.

Nanette has 25 years of experience in GIS and was involved in several groundbreaking GIS applications for the University of California and the Bureau of Land Management. She also coordinates with associates in Information Systems, Engineering, Planning, and Hydrology to integrate GIS into workflows and web-based delivery systems for our clients. She has developed relationships with several local agencies and is familiar with their GIS-related policies and procedures. She is also responsible for maintaining the accuracy and integrity of GIS data for various public agencies, integrating CAD-based drawings with GIS, creating data standards, and training WEBB GIS users.





## Matthew Webb, PE, TE, LLS

**Albert A. Webb Associates**

President/CEO

Registered Civil Engineer 37385 (CA)  
Registered Traffic Engineer 1898 (CA)  
Registered Land Surveyor 5529 (CA)

### EDUCATION

MS, Civil Engineering, Stanford University  
BS, Civil Engineering, Stanford University

### YEARS OF EXPERIENCE

38 Years

### AFFILIATIONS

American Society of Civil Engineers  
International Right-of-Way Association  
Institute of Transportation Engineers  
Tau Beta Pi Engineering Society  
The Monday Morning Group, President  
The Raincross Group  
District Attorney Crime Prevention Foundation Board  
Mission Inn Foundation Board of Trustees  
National Groundwater Association  
Riverside Community Hospital Board of Directors  
Riverside Chamber of Commerce Board of Directors  
Riverside County Building Industry Association Board of Directors  
Inland Empire American Heart Association, Chairman of the Board

Matthew Webb is the President/CEO at Albert A. Webb Associates and possesses nearly four decades of experience in preparing and reviewing Formation Engineer's Reports for Assessment Districts (AD) and Landscaping and Lighting Maintenance Districts (LLMD), as well as Annual Engineer's Reports for LLMDs. Matthew has vast experience pertaining to various types of Special Districts including, but not limited to the Landscaping and Lighting Act of 1972, Assessment Districts formed under the Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, and the Benefit Assessment Act of 1982, Mello-Roos Community Facilities Act of 1982.

Matthew serves as assessment engineer to 13 agencies. His breadth of knowledge, extensive experience, and responsibilities include:

- Preparation of Engineer's Report containing all items as required by code including proposed improvements, engineer's estimate of costs and incidental expenses, a narrative description of the spread methodology, assessment diagrams, preliminary annual assessment roll based upon current estimate of costs and expenses, confirmation of compliance with Proposition 218, and assumptions behind the determination of benefits
- Participation at public agency/public information meetings fully prepared to present all necessary testimony and to respond to all public comments pertaining to formations of ADs and LLMDs
- Experience in establishing lines of communication, preparing the assessment district schedule of events, reviewing procedural and financial considerations, discussing proposed improvements, the eligibility of those improvements, and any limitations on the funding of those improvements

## Assessment Engineer Experience Highlights

### Formation Engineering - LLMDs & ADs

- City of Riverside, Riverwalk LMD
- City of Corona, LMD No. 2003-1
- City of Corona, Corona Mall Business Improvement District
- City of Corona, AD 96-1
- City of Ontario, AD 106
- City of Indio, AD 2001-1
- City of Indio, ADs 2002-02 and 2002-3
- City of Indio, ADs 2003-1, 2003-2, 2003-3, 2003-5, and 2003-6
- City of Indio, ADs 2004-1, 2004-2, and 2004-3
- San Bernardino Special Districts, AD No. 2016-1 (in progress)
- Hi-Desert Water District, AD No. 2014-1
- Mission Springs Water District, AD 11, 12, 13
- Mission Springs Water District, AD 15 (in progress)
- Mission Springs Water District, AD 16 (in progress)
- Ventura County Watershed Protection District, Drainage Assessment Area No. 2015-1

### Annual Engineer's Reporting - LLMDs

- City of Riverside, Riverwalk LMD
- City of Riverside, LMD No. 88-1
- City of Riverside, SLAD No. 1
- City of Corona, LMDs No. 84-1 and No. 84-2
- City of Corona, Corona Mall Business Improvement District
- City of Menifee, LLMD 89-1C Volume 1 and Volume 2
- City of Desert Hot Springs, LLMDs No. 1 and No. 2
- City of Desert Hot Springs, Drainage Assessment District No. 1
- City of Temecula, Temecula Community Services District Service Levels B, C, R and Recycling & Refuse Collection
- City of Chino, LLMD Nos. 75-1 and 75-2
- City of Chino, LLMD No. 76-1
- City of Chino, LLMD No. 83-2
- City of Chino, LLMD No. 2002-1
- City of Santee, Roadway Lighting District
- City of Santee, Santee City Center LMD





## **Brian Knoll, PE**

**Albert A. Webb Associates**

CIP Review Specialist

Registered Civil Engineer 65690 (CA)

Registered Civil Engineer 42407 (AZ)

### **EDUCATION**

MS, Civil Engineering, Brigham Young University

BS, Civil Engineering, Brigham Young University

### **YEARS OF EXPERIENCE**

17 Years

### **AFFILIATIONS**

American Water Works Association (AWWA)

American Society of Civil Engineers (ASCE)

Water Environment Federation (WEF)

Inland County Water Association (ICWA)

Brian Knoll, Vice President and Market Leader for Water Agency and Partnerships at Albert A. Webb Associates (WEBB), has overseen the design and direction of complex, high profile capital improvement projects throughout Southern California. Brian's expertise lies in planning, design, and construction oversight of water and wastewater facilities. For the past 17 years, he has guided the development of numerous large multi-discipline water and wastewater projects including the 26 million-gallon expansion of the City of Riverside's water quality control plant, the 14 million-gallon expansion of the Western Riverside Wastewater Treatment Plant, and the six million-gallon expansion of the City of Calipatria Water Treatment Plant.

He has teamed closely with numerous municipalities and agencies to achieve sophisticated project goals including the City of Banning, City of Imperial, Golden State Water Company, Western Municipal Water District, the City of Corona, Crestline Lake Arrowhead Water Agency, Eastern Municipal Water District, the City of Riverside, and Mission Springs Water District. Brian has also worked closely with other engineering partners such as CDM Smith, Black & Veatch, and CH2M Hill. His macro style in water resources leadership, coupled with a practical approach, enhances his standing within the firm and the industry.



# Anticipated Hours of Service

## Financial Analysis and Redevelopment of Landscape Maintenance District (LMD) No. 1



TASK	PROJECT ROLE							TOTAL HOURS BY TASK
	Principal-in-Charge	Assessment Engineer	Capital Improvement Plan Review Specialist	Project Manager	Assistant Project Manager	Financial Analyst	GIS Specialist	
<b>Task 1</b> – Research and Review the History of the District, Current Process for Proposition 218 Compliance	3			4	6	5		<b>18</b>
<b>Task 2</b> – Data Review	4			8	10	9		<b>31</b>
<b>Task 3</b> – Prepare Project Schedule	1			1	2	1		<b>5</b>
<b>Task 4</b> – Recommend Benefit Assessments and Zones, Financial Budget Report	8	4	5	12	15	15		<b>59</b>
<b>Task 5</b> – Public Outreach/City Council Meetings and Presentations	29			35	35	15	5	<b>119</b>
<b>Task 6</b> – Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings	3			8	10	10		<b>31</b>
<b>Task 7</b> – Provide Data and All Reports in Compatible Format				1	2	4		<b>7</b>
<b>Task 8</b> – Provide All Maps and Exhibits	1			1	3	4	11	<b>20</b>
<b>Task 9</b> – Preliminary Engineer's Report	3	2		7	10	4		<b>26</b>
<b>Task 10</b> – Report Reproduction				1	2	5		<b>8</b>
<b>Task 11</b> – Public Service/Information	4			8	8			<b>20</b>
<b>Task 12</b> – Annual Levy Submittal				2	3	3		<b>8</b>
<b>Task 13</b> – Additional/Optional Tasks								<b>--</b>
<b>TOTAL HOURS</b>	<b>56</b>	<b>6</b>	<b>5</b>	<b>88</b>	<b>106</b>	<b>75</b>	<b>16</b>	<b>352</b>



## Section 5. Qualifications

### WMF has built a level foundation of superior service.

WMF's Team has successfully formed and administered more than 300 special financing districts, 275 completed annexations, 200 bond sales/refundings, and over \$1.2 billion in bond issuances. These special districts include districts formed under the Landscaping and Lighting Act of 1972, Mello-Roos Community Facilities Act of 1982, Benefit Assessment Act of 1982, Municipal Improvement Act of 1913, the Improvement Bond Act of 1915, and Community Services Areas.

The following chart illustrates a brief list of our landscape and lighting assessment district engineering services provided by WMF with other public agencies. Additionally, we have provided three detailed project/client references of service our team has administered over the last five years for the City's review.

### Active Landscape & Lighting Maintenance Districts

Fiscal Year 2018-2019

CLIENT & CONTACT	ANNUAL ENGINEER'S REPORTS	ACTIVE ZONES	PARCELS LEVIED	AMOUNT ENROLLED
<b>City of Riverside</b> Edward Enriquez, Interim Chief Financial Officer 951.826.2396 - eenriquez@riversideca.gov	3	3	75,461	\$3,949,883.60
<b>Riverside County Flood Control and Water Conservation District</b> Jeanine Rey, Finance Director 951.955.1264 - jrey@rivco.org	3	3	531,869	\$3,522,464.30
<b>City of Temecula</b> Jennifer Hennessy, Finance Director 951.694.6430 - jennifer.hennessy@temeculaca.gov	3	31	39,014	\$2,232,730.14
<b>Jurupa Community Services District</b> Steven Popelar, CPA, Director of Finance 951.685.7434 x525 - spopelar@jcsd.us	8	125	24,325	\$1,474,573.16
<b>City of Desert Hot Springs</b> Linda Kelly, Finance Director 760.329.6411 x289- lkelly@cityofdhs.org	3	28	16,784	\$982,140.30
<b>City of Santee</b> Tim McDermott, Director of Finance/Treasurer 619.258.4100 x143 - tmcdermo@ci.santee.ca.us	3	15	15,924	\$762,076.58
<b>City of Chino</b> Rob Burns, Director of Finance 909.334.3262 - rburns@cityofchino.org	6	174	5,320	\$604,122.57
<b>Edgemont Community Services District</b> Jessica Pfalmer, Manager & Treasurer 951.784.2632 - jessicaecsd@yahoo.com	1	1	475	\$21,128.16
<b>Total</b>	<b>30</b>	<b>380</b>	<b>709,172</b>	<b>\$13,549,118.81</b>





## CONSULTING SERVICES FOR SPECIAL DISTRICTS

**Client:**  
City of Chino  
13220 Central Avenue  
Chino, CA 91710

**Client Contact:**  
Jose Alire  
Assistant City Manager/  
Public Works Director  
909.334.3265  
jalire@cityofchino.org

Rob Burns  
Director of Finance  
909.334.3262  
rburns@cityofchino.org

**Fiscal Years (FY) of Service:**  
FY 2007-2008 to Present

**Project Team:**  
Heidi Schoeppe - PIC  
Charmaine McCarvel - PM  
Nadia Benali - APM  
Vincent Nguyen-Cao - Analyst  
Matthew Webb - EOR  
Nanette Pratini, GISP - GIS

WMF performs full consulting and administrative services for the City of Chino's Community Facilities Districts (CFD) totaling 32 Landscaping Lighting Maintenance Districts (LLMD) totaling 171 zones, and provides consulting for the City's Special Financing Districts. In this role, WMF has performed CFD Formation Consulting Services including tax rate analysis, Rates and Method of Apportionment preparation, infrastructure financing services, and CFD annexation services including feasibility and budget analysis. Additional services provided by WMF include CFD and Assessment District defeasance services, CFD refunding services, and Proposition 218 consulting services for the City's LLMDs.

### Administration Services

- Data maintenance, levy preparation/submission, reserve monitoring, analysis and recommendation for Proposition 218 compliance proceedings, public information services, budget review, and Annual Engineer's Reports preparation

### Formation Services

- Completed four CFD formations
- Provide projections of tax revenues to ensure sufficient funds will be generated to meet debt service
- Prepare and record boundary maps
- Review CFD Reports for facilities/services to be financed and/or maintained

### Bond Issuance

- Six new money bond issuances and three multiple CFD refinancings
- Provide analysis and data for bond offering and review bond documentation

### Proposition 218 Balloting Proceedings

- Provide assessment ballot proceeding consulting for the City's Lighting and Landscape Maintenance Districts





## FORMATION, ADMINISTRATION, AND ANNEXATION SERVICES

**Client:**  
City of Desert Hot Springs  
65-950 Pierson Blvd.  
Desert Hot Springs, CA 92240

**Client Contact:**  
Linda Kelly  
Finance Director  
760.329.6411 x289  
lkelly@cityofdhs.org

**Fiscal Years (FY) of Service:**  
FY 2010-2011 to Present

**Project Team:**  
Heidi Schoeppe - PIC  
Charmaine McCarvel - PM  
Nadia Benali - APM  
Vincent Nguyen-Cao - Analyst  
Matthew Webb - EOR  
Nanette Pratini, GISP - GIS

WMF provides a full complement of Special District Services for the City of Desert Hot Springs' Citywide Landscaping and Lighting Maintenance District, Drainage Benefit Assessment District containing 17 zones, Landscaping Maintenance District containing 18 zones, and managed three Assessment Districts through their maturity, two Community Facilities Districts, two Public Safety Measure Tax Districts, three tax roll billings for disposal and nuisance abatement services, and a County Service Area. In aggregate, 47,383 parcels are administered and maintained.

### Administration Services

- Data maintenance, preparation of the Annual Engineer's Reports, resolutions, council maps, staff reports, and annual levy submission to the Auditor-Controller's Office
- Audit the parcels in the Public Safety Measure Tax area for the purpose of determining whether or not all eligible parcels were taxed accurately for consecutive fiscal year levies
- Preparation of Disclosure, CDIAC, SB165, and AB 2109 Reporting

### Proposition 218 Balloting Proceedings

- Provide assessment balloting proceedings for the City's Landscape and Lighting Districts

### Formation Services

- Provide projections of tax revenues to ensure sufficient funds will be generated to meet debt service, as well as a back-up tax included in the preparation of the Rates and Method of Apportionment

### Annexation Services

- Review improvement plans and maintenance quantities
- Establish appropriate maintenance category, prepare cost estimates, and special tax rate per residential unit or acre





## FORMATION AND ADMINISTRATION SERVICES

### **Client:**

Jurupa Community Services District  
11201 Harrel Street  
Jurupa Valley, CA 91752

### **Client Contact:**

Steven Popelar, CPA  
Director of Finance  
951.685.7434 x525  
spopelar@jcsd.us

### **Fiscal Years (FY) of Service:**

Fiscal Year 1988-1989 to Present

### **Project Team:**

Heidi Schoeppe - PIC  
Charmaine McCarvel - APM  
Nanette Pratini, GISP - GIS

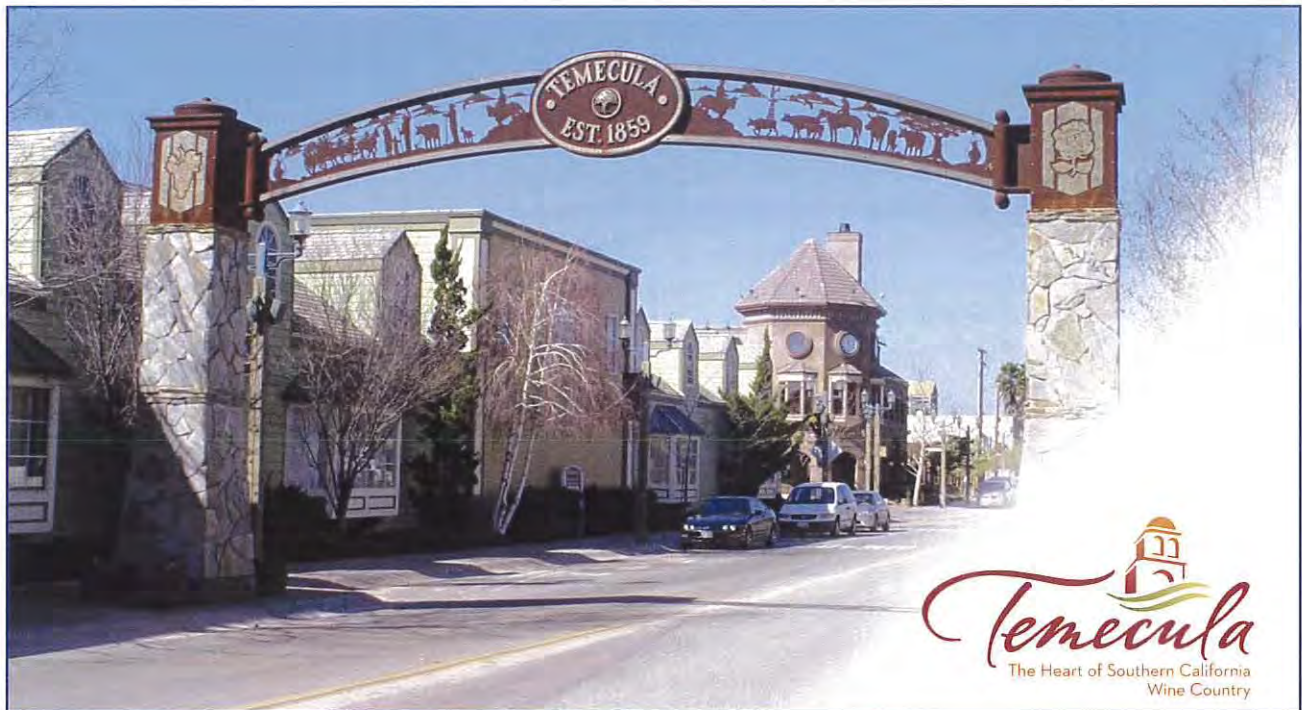
WMF currently performs administrative services for 52 bonded and non-bonded CFDs including 17 annexations, and seven LMDs including 124 annexations. The recent formations of CFDs for JCSD include the design, construction, and acquisition of proposed facilities for JCSD that consist of master plan water system facilities including capacity in existing facilities and sewage treatment and disposal capacity, park and recreation facilities including incidental expenses related to the planning, design, and completion of such facilities, school district facilities that include K-12 public school facility improvements to be owned and operated by the school district, and/or County of Riverside improvements to be owned and operated by the County of Riverside, and/or City of Eastvale Development Impact Fees.

The WMF Team participates in meetings with JCSD personnel either in person or by conference call.

### **Formation Services**

- Projects the planned build-out scenarios to determine taxing capabilities, taking into consideration any overlapping debt in order to maintain the taxing limits outlined by JCSD's policies
- Review outline of plans & specifications, collection and review of all data related to the formation and annexation, preparation of the Engineer's Report including the establishment of general benefit (Assessment Methodology), preparation of assessment diagrams, assessment roll preparation, and assistance in the preparation of the ballots (Proposition 218)





## FORMATION AND ADMINISTRATION SERVICES

**Client:**

City of Temecula  
41000 Main Street  
Temecula, CA 92590

**Client Contact:**

Jennifer Hennessy  
Director of Finance  
951.694.6430  
jennifer.hennessy@temeculaca.gov

**Fiscal Years (FY) of Service:**

Fiscal Year 2014-2015 to Present

**Project Team:**

Heidi Schoeppe - PIC  
Charmaine McCarvel - LLMD PM  
Nadia Benali - LLMD APM  
Vincent Nguyen-Cao - LLMD Analyst  
Matthew Webb - EOR  
Nanette Pratini, GISP - GIS

WMF currently performs administrative services for the City of Temecula of which approximately 106,482 charges were placed on the tax roll for the Fiscal Year 2017-2018, totaling over \$22.1 million in special financing revenues. WMF recently provided services for the formation of an additional CFD within the City. Services provided for the City include researching parcel changes, land use changes, and building permit activity to establish the current assessment rates and levies, annual budget preparation, fund balance analysis, Engineer's Reports, City Council resolutions, annual calculation and submission of special taxes to the Riverside County Auditor-Controller, exhibits including levy audit map, CDIAC and annual disclosure reporting, property owner inquiries, and other special projects.

### Administration Services

- Seven Community Facilities Districts
- One Assessment District
- One Parks and Lighting District Citywide
- Four Community Service Districts

### Proposition 218 Balloting Proceedings

- Provide assessment balloting proceedings for the City's 29 Zones within Community Services Districts

### Formation Services

- Determined the tax rate structure and the preparation of the Rates and Method of Apportionment of Special Tax

### Bond Issuance and Refinancing

- Analyze appropriate data for inclusion in bond offering statements
- Review comments to bond issuance documents and assists in any analysis and presentations for credit ratings



Our team is comprised of senior level staff, multiple Registered Municipal Advisor Representatives, and experts who have dedicated their careers to assisting communities build the necessary services and infrastructures through special financing districts. Although WMF has yet to have any direct professional experience with the City of Banning, we have provided services to multiple public agencies and we look forward to the opportunity of providing the City with the same outstanding service.



**Heidi Schrader, Financial Manager III**  
***Eastern Municipal Water District***

Along with Heidi and her team's undeniable talent, the [WMF] Team has been an absolute joy to work with. We consider them an extension of our staff due to the energy and commitment they have shown the District, always putting the needs of our agency first.

**Our Clients**

We value our relationships and communities in which we do business and are vested in every client's success.



**Steven Popelar, CPA, Director of Finance**  
***Jurupa Community Services District***

The [WMF] Team plays an integral role when issuing new money Special Tax Bonds, preparing bond sizing financing, levy calculations, value-to-debt valuations, and other tables for the Official Statements. They are responsive and knowledgeable in providing any and all information and analysis required as well as providing recommendations regarding Special Tax rate structures and viability of formations based upon JCSD's policies.



**Rob Burns, Director of Finance**  
***City of Chino***

A key factor in the success of our financing districts has been the work by Heidi Schoeppe and her team at [WMF]...they have provided a wealth of expertise in the administration of our Mello-Roos Special Tax districts. [WMF] serves as a full service Special Tax consultant for the City of Chino.



**Amy Aguer, Controller**  
***Formerly of Coachella Valley Water District***

Heidi Schoeppe and her staff respond professionally and accurately to changing information on the fly. They are conscientious and are an excellent resource to CVWD Staff when answering technical questions for the CVWD Board and members of the public during hearings.



## Section 6. Financial Capacity

WMF assures our clients we have the financial resources and organizational capabilities to conduct and complete the required services in a proficient and professional manner. As a newly established firm launched in 2018, WMF has yet received an official audited financial statement. In lieu and in part of our due diligence to meet the RFP's request, WMF has provided our most recent financial standing document noting our financial history as part formerly established Albert A. Webb Associates' Municipal Finance Department. An audited financial statement will be made available for the City's review as soon as the official document is prepared and finalized.

WMF does not have any administrative proceeding, claims, lawsuits, or other exposures pending against us that would impede our performance on the City's projects. Additionally, WMF has not had any claims or disciplinary action taken against the company or company key personnel within the past five years.



# Section 7. Price Proposal

Proposal Page 4

RFP No. 19-018

Type or description of cost/fee (required)	Title/Classification and Unit price/hourly rate (required)	Quantity (required)	Total Task Price (required)
<b>Task 1</b> – Research and Review the History of the District, Current Process for Prop 218 Compliance	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Project Manager \$156.00/hour	4 Hours	\$624.00
	Assistant Project Manager \$130.00/hour	6 Hours	\$780.00
	Financial Analyst \$115/hour	5 Hours	\$575.00
	<b>Total for Task:</b>		<b>\$2,693.00</b>
<b>Task 2</b> – Data Review	Principal-in-Charge \$238.00/hour	4 Hours	\$952.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	9 Hours	\$1,035.00
	<b>Total for Task:</b>		<b>\$4,535.00</b>
<b>Task 3</b> – Prepare Project Schedule	Principal-in-Charge \$238.00/hour	1 Hours	\$238.00
	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	1 Hours	\$115.00
	<b>Total for Task:</b>		<b>\$769.00</b>
<b>Task 4</b> – Recommend Benefit Assessments and Zones, Financial Budget Report	Principal-in-Charge \$238.00/hour	8 Hours	\$1,904.00
	Assessment Engineer \$258.00/hour	4 Hours	\$1,032.00
	Capital Improvement Plan Review Specialist \$258.00/hour	5 Hours	\$1,290.00
	Project Manager \$156.00/hour	12 Hours	\$1,872.00
	Assistant Project Manager \$130.00/hour	15 Hours	\$1,950.00
	Financial Analyst \$115/hour	15 Hours	\$1,725.00
	<b>Total for Task:</b>		<b>\$9,773.00</b>



<b>Task 5 – Public Outreach/City Council Meetings and Presentations (Assumes 4 Outreach, 3 Council and 2 City Staff Meetings)</b>	Principal-in-Charge \$238.00/hour	29 Hours	\$6,902.00
	Project Manager \$156.00/hour	35 Hours	\$5,460.00
	Assistant Project Manager \$130.00/hour	35 Hours	\$4,550.00
	Financial Analyst \$115/hour	15 Hours	\$1,725.00
	GIS Specialist \$156.00/hour	5 Hours	\$780.00
	Meeting Notices \$2 Per Notice (Assumes 4 Meetings)	4,060 Notices	\$8,120.00
	<b>Total for Task:</b>		<b>\$27,537.00</b>
<b>Task 6 – Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings</b>	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	10 Hours	\$1,150.00
	Ballots \$5 per ballot	1,015 Ballots	\$5,075.00
	<b>Total for Task:</b>		<b>\$9,487.00</b>
<b>Task 7 – Provide Data and All Reports in Compatible Format</b>	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	<b>Total for Task:</b>		<b>\$876.00</b>
<b>Task 8 – Provide All Maps and Exhibits</b>	Principal-in-Charge \$238.00/hour	1 Hours	\$238.00
	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	3 Hours	\$390.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	GIS Specialist \$156.00/hour	11 Hours	\$1,716.00
	<b>Total for Task:</b>		<b>\$2,960.00</b>
<b>Task 9 – Preliminary Engineer's Report</b>	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Assessment Engineer \$258.00/hour	2 Hours	\$516.00
	Project Manager \$156.00/hour	7 Hours	\$1,092.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	<b>Total for Task:</b>		<b>\$4,082.00</b>

Task 10 – Report Reproduction	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	5 Hours	\$575.00
	<b>Total for Task:</b>		<b>\$991.00</b>
Task 11 – Public Service/Information	Principal-in-Charge \$238.00/hour	4 Hours	\$952.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	8 Hours	\$1,040.00
	<b>Total for Task:</b>		<b>\$3,240.00</b>
Task 12 – Annual Levy Submittal	Project Manager \$156.00/hour	2 Hours	\$312.00
	Assistant Project Manager \$130.00/hour	3 Hours	\$390.00
	Financial Analyst \$115/hour	3 Hours	\$345.00
	<b>Total for Task:</b>		<b>\$1,047.00</b>

**Grand Total Amount: \$ 67,990.00**

Authorized Signature: Heidi Schoeppe Date: 02/05/2019



# Appendix A. Required Forms

## Ex Parte Communications Certification

### 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. 19-018 the RFP Financial Analysis and Redevelopment of LMD No.1. at any time after the issuance of this RFP solicitation.

Heidi Schoeppe

**OR**

I certify that Proposer or Proposer's representatives have communicated after the issuance of this RFP solicitation with a City Councilmember concerning the RFP No. 19-018 Financial Analysis and Redevelopment of LMD No.1. A copy of all such communications is attached to this form for public distribution.

\_\_\_\_\_

## Disqualifications Questionnaire

### DISQUALIFICATIONS QUESTIONNAIRE

The Consultant shall complete the following questionnaire:

Has the Consultant, any officer of the Consultant, or any employee of the Consultant who has proprietary interest in the Consultant, ever been disqualified, removed, or otherwise prevented from bidding on, or completing a federal, state, or local government project because of a violation of law or safety regulation?

Yes \_\_\_\_\_ No   X  

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



## Disclosure of Government Positions

Webb Municipal Finance, LLC does not have any past or current business and personal relationships with any current Banning elected official, appointed official, City employee, or is a family member of any current Banning elected official, appointed official, or City employee.

### 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

# ATTACHMENT 5

*(Draft Professional Services Agreement)*

**PROFESSIONAL SERVICES AGREEMENT (C00480)  
FOR FINANCIAL ANALYSIS AND REDEVELOPMENT OF  
LANDSCAPE MAINTENANCE DISTRICT (LMD) NO. 1**

**By and Between**

**THE CITY OF BANNING**

**and**

**WEBB MUNICIPAL FINANCE, LLC**

**AGREEMENT FOR PROFESSIONAL SERVICES (C00480) FOR FINANCIAL ANALYSIS AND REDEVELOPMENT OF LANDSCAPE MAINTENANCE DISTRICT (LMD) NO. 1 BY AND BETWEEN CITY OF BANNING AND WEBB MUNICIPAL FINANCE, LLC**

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 **WEBB MUNICIPAL FINANCE, LLC, a California corporation** ("Consultant"). City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

**RECITALS**

A. City has sought, by issuance of a Request for Proposals (RFP No. 19-018), the performance of the services for the financial analysis and redevelopment of LMD no. 1 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 to financial analysis and redevelopment of LMD no. 1 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 SIXTY-SEVEN THOUSAND, NINE-HUNDRED AND NINETY DOLLARS (\$67,990.00) (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:

Heidi Schoeppe, President/Managing Director, Chief Compliance Officer

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. Indemnity for Design Professional Services. To the fullest extent permitted by law, Consultant shall, at its sole cost and expense, protect, indemnify, and hold harmless City and its elected officials, officers, attorneys, agents, employees, designated volunteers, successors, assigns and those City agents serving as independent contractors in the role of City officials (collectively "Indemnitees"), from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith, and reimbursement of attorney's fees and costs of defense (collectively "Liabilities"), whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to, in whole or in part, the negligence, recklessness or willful misconduct of Consultant, its officers, agents, servants, employees, subcontractors, material men, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of design professional services under this Agreement by a "design professional," as the term is defined under California Civil Code Section 2782.8(c).

#### B. Other Indemnities.

1) Other than in the performance of design professional services, and to the fullest extent permitted by law, Consultant shall, at its sole cost and expense, defend, hold harmless and indemnify the Indemnitees from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, judgments, penalties, liens, and losses of any nature whatsoever, including fees of accountants, attorneys, or other professionals and all costs associated therewith and the payment of all consequential damages (collectively "Claims"), in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties. Consultant shall defend the Indemnitees in any action or actions filed in connection with any Claim with counsel of the Indemnitees' choice, and shall pay all costs and expenses, including all attorneys' fees and experts' costs actually incurred in connection with such defense. Consultant shall reimburse the Indemnitees for any and all legal expenses and costs incurred by the Indemnitees in connection therewith.

2) Consultant shall pay all required taxes on amounts paid to Consultant under this Agreement, and indemnify and hold City harmless from any and all taxes, assessments, penalties, and interest asserted against City by reason of the independent contractor relationship created by this Agreement. Consultant shall fully comply with the workers' compensation law regarding Consultant and Consultant's employees. Consultant shall indemnify and hold City harmless from any failure of Consultant to comply with applicable workers' compensation laws. City may offset against the amount of any fees due to Consultant under this



Agreement any amount due to City from Consultant as a result of Consultant's failure to promptly pay to City any reimbursement or indemnification arising under this subparagraph B.2).

3) Consultant shall obtain executed indemnity agreements with provisions identical to those in this Section from each and every subcontractor or any other person or entity involved by, for, with or on behalf of Consultant in the performance of this Agreement. If Consultant fails to obtain such indemnities, Consultant shall be fully responsible and indemnify, hold harmless and defend the Indemnitees from and against any and all Claims in law or equity, whether actual, alleged or threatened, which arise out of, are claimed to arise out of, pertain to, or relate to the acts or omissions of Consultant's subcontractor, its officers, agents, servants, employees, subcontractors, materialmen, contractors or their officers, agents, servants or employees (or any entity or individual that Consultant's subcontractor shall bear the legal liability thereof) in the performance of this Agreement, including the Indemnitees' active or passive negligence, except for Claims arising from the sole negligence or willful misconduct of the Indemnitees, as determined by court decision or by the agreement of the Parties.

C. Workers' Compensation Acts not Limiting. Consultant's 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.

D. Insurance Requirements not Limiting. City does not, and shall not, waive any rights that it may possess against Consultant because of the acceptance by City, or the deposit with City, of any insurance policy or certificate required pursuant to this Agreement. The 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.

E. 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]**



## CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On \_\_\_\_\_, 20\_\_ before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: \_\_\_\_\_

### OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER	DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/> INDIVIDUAL	
<input type="checkbox"/> CORPORATE OFFICER	
<div><div><div>TITLE(S)</div><div><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED <input type="checkbox"/> GENERAL</div></div><div><input type="checkbox"/> ATTORNEY-IN-FACT <input type="checkbox"/> TRUSTEE(S) <input type="checkbox"/> GUARDIAN/CONSERVATOR <input type="checkbox"/> OTHER _____</div></div>	<div>TITLE OR TYPE OF DOCUMENT _____ NUMBER OF PAGES _____ DATE OF DOCUMENT _____</div>
<b>SIGNER IS REPRESENTING:</b> (NAME OF PERSON(S) OR ENTITY(IES)) _____ _____	SIGNER(S) OTHER THAN NAMED ABOVE _____

**EXHIBIT “A”**  
**SCOPE OF SERVICES**

- I. Consultant will perform the following services and deliver the following tangible work products in connection with providing financial analysis and redevelopment of LMD no. 1:**

TASK	PROJECT ROLE							TOTAL HOURS BY TASK
	Principal-in-Charge	Assessment Engineer	Capital Improvement Plan Review Specialist	Project Manager	Assistant Project Manager	Financial Analyst	GIS Specialist	
<b>Task 1</b> – Research and Review the History of the District, Current Process for Proposition 218 Compliance	3	–	–	4	6	5	–	<b>18</b>
<b>Task 2</b> – Data Review	4	–	–	8	10	9	–	<b>31</b>
<b>Task 3</b> – Prepare Project Schedule	1	–	–	1	2	1	–	<b>5</b>
<b>Task 4</b> – Recommend Benefit Assessments and Zones, Financial Budget Report	8	4	5	12	15	15	–	<b>59</b>
<b>Task 5</b> – Public Outreach/City Council Meetings and Presentations	29	–	–	35	35	15	5	<b>119</b>
<b>Task 6</b> – Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings	3	–	–	8	10	10	–	<b>31</b>
<b>Task 7</b> – Provide Data and All Reports in Compatible Format	–	–	–	1	2	4	–	<b>7</b>
<b>Task 8</b> – Provide All Maps and Exhibits	1	–	–	1	3	4	11	<b>20</b>
<b>Task 9</b> – Preliminary Engineer’s Report	3	2	–	7	10	4	–	<b>26</b>
<b>Task 10</b> – Report Reproduction	–	–	–	1	2	5	–	<b>8</b>
<b>Task 11</b> – Public Service/Information	4	–	–	8	8	–	–	<b>20</b>
<b>Task 12</b> – Annual Levy Submittal	–	–	–	2	3	3	–	<b>8</b>
<b>Task 13</b> – Additional/Optional Tasks	–	–	–	–	–	–	–	<b>--</b>
<b>TOTAL HOURS</b>	<b>56</b>	<b>6</b>	<b>5</b>	<b>88</b>	<b>106</b>	<b>75</b>	<b>16</b>	<b>352</b>



- I.** 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.
- II.** 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.
- III.** Consultant will utilize the following personnel to accomplish the services:
  - A. Heidi Schoeppe, President/Managing Director & Chief Compliance Officer
  - B. Matthew Webb, PE, TE, LLS, Assessment Engineer
  - C. Charmaine McCarvel, Project Manager
  - D. Nadia Benali, Assistant Project Manager
  - E. Vincent Nguyen-Cao, Financial Analyst
  - F. Nanette Pratini, GISP, GIS Specialist
  - G. Brian Knoll, PE, CIP Review Specialist

**EXHIBIT "B"**  
**SPECIAL REQUIREMENTS**  
**(Superseding Contract Boilerplate)**

None

**EXHIBIT “C”**  
**SCHEDULE OF COMPENSATION**

**I. Consultant shall perform the following tasks (“Tasks”) at the following rates**

Type or description of cost/fee (required)	Title/Classification and Unit price/hourly rate (required)	Quantity (required)	Total Task Price (required)
<b>Task 1 – Research and Review the History of the District, Current Process for Prop 218 Compliance</b>	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Project Manager \$156.00/hour	4 Hours	\$624.00
	Assistant Project Manager \$130.00/hour	6 Hours	\$780.00
	Financial Analyst \$115/hour	5 Hours	\$575.00
	<b>Total for Task:</b>		<b>\$2,693.00</b>
<b>Task 2 – Data Review</b>	Principal-in-Charge \$238.00/hour	4 Hours	\$952.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	9 Hours	\$1,035.00
	<b>Total for Task:</b>		<b>\$4,535.00</b>
<b>Task 3 – Prepare Project Schedule</b>	Principal-in-Charge \$238.00/hour	1 Hours	\$238.00
	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	1 Hours	\$115.00
	<b>Total for Task:</b>		<b>\$769.00</b>
<b>Task 4 – Recommend Benefit Assessments and Zones, Financial Budget Report</b>	Principal-in-Charge \$238.00/hour	8 Hours	\$1,904.00
	Assessment Engineer \$258.00/hour	4 Hours	\$1,032.00
	Capital Improvement Plan Review Specialist \$258.00/hour	5 Hours	\$1,290.00
	Project Manager \$156.00/hour	12 Hours	\$1,872.00
	Assistant Project Manager \$130.00/hour	15 Hours	\$1,950.00
	Financial Analyst \$115/hour	15 Hours	\$1,725.00
	<b>Total for Task:</b>		<b>\$9,773.00</b>

Task 5 – Public Outreach/City Council Meetings and Presentations (Assumes 4 Outreach, 3 Council and 2 City Staff Meetings)	Principal-in-Charge \$238.00/hour	29 Hours	\$6,902.00
	Project Manager \$156.00/hour	35 Hours	\$5,460.00
	Assistant Project Manager \$130.00/hour	35 Hours	\$4,550.00
	Financial Analyst \$115/hour	15 Hours	\$1,725.00
	GIS Specialist \$156.00/hour	5 Hours	\$780.00
	Meeting Notices \$2 Per Notice (Assumes 4 Meetings)	4,060 Notices	\$8,120.00
	<b>Total for Task:</b>		<b>\$27,537.00</b>
Task 6 – Increased Levy Assessment Ballots/Public Notice and Hearing/Assessment Ballot Proceedings	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	10 Hours	\$1,150.00
	Ballots \$5 per ballot	1,015 Ballots	\$5,075.00
	<b>Total for Task:</b>		<b>\$9,487.00</b>
Task 7 – Provide Data and All Reports in Compatible Format	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	<b>Total for Task:</b>		<b>\$876.00</b>
Task 8 – Provide All Maps and Exhibits	Principal-in-Charge \$238.00/hour	1 Hours	\$238.00
	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	3 Hours	\$390.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	GIS Specialist \$156.00/hour	11 Hours	\$1,716.00
	<b>Total for Task:</b>		<b>\$2,960.00</b>
Task 9 – Preliminary Engineer's Report	Principal-in-Charge \$238.00/hour	3 Hours	\$714.00
	Assessment Engineer \$258.00/hour	2 Hours	\$516.00
	Project Manager \$156.00/hour	7 Hours	\$1,092.00
	Assistant Project Manager \$130.00/hour	10 Hours	\$1,300.00
	Financial Analyst \$115/hour	4 Hours	\$460.00
	<b>Total for Task:</b>		<b>\$4,082.00</b>

Task 10 – Report Reproduction	Project Manager \$156.00/hour	1 Hours	\$156.00
	Assistant Project Manager \$130.00/hour	2 Hours	\$260.00
	Financial Analyst \$115/hour	5 Hours	\$575.00
	<b>Total for Task:</b>		<b>\$991.00</b>
Task 11 – Public Service/Information	Principal-in-Charge \$238.00/hour	4 Hours	\$952.00
	Project Manager \$156.00/hour	8 Hours	\$1,248.00
	Assistant Project Manager \$130.00/hour	8 Hours	\$1,040.00
	<b>Total for Task:</b>		<b>\$3,240.00</b>
Task 12 – Annual Levy Submittal	Project Manager \$156.00/hour	2 Hours	\$312.00
	Assistant Project Manager \$130.00/hour	3 Hours	\$390.00
	Financial Analyst \$115/hour	3 Hours	\$345.00
	<b>Total for Task:</b>		<b>\$1,047.00</b>

**Grand Total Amount: \$67,990.00**

- II. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.
- III. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:
  - A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
  - B. Line items for all materials and equipment properly charged to the services.
  - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
  - D. Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.
- IV. The total compensation for services shall not exceed \$67,990.00 as provided in Section 2.1 of this Agreement.



**EXHIBIT “D”**  
**SCHEDULE OF PERFORMANCE**

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City’s request for services, unless otherwise agreed to by the Contract Officer.**
- II. Consultant shall deliver the following services and tangible work products to the City within the following timeframe.**
  - 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**

DESCRIPTION	DUE DATE	PARTY RESPONSIBLE
Collect and review historical data for Landscape and Lighting Act of 1972 and Proposition 218 compliance	June 2019	WMF
Kick-Off meeting	June 2019	City Staff, WMF
City Staff provides WMF with preliminary cost estimates for each existing zone	June 2019	City Staff
WMF prepares a detailed analysis and Financial Budget Report, determines and recommends if District restructuring is beneficial. WMF will provide five copies to the City for review and approval	July 2019	WMF
WMF prepares a timeline and preliminary maximum assessment amounts for City Staff approval	July 2019	WMF
WMF begins preparation of the Engineer's Report	July 2019	WMF
Flyer with FAQs guide is mailed (after City approval) to property owners stating City's intentions for Proposition 218 Balloting Proceedings with dates, times, and locations for community outreach meetings	August 2019	WMF
City Staff/WMF holds three property owner meetings to educate and answer any questions or concerns. Dates and locations of meetings to be determined	TBD	City Staff, WMF
WMF provides draft copies of the Preliminary Engineer's Report for review by City Staff including assessment diagram and boundaries	August 2019	WMF
WMF prepares ballots and public hearing notice to be reviewed and approved by City Staff and legal counsel	April 2019	City Staff, Legal Counsel
Legal counsel prepares resolutions for the Intent Meeting	April 2019	Legal Counsel
<b>Agenda Deadline</b> • WMF provides Preliminary Engineer's Report for Intent Meeting	September 2019	WMF
<b>Resolution of Intention Meeting</b> • City Council adopts the Resolution of Intention setting the date and time of the public hearing and resolution approving the preliminarily Engineer's Report	September 2019	City Council, City Staff, WMF
WMF mails out ballots	No later than 45 days prior to Public Hearing	WMF
City Clerk publishes the adopted Resolution of Intention in the local newspaper once	At least 14 Days prior to the Public Hearing	City Clerk
<b>Public Hearing</b> – City Council allows the public to ask questions and “hear and be heard.” City Council then reviews and approves the Final Engineer's Report • <i>Impartial party counts the ballots with WMF present</i>	November 2019	City Council, City Staff,
<b>Election</b> – Election results are announced	Next Day	City Council, City Staff