

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

July 9, 2019
3:15 p.m.

Banning Civic Center
Council Chamber
99 E. Ramsey Street

I. CALL TO ORDER

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

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

II. CLOSED SESSION

- 1. **CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Section 54956.9 (one case)
- 2. **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 No. RIC 1900544 and Golden State Environmental Justice Alliance v. City of Banning, Case No. RIC 19000654 (Banning Distribution Center)
- 3. **CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION**
(Pursuant to Subdivision (a) of Government Code Section 54956.9)
Name of Case: Sustainers Alliance for Environmental Responsibility (SAFER) v. City of Banning, et al. (Lawrence Equipment Warehouse Project)
Case No. RIC 1903059

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
SPECIAL WORKSHOP MEETING
CITY OF BANNING
BANNING, CALIFORNIA**

July 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

II. WORKSHOP

1. Electric Workshop Part 2.....
2. Mid-Cycle Budget Workshop.....

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

IV. 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]

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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AGENDA
REGULAR MEETING OF THE BANNING CITY COUNCIL, AND THE CITY COUNCIL
SITTING AS THE BANNING UTILITY AUTHORITY, BANNING FINANCING AUTHORITY
AND BANNING SUCCESSOR AGENCY
CITY OF BANNING
BANNING, CALIFORNIA

July 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 – Mountain Avenue Baptist Church - Pastor
- Pledge of Allegiance
- Roll Call – Council Members Happe, Peterson, Wallace, Mayor Pro Tem Andrade and Mayor Welch

II. AGENDA APPROVAL

III. PRESENTATION

None.

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. Select Voting Delegate to the League of California Cities General Assembly Annual Conference to be Held in Long Beach, October 16-18. **16**

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 5: 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 – 6/25/2019 Minutes (Closed Session) **21**
2. Approval of Regular Meeting – 6/25/2019 Minutes **24**
3. Adopt Resolution Approving the Agreement for Purchase and Sale and Escrow Instructions Between the City of Banning and Louis S. Lopez Trustee of the Louis S. Lopez Trust in Connection with Ramsey-Hathaway Street Improvement Project (Portions of APNs: 532-110-004, 532-120-001, -002, -008, -009, and -010) Not to Exceed \$51,102. **44**
4. Authorize the City Manager to Sign the Notice of Completion for Project No. 2018-05 “City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements” as Complete and Direct the City Clerk to record the Notice of Completion (NOC). **121**
5. Adopt Resolution Making an Appropriation of Additional Funds to Close Out Project No. 2016-04, “Roosevelt Williams Park Improvements”. **128**

VII. PUBLIC HEARINGS

1. Cedar Hills Apartments (“The Project”), General Plan Amendment No. 18-2504: Zone Change No. 18-3503; Design Review No. 18-7011; and Environmental Assessment No. 18-1508 for the Proposed Development of Multi-Family Residential Apartment Complex and Associated Infrastructure on 7.08 Acres of Land Within the Low Density Residential (LDR) Land Use District (APNS 534-283-011 and 534-283-014) **135**
(Staff Report – Adam Rush, Community Development Director)

Recommendation(s): Staff recommends that the City Council discuss and continue the item and the public hearing to August 27, City Council meeting.

2. Adopt Resolution Approving General Plan Amendment 18-2503, Waive Further Reading and Introduce Ordinance No. 1548, Approving Zone Change 18-3502, to Amend the Land Use Designation and Zoning Classification of Two Parcels Totaling 5.14 Acres from General Commercial (GC) to Industrial, and Develop with Industrial Uses, Located at 200 South Eight Street and 679 West Lincoln Street (APNs: 540-220-013 and 540-220-007). 142
(Staff Report – Adam Rush, Community Development Director)

Recommendation(s): Staff recommends that the City Council: 1) Find that in accordance with CEQA Guidelines Section 15161 (b)(3) Common Sense Exemption, it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying of certain real property from General Commercial (GC) to Industrial (I), may have a significant effect on the environment. The activity is not subject to CEQA; and 2) Waive further reading and introduce Ordinance No. 1548 to approve Zone Change (ZC) 18-3502 amending the Zoning Map of Title 17 of the Banning Municipal Code for two lots totaling approximately 5.14 acres from General Commercial to Industrial subject to conditions of approval.

Mayor asks the City Clerk to read the title of Ordinance 1548

“Ordinance No. 1548, An Ordinance of the City Council of the City of Banning, California, approving Zone Change No. 18-18-3502 Amending the Zoning Map from General Commercial (GC) to Industrial (I), in Conformance with General Plan Amendment No. 18-2503 for Real Property Located at 200 South Eight Street (APN: 540-200-113) and 679 West Lincoln Street (APN: 540-220-007).” (First reading and Introduction).

Motion: I move to waive further reading of Ordinance No. 1548
(Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1548 pass its first reading

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORT OF OFFICERS

1. Adopt Resolution Approving an Agreement for Purchase of Real Property in an Amount Not to Exceed \$150,020 (APN: 534-152-025) 212
(Staff Report – Ted Shove, Economic Development Manager)

Recommendation(s): Staff recommends that the City: 1) Approve the “Agreement for Purchase and Sale and Escrow Instructions for Real Property, Assessor’s Parcel Number 534-152-025”; 2) Authorize the City Manager to execute the Agreement for Purchase and Sale and Escrow Instructions and Certificate of Acceptance for Real Property (APN 543-090-0088); and 3) Authorize the Administrative Services Director to make necessary budget adjustments and appropriations for FY 2020.

2. Adopt Resolution of the Banning Utility Authority Approving the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. to Extend the Term of the Agreement. 233
(Staff Report – Art Vela, Director of Public Works/City Engineer)

Recommendation (s): Staff recommends that the City Council: 1) Approve the third amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. to extend the term of the agreement for one (1) additional year and thereby amending the termination date of the original Agreement to September 30, 2020; and 2) Authorize the City Manager or his designee to make the necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement; and 3) Authorize the City Manager to execute the Third amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc.

3. Banning Police Officer's Association Memorandum of Understanding 302
(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council Adopt Resolution Approving the Memorandum of Understanding between the City of Banning and the Banning Police Officer’s Association for 2019-2022.

4. Ordinance No. 1549, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 15.76 of the Banning Municipal Code Updating Participation in the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program to Include a Process for WRCOG Calculation and Collection of Fees Under the Program, and Making a Determination of Exemption Under the California Environmental Quality Act. (CEQA). *(First Reading & Introduction)* 341
(Staff Report – Adam Rush, Community Development Director)

Recommendation (s): Staff recommends that the City Council: 1) Waive further reading and introduce Ordinance No. 1549, an Ordinance of the City of Banning, amending chapter 15.76 of the Banning Municipal Code to update participation in the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program to include a process for WRCOG calculation and collection of fees under the program; and 2) Find that in accordance with CEQA Guidelines Section of the California Environmental Quality Act (CEQA) Guidelines that the

Transportation Uniform Mitigation Fee Program is not a “project” within the meaning of Section 15378 and Section 15061(b)(3) of the CEQA Guidelines and is therefore exempt from the requirements of CEQA. Ordinance No. 1549 will have no effect on the environment. The adoption of this Ordinance approves and sets forth a procedure for determining fees for the purpose of obtaining funds for capital projects necessary to maintain service within existing service areas and is statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273(a)(4).

Mayor asks the City Clerk to read the title of Ordinance 1549

“Ordinance No. 1549, Ordinance No. 1549, An Ordinance of the City Council of the City of Banning, California, Amending Chapter 15.76 of the Banning Municipal Code Updating Participation in the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program to Include a Process for WRCOG Calculation and Collection of Fees Under the Program, and Making a Determination of Exemption Under the California Environmental Quality Act. (CEQA).” (First reading and Introduction).

Motion: I move to waive further reading of Ordinance No. 1549
(Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1549 pass its first reading

5. Adopt Resolution Approving a Professional Services Agreement with Webb & Associates for the Preparation of CEQA Documentation and Environmental Services for the Sun Lakes Boulevard Circulation General Plan Amendment (CGPA). **363**
(Staff Report – Adam Rush, Community Development Director)

Recommendation (s): Staff recommends that the City Council: 1) Approve a Professional Service Agreement with Webb & Associates, in the amount of \$71,345 for Fiscal Year 2019/2020 for the preparation of CEQA documentation and environmental services for the Sun Lakes Boulevard Circulation General Plan Amendment; and 2) Authorize the City Manager to execute the Professional Services Agreement with Webb & Associates for Fiscal Year 2019/2020 for the preparation of CEQA documentation and environmental services for the Sun Lakes Boulevard Circulation Element General Plan Amendment.

6. Adopt Resolution Approving a Professional Services Agreement with Dude Solutions for the Purchase of SmartGov Software and Licensing for the Streamlining of Permitting, Planning/Zoning, and Permit Inspections Services. **424**
(Staff Report – Adam Rush, Community Development Director)

Recommendation (s): Staff recommends that the City Council: 1) Approve a Professional Service Agreement with Dude Solutions Inc., in an amount of \$125,967.46 and a contingency of \$12,596.75, for a total amount not-to-exceed

\$138,564.21 for Fiscal Year 2019/2020 for the licensing, development, training, and ongoing support of land use/zoning permitting and project management software; and 2) Authorize the City Manager to execute the Professional Services Agreement with Dude Solutions, Inc. for Fiscal Year 2019/2020 for the licensing, development, training, and ongoing support of land use/zoning permitting and project management software.

7. Refunding of 2005 Wastewater Revenue Bonds for Debt Service Savings 491

(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council Adopt Resolution of the City Council and Banning Utility Authority, Authorizing staff and consultants to prepare necessary documentation for the issuance of bonds to refund certain outstanding 2005 Wastewater Enterprise Revenue Bonds, Series 2005 and approving financing team members in connection therewith.

8. Adopt Resolution Approving the Renewal of the Landscape Maintenance Contract for City Parks with Z&T Ventures, Inc. dba Service Scape of Alta Loma, California for Fiscal Year 2019-2020 in the Amount of \$72,376.20 517

(Staff Report – Douglas Schulze, City Manager)

Recommendation (s): Staff recommends that the City Council: 1) Approve renewal of an Agreement with Z&T Ventures, Inc., dba Service Scape of Alta Loma, California in the amount “not to exceed” \$72,376.20 for Fiscal Year 2019/2020; 2) Authorize the Interim Administrative Services Director to make the necessary budget adjustments, appropriations and transfers related to the Agreement; and 3) Authorize the City Manager to execute the Amendment No. 2 to the Agreement with Z&T Ventures, Inc., dba Service Scape of Alta Loma, California for the remainder of Fiscal Year 2019/2020.

9. Discuss Community Development Department Staffing Needs. 559

(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council authorize the City Manager to initiate the process of transitioning from contract services to in-house building safety and planning staff.

10. Ordinance No. 1550, An Ordinance of the City Council of the City of Banning, California, Providing for Public Works Contracting Pursuant to the Uniform Public Construction Cost Accounting Act, Amending Title 3 of the Banning Municipal Code and Making a Finding of Exemption Under CEQA in Connection Therewith. ***(First Reading & Introduction)*** 563

(Staff Report – Tom Miller, Electric Utility Director)

Recommendation (s): Staff recommends that the City Council: 1) Waive further reading and introduce Ordinance No. 1550, an Ordinance of the City of Banning, California, Providing for Public Works Contracting Pursuant to the Uniform Public Construction Cost Accounting Act, Amending Title 3 of the Banning Municipal Code and Making a Finding of Exemption Under CEQA; and 2) Adopt

Resolution electing to become subject to the Uniform Public Construction Cost Accounting Act.

Mayor asks the City Clerk to read the title of Ordinance 1550

“Ordinance No. 1550, An Ordinance of the City Council of the City of Banning, California, Providing for Public Works Contracting Pursuant to the Uniform Public Construction Cost Accounting Act, Amending Title 3 of the Banning Municipal Code and Making a Finding of Exemption Under CEQA in Connection Therewith.” (First reading and Introduction).

Motion: I move to waive further reading of Ordinance No. 1550
(Requires a majority vote of the Council)

Motion: I move that Ordinance No. 1550 pass its first reading

11. Purchase of Electric Facilities from Mountain Air Mobile Home Estates .. **583**
(Staff Report – Thomas Miller, Electric Utility Director)

Recommendation: Staff recommends that the City Council:1) Discuss and take possible action regarding the purchase of secondary electrical energy distribution facilities within Mountain Air Mobile Home Estates (“Estates”); and 2) Adopt Resolution authorizing the City Manager and Electric Utility Director to purchase certain secondary electrical energy facilities owned and operated by Mountain Air Mobile Home Estates at an approximate cost of \$30,000. The resolution directs the management team to prepare all documentation necessary to complete the transaction in good form and make required budget adjustments to complete the purchase transaction within the mutually agreed upon terms.

12. Adopt Resolution Approving Purchase of Arena Fencing for Dysart Park in an Amount Not to Exceed \$35,000. **597**
(Staff Report – Douglas Schulze, City Manager)

Recommendation: Staff recommends that the City Council adopt resolution authorizing purchase of arena fencing for Dysart Park in an amount not to exceed \$35,000.

IX. DISCUSSION ITEM

None

CITY COUNCIL – Next Meeting, August 27, 2019, 5:00 p.m.

Please note that in accordance with City Council Resolution No. 2017-14, the City Council will go dark for the last meeting in July and the first meeting in August. Therefore, please be advised

that the City Council will not hold its regular meetings on July 23 or August 13 respectively.

X. ITEMS FOR FUTURE AGENDAS

1. Website Redesign
2. Wildfire Mitigation Plans
3. 553 E. Ramsey Receivership

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]

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Council Action Advised by August 30, 2019
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June 10, 2019

TO: Mayors, City Managers and City Clerks

**RE: DESIGNATION OF VOTING DELEGATES AND ALTERNATES
League of California Cities Annual Conference – October 16 - 18, Long Beach**

The League's 2019 Annual Conference is scheduled for October 16 – 18 in Long Beach. An important part of the Annual Conference is the Annual Business Meeting (during General Assembly), scheduled for 12:30 p.m. on Friday, October 18, at the Long Beach Convention Center. At this meeting, the League membership considers and takes action on resolutions that establish League policy.

In order to vote at the Annual Business Meeting, your city council must designate a voting delegate. Your city may also appoint up to two alternate voting delegates, one of whom may vote in the event that the designated voting delegate is unable to serve in that capacity.

Please complete the attached Voting Delegate form and return it to the League's office no later than Friday, October 4. This will allow us time to establish voting delegate/alternate records prior to the conference.

Please note the following procedures are intended to ensure the integrity of the voting process at the Annual Business Meeting.

- **Action by Council Required.** Consistent with League bylaws, a city's voting delegate and up to two alternates must be designated by the city council. When completing the attached Voting Delegate form, please attach either a copy of the council resolution that reflects the council action taken, or have your city clerk or mayor sign the form affirming that the names provided are those selected by the city council. Please note that designating the voting delegate and alternates **must** be done by city council action and cannot be accomplished by individual action of the mayor or city manager alone.
- **Conference Registration Required.** The voting delegate and alternates must be registered to attend the conference. They need not register for the entire conference; they may register for Friday only. To register for the conference, please go to our website: www.cacities.org. In order to cast a vote, at least one voter must be present at the

Business Meeting and in possession of the voting delegate card. Voting delegates and alternates need to pick up their conference badges before signing in and picking up the voting delegate card at the Voting Delegate Desk. This will enable them to receive the special sticker on their name badges that will admit them into the voting area during the Business Meeting.

- **Transferring Voting Card to Non-Designated Individuals Not Allowed.** The voting delegate card may be transferred freely between the voting delegate and alternates, but *only* between the voting delegate and alternates. If the voting delegate and alternates find themselves unable to attend the Business Meeting, they may *not* transfer the voting card to another city official.
- **Seating Protocol during General Assembly.** At the Business Meeting, individuals with the voting card will sit in a separate area. Admission to this area will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate. If the voting delegate and alternates wish to sit together, they must sign in at the Voting Delegate Desk and obtain the special sticker on their badges.

The Voting Delegate Desk, located in the conference registration area of the Sacramento Convention Center, will be open at the following times: Wednesday, October 16, 8:00 a.m. – 6:00 p.m.; Thursday, October 17, 7:00 a.m. – 4:00 p.m.; and Friday, October 18, 7:30 a.m.–11:30 a.m.. The Voting Delegate Desk will also be open at the Business Meeting on Friday, but will be closed during roll calls and voting.

The voting procedures that will be used at the conference are attached to this memo. Please share these procedures and this memo with your council and especially with the individuals that your council designates as your city's voting delegate and alternates.

Once again, thank you for completing the voting delegate and alternate form and returning it to the League's office by Friday, October 4. If you have questions, please call Darla Yacub at (916) 658-8254.

Attachments:

- Annual Conference Voting Procedures
- Voting Delegate/Alternate Form



Annual Conference Voting Procedures

1. **One City One Vote.** Each member city has a right to cast one vote on matters pertaining to League policy.
2. **Designating a City Voting Representative.** Prior to the Annual Conference, each city council may designate a voting delegate and up to two alternates; these individuals are identified on the Voting Delegate Form provided to the League Credentials Committee.
3. **Registering with the Credentials Committee.** The voting delegate, or alternates, may pick up the city's voting card at the Voting Delegate Desk in the conference registration area. Voting delegates and alternates must sign in at the Voting Delegate Desk. Here they will receive a special sticker on their name badge and thus be admitted to the voting area at the Business Meeting.
4. **Signing Initiated Resolution Petitions.** Only those individuals who are voting delegates (or alternates), and who have picked up their city's voting card by providing a signature to the Credentials Committee at the Voting Delegate Desk, may sign petitions to initiate a resolution.
5. **Voting.** To cast the city's vote, a city official must have in his or her possession the city's voting card and be registered with the Credentials Committee. The voting card may be transferred freely between the voting delegate and alternates, but may not be transferred to another city official who is neither a voting delegate or alternate.
6. **Voting Area at Business Meeting.** At the Business Meeting, individuals with a voting card will sit in a designated area. Admission will be limited to those individuals with a special sticker on their name badge identifying them as a voting delegate or alternate.
7. **Resolving Disputes.** In case of dispute, the Credentials Committee will determine the validity of signatures on petitioned resolutions and the right of a city official to vote at the Business Meeting.


CITY: _____

**2019 ANNUAL CONFERENCE
VOTING DELEGATE/ALTERNATE FORM**

Please complete this form and return it to the League office by Friday, October 4, 2019. Forms not sent by this deadline may be submitted to the Voting Delegate Desk located in the Annual Conference Registration Area. Your city council may designate one voting delegate and up to two alternates.

In order to vote at the Annual Business Meeting (General Assembly), voting delegates and alternates must be designated by your city council. Please attach the council resolution as proof of designation. As an alternative, the Mayor or City Clerk may sign this form, affirming that the designation reflects the action taken by the council.

Please note: Voting delegates and alternates will be seated in a separate area at the Annual Business Meeting. Admission to this designated area will be limited to individuals (voting delegates and alternates) who are identified with a special sticker on their conference badge. This sticker can be obtained only at the Voting Delegate Desk.

1. VOTING DELEGATE

Name: _____

Title: _____

2. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

3. VOTING DELEGATE - ALTERNATE

Name: _____

Title: _____

PLEASE ATTACH COUNCIL RESOLUTION DESIGNATING VOTING DELEGATE AND ALTERNATES.

OR

ATTEST: I affirm that the information provided reflects action by the city council to designate the voting delegate and alternate(s).

Name: _____

Email: _____

 Mayor or City Clerk _____
(circle one) (signature)

Date: _____ Phone: _____

Please complete and return by Friday, October 4, 2019

League of California Cities
ATTN: Darla Yacub
 1400 K Street, 4th Floor
 Sacramento, CA 95814

FAX: (916) 658-8240
 E-mail: dyacub@cacities.org
 (916) 658-8254

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

06/25/2019
SPECIAL MEETING- CLOSED SESSION

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Ted Shove, Economic Development Manager
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 June 25, 2019 at 4:47 p.m. at the Banning Civic Council Chambers, 99 E. Ramsey Street, Banning, California.

II. CLOSED SESSION

Mayor Welch opened the closed session items for public comments.

There were no public comments.

1. CONFERENCE WITH REAL PROPERTY NEGOTIATORS

(Pursuant to Government Code Section 54956.8)

Property Description: APN: 419-140-041

City Negotiators: Douglas Schulze, City Manager, and Ted Shove,
Economic Development Manager

Negotiating Parties: Marinita Development

Under Negotiation: Request for Conveyance of Land. **Report was provided and direction given to the City negotiators, City Manager Douglas Schulze, and Economic Development Manager, Ted Shove with regard to the potential conveyance of City property to Marinita Development.**

The meeting convened to closed session at 4:47 p.m. and reconvened to open session at 5:03 p.m.

III. ADJOURNMENT

By consensus, the meeting adjourned at 5:03 p.m.

Minutes Prepared by:

Daryl Betancur, Deputy City Clerk

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

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MINUTES
CITY COUNCIL

06/25/2019
REGULAR MEETING

COUNCIL MEMBERS PRESENT: Councilmember Happe
Councilmember Wallace
Mayor Welch

COUNCIL MEMBERS ABSENT: Councilmember Peterson
Mayor Pro Tem Andrade

OTHERS PRESENT Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Daryl Betancur, Deputy City Clerk
Matthew Hamner, Police Chief
Scott Foster, Interim Parks & Recreation Director
Tom Miller, Electric Utility Director
Art Vela, Public Works Director/City Engineer
Suzanne Cook, Interim Administrative Services Director
Adam Rush, Community Development Director
Ted Shove, Economic Development Manager
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 June 25, 2019, at 5:04 p.m. at the Banning Civic Center Council Chamber, 99 E. Ramsey Street, Banning, California.

Pastor Richard Szydlowski of Mountain Avenue Baptist Church offered the invocation.

Councilmember Colleen Wallace led the audience in the Pledge of Allegiance.

Mayor Welch requested that item number 7 under Report of Officers be moved ahead on the agenda right after item number 5.

A motion was made by Councilmember Happe, seconded by Councilmember Wallace to approve the change to the agenda. Electronic roll call vote was taken as follows:

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

II. APPROVAL OF AGENDA

A motion was made by Councilmember Wallace, seconded by Councilmember Happe to approve the agenda as amended. Electronic roll call vote was taken as follows:

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

III. PRESENTATION

None

IV. REPORT ON CLOSED SESSION

1. **CONFERENCE WITH REAL PROPERTY NEGOTIATORS**

(Pursuant to Government Code Section 54956.8)

Property Description: APN: 419-140-041

City Negotiators: Douglas Schulze, City Manager, and Ted Shove, Economic Development Manager

Negotiating Parties: Marinita Development

Under Negotiation: Request for Conveyance of Land. **Report was provided and direction given to the City negotiators, City Manager Douglas Schulze, and Economic Development Manager, Ted Shove with regard to the potential conveyance of City property to Marinita Development.**

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

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

Public Comments

Mary Hamlin spoke with regards to the Grand Jury report that was issued June 18th, 2019, which was made public on June 21; she made specific reference to the summary whereby it says that the people of Banning deserve and expect the proper function and operation of their City government and stated that we can all agree on that statement; commented that under goals, the report states that the citizens of Banning should hold the City Council accountable to high standards and expectations, observe, attend and voice their concerns at City Council public meetings; stated that she hoped that when said report comes before the City Council that the public steps up and voices their opinion and also that the City Council seriously listens to the citizens of Banning; perhaps the guilty party would just resign and save us all some trouble.

Inge Schuler addressed the City Council with respect to an event that occurred a few weeks ago and which seemed to be drifting off into no comment area and that was the destruction of the reed building; she stated that she understood it was an attempt to demolish it, and luckily some of that was stopped but that she wanted to know if the next item was going to be to demolish it after all; stated that we have a list of buildings that have been demolished in town such as the San Gorgonio Inn; and that the only art deco building between Palm Springs and Redlands was the one to the east of the property in which the San Gorgonio Inn was located; she stated that it was a show room for cars and that the developer who wanted to rebuild the property across from City Hall was interested in that building being demolished; stated that we need to pay attention to the old buildings in town; commented that it was ironic that on the day the building was facing partial demolition, the group of people with the historical society had a meeting to list the historical buildings in the pass area; commented that the Council also removed the discussion of the Mills Act from your agenda of future items and urge the Council to put it back on the agenda.

Rena Richards, Chairman of the Board of the Sunrise Estates Park Board at 2200 W. Wilson Street spoke about the traffic on sunrise states and read a statement included herein as part of the record.

Misha Graves with the Riverside Sheriff's Department stated that she had come to introduce herself to the City Council and the community because she had recently been assigned to the Larry D. Smith Correctional Facility here in Banning as a Captain in charge of the facility.

Bill Hobbs spoke about San Gorgonio Hospital and the Cherry Valley Health Care Facility stating that a long time ago there was a lot of negative information in the community about San Gorgonio hospital; commented that he had been attending their board meetings for the past two years and that he had seen significant progress; commented that it feels good to see positivity and collaborative partnerships; commented on the event held at Johnny Russo's and the Station tap house where everyone enjoyed karaoke; stated that Banning was positively changing.

CORRESPONDENCE

None.

VI. CONSENT ITEMS

Mayor Welch asked if the Council wished to pull any items. Seeing none, he entertained a motion to approve the consent calendar.

There were no comments on consent items.

A motion was made by Councilmember Wallace, seconded by Councilmember Happe to approve the rest of the consent calendar as presented. Electronic vote was taken as follows:

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

1. Approval of Special Meeting – 6/11/19 Minutes (Closed Session)

Action: Approved by Minute Order No. 2019-086

2. Approval of Special Meeting – 6/11/19 Minutes (Workshop)

Action: Approved by Minute Order No. 2019-087

3. Approval of Regular Meeting – 6/11/19 Minutes

Action: Approved by Minute Order No. 2019-088

4. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of May 2019.

Action: Approved by Minute Order No. 2019-089

5. Receive and File Cash, Investments and Reserve Report for May 2019.

Action: Received and filed by Minute Order No. 2019-090

6. **Receive and file** Public Works Capital Improvement Project Tracking List for June 2019.

Action: Received and filed by Minute Order No. 2019-091

7. Receive and File Police Department Statistics Report for May 2019.

Action: Received and filed by Minute Order No. 2019-092

8. Receive and File Fire Department Statistics Report for May 2019.

Action: Received and filed by Minute Order No. 2019-093]

9. Ordinance No. 1547 - An Ordinance of the City Council of the City of Banning, California, Approving the Zoning Text Amendment No. 19-97502, Amending Chapter 17.12 "Commercial and Industrial Zoning Districts" and 17.36 "Sign

Regulations of Title 17 Zoning” of the Banning Municipal Code Authorizing Electronic Message Centers in the Downtown Commercial Zoning District, Subject to a Conditional Use Permit (CUP) and Development Agreement.
(*Second Reading and Adoption*)

Action: Adopted Ordinance No. 1547

VII. PUBLIC HEARING(S)

1. Tentative Tract Map (TTM) 37365, A Proposal to Subdivide Approximately 14.22 Gross Acres of Vacant Land into 18 Lots for Condominium Purposes for a Total of 107 Single-Family Residential Detached Condo Units, Four Open Space Lots, One Park Lot and Public Streets, All Within the Butterfield Specific Plan, Planning Areas 4, 9B and 26.

Adam Rush, Community Development Director presented the staff report and indicated that there were three public hearings, which were all adjacent projects; that the first public hearing was on Tentative Tract Map 37365, which was part of the Pardee Development is a proposal to subdivide approximately 14.22 gross acres of vacant land into 18 lots for condominium purposes for a total of 107 single-family residential detached condo units, four open space lots, one park lot and public streets located within the Butterfield Specific Plan, Planning Areas 4, 9B and 26.

Mr. Rush explained the location of the project, which was in the northeastern portion of Highland Springs Avenue, adjacent to Wilson Street; he also explained elements of the project site and its geographical areas including the school district boundaries. In the way of background, Mr. Rush stated that the Butterfield Specific Plan, General Plan and Zoning Map Amendments, Development Agreement and related EIR were originally approved by the City Council in March of 2012; stated that the Planning Commission had recommended its approval.

There were several questions from Council in relation to the School District boundary issue.

City Manager, Douglas Schulze stated that City staff had had a meeting with representative of the School District and Pardee and discussed the issue of the School District boundary; that as a follow up to that meeting they are working to scheduling a meeting to include the legal counsel of each of those entities, to discuss some of the implications related to environmental issues, the EIR and how the boundary for territory adjustment would potentially impact the need to redo or do additional environmental work.

Public Comment

There were no public comments.

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

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

Action: Adopted Resolution No. 2019-73

2. Tentative Tract Map (TTM) 37390, A Proposal to Subdivide Approximately 93 Gross Acres of Vacant Land for Purposes of Subdividing 362 Single Family Lots, 1 Lot for a Park Site, 13 Open Space Lettered Lots (Including Recreation and Drainage), and Public Streets, All Within Planning Area 2B, 6, 7, 8A, 8B, 23, 24, 25, 35A, 35B, and 50B the Butterfield Specific Plan Area.

Adam Rush, Community Development Director presented the staff report and indicated that the item before the Council was Tentative Tract Map 37390, which was a proposal to proposal to subdivide approximately 93 gross acres of vacant land for purposes of subdividing 362 single family Lots, 1 Lot for a park site, 13 open space lettered lots (Including Recreation and Drainage), and public streets, all within planning area 2B, 6, 7, 8A, 8B, 23, 24, 25, 35A, 35B, and 50B the Butterfield Specific Plan Area; commented that the lots in this tract were larger; that there were two park sites within the proposed development.

Mr. Rush stated that the proposal was presented to the Planning Commission and that they had recommended approval as well.

Public Comment

Unidentified speaker asked for a definition of CEQA and inquired about traffic impacts on the surrounding areas particularly Highland Springs Avenue. Staff commented that CEQA stands for the California Environmental Quality Act and explained that the Environmental Impact Report (EIR) addressed all of the impact related to the project.

Kathy Noor also addressed the City Council on the traffic impact on Highland Springs given that it already has a lot of traffic, and stated that was concerned about traffic.

Art Vela, Director of Public Works/City Engineer stated that because it was such a large project, the impacts were difficult to understand; Mr. Vela stated that CEQA requires that we take very technical looks at all of those factors mentioned and device mitigating measures for each one.

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

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

Action: Adopted Resolution No. 2019-74

3. Tentative Tract Map (TTM) 37474, A Proposal to Subdivide Approximately 16.5 Gross Acres of Vacant Land for Purposes of Creating 109 Single Family Lots, 2 Open Space Lettered Lots, and Public Streets, All Within Planning Area 3, Within the Butterfield Specific Plan.

Adam Rush, Community Development Director presented the staff report and indicated that the item before the Council was Tentative Tract Map 37474, which was sandwiched between the two previous tract maps.

Public Comment

Jeff Chambers representative with Pardee Homes thanked Community Development Director, Adam Rush for putting together a great deal of information on these projects in a very quick period of time; he also thanked Art Vela, Director of Public Works/City Engineer for his hard work on these projects.

Nick Parra stated that he was in support of these projects because they were making America's dream come through in terms of homeownership for many families.

Councilmember Happe inquired about public recreation facilities within the project area, and was advised by Jeff Chambers from Pardee that there will be park amenities for both, the residents that would be part of the HOA as well as park amenities that the general public could use.

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

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

Action: Adopted Resolution No. 2019-75

4. Adopt Resolution Approving an Increase in Overage and Contamination Fees Related to the Collection, Transportation and Disposal of Solid Waste.

Art Vela, Director of Public Works/City Engineer presented the staff report and stated that this was first introduced at the June 11, Council meeting; that at that time a request for a rate adjustment was asked for to keep up with CIP increases; that in order to make those fees effective a public hearing was required.

Councilmember Happe inquired about the definition of contamination.

Mr. Vela commented that contamination refers to contamination of recycled material or green waste.

Public Comment

Susan Shotts spoke about the issue of contamination stating that she had become more and more passionate about trash; that we are all causing our trash fees to increase because we are being careless; stated that she was enlightened by someone from Waste Management at a recent event where she had learned about trash; commented that more of us need to become aware and passionate about recycling; that we need to do more to educate people and that we as a City are causing our rates to go up because of our contamination of our recycling.

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

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

Action: Adopted Resolution No. 2019-76

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Wallace reported on having attended the Riverside County Community Action organization; that she had attend the graduation of college kids who volunteer helping other kids with tutoring, mentoring and other projects, and that it was a nice event; also spoke about Community Action and commented that Community Action wants to partner with the City of Banning about bringing youth programs to the City.

Councilmember Happe. No report.

Mayor Welch reported on having attended a meeting with the Historical Society; commented that so far the City has not been quite organized on preserving historical sites and it had to do with the fact that the City had not had a well-organized group in the community making suggestions as to what we can do or should do; that owners of historical properties do not have objections in keeping those properties designated as historical; he stated that the City is working very hard to put the City and the Historical Society together to work in more collaboration.

REPORT BY CITY ATTORNEY

None.

REPORT BY CITY MANAGER

Douglas Schulze reported on two items: 1) a reminder to the Council and the community that they next meeting of July 9 will be the last meeting before the Council goes dark for the second meeting in July and the first meeting in August; that after July 9, the next Council meeting will be on August 27; and 2) provided an update on the Reed Building and stated that this building appears to be the oldest commercial building in Banning, dating back to the 1890's; that on Wednesday, June 12, the day before the Mayor and he spoke at the San Gorgonio Pass Historical Society meeting, contractors began work in the building that far exceeded the work that was allowed by the issued building permit, which was issued for tenant improvements to create an interior space and to do some patching around windows and doors.

Mr. Schulze further commented that around 11 a.m. on Wednesday the 12th, he had observed significant demolition to the exterior of that building and thus has contacted the Community Development Director, Mr. Adam Rush and Mr. Rush and his staff quickly reviewed the permit file and eventually a few hours later there was a stop work order issued on that property. He explained that as of today City staff continues to communicate with the owner and owners agents regarding the project; that the majority of the building has been modified over the past 100 plus years; that the original building does not exist anymore except for the structure, even though the building was listed in the City's general plan under the archeological element as one of the places or buildings in the City that has some historical significance, there is no legal requirement

for the owner to preserve that building; stated that staff is working with the owner to do what we can to at a minimum restore the building to at least some resemblance of what the original appearance was when it was built in the 1890's.

Councilmember Wallace inquired as to whether or not the City Manager was holding any District meetings during the summer months.

REPORT OF OFFICERS

1. Adopt Resolution Approving the Agreement with Cybertime Network Communications for Citywide Looped Microwave Backbone System and Data Circuit to the Water Plant, and Provision of 10.0 Mbps Internet Feed to City Hall for Fiscal Year 2019-2020 for \$31,188.00.

City Manager Douglas Schulze stated that this was an ongoing relationship with this vendor, which has provided the City with high-speed interconnectivity services and technical support as a sole provider; that this item was to continue this service contract.

Public Comment

Nick Parra stated that he was a member of the Historical Society and that he was very proud to see the collaboration between the City, citizens, and owner of the Reed Building; that he looks forward to seeing more of that kind of collaboration.

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

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

Action: Adopted Resolution No. 2019-77

2. Adopt Resolution Authorizing Workers' Compensation Coverage for Off-Duty Peace Officers Injured Out of State.

City Manager Douglas Schulze indicated that this item was before the Council in anticipation of new legislation that is coming down to the Cities and is intended to provide coverage in the event that a police officer who is traveling or who is out of state and while off duty engages in the apprehension of law violators or suspected law violators or engages in protection or preservation of life or property, the officer could potentially be injured; that as it stands now,

if this were to happen the officer would not be covered by Workers' Compensation benefits.

There were several questions from the Council regarding coverages under the City's insurance medical plan and what this protection would do; and whether or not there had been changes to the Workmen's' Compensation provisions of if there was any fiscal impact.

Mr. Schulze explained the rationale that having for having this in place, and stated that the officer would not need to use the City's medical benefits or be out without a paycheck.

City Attorney Kevin G. Ennis indicated that section 3600.2 of the labor code was recently approved by the legislature to allow cities to provide this type of coverage.

Public Comment

There were no public comments.

Susan Shouts stated that she was in support of approving this item due to the multiple of benefits afforded to peace officers who will then be more vested in serving and staying in the City.

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

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

Action: Adopted Resolution No. 2019-78

3. Approving a Determination of Public Convenience and Necessity for the Sales of Beer and Wine (Type 20) in an Existing Retail Store (Dollar General) Located at 1323 West Ramsey Street, Banning, California (APN 540-130-039) in the Highway Servicing Commercial (HSC) Zoning District.

Adam Rush Community Development Director presented the staff report. Mr. Rush stated that this was a finding of public necessity and convenience for the sales of beer and wine (type 20) in an existing retail store (Dollar General) located at 1323 West Ramsey Street; stated that the project required a CUP, which was then approved by the Planning Commission; that due to

overconcentration nature of this area, there is also a finding that needs to be determined by the City Council for public necessity and convenience.

He further commented that the area of sales is only going to be 200 square feet of retail space; that no single sales are allowed.

Councilmember Happe inquired as to whether or not ABC would require additional training for their staff.

Community Development Director Adam Rush stated that in fact that was a condition of approval of the Conditional Use Permit (CUP), and as part of the maintenance of their license.

Public Comment

Bill Hobbs asked about the hours of the sale, with Steve Rawlings representative from Dollar General indicating that sales would be from 8:00 a.m. to 10:00 p.m. He expressed that he asked because at that time of the evening there are quite a few transients in that area.

Nick Parra stated that Dollar General appear to be a family friendly business and stated that he had concerns with liquor mixing with children; that there are families with children shop there, and concerns about alcohol being available to children.

Steve Rawlings representing Dollar General store elaborated on Dollar General alcohol sales program and stated that currently operates over 200 stores in the state of California; that each store is approximately 10,000 square feet, and it is considered a full service store; stated that the sales of beer and wine were intended to be only incidental; that they only stock four, they don't stock singles, and that total square footage of retail space for the sale of beer and wine is less than 100 square feet.

There were several questions from the City Council with respect to security, training and proper identification checks. Mr. Rawlings addressed these questions and stated that they have electronic card readers to prevent sales to minors, which is an effective control mechanism.

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

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

Action: Approved by Minute Order No. 2019-094

4. Adopt Resolution Approving and Authorizing the Submittal of the Application for Statewide Park Development and Community Revitalization Program Grant Funds.

Art Vela, Director of Public Works/City Engineer stated that the State Department of Recreation has been assigned as the Grant Administrator for the Statewide Park Development and Community Revitalization Grant Program; that they have advertised a call for project for round 1; that they currently have 254,942 million available for disbursement; stated that staff will be submitting an application for funds to complete the expansion of Lyons Park; that about 2.75 million will be needed for the Park, which require extensive community outreach with a deadline of August 5 and with no local matching of funds required.

There were several questions from Council regarding the design, layout, parking feedback received from the community and available funding if the project goes above its allocated budget.

Councilmember Happe inquired as to whether or not other grant funding applications could be submitted during round 1 to do work on other parks.

Public Comment

There were no public comments.

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

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

Action: Adopted Resolution No. 2019-79

5. Adopt Resolution Approving the Replacement of Vehicles for Fiscal Year 2020 Pursuant to the Five (5) Year Master Equity Lease Agreement with Enterprise Fleet Management.

Art Vela, Director of Public Works/City Engineer provided a brief history of this item by stating that back in September of 2018, the City Council had approved the five-year lease agreement with Enterprise, and also the first grouping of

vehicles was also approved; he stated that he was proposing to replace about 12 vehicles.

Public Comments

There were no public comments.

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

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

Action: Adopted Resolution No. 2019-80

6. Discuss the Current Policy for the Repair and Maintenance of Curbs, Sidewalks, and Parkstrips.

Art Vela, Director of Public Works/City Engineer presented the staff report stating that this item is on the agenda to allow the Council the opportunity to discuss the current policy that is in place; that it relates to comments that staff receives on the telephone, via public comments and at the Engineering counter about the maintenance of landscaping, shrubs, weeds, and sidewalks within the public right-of-way; commented that in accordance with Resolution 1977-15 identifies the responsibilities of certain items within the right-of-way; he described in detail what those items were that were included in the resolution.

Mr. Vela stated that when they receive requests for the maintenance of certain items, that they try to educate the public about whose responsibility it is to maintain landscaping and other areas that they City is not responsible for.

There was an extensive discussion about the enforcement of the provisions of this resolution, and about trees that are diseased, landscaping, weeds on sidewalks.

Councilmember Happen commented that there needs to be a public awareness campaign about this; that the perception on the part of the public is that these are the City's' trees and sidewalks and thus they need to take care of them, when in fact, that was not the case; stated that there was not a lot of public education about this; he proposed a workshop to discuss and educate the public

Mayor Welch commented that we need some type of campaign or exposure or workshops to educate people about what their responsibilities are along with what the city's responsibilities are.

Mr. Vela stated that the main objective with this item was to seek direction from Council moving forward with the maintenance of items on the public-right-of-way; and the second reason was to solicit Council's input on the implementation of this policy.

Public Comment

Nick Parra stated that he was aware of the historical value of the trees; that Banning was the first official city of trees; suggested on trimming trees that are potential hazards and that he was in favor of a workshop.

Susan Shoots stated that the City needed to exercise consistency in implanting this policy or whatever policy the City decides on as it could prove to be controversial for a lot of people; stated that a workshop may not be the right strategy because they people who need to hear this, will not show up and that there needs to be another method of reaching these folks.

Action: Direction provided to staff by Minute Order No. 2019-095

7. Adopt Resolution, Approving the Interagency Services Agreement between the City of Banning and the City of Beaumont for the Purpose of Providing Coordinated Transit Services.

Art Vela, Director of Public Works/City Engineer presented the staff report. Mr. Vela stated that back in 2002, the City Council approved Resolution 2002-76 authorizing the execution of an agreement with the City of Beaumont to provide coordinated transit services and that both cities had operated under that agreement; highlighted some of the provisions of the agreement.

There were several comments from Council regarding the transfer stations.

Public Comment

There were no public comments.

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

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

Action: Adopted Resolution No. 2019-81**8. Revisions and Update of Electric Rule #22- Tree Trimming.**

Tom Miller Electric Utility Director stated that the rule was last updated in December of 1994 because of the Banning Fire, which was roughly a 1.6 million dollar claim against the Electric Utility for a fire that was started by power lines on private property, which cost the City dearly for that fire; he commented that about six weeks ago, there was a tree limb in a private yard that fell down across a neighbors power, and knocked the service off to the house and it resulted in damage to electronic equipment in the house, and that both homeowners stated that the Electric Utility should pay for this incident; that staff had referenced Electric Rule 22 to ascertain who had the responsibility of cutting trees on private property.

Mr. Miller stated that the overhead service drop from the public utility power poles into the house if it is overhead is the private owners' responsibility, and that the rule clearly stated that; further, he commented that staff noticed that when the rule was passed in 1994 that the strikeout version was what was being operated off of; that staff had revised the provisions of the Rule and made some changes to it.

Public Comment

There was no public comments.

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

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

Action: Adopted Resolution No. 2019-82**IX. DISCUSSION ITEM**

None

CITY COUNCIL – Next Meeting, August 27, 2019, 5:00 p.m.

Please note that in accordance with City Council Resolution No. 2017-14, the City Council will go dark for the last meeting in July and the first meeting in August. Therefore, please be advised that the City Council will not hold its regular meetings on July 23 or August 13 respectively.

X. ITEMS FOR FUTURE AGENDAS

1. Website Redesign
2. Wildfire Mitigation Plans
3. 553 E. Ramsey Receivership

XI. ADJOURNMENT

By consensus, the meeting was adjourned at 7:37 p.m.

Minutes Prepared by:

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://www.banning.ca.us/ArchiveCenter/ViewFile/Item/2122> requesting a CD or DVD at Banning City Hall located at 99 E. Ramsey Street.

CORRESPONDENCE
(RECEIVED DURING PUBLIC COMMENTS
JUNE 25, 2019)

June 25, 2019



Dear Mayor Welch and Council Members:

My name is Rena Richards. I am the Chairman of Sunrise Estates Park Board at 2200 W. Wilson St. Thank you for the opportunity to speak to you this evening about a subject that is of the utmost importance to our residents. Sunrise Estates is an "over 55" park. Most of our residents are quite a bit over 55 and many are still drivers.

When the speed limit on West Wilson was 45 mph between Sunrise St. and Coombs School, most cars were traveling 55 mph or faster. Now at 50 mph they are traveling in excess of 60 mph and very much faster. It is quite dangerous to enter and exit our park due to the speed other cars are traveling. I have found that if I see a car traveling westbound, and it is at the top of the hill, I do not turn out. There is no turning lane for us and the car is to our entrance within 2 to 3 seconds. Cars eastbound cause practically the same problem. They are on top of us almost before we see them. They are traveling so fast that they nearly rear end us. As the chairman of the Board, I am always told about the near accidents that our residents are encountering. We feel that the speed is too fast for our section of West Wilson. Also, we sit in sort of a valley.

In addition, just east of Sunrise Street, there is a sign-post with a blinking light and a cross-traffic sign. This blinking light worked for years as I would use it as my marker to know that I was near the park when I would come to visit my sister. I have now resided here for 3 years and the sign has not worked since before I arrived. This has been reported, yet nothing has been done. I am not sure if I believe that it would make us safer, but it could not hurt. Also, years ago there was a turning lane just before the park entrance. That lane has been changed, giving the turning lane to the housing development across Wilson.

We have signed petitions from residents but probably not enough to change the problems on Wilson Street. So we humbly request that you look into our issues regarding the speed limit AND the blinking light in order to do your part in keeping our residents safe, as they go about their business in Banning. Thank you for allowing us to bring these issues to your attention.

Sincerely,
Rena Richards
Rena Richards
Sunrise Estates, Space 73

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution No. 2019____, Approving the Agreement for Purchase and Sale and Escrow Instructions Between the City of Banning and Louis S. Lopez, Trustee of the Louis S. Lopez Trust in Connection with Ramsey-Hathaway Street Improvement Project (Portions of APNs 532-110-004, 532-120-001, -002, -008, -009, and -010) Not to Exceed \$51,102.

RECOMMENDED ACTION:

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

1. Approving the "Agreement for Purchase and Sale and Escrow Instructions Between City of Banning and Louis S. Lopez, Trustee of the Louis S. Lopez Trust in Connection with Ramsey-Hathaway Street Improvement Project (Portions of APN 532-110-004, 532-120-001, -002, -008, -009, and -010)";
2. Authorize the City Manager to execute the Agreement for Purchase and Sale and Escrow Instructions and Certificate of Acceptance for portions of APN 532-110-004, 532-120-001, -002, -008, -009, and -010; and
3. Authorize Administrative Services Director to make necessary budget adjustments and appropriations for FY 2020.

BACKGROUND:

Under the City's Capital Improvement Program, the Ramsey and Hathaway Street Widening project has concluded design and engineering work. The project, as planned and designed, will improve circulation in this area of the City and will widen Ramsey Street

approximately 500 feet west and 1,500 feet east of Hathaway Street. Widening will also occur along Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the project will construct a new 12-inch ductile iron water line along Ramsey Street. The construction of the project will require the acquisition of right of way in order to be completed.

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

In total, the Hathaway and Ramsey Street Widening project consists of eleven parcels and seventeen separate right of way sections within those parcels. Louis S. Lopez has agreed to terms based upon the appraised value which includes acquisition of approximately 48,047 square feet, of which 24,675 is a conversion from an easement to fee acquisition and the remaining 23,372 square feet is new acquisition for the permanent use as a roadway. The purchase also includes approximately 10,661 square feet for a Temporary Construction Easement ("TCE"). The purchase price is \$48,102. Staff is also requesting an amount not to exceed \$3,000 for associated escrow and title services, totaling \$51,102.

FISCAL IMPACT:

The purchase price is \$48,102 plus escrow and title charges not to exceed \$3,000 for a total expenditure of up to \$51,102. Funds to be sourced from Account 840-9500-490.93-30.

ATTACHMENTS:

1. Resolution No. 2019-____
2. Purchase and Sale and Escrow Instructions Agreement – Partially Executed

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-__

RESOLUTION 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT FOR THE PURCHASE OF CERTAIN REAL PROPERTY INTERESTS FROM THE REAL PROPERTY, ASSESSOR PARCEL NUMBERS 532-10-004, 532-120-001, -002, -008, -009, AND -010

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

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

WHEREAS, on November 8, 2018, the City extended to the record owner, Louis S. Lopez, Trustee of the Louis S. Lopez Trust, a written offer pursuant to Government Code Section 7267.2 to purchase an approximate 23,372 square foot fee portion ("Subject Fee Property") of the real property identified as Riverside County Tax Assessor's Parcel Number 532-110-004, 532-120-001, -002, -008, -009, and -010 ("Lopez Trust Parcel") for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto. The City also offered to purchase an approximate 10,661 square foot temporary construction easement on the Lopez Trust Parcel for a term of nine months ("TCE") to help facilitate the City's construction of the Project. The Subject Fee Property consists of an approximate 24,675 square foot portion of the Lopez Trust Parcel previously dedicated as an easement for state highway purposes pursuant to the Record of Survey recorded in July 1937 in Book 11, Page 24 of Official Records of the County of Riverside and an approximate 23,372 square foot fee area that is not currently burdened by a right of way easement. The approximate 23,372 square foot Subject Fee Property and the approximate 10,661 square foot TCE are more particularly described in the exhibits to the Agreement for Purchase and Sale and Escrow Instructions attached as Attachment 2 to the staff report. The City's offer was based on the fair market value estimate determined by the City's independent appraiser; and

WHEREAS, the City and record owners negotiated in good faith the City's purchase of the Subject Fee Property and TCE and have reached an agreement regarding the terms of the City's purchase, subject to ratification by the City Council; and

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

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

SECTION 1. The Banning City Council adopts Resolution 2019-__ approving the Agreement for Purchase and Sale and Escrow Instructions between City of Banning and Louis S. Lopez, Trustee of the Louis S. Lopez Trust in Connection with the Ramsey-Hathaway Street Improvement Project (Portions of APN 532-110-004, 532-120-001, -002, -008, -009, and -010) for the purchase of the Subject Fee Property and the TCE for the sum of \$48,102. A copy of the Agreement is attached as Attachment 2 to the staff report that accompanies this Resolution. This approval of the Agreement is not an announcement of the City's intent to acquire any other real property interests for the Project and does not commit the City to acquire any other real property interests for the Project.

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

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

SECTION 4. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers to effectuate the property transactions contemplated in the Agreement, including but not limited to the payment of the Purchase Price of \$48,102, payment for the City's costs relating to the additional consideration items described in the Agreement, compensation for any necessary extension of the term of the TCE in accordance with the TCE Agreement, and escrow-related charges, which are not estimated to exceed \$3,000.

SECTION 5. 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 July, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-__ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Purchase and Sale and
Escrow Instructions
Agreement
Partially Executed

AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS BETWEEN CITY OF BANNING AND LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1983 IN CONNECTION WITH RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT (PORTIONS OF ASSESSOR'S PARCEL NUMBERS 532-110-004, 532-120-001, -002, -008, -009 and -010)

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS BETWEEN THE CITY OF BANNING AND LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1983 IN CONNECTION WITH RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT (PORTIONS OF ASSESSOR'S PARCEL NUMBERS 532-110-004, 532-120-001, -002, -008, -009 and -010) ("Agreement") is entered into by and between the City of Banning, a municipal corporation ("Buyer" or "City") and Louis S. Lopez, Trustee of the Louis S. Lopez Trust Dated May 25, 1983 ("Seller") and constitutes an agreement to purchase and sell certain real property interests between Seller and Buyer and the joint escrow instructions directed to Sentry Escrow Service, Inc., attention Judy A. Russell, President ("Escrow Holder"). Seller and Buyer are referred to below collectively as the "Parties". The Agreement is effective on the date it is fully executed by the Parties ("Effective Date"). Upon execution of this Agreement by Buyer, Buyer shall promptly deliver a copy of this executed Agreement to Seller.

RECITALS

A. Seller is the owner of that certain real property located on the north side of Ramsey Street, east of N. Hathaway Street, in the City of Banning, California, and identified as Riverside County Tax Assessor's Parcel Numbers 532-110-004, 532-120-001, -002, -008, -009 and -010 ("Larger Parcel"). The Larger Parcel is comprised of the above-referenced parcels with similar highest and best uses, common ownership, and physical contiguity. The Larger Parcel is approximately 24.61 acres (1,072,012 square feet) in size. Except for a fenced storage-yard area and related improvements, the Larger Parcel is unimproved and vacant. Said storage-yard improvements are predominantly considered personal property. The 1,072,012 square foot gross area of the Larger Parcel includes an approximate 24,675 square foot area previously dedicated for public street purposes pursuant to the 1937 Record of Survey.

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

C. City seeks to purchase in fee an approximate 48,047 square foot portion of the Larger Parcel ("Subject Fee Property") in connection with the proposed Ramsey-Hathaway Street Improvement Project ("Project"). The Subject Fee Property is described more particularly on Exhibit "A" and depicted on Exhibit "B" hereto, which are incorporated herein by this reference. The Subject Fee Property includes an approximate 24,675 square foot area along Ramsey Street and Hathaway Street that was previously dedicated as an easement for state highway purposes pursuant to the Record of Survey recorded in July 1937 in Book 11, Page 24 of Official Records of the County of Riverside ("1937 Record of Survey"). The City seeks to acquire the fee interest

in said 24,675 square foot area previously dedicated and currently used for public street purposes. A copy of the 1937 Record of Survey is attached as Exhibit "A-1" hereto, and incorporated herein by this reference. The Subject Fee Property also includes an approximate 23,372 square foot fee area that is currently not burdened by a right of way easement that the City seeks to acquire in connection with the proposed construction of the Project. The approximate 23,372 square foot portion of the Subject Fee Property that is not currently burdened with a right-of-way easement is described on Exhibit "A-2" and depicted on Exhibit "B-2", which are attached hereto and incorporated herein by this reference.

D. The City also seeks to purchase an approximate 10,661 square foot temporary construction easement for a term of nine months ("TCE") to facilitate the construction of the Project. The approximate 10,661 square foot TCE is described more particularly on Exhibit "A-3" and depicted on Exhibit "B-3", which are attached hereto and incorporated herein by this reference.

E. The Parties negotiated City's purchase in fee of the Subject Fee Property and the City's use of the TCE for a term of nine months, and have reached an agreement regarding the terms of the City's purchase of the Subject Fee Property and TCE, subject to ratification by the City Council.

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

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

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

1. SALE AND PURCHASE PRICE.

1.1 Sale and Purchase. Seller agrees to sell in fee the Subject Fee Property to the City and to authorize the City to use the TCE for a term of nine months, and the City agrees to purchase in fee the Subject Fee Property and to use the TCE for a term of nine months subject to the terms and conditions hereafter set forth.

a. *Subject Fee Property.* On the Close of Escrow (as defined in Section 3.2 below), Seller agrees to sell in fee to the City the approximate 48,047 square foot Subject Fee Property pursuant to a Grant Deed in the form attached as Exhibit "C" hereto. The Subject Fee Property is shown collectively on Exhibit "A" and depicted on Exhibit "B" hereto. The Subject Fee Property is comprised of the following property areas:

(i) An approximate 24,675 square foot area previously dedicated as an easement for state highway purposes pursuant to the 1937 Record of Survey (Exhibit "A-1" hereto).

(ii) An approximate 23,372 square foot fee portion of the Larger Parcel that is not currently burdened by a right of way easement. Said 23,372 square foot portion of the Subject Fee Property is described on Exhibit "A-2" and depicted on Exhibit "B-2" hereto.

b. *Temporary Construction Easement.* Seller further agrees to authorize City to use the approximate 10,661 square foot TCE described on Exhibit "A-3" hereto and depicted on Exhibit "B-3" hereto for a term of nine months to facilitate the City's construction of the Project, including construction of street and drainage improvements in the new right of way area, construction staging purposes, and storage of material and equipment, if necessary. City's use of the TCE and an option to extend the TCE for up to an additional six months is subject to the terms of the Temporary Construction Easement Agreement ("TCE Agreement"), the form of which is attached as Exhibit "D" hereto, and incorporated herein by this reference.

1.2 Purchase Price.

a. *Purchase Price.* The total purchase price ("Purchase Price") for the 48,047 square foot Subject Fee Property and the approximate 10,661 square foot TCE is \$48,102 (Forty-Eight Thousand One Hundred Two Dollars).

2. TITLE AND TITLE INSURANCE.

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

2.2 Title Insurance. Upon the Opening of Escrow, Escrow Holder will obtain from First American Title Company a title commitment for the Subject Fee Property. Escrow

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

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

3. ESCROW.

3.1 Escrow Holder. The escrow shall be opened with Sentry Escrow Service, Inc. (Attention: Judy A. Russell, President) ("Escrow Holder") within five (5) business days after the execution of this Agreement by Buyer and Seller. Seller will deposit, within said time period, an executed copy or executed counterparts of this Agreement with Escrow Holder. This Agreement will be considered as the escrow instructions between the Parties, with such further instructions as Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder. For the purposes of this Agreement, "Opening of Escrow" means the date on which Escrow Holder receives a copy of the fully-executed Agreement or copy of executed counterparts of this Agreement.

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

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

a. A grant deed conveying the Subject Fee Property to Buyer, in the form attached hereto as Exhibit "C", duly executed by Seller and acknowledged ("Grant Deed");

b. The executed TCE Agreement in the form attached hereto as Exhibit "D", duly executed by Seller and acknowledged;

c. A California 593 certificate and federal non-foreign affidavit (with respect to Seller); and

d. Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Seller to carry out this escrow.

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

a. An executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "C");

b. The executed TCE Agreement in the form attached hereto as Exhibit "D", duly executed by the City;

c. The City covenants and agrees to deposit with Escrow Holder the Purchase Price and such escrow funds as are required within five business days of receiving written notice from Escrow Holder regarding the confirmation of the completion of the conditions required herein for the Close of Escrow; and

d. Any other documents reasonably required by Escrow Holder to be deposited by Buyer to carry out this escrow.

3.5 Conditions to the Close of Escrow. Escrow shall not close unless and until both Parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally, Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

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

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

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

3.6 Recordation of Grant Deed and TCE Agreement; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in Sections 3.3 and 3.4, Escrow Holder shall cause the Grant Deed and TCE Agreement to be recorded in the Riverside County Recorder's Office. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Buyer and Seller) to Seller, and Seller shall deliver possession of the Subject Fee Property to Buyer free and clear of any occupants. Further, Buyer will be authorized to use the TCE in accordance with the terms of the TCE Agreement.

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

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

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

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

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

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

5.1 That to the best of Seller's knowledge on the Close of Escrow (i) the Subject Fee Property will be free and clear of Hazardous Materials (defined in Section 10.1. below) or toxic substances and waste, including, but not limited to, asbestos; (ii) businesses, if any, on the Subject Fee Property have disposed of their waste in accordance with all applicable statutes, ordinances, and regulations; and (iii) Seller has no notice of any pending or threatened action or proceeding arising out of the condition of the Subject Fee Property or alleged violation of Environmental Laws (defined in Section 10.2. below), health or safety statutes, ordinance, or regulations.

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

5.3 Neither this Agreement nor anything provided to be done hereunder, including the transfer of the Subject Fee Property to City, violates or will violate any contract, agreement or instrument to which Seller is a party, or which affects the Subject Fee Property, and

the Seller's grant to City of the Subject Fee Property pursuant to this Agreement does not require the consent of any party not a signatory hereto.

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

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

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

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

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

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

7. TOTAL CONSIDERATION.

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

7.2 No Loss of Business Goodwill. Seller further acknowledges and agrees that Seller will not suffer any loss of goodwill under Code of Civil Procedure Section 1263.510 as a

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

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

8. RELEASES.

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

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

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF

KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Seller's Initials: _____ City's Initials: _____

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

This Section 8 will survive the Close of Escrow.

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

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

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

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

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

10. CERTAIN DEFINITIONS.

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

Procedure Section 736(f)(3); and any other substance or material regulated by any Environmental Laws.

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

11. EVIDENCE IN COURT PROCEEDING. The Parties agree that the total Purchase Price of \$48,102 or any inference of per square foot value of the Subject Fee Property or TCE based on said Purchase Price will not be admissible as evidence of the fair market value of the Subject Fee Property or TCE in any eminent domain or other proceeding or litigation concerning the Subject Fee Property or TCE, or any portions thereof.

12. DEFAULT. In the event of a breach or default under this Agreement by either City or Seller, the non-defaulting party will have, in addition to all rights available at law or equity, the right to terminate this Agreement and the Escrow for the purchase and sale of the Subject Fee Property and TCE, by delivering written notice thereof to the defaulting party and to Escrow Holder, and if City is the non-defaulting party, City will thereupon promptly receive a refund of all of the deposits it deposited with Escrow Holder, if any, less City's share of any Escrow cancellation charges. Such termination of the Escrow by a non-defaulting party will be without prejudice to the non-defaulting party's rights and remedies at law or equity.

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

BUYER: City of Banning
99 E. Ramsey Street

Banning, California 92220
Attention: City Manager

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

SELLER: Louis S. Lopez
Trustee of the Louis S. Lopez Trust Dated May 25, 1983
805 Cloverview Drive
Glendora, California 91741-1906

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

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

14. MISCELLANEOUS.

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

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

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

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

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

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

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

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

14.9 Authority of City Manager. The City Manager may give any and all notices, consents, and terminations hereunder on behalf of the City provided they are in writing. The City Manager may execute the TCE Agreement, Certificate of Acceptance, escrow documents, and any such documents or instruments that are necessary to effect the transfer of property interests contemplated herein.

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

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

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

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

SELLER

Louis S. Lopez, Trustee of the Louis S. Lopez Trust Dated May 25, 1983

Dated: 6/23/2019

By: 

Louis S. Lopez, Trustee of the Louis S. Lopez Trust Dated May 25, 1983

BUYER

City of Banning, a municipal corporation

Dated: _____

By: _____

Douglas Schulze, City Manager

ATTEST:

By: _____

Daryl Betancur, Deputy City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Subject Fee Property

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

RW PARCEL 1:

THOSE PORTIONS OF PARCELS 3, 4, AND 5 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°07'14" EAST, 165.00 FEET TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED AS PARCEL 1 IN A CORPORATION GRANT DEED TO PETER MARINO RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, NORTH 00°03'38" EAST, 65.01 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET AND THE POINT OF BEGINNING;

THENCE, TRAVERSING THE INTERIOR OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, THE FOLLOWING COURSES:

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 162.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 212.00 FEET;

EASTERLY 21.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25";

SOUTH 83°24'49" EAST, 80.62 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 188.00 FEET, SAID CURVE BEING TANGENT WITH A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

EASTERLY 18.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°42'25" TO SAID PARALLEL LINE;

EXHIBIT "A"
 RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 165.86 FEET TO
 THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF
 615.00 FEET;

EASTERLY 177.69 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
 16°33'15";

NORTH 74°19'31" EAST, 418.31 FEET;

NORTH 70°54'14" EAST, 68.91 FEET TO THE BEGINNING OF A CURVE
 CONCAVE NORTHWESTERLY HAVING A RADIUS OF 365.00 FEET;

NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE
 OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE
 NORTHWEST QUARTER OF SECTION 11.

CONTAINING 6,920 SQUARE FEET, MORE OR LESS.

RW PARCEL 2:

THOSE PORTIONS OF PARCELS 1, 2, AND 6 DESCRIBED IN SAID GRANT DEED TO
 LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25,
 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF
 OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER, MORE
 PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND
 HATHAWAY STREET AS SHOWN ON SAID RECORD OF SURVEY FILED IN BOOK 11,
 PAGE 24;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 310.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID
 PARCEL 2 AND THE POINT OF BEGINNING;

THENCE, CONTINUING ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 822.50 FEET TO THE NORTHWESTERLY CORNER OF SAID
 PARCEL 6;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 6,
 SOUTH 89°14'00" EAST, 50.00 FEET TO A LINE PARALLEL WITH AND 50.00
 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 822.60 FEET TO
 THE SOUTHERLY LINE OF SAID PARCEL 2;

EXHIBIT "A"
 RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, ALONG SAID SOUTHERLY LINE OF PARCEL 2,
 NORTH 89°07'14" WEST, 50.01 FEET TO THE POINT OF BEGINNING.

CONTAINING 41,127 SQUARE FEET, MORE OR LESS.

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

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



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

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

JUNE 12, 2019
 J.N. 2042 473201

Exhibit "B"
Depiction of Subject Fee Property

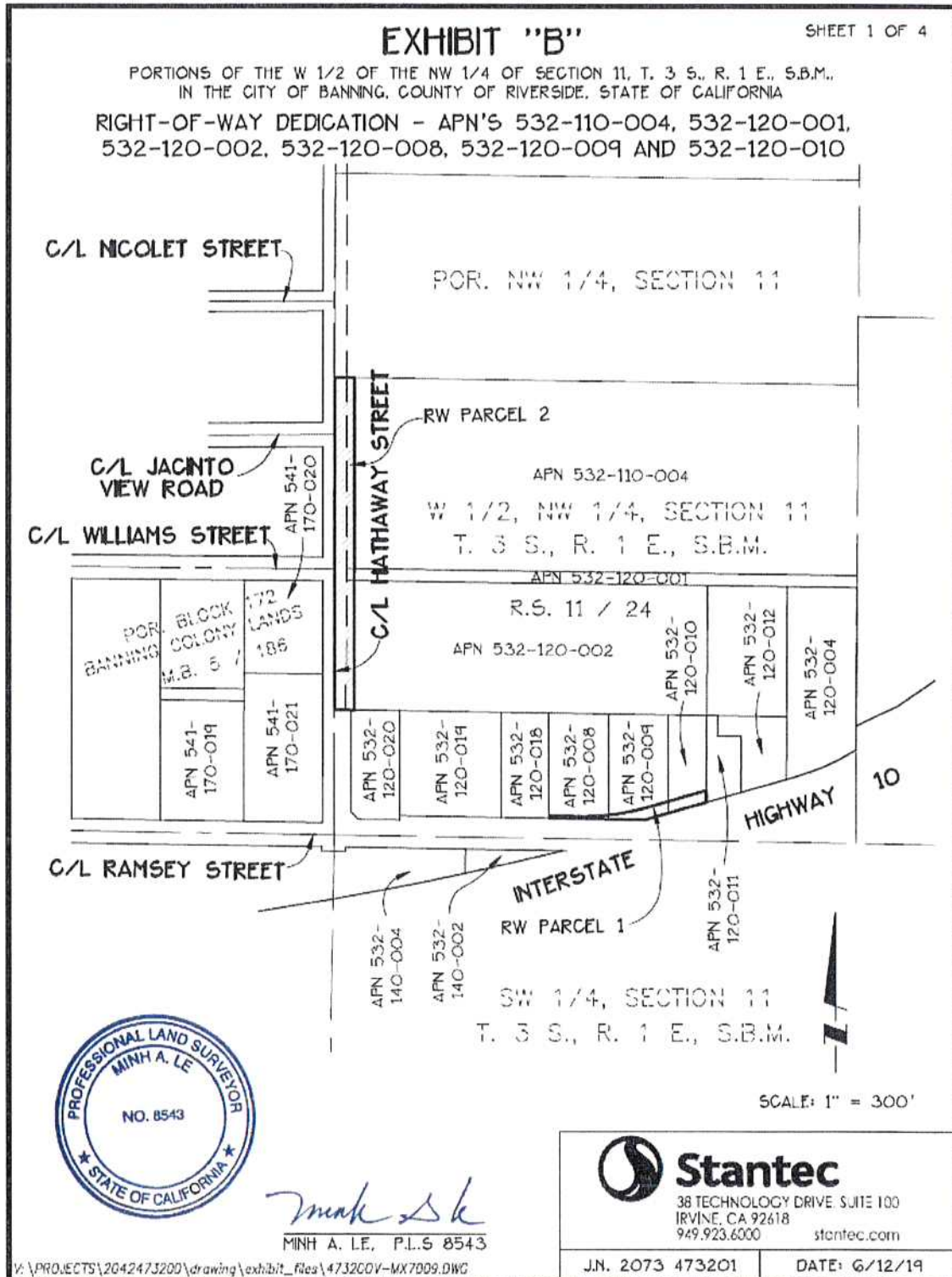


Exhibit "B"
 Page 1 of 4

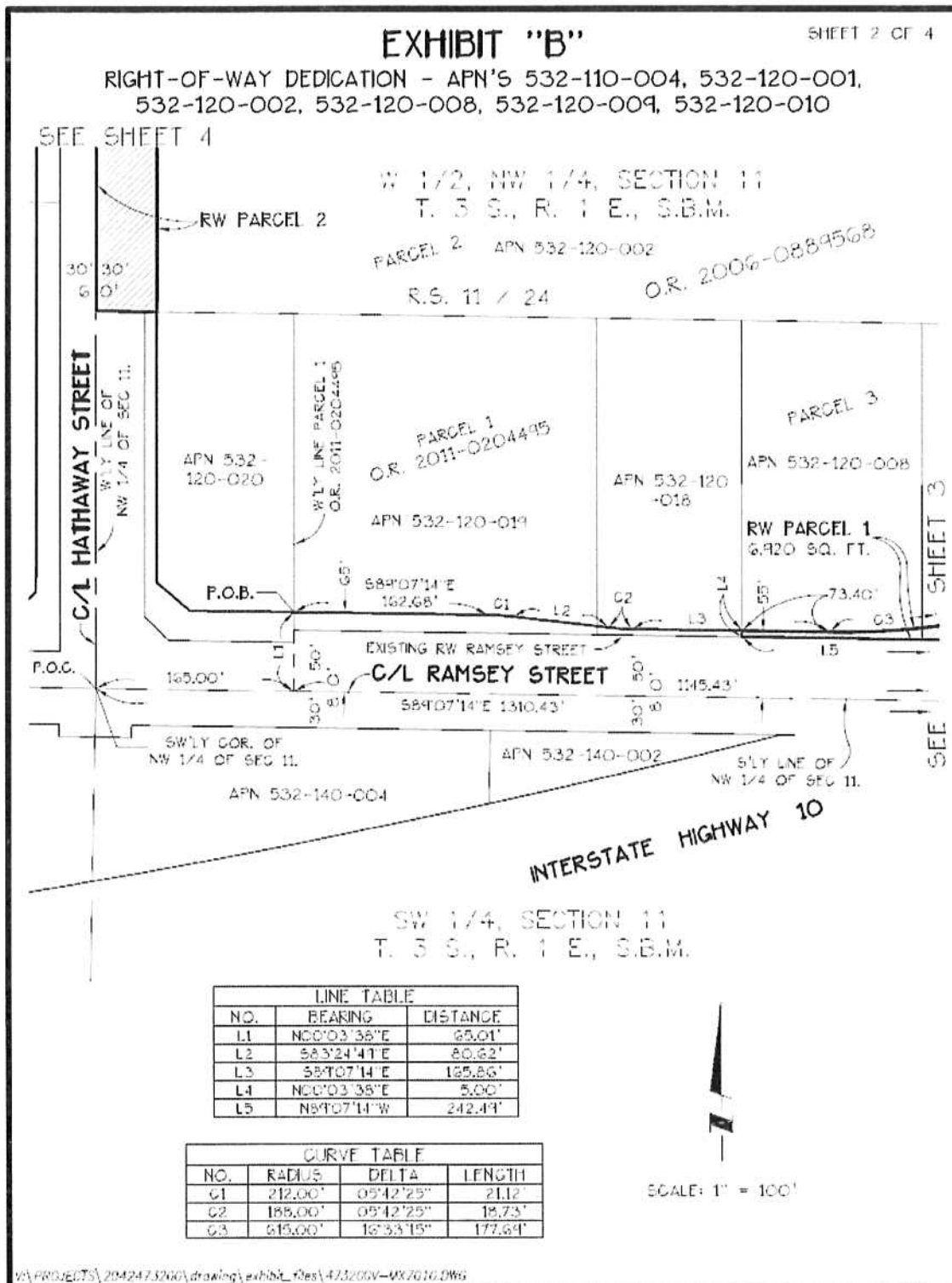


Exhibit "B"
Page 2 of 4

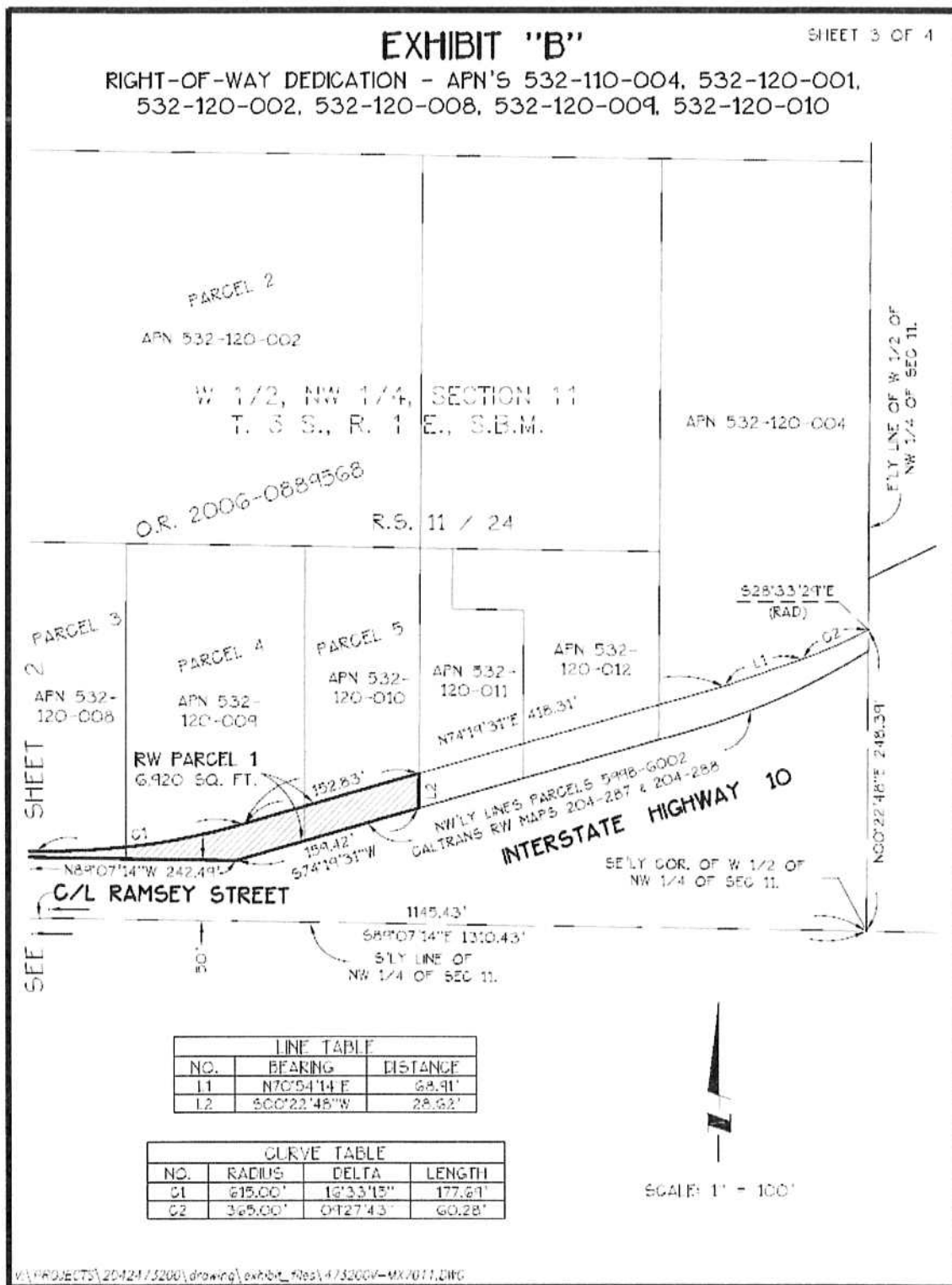


Exhibit "B"
Page 3 of 4

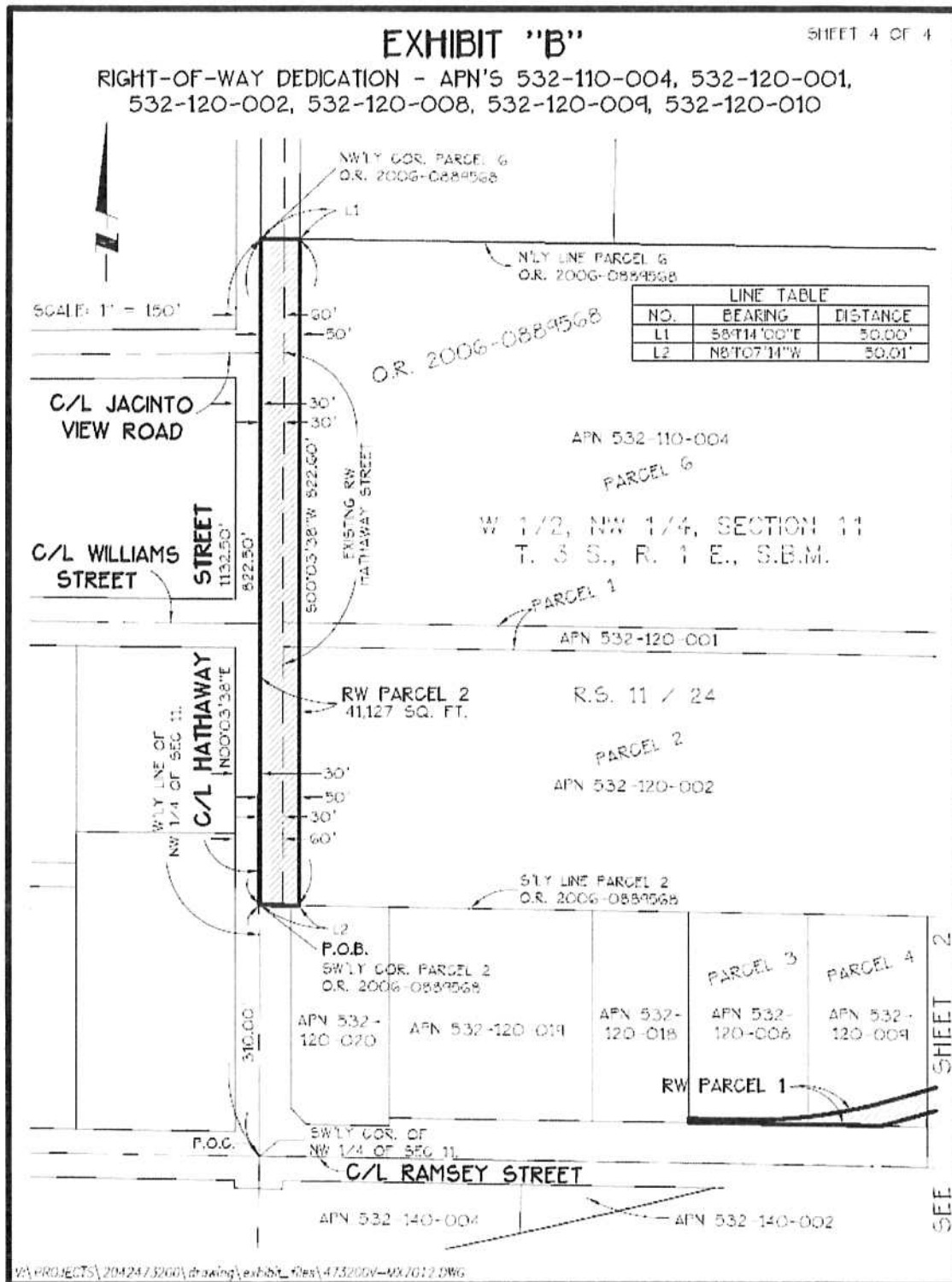
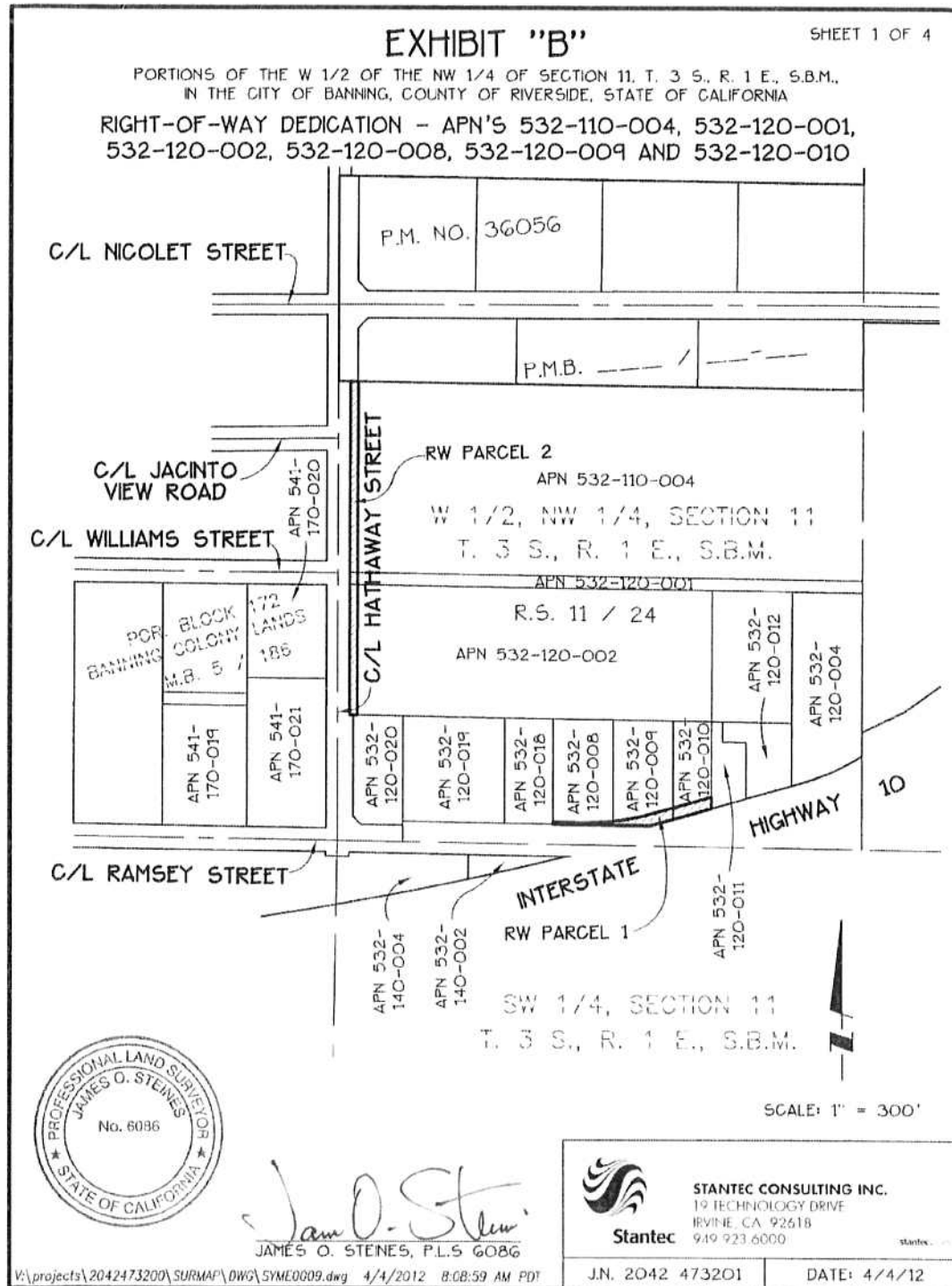


Exhibit "B"
Page 4 of 4

Exhibit "B-2"

Depiction of Approximate 23,372 Square Foot Portion of Subject Fee Property Not Previously Dedicated for Public Street Purposes



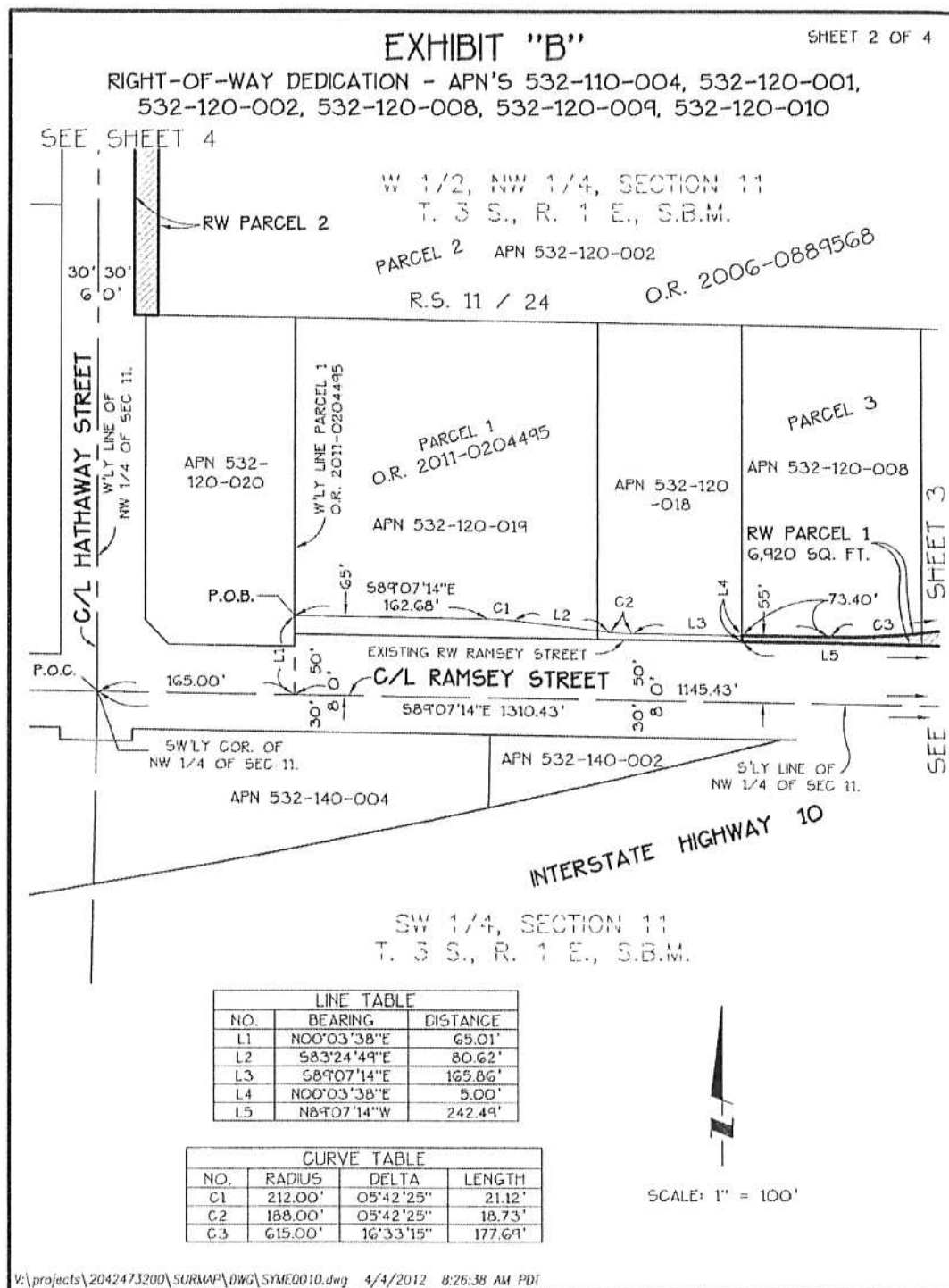


Exhibit "B-2"
Page 2 of 4

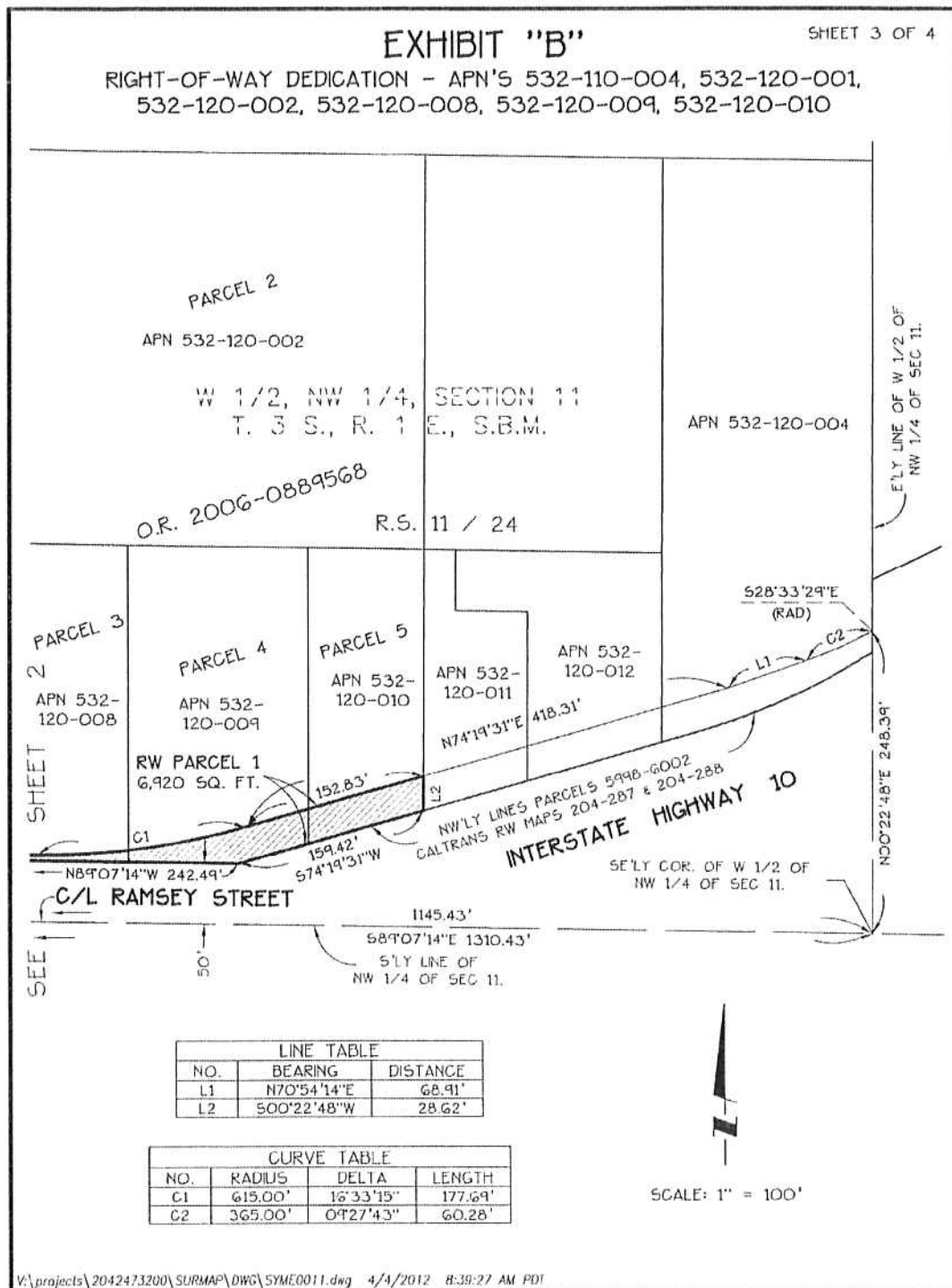


Exhibit "B-2"
Page 3 of 4

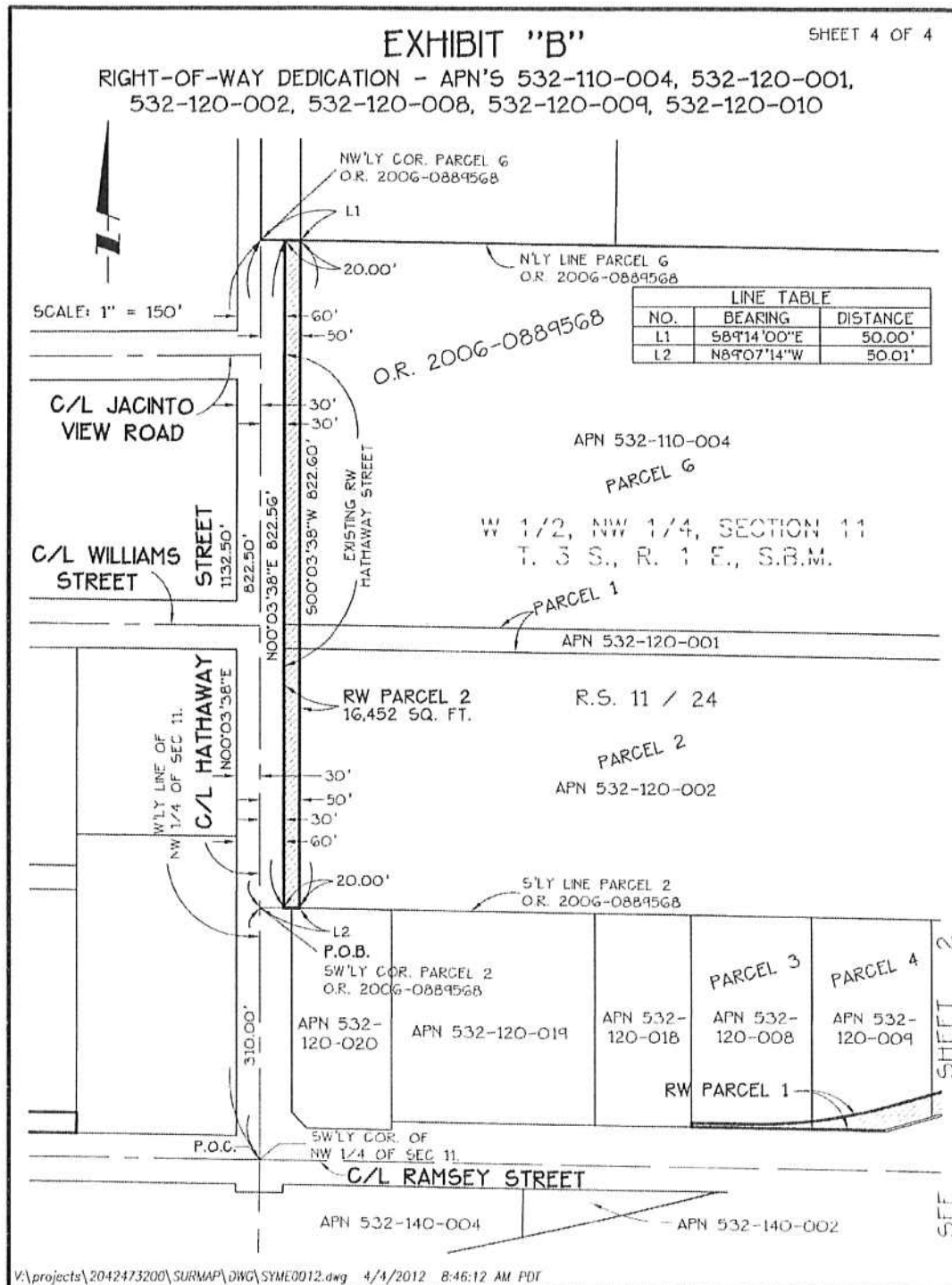


Exhibit "B-2"
Page 4 of 4

Exhibit "A-3"
Legal Description of Temporary Construction Easement

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

TCE PARCEL 1:

THOSE PORTIONS OF PARCELS 1, 2, AND 6 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED REFERENCE LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'38" EAST, 1635.00 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, RECORDED APRIL 10, 2008 AS DOCUMENT NO. 2008-0178325, OFFICIAL RECORDS OF SAID COUNTY, AND THE POINT OF BEGINNING;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, SOUTH 89°15'37" EAST, 52.00 FEET TO A LINE PARALLEL WITH AND 52.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 125.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 53.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 29.50 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 54.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 99.65 FEET;

THENCE, SOUTH 44°59'49" EAST, 43.56 FEET;

THENCE, SOUTH 00°03'16" EAST, 61.19 FEET;

THENCE, SOUTH 45°00'11" WEST, 40.99 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 126.26 FEET TO THE NORTHERLY LINE OF SAID PARCEL 6 DESCRIBED IN A GRANT DEED TO LOUIS

1 OF 6

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5,
 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID NORTHERLY LINE, NORTH 89°14'00" WEST, 1.00 FEET TO
 A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF
 HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 288.84 FEET;

THENCE, SOUTH 89°56'22" EAST, 2.00 FEET TO A LINE PARALLEL WITH AND
 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 69.37 FEET;

THENCE, NORTH 89°56'22" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND
 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 105.38 FEET;

THENCE, SOUTH 53°55'49" EAST, 11.13 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.32 FEET;

THENCE, SOUTH 51°09'30" WEST, 12.85 FEET TO A LINE PARALLEL WITH AND
 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 219.93 FEET;

THENCE, SOUTH 38°57'16" EAST, 14.30 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.56 FEET;

THENCE, SOUTH 61°37'51" WEST, 10.23 FEET TO A LINE PARALLEL WITH AND
 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.62 FEET TO
 THE SOUTHERLY LINE OF SAID PARCEL 2 DESCRIBED IN A GRANT DEED TO LOUIS
 S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5,
 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 89°07'14" EAST, 9.00 FEET TO
 A LINE PARALLEL WITH AND 64.00 FEET EASTERLY OF SAID CENTERLINE OF
 HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.71 FEET;

THENCE, SOUTH 49°31'47" WEST, 9.21 FEET TO A LINE PARALLEL WITH AND
 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 52.53 FEET;

2 OF 6

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, SOUTH 01°47'23" WEST, 66.27 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 57.98 FEET;

THENCE, SOUTH 50°12'34" EAST, 21.36 FEET TO A LINE PARALLEL WITH AND 74.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 93.57 FEET TO THE WESTERLY LINE OF PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°03'38" WEST, 9.00 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 117.32 FEET;

THENCE, NORTH 00°03'38" EAST, 18.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 65.00 FEET;

THENCE, SOUTH 00°03'38" WEST, 20.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 212.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 06°12'06" EAST;

THENCE, EASTERLY 1.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'05";

THENCE, SOUTH 83°24'49" EAST, 70.70 FEET TO THE EASTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495;

THENCE, ALONG SAID EASTERLY LINE, NORTH 00°03'38" EAST, 10.20 FEET;

THENCE, SOUTH 89°56'22" EAST, 42.00 FEET;

THENCE, SOUTH 00°23'37" EAST, 12.72 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 78.89 FEET TO THE WESTERLY LINE OF SAID PARCEL 3 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID WESTERLY LINE, NORTH 00°03'38" EAST, 14.00 FEET TO A LINE PARALLEL WITH AND 69.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

3 OF 6

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 42.66 FEET;

THENCE, SOUTH 81°14'46" EAST, 21.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 604.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 01°48'41" WEST;

THENCE, EASTERLY 86.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°11'48" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 06°23'07" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 00°03'38" EAST, 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 602.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 06°24'24" EAST;

THENCE, EASTERLY 59.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°38'47" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 12°03'11" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 72°27'02" EAST, 27.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 600.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 14°39'03" EAST;

THENCE, EASTERLY 10.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°01'26";

THENCE, NORTH 74°19'31" EAST, 57.22 FEET;

THENCE, SOUTH 00°03'38" WEST, 4.16 FEET;

THENCE, NORTH 74°19'31" EAST, 35.48 FEET;

THENCE, NORTH 63°02'37" EAST, 56.23 FEET;

THENCE, NORTH 74°19'31" EAST, 12.45 FEET TO THE EASTERLY LINE OF SAID PARCEL 5 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 7.28 FEET;

THENCE, NORTH 74°19'31" EAST, 90.54 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO HUMBERTO RAMIREZ RECORDED APRIL 1, 2011 AS DOCUMENT NO. 2011-0145549, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, CONTINUING NORTH 74°19'31" EAST, 22.89 FEET;

THENCE, NORTH 82°52'09" EAST, 40.39 FEET;

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, NORTH 74°19'31" EAST, 53.02 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°22'48" WEST, 2.08 FEET;

THENCE, NORTH 74°19'31" EAST, 36.50 FEET;

THENCE, NORTH 81°52'04" EAST, 42.65 FEET;

THENCE, NORTH 70°54'14" EAST, 45.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 365.00 FEET;

THENCE, NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 248.39 FEET TO THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 11 AND THE TERMINUS OF THE REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF HATHAWAY STREET.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 2 OF THE RIGHT-OF WAY DEDICATION TO THE CITY OF BANNING RECORDED _____ AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 5,160 SQUARE FEET, MORE OR LESS.

TCE PARCEL 2:

THOSE PORTIONS OF PARCELS 3, 4, AND 5 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, LYING SOUTHERLY OF THE HEREINABOVE DESCRIBED REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 1 OF THE RIGHT-OF WAY DEDICATION TO THE CITY OF BANNING RECORDED _____ AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 5,501 SQUARE FEET, MORE OR LESS.

5 OF 6

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

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

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



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

A handwritten signature in black ink, appearing to read "Minh A. Le".

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

MARCH 7, 2018
J.N. 2073 013430

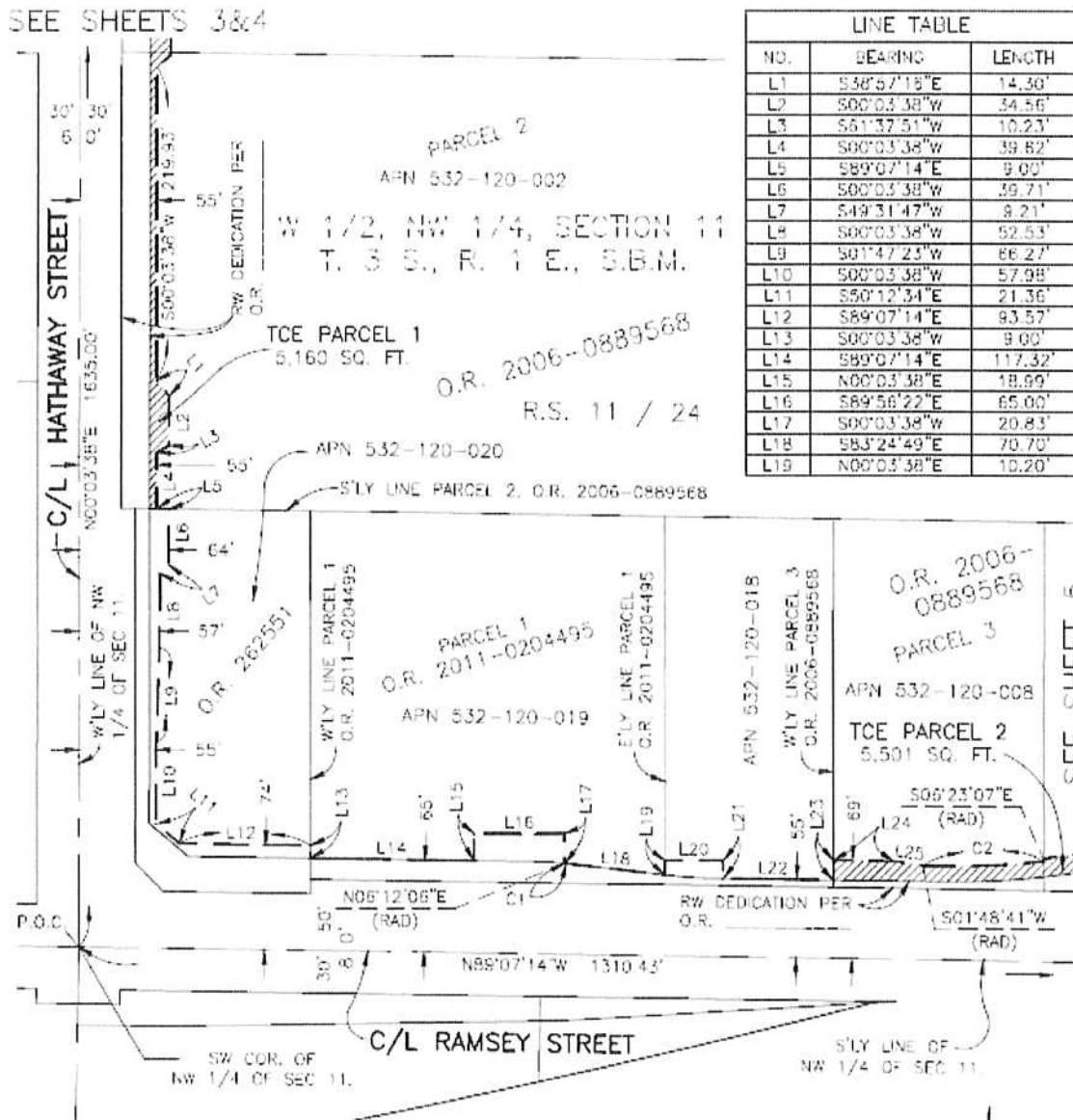
6 OF 6

EXHIBIT "B"

SHEET 2 OF 5

TEMPORARY CONSTRUCTION EASEMENT - APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010

SEE SHEETS 3&4



LINE TABLE		
NO.	BEARING	LENGTH
L1	S38°57'18"E	14.30'
L2	S00°03'38"W	34.56'
L3	S61°32'51"W	10.23'
L4	S00°03'38"W	39.62'
L5	S89°07'14"E	9.00'
L6	S00°03'38"W	39.71'
L7	S49°31'47"W	8.21'
L8	S00°03'38"W	52.53'
L9	S01°47'23"W	66.27'
L10	S00°03'38"W	57.98'
L11	S50°12'34"E	21.36'
L12	S89°07'14"E	83.57'
L13	S00°03'38"W	9.00'
L14	S89°07'14"E	117.32'
L15	N00°03'38"E	18.89'
L16	S89°56'22"E	65.00'
L17	S00°03'38"W	20.83'
L18	S83°24'49"E	70.70'
L19	N00°03'38"E	10.20'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	212.00'	00°23'05"	1.42'
C2	604.00'	08°11'48"	86.41'

LINE TABLE		
NO.	BEARING	LENGTH
L20	S89°56'22"E	42.00'
L21	S00°23'37"E	12.72'
L22	S89°07'14"E	78.89'
L23	N00°03'38"E	14.00'
L24	S89°07'14"E	42.66'
L25	S81°14'46"E	21.31'

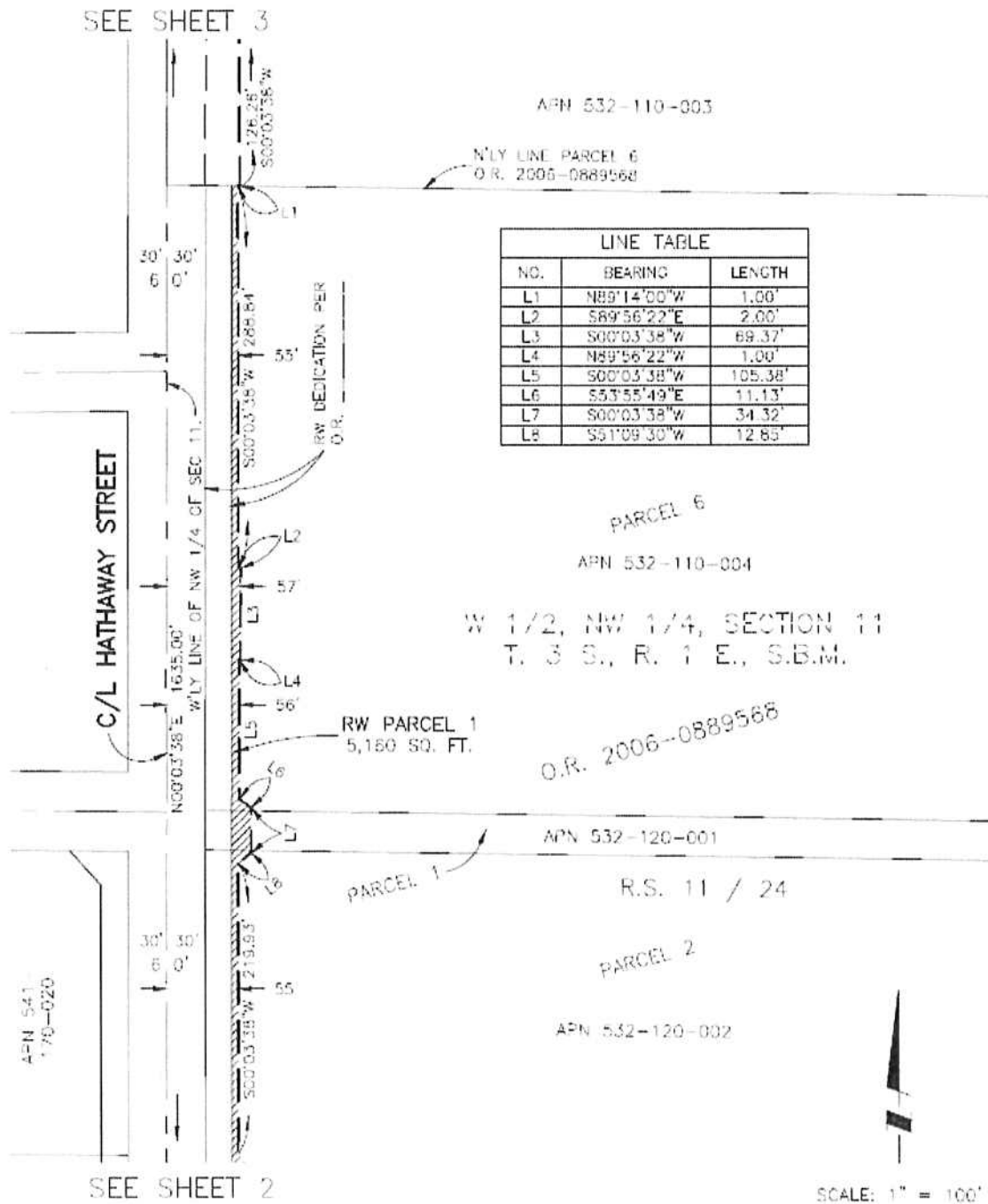
SCALE: 1" = 100'

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EXHIBIT "B"

SHEET 4 OF 5

TEMPORARY CONSTRUCTION EASEMENT - APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010



:\PROJECTS\2073013435\drawing\exhibit_files\0134304-MX7004.DWG

Exhibit "B-3"

Page 4 of 5

Exhibit "C"
Form of Grant Deed

Recording Requested by
 and when recorded return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel Nos. 532-110-004, 532-120-001, -002, -008, -009 and -010 [X] Portions

Documentary Transfer Tax \$0.00

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

GRANT DEED

LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1983 ("Grantor") is the record fee owner of that certain real property located on the north side of Ramsey Street, east of N. Hathaway Street in the City of Banning, County of Riverside, California, and identified as Riverside County Tax Assessor's Parcel Numbers 532-110-004, 532-120-001, -002, -008, -009 and -010 ("Larger Parcel").

Grantor seeks to grant to the CITY OF BANNING, a California municipal corporation, in fee a total approximate 48,047 square foot portion of the Larger Parcel described more particularly below ("Subject Fee Property") for public use. The Subject Fee Property is described more particularly on Exhibit "A" and depicted on Exhibit "B", which are attached hereto and incorporated herein by this reference.

The Subject Fee Property consists of (i) an approximate 24,675 square foot area that was dedicated as an easement for state highway purposes pursuant to the Record of Survey recorded in July 1937 in Book 11, Page 24 of Official Records of the County of Riverside and used for public street purposes, and (ii) an approximate 23,372 square foot fee area of the Larger Parcel that is currently not burdened by a right of way easement.

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, receipt and sufficiency of which are hereby acknowledged, Grantor hereby grants to the CITY OF BANNING, a municipal corporation ("Grantee") in fee the approximate 48,047 square foot Subject Fee Property described more particularly on Exhibit "A" and depicted on Exhibit "B",

which are attached hereto and incorporated herein by this reference for public use, namely public street purposes and all uses necessary or convenient thereto, including but not limited to street, sewer, drainage, and utilities in connection with the Ramsey-Hathaway Street Improvement Project. The grant from Grantor to Grantee of the Subject Fee Property includes all improvements thereon, and any rights, title, and interest of Grantor in and to adjacent streets, alleys, or rights of way. IN WITNESS WHEREOF, Grantor has executed this Grant Deed as of the date set forth below.

GRANTOR

Louis S. Lopez, Trustee of the Louis S. Lopez
Trust Dated May 25, 1983

Dated: _____

By: _____
Louis S. Lopez, Trustee of the Louis S.
Lopez Trust Dated May 25, 1983

Exhibit "A"
Legal Description of Subject Fee Property

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO BASE AND MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

RW PARCEL 1:

THOSE PORTIONS OF PARCELS 3, 4, AND 5 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH $89^{\circ}07'14''$ EAST, 165.00 FEET TO THE SOUTHWESTERLY CORNER OF THE LAND DESCRIBED AS PARCEL 1 IN A CORPORATION GRANT DEED TO PETER MARINO RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG THE WESTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495 OF OFFICIAL RECORDS, NORTH $00^{\circ}03'38''$ EAST, 65.01 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET AND THE POINT OF BEGINNING;

THENCE, TRAVERSING THE INTERIOR OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, THE FOLLOWING COURSES:

ALONG SAID PARALLEL LINE, SOUTH $89^{\circ}07'14''$ EAST, 162.68 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHERLY HAVING A RADIUS OF 212.00 FEET;

EASTERLY 21.12 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $05^{\circ}42'25''$;

SOUTH $83^{\circ}24'49''$ EAST, 80.62 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF 188.00 FEET, SAID CURVE BEING TANGENT WITH A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

EASTERLY 18.73 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF $05^{\circ}42'25''$ TO SAID PARALLEL LINE;

EXHIBIT "A"
 RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 165.86 FEET TO
 THE BEGINNING OF A CURVE CONCAVE NORTHERLY HAVING A RADIUS OF
 615.00 FEET;

EASTERLY 177.69 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF
 16°33'15";

NORTH 74°19'31" EAST, 418.31 FEET;

NORTH 70°54'14" EAST, 68.91 FEET TO THE BEGINNING OF A CURVE
 CONCAVE NORTHWESTERLY HAVING A RADIUS OF 365.00 FEET;

NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE
 OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE
 NORTHWEST QUARTER OF SECTION 11.

CONTAINING 6,920 SQUARE FEET, MORE OR LESS.

RW PARCEL 2:

THOSE PORTIONS OF PARCELS 1, 2, AND 6 DESCRIBED IN SAID GRANT DEED TO
 LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25,
 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF
 OFFICIAL RECORDS, IN SAID OFFICE OF THE COUNTY RECORDER, MORE
 PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND
 HATHAWAY STREET AS SHOWN ON SAID RECORD OF SURVEY FILED IN BOOK 11,
 PAGE 24;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 310.00 FEET TO THE SOUTHWESTERLY CORNER OF SAID
 PARCEL 2 AND THE POINT OF BEGINNING;

THENCE, CONTINUING ALONG SAID CENTERLINE OF HATHAWAY STREET,
 NORTH 00°03'38" EAST, 822.50 FEET TO THE NORTHWESTERLY CORNER OF SAID
 PARCEL 6;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 6,
 SOUTH 89°14'00" EAST, 50.00 FEET TO A LINE PARALLEL WITH AND 50.00
 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 822.60 FEET TO
 THE SOUTHERLY LINE OF SAID PARCEL 2;

EXHIBIT "A"
 RIGHT-OF-WAY DEDICATION - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, ALONG SAID SOUTHERLY LINE OF PARCEL 2,
 NORTH 89°07'14" WEST, 50.01 FEET TO THE POINT OF BEGINNING.

CONTAINING 41,127 SQUARE FEET, MORE OR LESS.

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

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

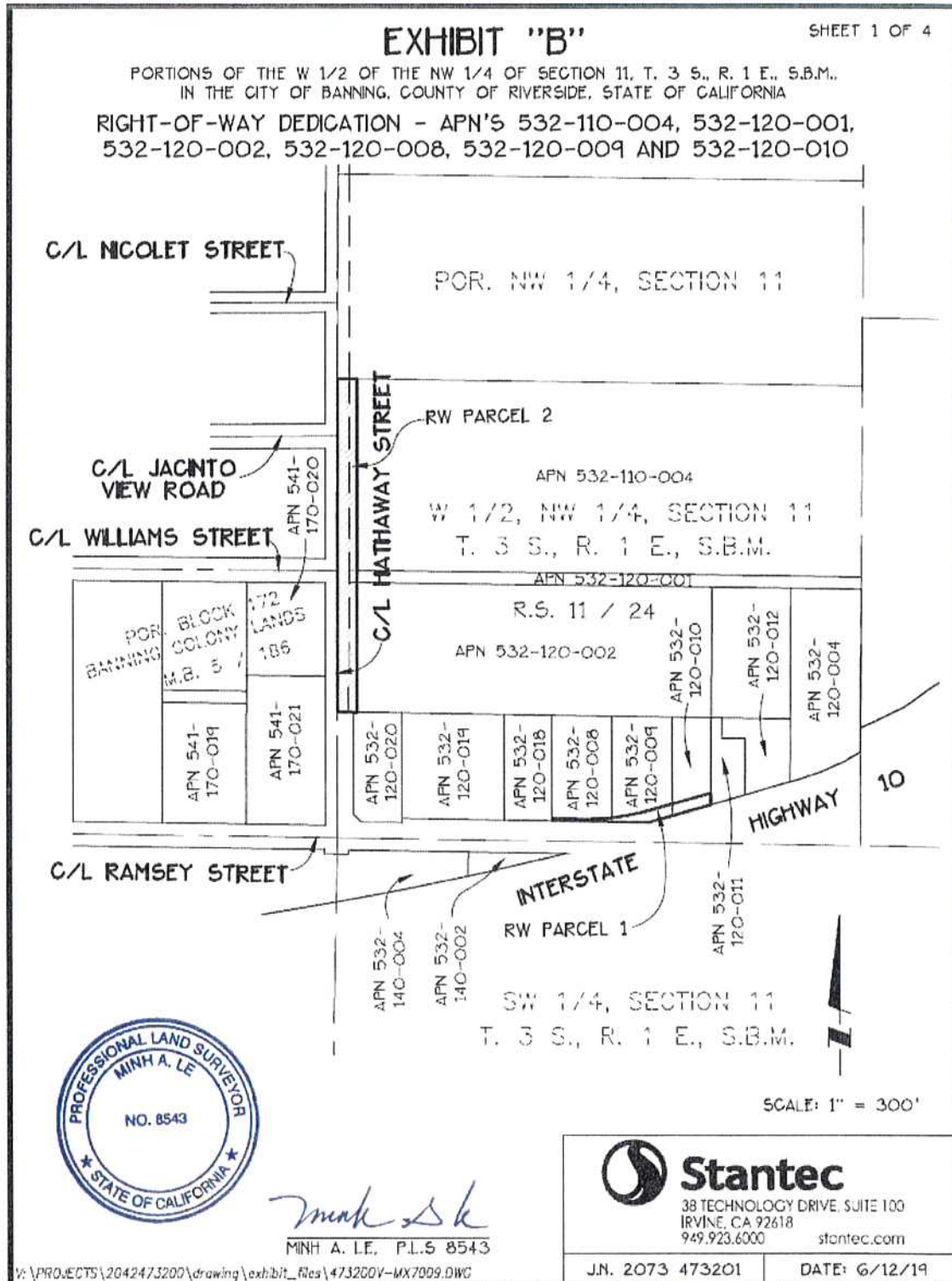


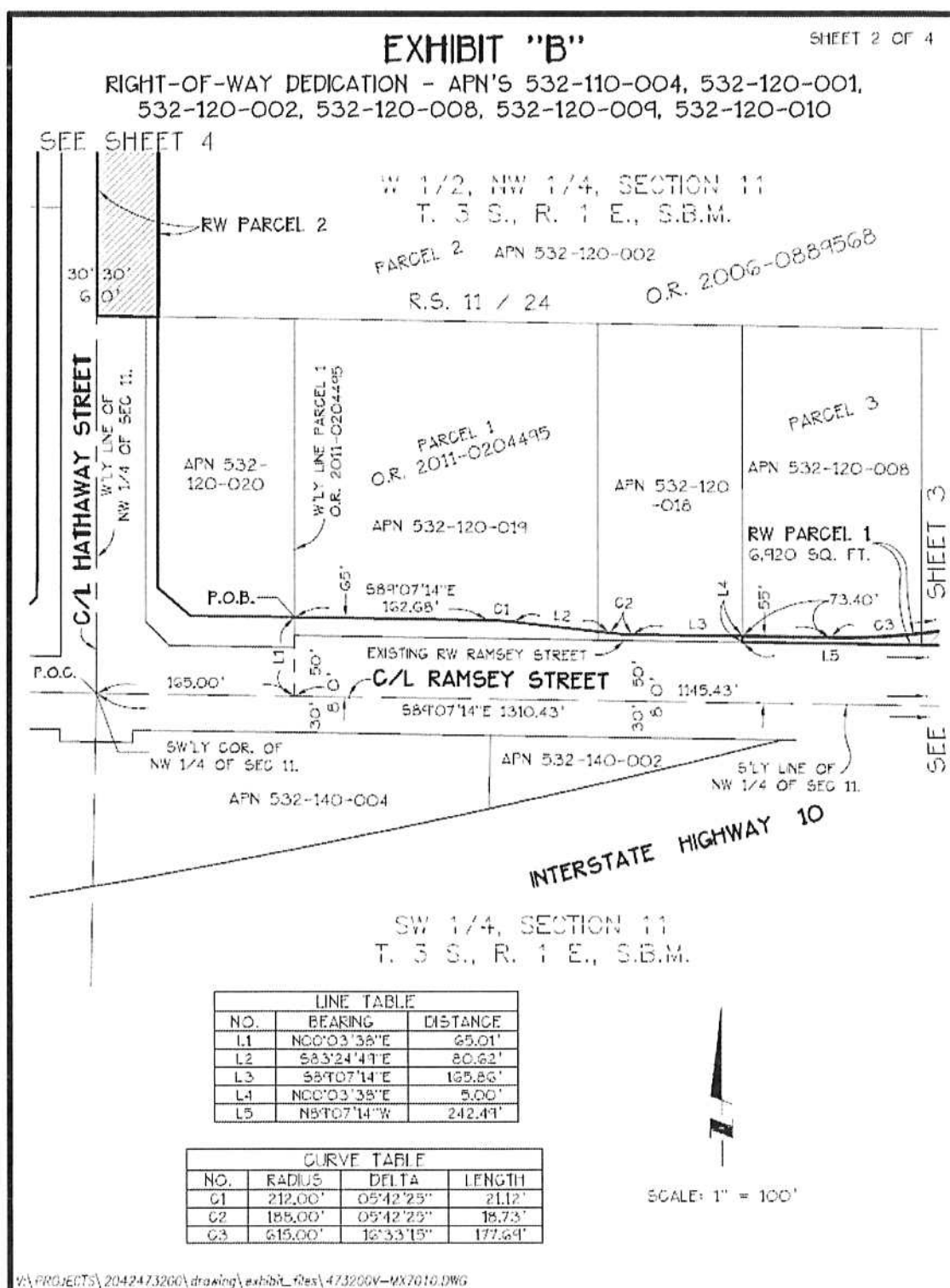
PREPARED BY: STANTEC CONSULTING INC.
 UNDER THE DIRECTION OF:

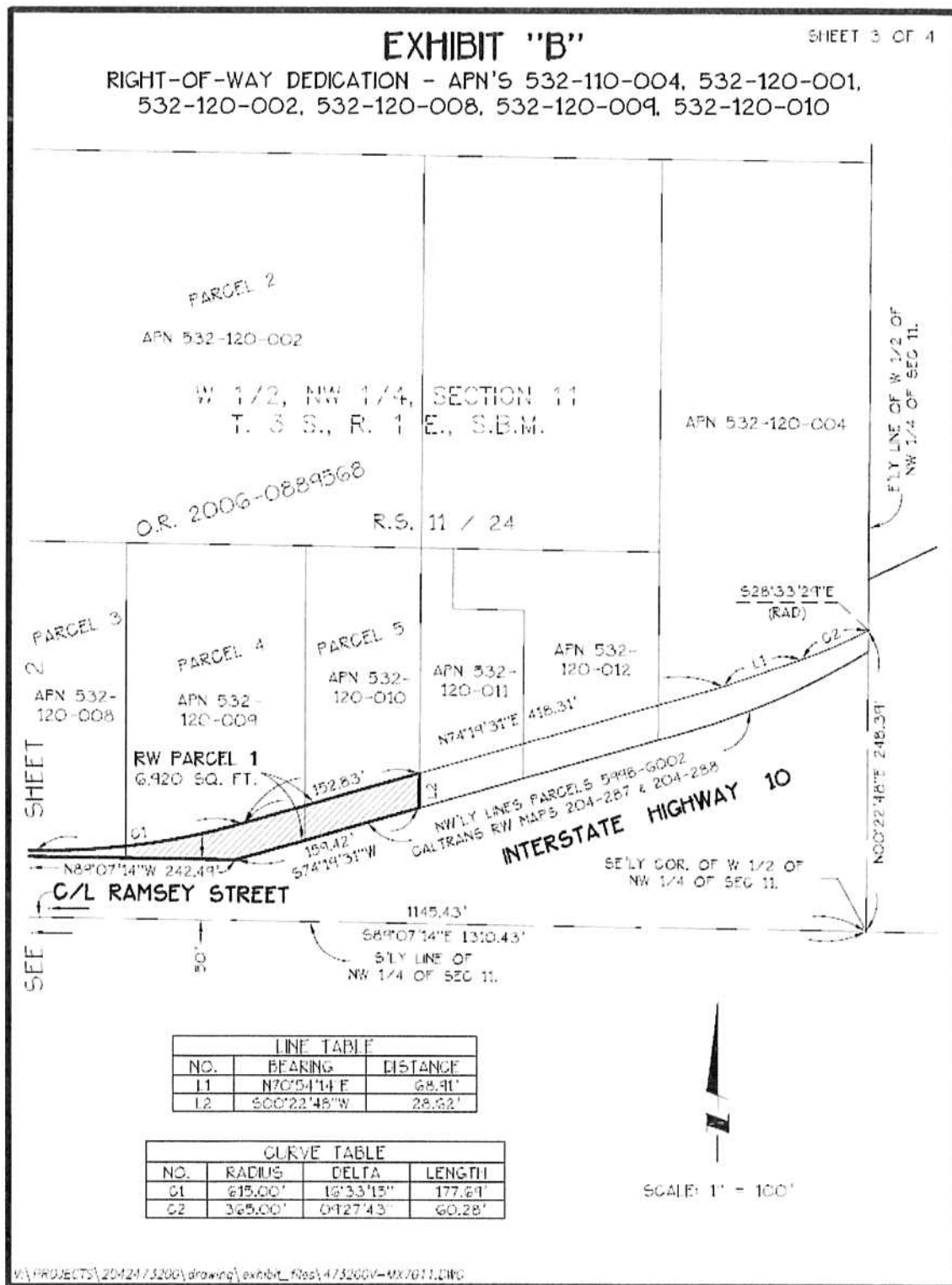
Minh A. Le
 MINH A. LE, P.L.S. 8543

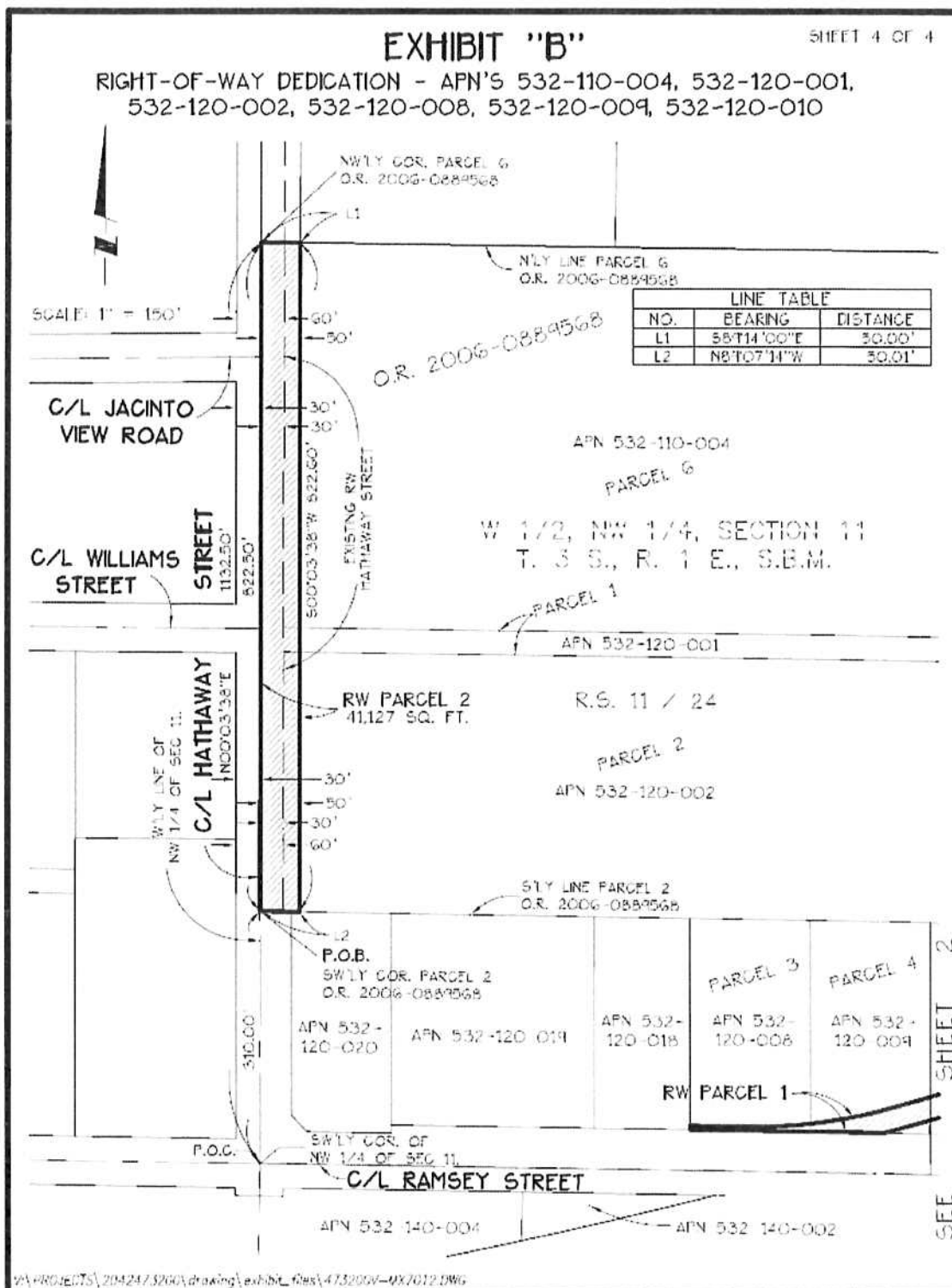
JUNE 12, 2019
 J.N. 2042 473201

Exhibit "B"
Depiction of Subject Fee Property









CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
) ss.
 County of Riverside)

On _____ before me, _____, Notary Public
 personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature: _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

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

CERTIFICATE OF ACCEPTANCE OF GRANT DEED

(Gov't Code § 27281)

(Portions of APNs 532-110-004, 532-120-001, -002, -008, -009 and -010)

This is to certify that the grant to the City of Banning in fee of that certain approximate 48,047 square foot portion of the real property located on the north side of Ramsey Street, east of N. Hathaway Street in the City Banning, and identified as Riverside County Tax Assessor's Parcel Numbers 532-110-004, 532-120-001, -002, -008, -009 and -010 ("Larger Parcel") described more particularly on Exhibit "A" and depicted on Exhibit "B" to the attached Grant Deed is hereby accepted under the authority of the City Council of the City of Banning, and the City of Banning hereby consents to the recordation thereof by its duly authorized officer. The 48,047 square foot fee area consists of (i) an approximate 24,675 square foot portion of the Larger Parcel that was previously dedicated for state highway purposes pursuant to the 1937 Record of Survey and is currently improved with, and used for public street purposes and (ii) an approximate 23,372 square foot portion of the Larger Parcel not encumbered by a public street dedication or easement.

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

Attest:

By: _____
Marie Calderon, City Clerk

Approved as to form:

By: _____
Kevin Ennis, City Attorney

Exhibit "D"
Form of Temporary Construction Easement Agreement

Recording Requested by
and when recorded return to:

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

SPACE ABOVE THIS LINE FOR RECORDER'S USE

Assessor's Parcel No. APNs 532-110-004, 532-120-001, -002, -008, -009 and -010 [X] Portions

Documentary Transfer Tax \$0.00

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

TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

This Temporary Construction Easement Agreement ("TCE Agreement") is entered into by and between LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1983 ("Grantor") and the CITY OF BANNING, a California municipal corporation ("City" or "Grantee") and is effective as of the date it is fully executed by the Parties.

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

A. Grantor is the record fee owner of that certain real property located on the north side of Ramsey Street, east of N. Hathaway Street in the City of Banning, County of Riverside, State of California, identified as Riverside County Tax Assessor's Parcel Numbers 532-110-004, 532-120-001, -002, -008, -009 and -010 ("Larger Parcel"). The Larger Parcel is comprised of several parcels located on the north side of Ramsey Street, east of N. Hathaway Street in the City of Banning identified as Riverside County Tax Assessor's Parcel Numbers 532-110-004, 532-120-001, -002, -008, -009 and 010 with similar highest and best uses, common ownership, and physical contiguity. The Larger Parcel is approximately 24.61 acres (1,072,012 square feet) in size. Except for a fenced storage-yard area and related improvements, which are predominantly considered personal property, the Larger Parcel is unimproved and vacant. The 1,072,012 square foot gross area of the Larger Parcel includes an approximate 24,675 square foot area previously dedicated for public street purposes pursuant to the 1937 Record of Survey.

B. Grantor and City have entered into a Purchase and Sale Agreement ("Purchase Agreement") for City's purchase in fee of an approximate 48,047 square foot portion of Grantor's

Larger Parcel for public use, namely public street purposes and all uses necessary or convenient thereto in connection with the Ramsey-Hathaway Street Improvement Project ("Project"). The Project will improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street.

C. Pursuant to the Purchase Agreement, City is also purchasing the approximate 10,661 square foot temporary construction easement described below for a term of nine months on the Larger Parcel to facilitate the construction of the Project. City's use of the TCE is subject to the terms and conditions of this TCE Agreement.

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

1. Grant of 10,661 Square Foot Temporary Construction Easement. Grantor hereby grants to City, its contractors, agents, representatives, employees, and all others reasonably deemed necessary by City ("City Designees"), that certain approximate 10,661 square foot Temporary Construction Easement more particularly described on Exhibit "A" and depicted on Exhibit "B" hereto ("TCE") in, over, under and across the Larger Parcel for a term of nine months. Exhibit "A" and Exhibit "B" are attached hereto, and incorporated herein by this reference.

2. Term. The term of the TCE will commence thirty calendar days from the date that the City provides written notice to Grantor that it intends to commence construction of the Project. The thirtieth calendar day after the date of the City's notice is the "commencement date" of the TCE. The TCE will terminate automatically nine months from the commencement date ("termination date"). City is authorized to use the approximate 10,661 square foot TCE from the commencement date to the termination date to facilitate City's construction of the Project. The TCE will expire on the earlier of (i) the termination date or (ii) the date on which City records a notice of termination of the TCE in the Official Records of the County of Riverside.

3. Option to Extend Term. The City has the option to extend the term of the TCE by up to six months provided that the City provides Grantor written notice 15 calendar days before the termination date (as defined in 2) notifying Grantor that the City wishes to exercise the option to extend the term by up to six months. During any such extension period, the Parties agree that the City will pay to Grantor the sum of \$176.80 per month for any portion of a month in which the City continues to use the TCE. The monthly compensation is based on compensation at \$1.99 per square foot with a net annual rate of return of ten percent. Thus, if the City uses the TCE for an additional 2.3 months, the City will pay to Grantor the sum of \$530.40, which represents the compensation for three months (\$176.80 x 3 months). The City will pay any such compensation for the extension term within 30 calendar days of the date on which the City's use of the TCE terminates.

4. Scope of Temporary Construction Easement. The 10,661 square foot TCE is for the use by City Designees for the above-referenced approximate nine-month period (and any extension period pursuant to Section 3 above) to facilitate City's construction of the Project, including construction of street, utility, and drainage improvements in the new right of way,

construction staging purposes, and storage of material and equipment on the TCE, if necessary. The construction staging purposes include, but are not limited to, the use of the TCE to facilitate the movement of construction equipment for the construction of the Project, storage and assembly of equipment and materials, ingress and egress, and any related support activities to facilitate the construction of the Project. City agrees that it will provide to Grantor 24-hours telephonic notice prior to causing any temporary impacts to the access to the main wrought iron sliding gate and freestanding mailboxes on the Larger Parcel.

5. No Liens. City agrees to keep the approximate 10,661 square foot TCE and the Larger Parcel free of any liens, including without limitation, liens by contractors, subcontractors, or suppliers, engineers, architects, surveyors, or others that may have lien rights for work arising out of City's use of the TCE in connection with the construction of the Project. If any such lien is filed on the TCE or any portion of the Larger Parcel in connection with City's use of the TCE, City will, at its sole cost and expense, have the lien released and discharged of record in a matter satisfactory to Grantor within 30 calendar days of receiving notice of the lien. If City fails to remove the lien within such 30-day period, Grantor will have the right to remove or bond over the lien, and City, upon demand, will reimburse Grantor for all reasonable costs and expenses, including without limitation reasonable attorneys' fees incurred by Grantor in connection with such removal or bond.

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

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

8. Insurance. Prior to entry onto the approximate 10,661 square foot TCE area, City will procure and maintain (and cause City's contractor for the Project to procure and maintain) a policy of commercial general liability insurance issued by an insurer reasonably satisfactory to Grantor covering the use by and activities of City and City's Designees with a single limit of liability (per occurrence and aggregate) of not less than \$2,000,000, and to deliver to Grantor a certificate of insurance and copy of additional insured endorsement naming Grantor as named additional insured, evidencing that such insurance is in force and effect, and evidencing that Grantor has been named as an additional insured thereunder with respect to the use by Grantee and Grantee's Designees of the TCE. Such insurance will be maintained in force throughout the term of this TCE.

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

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

GRANTEE:	City of Banning 99 E. Ramsey Street Banning, California 92220 Attention: City Manager
COPY TO:	Richards, Watson & Gershon 355 South Grand Avenue 40th Floor Los Angeles, California 90071-3101 Attention: Kevin Ennis, City Attorney
GRANTOR:	Louis S. Lopez Trustee of the Louis S. Lopez Trust Dated May 25, 1983 805 Cloverview Drive Glendora, California 91741-1906

11. Miscellaneous Provisions.

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

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

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

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

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

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

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

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

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and City have entered into this TCE Agreement as of the date set forth below.

GRANTOR

Louis S. Lopez, Trustee of the Louis S. Lopez
Trust Dated May 25, 1983

Dated: _____

By: _____
Louis S. Lopez, Trustee of the Louis S.
Lopez Trust Dated May 25, 1983

GRANTEE

City of Banning, a municipal corporation

Dated: _____

By: _____
Douglas Schulze, City Manager

ATTEST:

By: _____
Marie Calderon, City Clerk

APPROVED AS TO FORM:

Kevin Ennis, City Attorney

Exhibit "A"
Legal Description of Temporary Construction Easement

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

THOSE PORTIONS OF THE WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST, SAN BERNARDINO MERIDIAN, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, ACCORDING TO THE OFFICIAL PLAT THEREOF, DESCRIBED AS FOLLOWS:

TCE PARCEL 1:

THOSE PORTIONS OF PARCELS 1, 2, AND 6 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, LYING WESTERLY OF THE FOLLOWING DESCRIBED REFERENCE LINE:

COMMENCING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON A RECORD OF SURVEY FILED IN BOOK 11, PAGE 24 OF RECORD OF SURVEYS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'38" EAST, 1635.00 FEET TO THE NORTHWESTERLY CORNER OF PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, RECORDED APRIL 10, 2008 AS DOCUMENT NO. 2008-0178325, OFFICIAL RECORDS OF SAID COUNTY, AND THE POINT OF BEGINNING;

THENCE, ALONG THE NORTHERLY LINE OF SAID PARCEL 1 AS DESCRIBED IN A GRANT DEED TO OSI PARTNERSHIP 1, LLC, SOUTH 89°15'37" EAST, 52.00 FEET TO A LINE PARALLEL WITH AND 52.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 125.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 53.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 29.50 FEET;

THENCE, SOUTH 89°56'22" EAST, 1.00 FEET TO A LINE PARALLEL WITH AND 54.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 99.85 FEET;

THENCE, SOUTH 44°59'49" EAST, 43.56 FEET;

THENCE, SOUTH 00°03'16" EAST, 61.19 FEET;

THENCE, SOUTH 45°00'11" WEST, 40.99 FEET TO A LINE PARALLEL WITH AND 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 126.26 FEET TO THE NORTHERLY LINE OF SAID PARCEL 6 DESCRIBED IN A GRANT DEED TO LOUIS

1 OF 6

Exhibit "A"
Page 1 of 6

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5,
 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID NORTHERLY LINE, NORTH 89°14'00" WEST, 1.00 FEET TO
 A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF
 HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 288.84 FEET;

THENCE, SOUTH 89°56'22" EAST, 2.00 FEET TO A LINE PARALLEL WITH AND
 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 69.37 FEET;

THENCE, NORTH 89°56'22" WEST, 1.00 FEET TO A LINE PARALLEL WITH AND
 56.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 105.38 FEET;

THENCE, SOUTH 53°55'49" EAST, 11.13 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.32 FEET;

THENCE, SOUTH 51°09'30" WEST, 12.85 FEET TO A LINE PARALLEL WITH AND
 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 219.93 FEET;

THENCE, SOUTH 38°57'16" EAST, 14.30 FEET;

THENCE, SOUTH 00°03'38" WEST, 34.56 FEET;

THENCE, SOUTH 61°37'51" WEST, 10.23 FEET TO A LINE PARALLEL WITH AND
 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.62 FEET TO
 THE SOUTHERLY LINE OF SAID PARCEL 2 DESCRIBED IN A GRANT DEED TO LOUIS
 S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5,
 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID SOUTHERLY LINE, SOUTH 89°07'14" EAST, 9.00 FEET TO
 A LINE PARALLEL WITH AND 64.00 FEET EASTERLY OF SAID CENTERLINE OF
 HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 39.71 FEET;

THENCE, SOUTH 49°31'47" WEST, 9.21 FEET TO A LINE PARALLEL WITH AND
 57.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 52.53 FEET;

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EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, SOUTH 01°47'23" WEST, 66.27 FEET TO A LINE PARALLEL WITH AND 55.00 FEET EASTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 57.98 FEET;

THENCE, SOUTH 50°12'34" EAST, 21.36 FEET TO A LINE PARALLEL WITH AND 74.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 93.57 FEET TO THE WESTERLY LINE OF PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°03'38" WEST, 9.00 FEET TO A LINE PARALLEL WITH AND 65.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 117.32 FEET;

THENCE, NORTH 00°03'38" EAST, 18.99 FEET;

THENCE, SOUTH 89°56'22" EAST, 65.00 FEET;

THENCE, SOUTH 00°03'38" WEST, 20.83 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 212.00 FEET, A RADIAL LINE TO SAID CURVE BEARS NORTH 06°12'06" EAST;

THENCE, EASTERLY 1.42 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 00°23'05";

THENCE, SOUTH 83°24'49" EAST, 70.70 FEET TO THE EASTERLY LINE OF SAID PARCEL 1 OF THE CORPORATION GRANT DEED RECORDED MAY 9, 2011 AS DOCUMENT NO. 2011-0204495;

THENCE, ALONG SAID EASTERLY LINE, NORTH 00°03'38" EAST, 10.20 FEET;

THENCE, SOUTH 89°56'22" EAST, 42.00 FEET;

THENCE, SOUTH 00°23'37" EAST, 12.72 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 78.89 FEET TO THE WESTERLY LINE OF SAID PARCEL 3 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID WESTERLY LINE, NORTH 00°03'38" EAST, 14.00 FEET TO A LINE PARALLEL WITH AND 69.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

EXHIBIT "A"
 TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
 532-120-001, 532-120-002, 532-120-008,
 532-120-009, AND 532-120-010

THENCE, ALONG SAID PARALLEL LINE, SOUTH 89°07'14" EAST, 42.66 FEET;

THENCE, SOUTH 81°14'46" EAST, 21.31 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 604.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 01°48'41" WEST;

THENCE, EASTERLY 86.41 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 08°11'48" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 06°23'07" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 00°03'38" EAST, 2.01 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 602.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 06°24'24" EAST;

THENCE, EASTERLY 59.33 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 05°38'47" TO A NON-TANGENT LINE AND TO WHICH A RADIAL LINE BEARS SOUTH 12°03'11" EAST;

THENCE, ALONG SAID NON-TANGENT LINE, NORTH 72°27'02" EAST, 27.32 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 600.00 FEET, A RADIAL LINE TO SAID CURVE BEARS SOUTH 14°39'03" EAST;

THENCE, EASTERLY 10.72 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°01'26";

THENCE, NORTH 74°19'31" EAST, 57.22 FEET;

THENCE, SOUTH 00°03'38" WEST, 4.16 FEET;

THENCE, NORTH 74°19'31" EAST, 35.48 FEET;

THENCE, NORTH 63°02'37" EAST, 56.23 FEET;

THENCE, NORTH 74°19'31" EAST, 12.45 FEET TO THE EASTERLY LINE OF SAID PARCEL 5 DESCRIBED IN A GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 7.28 FEET;

THENCE, NORTH 74°19'31" EAST, 90.54 FEET TO THE EASTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO HUMBERTO RAMIREZ RECORDED APRIL 1, 2011 AS DOCUMENT NO. 2011-0145549, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, CONTINUING NORTH 74°19'31" EAST, 22.89 FEET;

THENCE, NORTH 82°52'09" EAST, 40.39 FEET;

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

THENCE, NORTH 74°19'31" EAST, 53.02 FEET TO THE WESTERLY LINE OF THE LAND DESCRIBED IN A GRANT DEED TO GARY CARLTON AND WENDY CARLTON, TRUSTEES OF THE GARY AND WENDY CARLTON LIVING TRUST, RECORDED MARCH 8, 2006 AS DOCUMENT NO. 2006-0165322, OFFICIAL RECORDS OF SAID COUNTY;

THENCE, ALONG SAID WESTERLY LINE, SOUTH 00°22'48" WEST, 2.08 FEET;

THENCE, NORTH 74°19'31" EAST, 36.50 FEET;

THENCE, NORTH 81°52'04" EAST, 42.65 FEET;

THENCE, NORTH 70°54'14" EAST, 45.42 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 365.00 FEET;

THENCE, NORTHEASTERLY 60.28 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 09°27'43" TO THE EASTERLY LINE OF SAID WEST HALF OF THE NORTHWEST QUARTER OF SECTION 11, TOWNSHIP 3 SOUTH, RANGE 1 EAST;

THENCE, ALONG SAID EASTERLY LINE, SOUTH 00°22'48" WEST, 248.39 FEET TO THE SOUTHERLY LINE OF SAID NORTHWEST QUARTER OF SECTION 11 AND THE TERMINUS OF THE REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF HATHAWAY STREET.

ALSO EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 2 OF THE RIGHT-OF WAY DEDICATION TO THE CITY OF BANNING RECORDED _____,
AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 5,160 SQUARE FEET, MORE OR LESS.

TCE PARCEL 2:

THOSE PORTIONS OF PARCELS 3, 4, AND 5 DESCRIBED IN SAID GRANT DEED TO LOUIS S. LOPEZ, TRUSTEE OF THE LOUIS S. LOPEZ TRUST DATED MAY 25, 1993, RECORDED DECEMBER 5, 2006 AS DOCUMENT NO. 2006-0889568 OF OFFICIAL RECORDS, LYING SOUTHERLY OF THE HEREINABOVE DESCRIBED REFERENCE LINE.

EXCEPTING THEREFROM THAT PORTION INCLUDED WITHIN PARCEL 1 OF THE RIGHT-OF WAY DEDICATION TO THE CITY OF BANNING RECORDED _____,
AS DOCUMENT NO. _____, OFFICIAL RECORDS OF SAID COUNTY.

CONTAINING 5,501 SQUARE FEET, MORE OR LESS.

EXHIBIT "A"
TEMPORARY CONSTRUCTION EASEMENT - A.P.N.'S 532-110-004,
532-120-001, 532-120-002, 532-120-008,
532-120-009, AND 532-120-010

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

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



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

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

MARCH 7, 2018
J.N. 2073 013430

Exhibit "B"
Depiction of Temporary Construction Easement

EXHIBIT "B"

SHEET 1 OF 5

PORTIONS OF THE W 1/2 OF THE NW 1/4 OF SECTION 11, T. 3 S., R. 1 E., S.B.M.,
 IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

**TEMPORARY CONSTRUCTION EASEMENT – APN'S 532-110-004, 532-120-001,
 532-120-002, 532-120-008, 532-120-009, 532-120-010**



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



38 TECHNOLOGY DRIVE SUITE 100
 IRVINE, CA 92618
 949 923 6000 stantec.com

SCALE 1" = 300'

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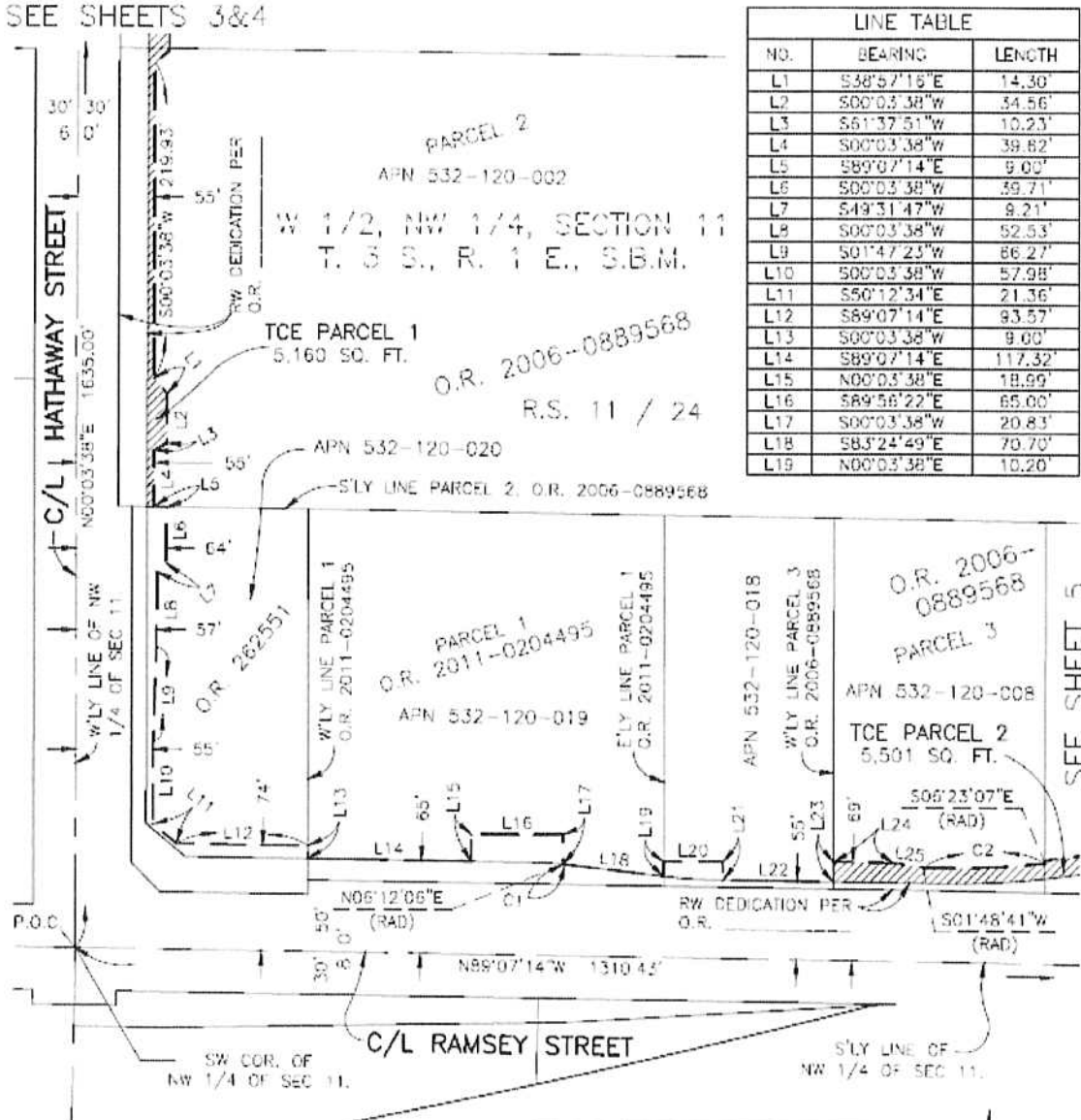
DATE: 3/07/18

EXHIBIT "B"

SHEET 2 OF 5

TEMPORARY CONSTRUCTION EASEMENT - APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010

SEE SHEETS 3&4



LINE TABLE		
NO.	BEARING	LENGTH
L1	S38°57'16"E	14.30'
L2	S00°03'38"W	34.56'
L3	S61°37'51"W	10.23'
L4	S00°03'38"W	39.82'
L5	S89°07'14"E	9.00'
L6	S00°03'38"W	39.71'
L7	S49°31'47"W	9.21'
L8	S00°03'38"W	52.53'
L9	S01°47'23"W	86.27'
L10	S00°03'38"W	57.98'
L11	S50°12'34"E	21.36'
L12	S89°07'14"E	93.57'
L13	S00°03'38"W	9.00'
L14	S89°07'14"E	117.32'
L15	N00°03'38"E	18.99'
L16	S89°56'22"E	65.00'
L17	S00°03'38"W	20.83'
L18	S83°24'49"E	70.70'
L19	N00°03'38"E	10.20'

CURVE TABLE			
NO.	RADIUS	DELTA	LENGTH
C1	212.00'	00°23'05"	1.42'
C2	604.00'	08°11'48"	86.41'

LINE TABLE		
NO.	BEARING	LENGTH
L20	S89°56'22"E	42.00'
L21	S00°23'37"E	12.72'
L22	S89°07'14"E	78.89'
L23	N00°03'38"E	14.00'
L24	S89°07'14"E	42.66'
L25	S81°14'46"E	21.31'

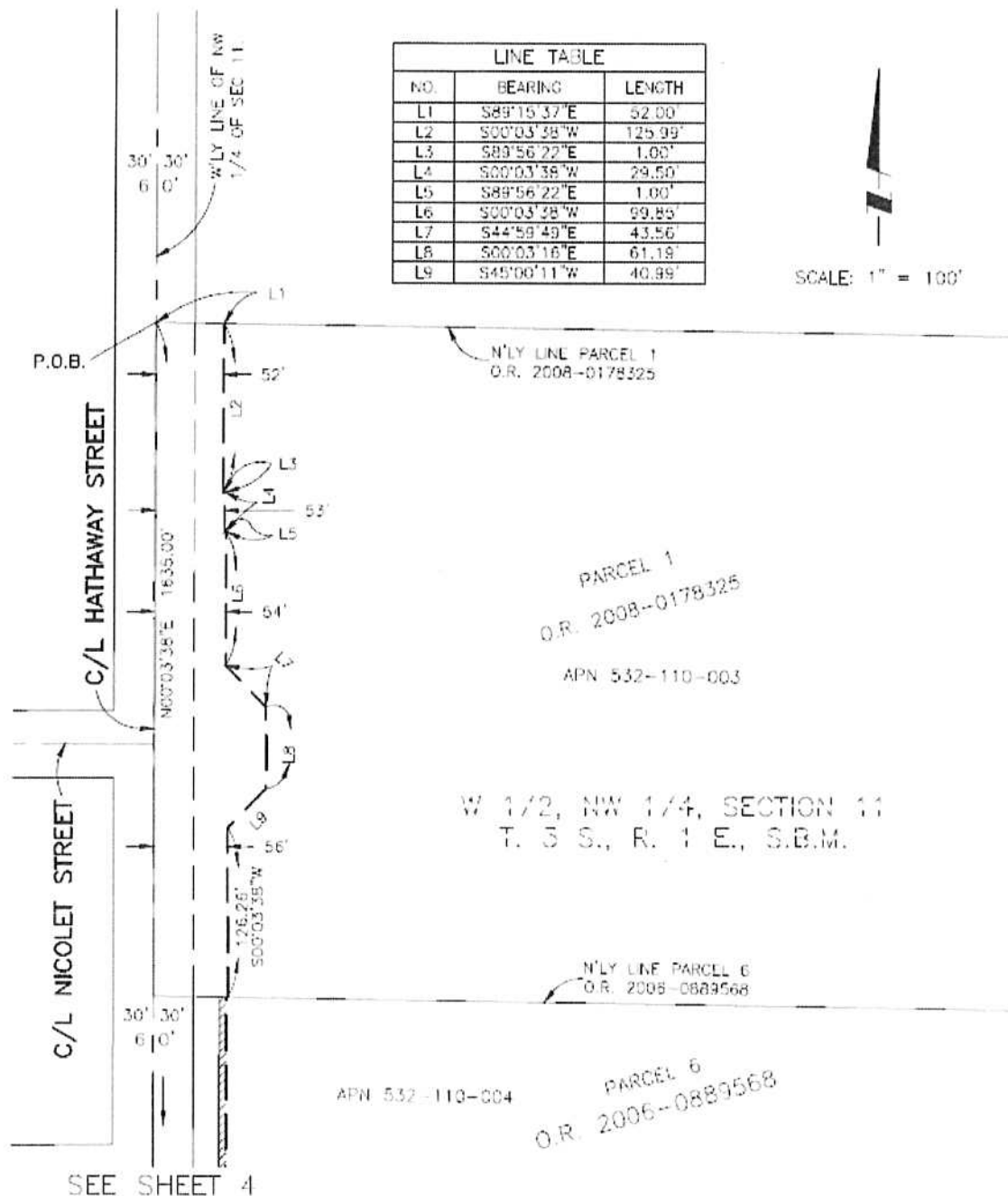
SCALE: 1" = 100'

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EXHIBIT "B"

SHEET 3 OF 5

TEMPORARY CONSTRUCTION EASEMENT - APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010

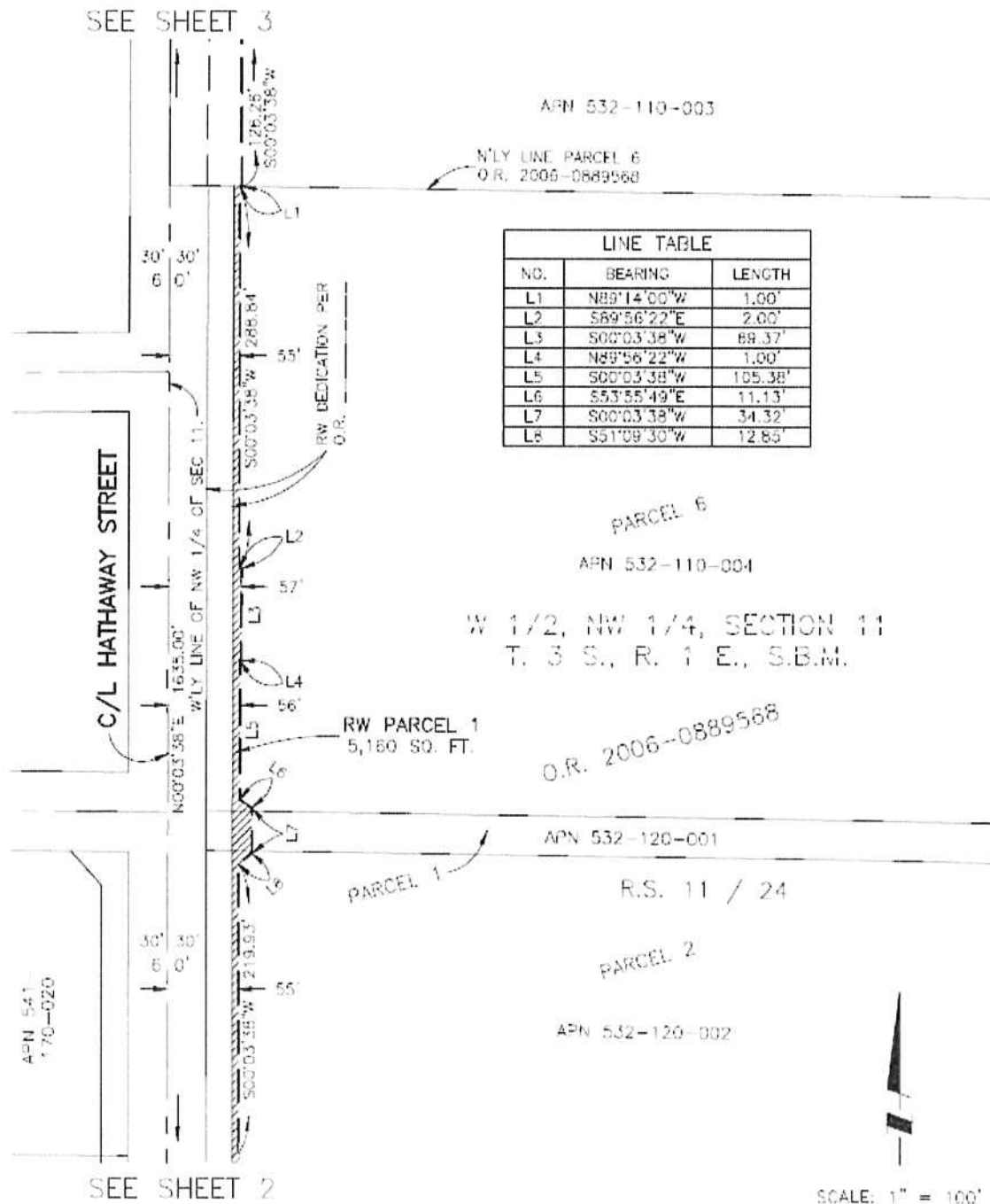


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EXHIBIT "B"

SHEET 4 OF 5

TEMPORARY CONSTRUCTION EASEMENT — APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010



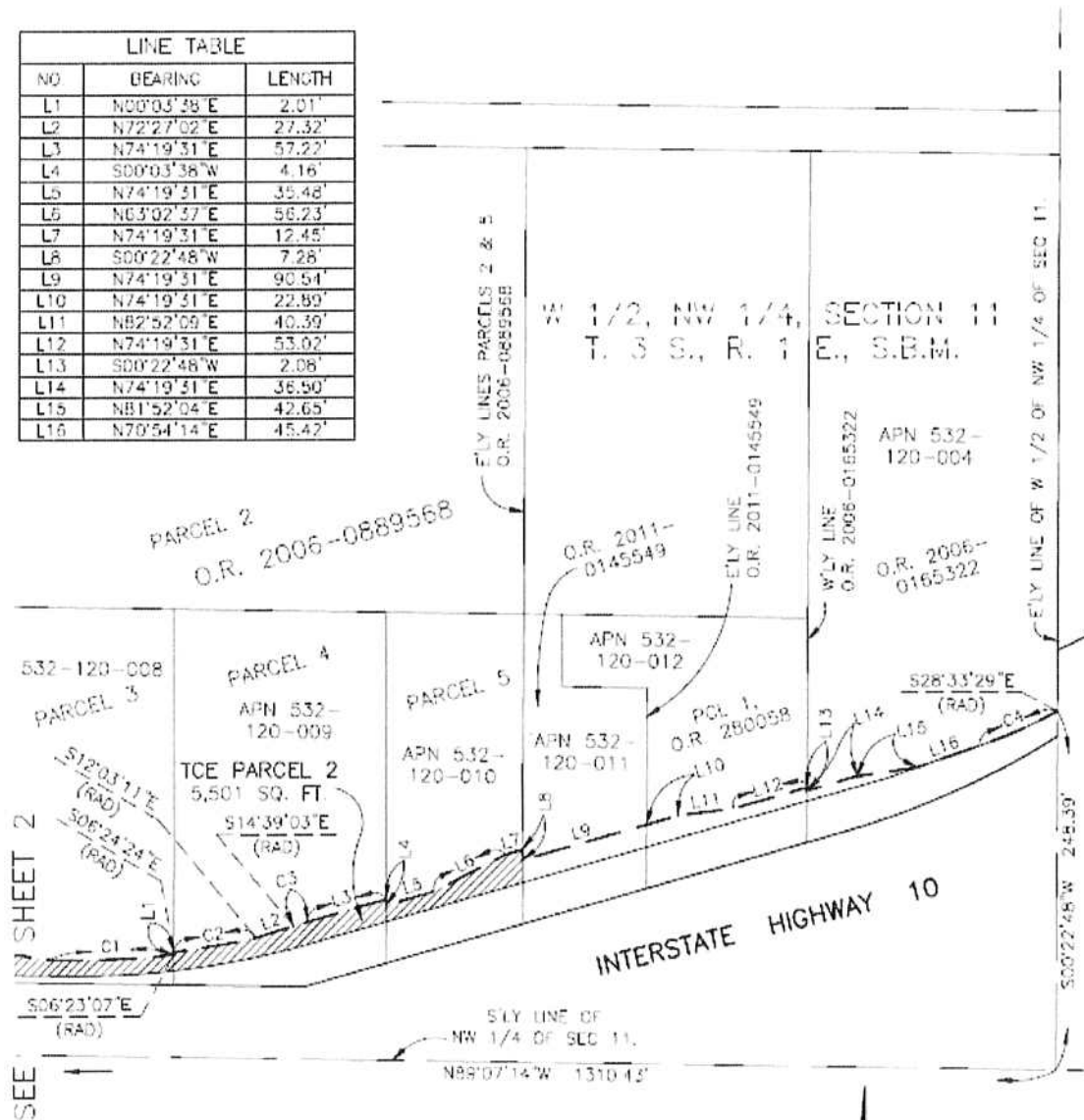
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EXHIBIT "B"

SHEET 5 OF 5

TEMPORARY CONSTRUCTION EASEMENT — APN'S 532-110-004, 532-120-001,
532-120-002, 532-120-008, 532-120-009, 532-120-010

LINE TABLE		
NO	BEARING	LENGTH
L1	N00°03'38"E	2.01'
L2	N72°27'02"E	27.32'
L3	N74°19'31"E	57.22'
L4	S00°03'38"W	4.16'
L5	N74°19'31"E	35.48'
L6	N03°02'37"E	56.23'
L7	N74°19'31"E	12.45'
L8	S00°22'48"W	7.28'
L9	N74°19'31"E	90.54'
L10	N74°19'31"E	22.89'
L11	N82°52'09"E	40.39'
L12	N74°19'31"E	53.02'
L13	S00°22'48"W	2.08'
L14	N74°19'31"E	36.90'
L15	N81°52'04"E	42.65'
L16	N70°54'14"E	45.42'



CURVE TABLE			
NO	RADIUS	DELTA	LENGTH
C1	604.00'	08°11'48"	86.41'
C2	602.00'	05°38'47"	59.33'
C3	600.00'	01°01'25"	10.72'
C4	365.00'	09°27'43"	60.28'

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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
) ss.
 County of Riverside)

On _____ before me, _____, Notary Public
 personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature: _____
 Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____

Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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State of California)
) ss.
 County of Riverside)

On _____ before me, _____, Notary Public
 personally appeared _____,

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

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

WITNESS my hand and official seal.

Signature: _____
 Signature of Notary Public

Place Notary Seal Above

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☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer's Name: _____

☐ Corporate Officer – Title(s): _____

☐ Partner – ☐ Limited ☐ General

☐ Individual ☐ Attorney in Fact

☐ Trustee ☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

Signer Is Representing: _____

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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
Holly Stuart, Management Analyst

MEETING DATE: July 9, 2019

SUBJECT: Authorize the City Manager to sign the Notice of Completion for Project No. 2018-05, "City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements" as complete and direct the City Clerk to record the Notice of Completion

RECOMMENDED ACTION:

That the City Council accept Project No. 2018-05, "City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements" as complete, authorize the City Manager or designee to sign the Notice of Completion and direct the City Clerk to record the Notice of Completion.

BACKGROUND:

On October 29, 2018, City Council adopted Resolution 2018-124 awarding a Construction Agreement to Allison Mechanical, Inc., of Redlands for Project No. 2018-05, "City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements". The project was approved in the amount of \$162,000 with a 10% contingency for a total project budget of \$178,200.

The scope of work included furnishing labor and materials for the demolition of selected existing controls and ductwork; installation of an upgraded variable volume and temperature (VVT) system and ductwork; testing, adjusting and balancing of the system; installation of upgraded controls; electrical; and general construction.

A project change order was processed in the amount of \$9,743.35 increasing the contract amount by approximately 6% for a total contract amount of \$171,743.35. The change order was necessary in order to address separation of ducting from the main

trunk of one of the units, resulting in air loss to the attic. Without repairing the over pressurized unit and duct work, air balance could not be performed.

JUSTIFICATION:

The lowest qualified bidder, Allison Mechanical, Inc., was awarded the contract and work was completed on May 10, 2019. Public Works staff verified through inspections that the workmanship, materials, and procedures were satisfactory and that the contractor had met the required contract obligations.

FISCAL IMPACT:

The original contract was awarded in the amount of \$162,000 and the final contract amount for this project is \$171,743.35, under the allocated project budget approved under Resolution 2018-124. The project was funded by the General Facilities Fund 430, Account No. 430-2900-441.90-15 (Capital Expenditures/Building Improvements).


ALTERNATIVE:

City Council may elect to not accept the project as complete which would keep the project open and prevent the release of retention funds to the contractor.

ATTACHMENT:

1. Notice of Completion

Approved by:



Doug Schulze
City Manager

ATTACHMENT 1

(Notice of Completion)

1 WHEN RECORDED MAIL TO:

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

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

12
13 NOTICE OF COMPLETION

14 PROJECT NO. 2018-05,
15 "CITY HALL HEATING, VENTILATION AND AIR CONDITIONING (HVAC)
16 IMPROVEMENTS"

17
18 THIS NOTICE OF COMPLETION IS HEREBY GIVEN by the OWNER, the City
19 of Banning, a municipal corporation, pursuant to the provisions of Section 9204 of the Civil
20 Code of the State of California, that Project No. 2018-05 is hereby accepted by the City of
21 Banning, pursuant to authority conferred by the City Council this July 9, 2019, and the
22 grantees consent to recordation thereof by its duly authorized agent.
23

24 That the OWNER, the City of Banning, and Allison Mechanical, Inc., of Redlands,
25 California, the vendee, entered into an agreement dated October 9, 2018, for Project No.
26 2018-05, "City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements".
27

28 The principal items of work consisted of improvements to the Heating, Ventilation and Air
29 Conditioning (HVAC) system improvements at City Hall including furnishing labor and
30 materials for the demolition of selected existing controls and ductwork; installation of an
31 upgraded variable volume and temperature (VVT) system and ductwork; testing, adjusting
32 and balancing of the system; installation of upgraded controls; electrical; and general
33 construction. The work was performed at City Hall, 99 East Ramsey Street, Banning, CA
34 92220.
35

1 That the work was substantially completed on May 10, 2019, for Project No. 2018-05,
2 "City Hall Heating, Ventilation and Air Conditioning (HVAC) Improvements":

3 (1) The Nature of Interest was City Hall HVAC improvements completed on
4 May 10, 2019 for Project No. 2018-05.

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

8 (3) That said improvements were performed at 99 East Ramsey Street,
9 Banning, CA 92220.

10 (4) That the original contractor for said improvement was Allison Mechanical,
11 State Contractor's License No. 679866.

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

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

15 Dated: July 9, 2019

16 CITY OF BANNING
17 A Municipal Corporation
18
19
20

21 By _____
22 Doug Schulze
23 City Manager
24
25

26 APPROVED AS TO FORM:
27
28
29
30

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

JURAT

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

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this _____ day of _____, 2019 by _____ proved to me on this basis of satisfactory evidence to be the person(s) who appeared before me.

(S e a l)

Notary Public in and for said County
and State

STATE OF CALIFORNIA)

) ss

COUNTY OF RIVERSIDE)

Daryl Betancur, being duly sworn, deposes and says:

That I am the Deputy City Clerk of the City of Banning, which City caused the work to be performed on the real property hereinabove described, and is authorized to execute this Notice of Completion on behalf of said City; that I have read the foregoing Notice and know the contents thereof, and that the facts stated therein are true based upon information available to the City of Banning, and that I make this verification on behalf of said City of Banning. I declare under perjury that the foregoing is true and correct.

Executed on _____, 2019 at Banning, California.

Deputy City Clerk of the City of
Banning

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works

DATE: July 9, 2019

SUBJECT: Adoption of a Resolution Making an Appropriation of Additional Funds to Close Out Project No. 2016-04, "Roosevelt Williams Park Improvements"

RECOMMENDED ACTION:

Staff recommends the City Council adopt Resolution authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers in the amount of \$60,191.18, or such other amount as is necessary, to close out the completed Roosevelt Williams Park Improvements consistent with the Settlement Agreement with Environmental Construction, Inc. ("ECI").

BACKGROUND:

On June 27, 2017 the City Council adopted Resolution No. 2017-60 awarding an Agreement to Environmental Construction, Inc. ("ECI") of Woodland Hills, CA in the amount of \$2,585,178 with the inclusion of a 10% contingency for a total budget amount of \$2,843,696 for the completion of Project No. 2016-04, "Roosevelt Williams Park Improvements" (the "Project").

The Project is now complete. A Compensation Close-Out, Settlement and Limited Release Agreement ("Settlement Agreement") will be considered and acted upon by the City Council by separate action. If that Settlement Agreement is approved by the Council, then the City Council will need to appropriate or transfer \$60,191.18 from Account No. 855-9500-490.90-30 and into the fund for Project No. 2016-04.

ATTACHMENT:

1. Resolution No. 2019-____ approving the appropriation of \$60,191.18 into the Project Fund for Project No. 2016-04.

Approved by:



Doug Schulze
City Manager

ATTACHMENT 1

(Resolution No. 2019-_____ making the Appropriation)

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF BANNING APPROVING THE APPROPRIATION OF
ADDITIONAL FUNDS TO THE ROOSEVELT WILLIAMS
PARK IMPROVEMENT FUND**

WHEREAS, on June 27, 2017 the City Council adopted Resolution No. 2017-60 awarding an Agreement to Environmental Construction, Inc. ("ECI") of Woodland Hills, CA in the amount of \$2,585,178 with the inclusion of a 10% contingency for a total budget amount of \$2,843,696 for the completion of Project No. 2016-04, "Roosevelt Williams Park Improvements" (the "Project"); and

WHEREAS, the Project is now complete. A Compensation Close-Out, Settlement and Limited Release Agreement ("Settlement Agreement") between the City and ECI has been considered and approved by the City Council by separate action; and

WHEREAS, based on the approval of the Settlement Agreement, it is now necessary to appropriate or transfer \$60,191.18 from Account No. 855-9500-490.90-30 and into the fund for Project No. 2016-04.

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING HEREBY
FINDS AND RESOLVES AS FOLLOWS:**

SECTION 1. The City Council authorizes the City Manager or his designee to make necessary budget adjustments, appropriations and transfers in the amount of \$60,191.18, or such other amount as is necessary, to close out the completed Roosevelt Williams Park Improvements consistent with the Settlement Agreement.

SECTION 2. The City Clerk shall certify to the adoption of this Resolution and shall cause a certified copy of this resolution to be filed in the book of original resolutions.

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

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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-___ was duly adopted at a regular meeting of the City Council of the City of Banning held on the 9th day of July 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam Rush, AICP, Community Development Director

MEETING DATE: July 9, 2019

SUBJECT: CEDAR HILLS APARTMENTS (THE PROJECT)
GENERAL PLAN AMENDMENT 18-2504; ZONE CHANGE
18-3503; DESIGN REVIEW 18-7011; AND
ENVIRONMENTAL ASSESSMENT 18-1508 FOR THE
PROPOSED DEVELOPMENT OF A MULTI-FAMILY
RESIDENTIAL APARTMENT COMPLEX AND
ASSOCIATED INFRASTRUCTURE ON 7.08 ACRES OF
LAND WITHIN THE LOW DENSITY RESIDENTIAL (LDR)
LAND USE DISTRICT (APN 534-283-011 AND 534-283-014)

RECOMMENDED ACTION:

Discuss and Continue to August 27, 2019 City Council Meeting

PROJECT / APPLICANT INFORMATION:

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

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

Project Location: The eastern portion of the City on approximately 7.08 acres. The Project site is located south of East Hoffer Street, and west of North Hathaway Street in the City of Banning, California.

APN Information: The affected parcels include; 534-283-011 and 534-283-014.

APPLICANT'S REQUEST:

The applicant, is requesting consideration of a General Plan Amendment and Zone Change to change the zoning and land use designation from Low Density Residential (LDR) (0-5 DU/AC) to High Density Residential (HDR) (11-18 DU/AC) and Design Review for the construction of a multi-family residential apartment complex with private and common recreation and open space amenities on approximately 7.08 acres of land located south of East Hoffer Street and west of North Hathaway Street (APN's 534-283-011, 534-283-014).

PROJECT BACKGROUND:

The proposed Project was scheduled before the City Council, for a Public Hearing, on the May 14, 2019 Agenda. The Council cited several concerns regarding the proposed density, the request for a general plan amendment and zone change, and amenities proposed on-site.

In addition, the future extension of Wilson Street is required to be integrated into the site plan. This road extension was not identified during the Design Review process. As such, the Project was continued to the June 11, 2019 City Council Agenda.

The applicant requested a continuance, from the June 11, 2019 Agenda to the July 9, 2019 agenda to allow additional time to prepare an updated site plan.

The project proponent has submitted two conceptual site plans for staff review. Based upon feedback provided by the Council, the acceptance of additional public testimony, and staff comments, the project will be required to update the site plan with revised engineering and amendments to the required technical documents (e.g., Hydrology, Drainage, Water Quality, Grading, Landscaping, etc.).

ENVIRONMENTAL SETTING:

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

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

LAND USE SUMMARY TABLE

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

PUBLIC COMMUNICATION

The Project was advertised in the Record Gazette newspaper on May 3, 2019 (Attachment 5). As of the date of this report, staff has received one comment letter, from an adjacent property owner, Mr. Brent Bumpus.

COMMISSION RECOMMENDATION:

On April 3, 2019, the City of Banning Planning Commission adopted Resolution 2019-05 by a 5-0-0 vote, recommending that the City Council of the City of Banning adopt a Mitigated Negative Declaration and Mitigation Monitoring Report and Program and approve General Plan Amendment 18-2504, Zone Change 18-3503 and Design Review 2018-7011 for the Cedar Hills Apartments Project.

FISCAL IMPACT:

The Cedar Hills Apartments project consists of a High Density Residential, multi-family apartment complex on 7.08-acres of land. Issuance of grading, building, and other permits will result in additional revenues for the City, as will increase property tax revenues and create permanent and temporary jobs within the City.

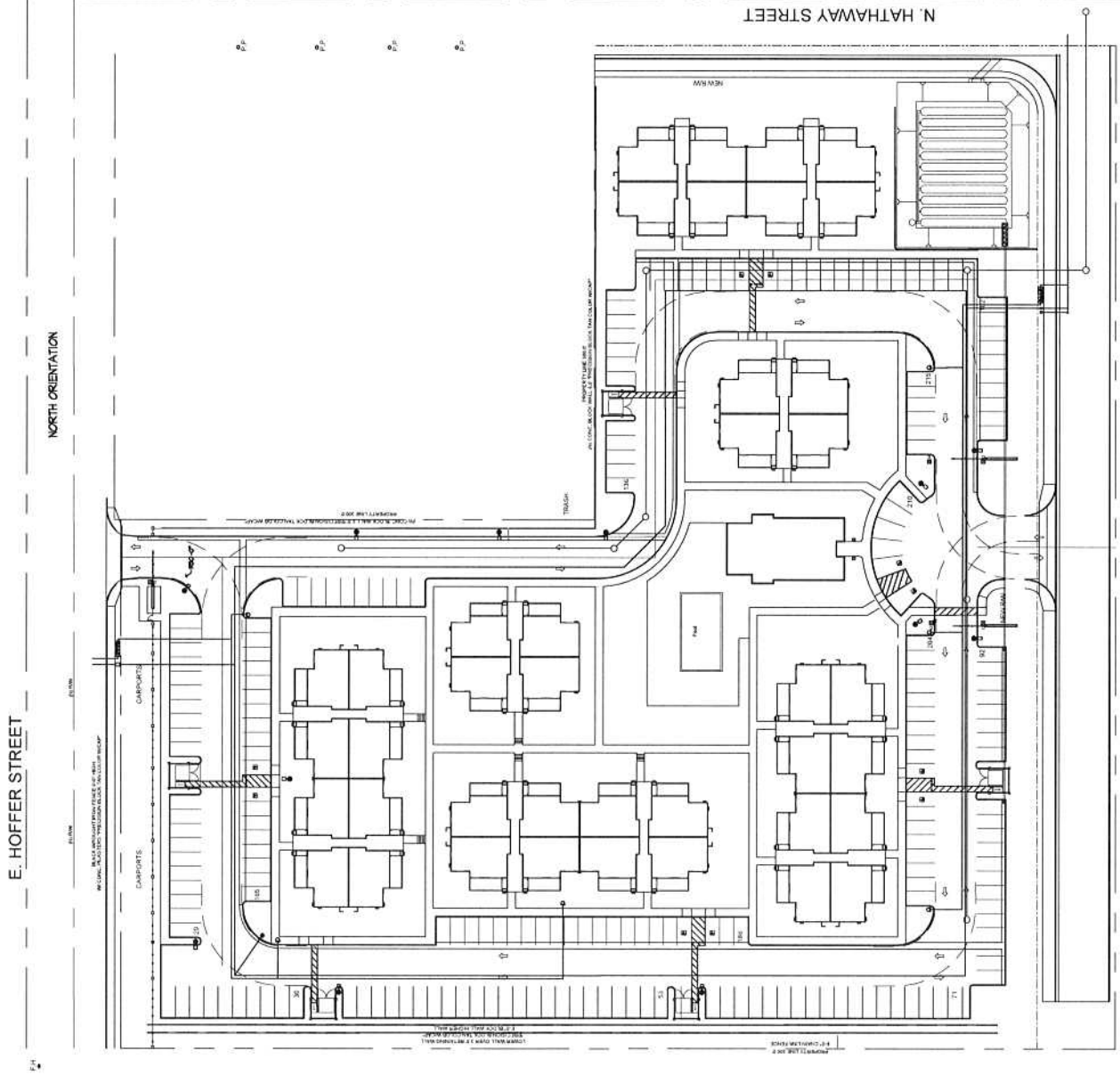
OPTIONS:

1. Continue to August 27, 2019
2. Continue off calendar

Approved by:



Douglas Schulze
City Manager



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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director
Sonia Pierce, Senior Planner

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution Approving General Plan Amendment 18-2503 and Waiving Further Reading and Introducing Ordinance No. 1548 Approving Zone Change 18-3502, to Amend the Land Use Designation and Zoning Classification of Two Parcels Totaling 5.14 acres from General Commercial (GC) to Industrial, and Develop with Industrial Uses, Located at 200 South Eighth Street and 679 West Lincoln Street (APNs: 540-220-013 and 540-220-007)

RECOMMENDED ACTION:

Staff recommends that the City Council Adopt Resolution 2019-____, and take the following actions:

- I. Find that in accordance with CEQA Guidelines Section 15161 (b)(3) Common Sense Exemption, it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying of certain real property from General Commercial (GC) to Industrial (I), may have a significant effect on the environment. The activity is not subject to CEQA.
- II. Approve the Ordinance to approve Zone Change 18-3502 to amend the Zoning Map of Title 17 of the Banning Municipal Code for two lots totaling approximately 5.14 acres from General Commercial to Industrial subject to conditions of approval.

PROJECT/APPLICANT INFORMATION:

Project Location	200 S. Eighth Street
APN Information:	540-220-013
Project Applicants:	Shawn Lathrom / Andy Birchard 252 W. 4 th Street, Suite F Beaumont, CA 92223
Property Owners:	Clyde and Suzanne Birchard / Harry and Elizabeth Reubush PO Box 746 Banning, CA 92220
Project Location	679 W. Lincoln Street
APN Information:	540-220-007
Project Applicants:	Shawn Lathrom / Andy Birchard 252 W. 4 th Street, Suite F Beaumont, CA 92223
Property Owners:	Slade A. Lohman and Mary Vrooman Michael and Michelle Agahee 530 Commerce Ave., Suite B Palmdale, CA 93551

BACKGROUND

On June 5, 2019, the City Planning Commission considered Resolution No 2019-12 and held a public hearing receiving public comments in favor of the project. The Planning Commission unanimously recommended that the City Council approve the subject applications for the General Plan Amendment and Zone change from General Commercial to Industrial. The Planning Commission staff report is attached.

JUSTIFICATION

The applicant proposes a General Plan Amendment (GPA 18-2503) to change the General Plan Land Use Designation for the site from General Commercial to Industrial, Zone Change (ZC 18-3502) to change the Zoning designation of the site from General Commercial to Industrial, to allow for the future development of the properties. At this time there is no proposal for development and at such time as development plans are submitted the applicant will be required to return to the

Planning Commission for review and approval and will be subject to use specific standards set forth in Section 17.12 of the Banning Municipal Code.

Additional details, including findings, are provided in the Planning Commission staff report which is attached as Attachment 3.

FISCAL IMPACT

Future development of the property would result in increased property values and associated increases in property taxes.

OPTIONS:

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

ATTACHMENTS

1. City Council Resolution No. 2019-____
2. City Council Ordinance No. _____
3. Planning Commission Staff Report and Resolution 2019-12
4. General Plan Amendment / Zone Change Location Map
5. Area Land Use Plan
6. Public Hearing Notice

Approved by:



Douglas Schulze
City Manager

Attachment 1

(City Council Resolution No. 2019-__)

RESOLUTION 2019-____

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, TO APPROVE GENERAL PLAN AMENDMENT NO. 18-2503 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION OF REAL PROPERTY LOCATED AT 200 SOUTH EIGHTH STREET (APN: 540-220-013) AND 679 WEST LINCOLN STREET (APN: 540-220-007) FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), TO APPROVE ZONE CHANGE NO. 18-3502 TO AMEND THE ZONING MAP AND RE-ZONE REAL PROPERTY LOCATED AT 200 SOUTH EIGHTH STREET (APN: 540-220-013) AND 679 WEST LINCOLN STREET (APN: 540-220-007) FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), AND MAKE A DETERMINATION OF EXEMPTION UNDER CEQA GUIDELINE SECTION 15061

WHEREAS, an application for General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 to permit the re-designation and re-classification of two parcels totaling 5.14 acres from General Commercial (GC) to Industrial (I) has been duly filed by:

Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Clyde and Suzanne Birchard / Harry and Elizabeth Reubush
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	200 South Eighth Street
APN Information:	540-220-013
Lot Area:	3.23 acres;
Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Slade A. Lohman and Mary Vrooman/ Michael and Mary Agahee
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	679 West Lincoln Street
APN Information:	540-220-007
Lot Area:	1.95 acres;

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

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

WHEREAS, the City Council has the authority to review and either approve or deny General Plan Amendment 18-2503 for a change in the General Plan from General

Commercial to Industrial for the property located at 200 South Eighth Street and 679 West Lincoln Street; and

WHEREAS, in accordance with Chapter 17.68 of the Banning municipal code and Government Code Sections 65353, 65355 and 65090, on June 28, 2019 the City gave public notice by advertisement in the Record Gazette, a newspaper of general circulation within the City of Banning, of holding a public hearing on July 9, 2019, during which proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 (the "Project") would be considered. The public hearing notice was also mailed to the owners of the subject real properties, the Project applicants, and property owners within 300 feet of the Project site on or before June 28, 2019; and

WHEREAS, in accordance with Government Code Sections 65353, on June 5, 2019, the Planning Commission held the noticed public hearing to consider a recommendation to the City Council during which interested parties had an opportunity to testify in support of, or opposition to, proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502; and.

WHEREAS, the City Council City Council reviewed General Plan Amendment 18-2503 and Zone Change 18-3502 for compliance with the California Environmental Quality Act (CEQA), the CEQA guidelines, and the City's environmental procedures and determined the project is exempt from the requirements of and the CEQA guidelines pursuant to Section 15061 (b)(3).

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

SECTION 1: California Environmental Quality Act Findings and Multiple Species Habitat Conservation Plan Findings. The City Council of the City of Banning makes the following environmental findings and determinations in connection with the approval of the Project:

- A. CEQA. It has been determined that the Project is exempt from the requirements of the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000, *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. §15000 *et seq.*) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will have a significant effect on the environment. The proposed General Plan Amendment and Zone Change are administrative processes of the City that will not result in direct or indirect physical changes in the environment because further environmental review, if required under CEQA, will be performed as development applications for the Project sites are submitted to the City. The City Council has reviewed the administrative record concerning proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 and the proposed CEQA exemption, and based on

its own independent judgment, finds that proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 are exempt from the requirements of CEQA and the CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3).

- B. Multiple Species Habitat Conservation Plan (MSHCP). The Project is not subject to MSHCP as the Project is an existing facility and no development is proposed at this time.

SECTION 2: Findings for Recommendation of Approval of General Plan Amendment No. 18-2503. The City Council of the City of Banning does hereby find and determine that General Plan Amendment No. 18-2503 is approved because:

Finding No. 1: The proposed amendment is internally consistent with the General Plan.

Findings of Fact: Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to Industrial, and the existing development would be consistent with uses permitted within the Industrial land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.

Finding No. 2: That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.

Findings of Fact: The proposed amendment will complement the existing industrial businesses and land uses on West Lincoln Street. As demonstrated in the analysis contained in the Planning Commission staff report dated June 5, 2019, there are no features unique to the site that would create conditions detrimental to the public interest, health, safety, convenience, or welfare of the City.

Finding No. 3: That the proposed amendment would maintain the appropriate balance of land uses within the City.

Findings of Fact: Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to Industrial (I), and the existing development is consistent with uses permitted within the Industrial land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.

Finding No. 4: That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is physically suitable (including, but not

limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation(s) and the anticipated land use developments(s).

Findings of Fact: The 5.14-acre land area is of currently developed with a recycling center and a vacant warehouse building and has access, existing utilities, and is of adequate size to accommodate a development, subject to compliance with the Banning Municipal Code (BMC). No natural constraints exist to the existing or future development, and no significant adverse environmental impacts are anticipated. Lincoln Street provides suitable access and all necessary utilities are in place within adjacent public rights-of-way. As has been described in the Planning Commission staff report dated June 5, 2019, the site is surrounded by Interstate-10, to the north, a vacant industrial complex to the east, vacant land to the south and vacant land to the west. There is no development proposed at this time. The subject site is basically flat and has been graded in the past, thus no unique physical features or vegetation will be affected by the proposed Project.

SECTION 3. Findings for Recommendation of Approval of Zone Change 18-3502. The City Council of the City of Banning find and determines that Zone Change 18-3502 is approved because:

Finding No. 1: The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact: The proposed amendment is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The zoning classification of Industrial (I) would allow the existing development to be consistent with uses permitted within the Industrial (I) land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.

Finding No. 2: The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact: The proposed amendment is internally consistent with the Zoning Ordinance. No development is proposed at this time and the existing uses would be brought into compliance with the uses allowed in the Industrial (I) zone.

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

Findings of Fact: See findings of fact in Section 1 of this Resolution.

SECTION 4: **CITY COUNCIL ACTION** - Approval of General Plan Amendment 18-2503 and Zone Change 18-3502: Based on the foregoing, the City Council of the City of Banning hereby approves General Plan Amendment 18-2503 and Zone Change 18-3502 to amend the land use designation and zoning classification of two parcels totaling 5.14 acres, and developed with a recycling center and a vacant warehouse building, located at 200 S. Eighth Street and 679 W. Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I), consistent with the General Plan Amendment attached hereto as Exhibit "A," and subject to the Conditions of Approval attached hereto as Exhibit "B" and Notice of Exemption (NOE) attached hereto as Exhibit "C".

SECTION 5. 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 July, 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 at a Regular Meeting thereof held on 9 July 2019.

AYES:

NOES:

ABSTAIN:

ABSENT:

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

Exhibit “A”

General Plan Amendment No. 18-3502

(See Attachment No. 5)

Exhibit “B”

Conditions of Approval



City of Banning

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

COMMUNITY DEVELOPMENT DEPARTMENT

PROJECT #: General Plan Amendment No. 18-2503 and Zone Change No. 18-3502

SUBJECT: Conditions of Approval (City Council Resolution No. 2019-____)
Shawn Lathrom/ Andy Birchard (Southern California West Coast

APPLICANT: Electric)

LOCATION: APNs: 540-220-013 and 540-220-007

EXHIBIT B to City Council Resolution No. 2019-____

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

Community Development Department

1. The project shall at all times comply with all federal, state, County and City laws, codes, regulations, and standards, including those that relate to hazardous materials.
2. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to, arbitrations, mediations, and other such procedures) (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California

Exhibit B
Conditions of Approval
General Plan Amendment No. 18-2503
Zone Change No. 18-3502
July 9, 2019
Page 2 of 2

Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

3. Any future development plans must be submitted to the Planning Commission for a full review, including environmental review, and further review by all applicable jurisdictions, including the Airport Land Use Commission (ALUC), as set forth in the Commission's March 14, 2019 staff report and the Native American Heritage Commission (NAHC).

END

Exhibit “C”

Notice of Exemption (NOE)

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Drive

Riverside, CA, 92507

From: (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: General Plan Amendment 18-2503/Zone Change 18-3502 (So Cal West Coast Electric)

Project Applicant: Shawn Lathrom and Andy Birchard

Project Location - Specific:

200 S. 8th St. (APN: 540-220-013) and 679 W. Lincoln St. (APN: 540-220-007)

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

The project consists of a General Plan Amendment (GPA) to change the land use from General Commercial (GC) to Industrial (I) and a Zone Change to modify the zoning classification of the same parcels from General Commercial (GC) to Industrial (I)

Name of Public Agency Approving Project: Banning

Name of Person or Agency Carrying Out Project: Shawn Lathrom and Andy Birchard

Exempt Status: **(check one):**

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☒ Statutory Exemptions. State code number: 15061(b)(3)

Reasons why project is exempt:

The project is exempt, under CEQA Guidelines Section 15061(b)(3) (General Rule) (Existing Facilities) because there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will not have a significant effect on the environment.

Lead Agency

Contact Person: Sonia Pierce

Area Code/Telephone/Extension: (951) 922-3152

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: May 31, 2019 Title: Senior Planner

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

Attachment 2

(City Council Ordinance No. ____)

ORDINANCE NO. ____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING ZONE CHANGE NO. 18-3502 TO AMEND THE ZONING MAP FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), IN CONFORMANCE WITH GENERAL PLAN AMENDMENT NO. 18-2503 FOR REAL PROPERTY LOCATED 200 SOUTH EIGHTH STREET (APN: 540-220-013) AND 679 WEST LINCOLN STREET (APN: 540-220-007).

WHEREAS, an application for a Zone Change No. 18-3502 has been duly filed by:

Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Clyde and Suzanne Birchard / Harry and Elizabeth Reubush
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	200 South Eighth Street
APN Information:	540-220-013
Lot Area:	3.23 acres;
Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Slade A. Lohman and Mary Vrooman/ Michael and Mary Agahee
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	679 West Lincoln Street
APN Information:	540-220-007
Lot Area:	1.95 acres;

WHEREAS, Zone Change No. 18-3502 is the subject of this Ordinance;

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.050, and 17.116.030, on June 5, 2019, the Planning Commission held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the Planning Commission adopted Resolution No. 2019-12 by a 4-0-0 vote, recommending that the City Council approve General Plan Amendment No. 18-2503, and Zone Change No. 18-3502; and

WHEREAS, in accordance with Government Code Sections 65355, 65856, and 65090 and Banning Municipal Code Section 17.68.020.B., on June 28, 2019, the City gave public notice, by advertisement in the Record Gazette Newspaper, and by mailing to the owner of the subject real property, the owner's duly authorized agent, the Applicant, and the property owners within 300 feet of the Project site, of a public hearing concerning the Project;

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

modify, or disapprove the Planning Commission's recommendation on Zone Change No. 18-3502; and

WHEREAS, in accordance with Banning Municipal Code Sections 17.64.040, and 17.116.040, and Government Code Sections 65355 and 65856, on July 9, 2019, the City Council held a public hearing at which interested parties had an opportunity to testify in support of, or opposition to, the Project, and at which the City Council considered the Project.

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

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

A. CEQA. Planning Division staff has determined that the Project is exempt from the requirements of the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000, *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. §15000 *et seq.*) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will have a significant effect on the environment. The proposed General Plan Amendment and Zone Change are administrative processes of the City that will not result in direct or indirect physical changes in the environment because further environmental review, if required under CEQA, will be performed as development applications for the Project sites are submitted to the City. The City Council has reviewed the administrative record concerning proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 and the proposed CEQA exemption, and based on its own independent judgment, finds that proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 are exempt from the requirements of CEQA and the CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3).

B. Multiple Species Habitat Conservation Plan (MSHCP). The Project is not subject to MSHCP as the Project is an existing facility and no development is proposed at this time.

C. On June 28, 2019, the City circulated a Notice of Exemption ("NOE") for public review for the Project to the public and other interested parties for a 10-day comment period, from June 28, 2019, to July 9, 2019. The City did not receive any comment letters.

D. On July 09, 2019, the City Council conducted a duly noticed public hearing to consider the Project and reviewed the staff report, accepted and considered public testimony. Based upon the evidence presented at the hearing, including the staff report and oral testimony, the City Council, by separate City Council Resolution No. 2019-____,

adopted findings pursuant to CEQA for the Project as set forth in Exhibit "A" to City Council Resolution No. 2019-____, and determined an Exemption for the Project as set forth in Exhibit "B" City Council Resolution No. 2019-____.

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

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

SECTION 2. Findings for Approval of Zone Change No. 18-3502. The City Council of the City of Banning hereby finds and determines that Zone Change No. 18-3502 should be approved because:

Finding No. 1: The proposed Zone Change No. 18-3502 is consistent with the goals and policies of the General Plan.

Finding of Fact: The proposed amendment is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The zoning classification of Industrial (I) would allow the existing development to be consistent with uses permitted within the Industrial (I) land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.

Finding No. 2: The proposed Zone Change No. 18-3502 is internally consistent with the Zoning Ordinance.

Finding of Fact: The proposed amendment is internally consistent with the Zoning Ordinance. No development is proposed at this time and the existing uses would be brought into compliance with the uses allowed in the Industrial (I) zone.

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

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

SECTION 3: CITY COUNCIL ACTION - Approval of Zone Change No. 18-3502.

Based on the foregoing, the City Council of the City of Banning hereby approves Zone Change No. 18-3502, amending the Zoning Classification for real property located at 200 South Eighth Street and 679 West Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I). This approval of Zone Change No. 18-3502 is conditioned upon the City Council's adoption of a resolution approving General Plan Amendment No. 18-2503.

SECTION 4. CERTIFICATION, PUBLICATION & EFFECTIVE DATE

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

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

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. _____ was duly adopted at a regular meeting of the City Council of the City of Banning held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

Attachment 3

(Planning Commission Staff Report)



**CITY OF BANNING
PLANNING COMMISSION
STAFF REPORT**

TO: PLANNING COMMISSION

FROM: Adam B. Rush, Community Development Director

PREPARED BY: Sonia Pierce, Senior Planner

MEETING DATE: June 5, 2019

SUBJECT: Resolution No. 2019-12, approving General Plan Amendment 18-2503 and Zone Change 18-3502 to amend the land use designation and zoning classification of two parcels totaling 5.14 acres, and developed with industrial uses, located at 200 South Eighth Street and 679 West Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I).

RECOMMENDED ACTION:

Staff recommends the Planning Commission adopt Resolution 2019-12, recommending that the City Council make a determination of exemption under the California Environmental Quality Act (CEQA) Guidelines Section 15061(b)(3) and approve General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 to amend the land use designation and zoning classification of two parcels totaling 5.14 acres, and developed with a recycling center and a vacant warehouse building, located at 200 S. Eighth Street and 679 W. Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I).

PROJECT / APPLICANT INFORMATION:

Project Location	200 S. Eighth Street
APN Information:	540-220-013
Project Applicants:	Shawn Lathrom / Andy Birchard 252 W. 4 th Street, Suite F Beaumont, CA 92223
Property Owners:	Clyde and Suzanne Birchard / Harry and Elizabeth Reubush PO Box 746 Banning, CA 92220

Project Location 679 W. Lincoln Street

APN Information: 540-220-007

Project Applicants: Shawn Lathrom / Andy Birchard
 252 W. 4th Street, Suite F
 Beaumont, CA 92223

Property Owners: Slade A. Lohman and Mary Vrooman
 Michael and Michelle Agahee
 530 Commerce Ave., Suite B
 Palmdale, CA 93551

REQUEST:

The applicants, Shawn Lathrom and Andy Birchard, on behalf of Southern California West Coast Electric, is requesting approval of a General Plan Amendment (GPA) to change the General Plan land use designation of two parcels totaling 5.14-acres and located at 200 S. Eighth Street and 679 W. Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I) and a Zone Change (ZC) to change the zoning classification of the same parcels from General Commercial (GC) to Industrial (I).

DESCRIPTION:

The subject site consists of two parcels. The westerly 3.23-acre parcel (APN: 540-220-013) is located at the northeast corner of Lincoln and Eighth Streets. This parcel is developed with two metal single-story structures and has been in operation as a recycling center for many years. The easterly 1.95-acre parcel (APN: 540-220-007) is developed with a single-story cement block warehouse building and has been intermittently vacant for the last two years.

The property owners of both parcels have requested a GPA and ZC from General Commercial to Industrial for the properties and there is no development proposed at this time.

Surrounding Land Use

Located north of the site in the Public Facilities – Railroad / Interstate zoning district is the Southern Pacific Railroad and Interstate 10 beyond. To the west of the site, in a combination of General Commercial and Industrial land use districts, is the Banning Business Center. Since multiple fires on the site, it has been vacant and in various states of disrepair for many years. The remaining land uses are vacant parcels with the zoning designation of Industrial to the south and General Commercial to the west.

The nature of the surrounding uses, zoning classifications, and General Plan land use designations are delineated for the Planning Commission's consideration in the following table.

Land Use Summary Table

	Existing Land Use	Zoning Classification	General Plan Designation
Subject Site	Recycling Center / Warehouse	(GC)	(GC)
North	Southern Pacific Rail Road	(PF-RI)	(PF-RI)
South	Vacant	(I)	(I)
East	Vacant Business Center	(GC)/(I)	(GC)/(I)
West	Vacant	(GC)	(GC)

PROJECT ANALYSIS:Zoning

The recycling center has been in existence at this location for many years, including prior to the adoption of the existing General Plan on January 31, 2006. The site was rezoned to General Commercial with the update of the 2006 General Plan resulting in recycling center becoming a non-conforming use. The existing warehouse is also a non-conforming use in the General Commercial land use district. The change of the land use designation for the properties from General Commercial to Industrial will bring the uses into conformance as both uses are permitted in the Industrial land use district.

At this time there is no proposal for development and at such time as development plans are submitted the applicant will be required to return to the Planning Commission for review and approval and will be subject to use specific standards set forth in Section 17.12 of the Banning Municipal Code.

Site Compliance with Industrial Development Standards

The subject site consists of two developed parcels. Below is a chart showing the minimum development standards applicable to premises in the Industrial zoning district, as stated in Table 17.12.030, and how the existing properties meets those standards.

Development Standards	Required	Provided 200 S. 8 th St.	Provided 679 W. Lincoln St.	Complies With Code
Minimum Lot Size	10,000 square feet	140,698 square feet	84,942 square feet	Yes

Minimum Lot Width	70 feet	239 feet	165 feet	Yes
Minimum Lot Depth	100 feet	524 feet	511 feet	Yes
Minimum Front Setback	10 feet	+/- 100 feet	+/- 25 feet	Yes
Minimum Rear Setback	0 feet	+/-100 feet	+/-100 feet	Yes
Minimum Side Yard Setback	0 feet	+/- 20 feet	+/- 20 feet	Yes
Maximum Building Coverage	60 %	+/- 20%	+/- 20%	Yes
Maximum Building Height (stories/feet)	2/50 feet	1 story/25 feet	1 story/25 feet	Yes
Maximum Fence/Wall Height	8 feet	6 feet	6 feet	Yes

Projects Near Airports

The project is located within Compatibility Zone D of the Riverside County Airport Land Use Compatibility Plan Policy Document adopted in October 2004, for the Banning Municipal Airport. The plan identifies Zone D as an area that restricts non-residential intensity to an average of 200 people per acre and a maximum of 800 people in any given single-acre area.

On March 14, 2019, the Riverside County Land Use Commission (ALUC) found the General Plan Amendment and Zone Change consistent with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

Planning Department staff has determined that this Project is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will not have a significant effect on the environment. The proposed General Plan Amendment and Zone Change are administrative processes

of the City that will not result in direct or indirect physical changes in the environment because further environmental review, if required under CEQA, will be performed as development applications for the Project sites are submitted to the City.

Multiple Species Habitat Conservation Plan (MSHCP).

The project is not subject to MSHCP as the project is an existing facility and no development is proposed at this time.

PUBLIC COMMUNICATION:

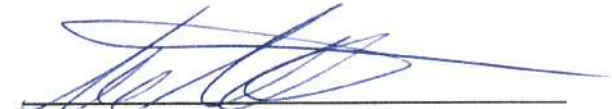
Proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 was advertised in the Record Gazette newspaper on May 24, 2019 (Attachment 4). As of the date of this report, staff has not received any written comments on the project.

Prepared By:



Sonia Pierce
Senior Planner

Reviewed and Recommended By:



Adam B. Rush, M.A., AICP
Community Development Director

ATTACHMENTS:

1. Planning Commission Resolution No. 2019-12
Exhibit A – Project Plans
Exhibit B – Conditions of Approval
2. Project Plans
3. Airport Land Use Commission Development Review Report
4. Public Hearing Notice
5. Notice of Exemption

ATTACHMENT 1

Resolution No. 2019-12

RESOLUTION 2019-12

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA, RECOMMENDING THAT THE CITY COUNCIL OF THE CITY OF BANNING, APPROVE GENERAL PLAN AMENDMENT NO. 18-2503 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION OF REAL PROPERTY LOCATED AT 200 SOUTH EIGHTH STREET (APN: 540-220-013) AND 679 WEST LINCOLN STREET (APN: 540-220-007) FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), APPROVE ZONE CHANGE NO. 18-3502 TO AMEND THE ZONING MAP AND RE-ZONE REAL PROPERTY LOCATED AT 200 SOUTH EIGHTH STREET (APN: 540-220-013) AND 679 WEST LINCOLN STREET (APN: 540-220-007) FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), AND MAKE A DETERMINATION OF EXEMPTION UNDER CEQA GUIDELINE SECTION 15061

WHEREAS, an application for General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 to permit the re-designation and re-classification of two parcels totaling 5.14 acres from General Commercial (GC) to Industrial (I) has been duly filed by:

Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Clyde and Suzanne Birchard / Harry and Elizabeth Reubush
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	200 South Eighth Street
APN Information:	540-220-013
Lot Area:	3.23 acres;

Project Applicant:	Shawn Lathrom / Andy Birchard
Property Owners:	Slade A. Lohman and Mary Vrooman/ Michael and Mary Agahee
Project Sponsor:	Southern California West Coast Electric, Inc.
Project Location:	679 West Lincoln Street
APN Information:	540-220-007
Lot Area:	1.95 acres;

WHEREAS, the Planning Commission is authorized under Banning Municipal Code Sections 17.64.050 and 17.116.020 and Government Code Sections 65353 and 65854 to review and make a recommendation to the City Council on proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502;

WHEREAS, in accordance with Chapter 17.68 of the Banning Municipal Code and Government Code Sections 65353, 65854, 65090, and 65091, on May 24, 2019, the City gave public notice, by advertisement in the Record Gazette, a newspaper of general

circulation within the City of Banning, of the holding of a public hearing during which proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 (the "Project") would be considered. The public hearing notice was also mailed to the owners of the subject real properties, the Project applicants, and property owners within 300-feet of the Project site on or before May 24, 2019; and

WHEREAS, in accordance with Government Code Sections 65353 and 65854, on June 5, 2019, the Planning Commission held the noticed public hearing during which interested parties had an opportunity to testify in support of, or opposition to, proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502.

NOW THEREFORE, the Planning Commission of the City of Banning does hereby recommend to the City Council of the City of Banning as follows:

SECTION 1: California Environmental Quality Act Findings and Multiple Species Habitat Conservation Plan Findings. The Planning Commission of the City of Banning does hereby recommends that the City Council of the City of Banning make the following environmental findings and determinations in connection with the approval of the Project:

A. CEQA. Planning Division staff has determined that the Project is exempt from the requirements of the California Environmental Quality Act ("CEQA") (Cal. Pub. Res. Code § 21000, *et seq.*) and the State Guidelines (the "Guidelines") (14 Cal. Code Regs. §15000 *et seq.*) pursuant to CEQA Guidelines Section 15061(b)(3) because it can be seen with certainty that there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will have a significant effect on the environment. The proposed General Plan Amendment and Zone Change are administrative processes of the City that will not result in direct or indirect physical changes in the environment because further environmental review, if required under CEQA, will be performed as development applications for the Project sites are submitted to the City. The City Council has reviewed the administrative record concerning proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 and the proposed CEQA exemption, and based on its own independent judgment, finds that proposed General Plan Amendment No. 18-2503 and Zone Change No. 18-3502 are exempt from the requirements of CEQA and the CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3).

B. Multiple Species Habitat Conservation Plan (MSHCP). The Project is not subject to MSHCP as the Project is an existing facility and no development is proposed at this time.

SECTION 2: Findings for Recommendation of Approval of General Plan Amendment No. 18-2503. The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that General Plan Amendment No. 18-2503 should be approved because:

Finding No. 1: The proposed amendment is internally consistent with the General Plan.

- Findings of Fact:** Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to Industrial, and the existing development would be consistent with uses permitted within the Industrial land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.
- Finding No. 2:** That the proposed amendment would not be detrimental to the public interest, health, safety, convenience, or welfare of the City.
- Findings of Fact:** The proposed amendment will complement the existing industrial businesses and land uses on West Lincoln Street. As demonstrated in the analysis contained in the Planning Commission staff report dated June 5, 2019, there are no features unique to the site that would create conditions detrimental to the public interest, health, safety, convenience, or welfare of the City.
- Finding No. 3:** That the proposed amendment would maintain the appropriate balance of land uses within the City.
- Findings of Fact:** Upon City Council approval of the requested General Plan Amendment, the site's land use designation will be changed to Industrial (I), and the existing development is consistent with uses permitted within the Industrial land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.
- Finding No. 4:** That in the case of an amendment to the General Plan Land Use Map, the subject parcels (s) is physically suitable (including, but not limited to, access, provision of utilities, compatibility with adjoining land uses, and absence of physical constraints), for the requested land use designation(s) and the anticipated land use developments(s).
- Findings of Fact:** The 5.14-acre land area is of currently developed with a recycling center and a vacant warehouse building and has access, existing utilities, and is of adequate size to accommodate a development, subject to compliance with the Banning Municipal Code (BMC). No natural constraints exist to the existing or future development, and no significant adverse environmental impacts are anticipated. Lincoln Street provides suitable access and all necessary utilities are in place within adjacent public rights-of-way. As has been described in the Planning Commission staff report dated June 5, 2019, the site is surrounded by Interstate-10, to the north, a

vacant industrial complex to the east, vacant land to the south and vacant land to the west. There is no development proposed at this time. The subject site is basically flat and has been graded in the past, thus no unique physical features or vegetation will be affected by the proposed Project.

SECTION 3: Findings for Recommendation of Approval of Zone Change 18-3502.
The Planning Commission of the City of Banning does hereby recommend that the City Council of the City of Banning find and determine that Zone Change 18-3502 should be approved because:

Finding No. 1: The proposed Amendment is consistent with the goals and policies of the General Plan.

Findings of Fact: The proposed amendment is consistent with the General Plan Land Use Element Policy which states: "The land-use map shall provide for sufficient lands to provide a large range of products and services to the City and the region while carefully considering compatibility with adjacent residential lands". The zoning classification of Industrial (I) would allow the existing development to be consistent with uses permitted within the Industrial (I) land use designation. The Industrial land use designation is intended to allow light and medium intensity manufacturing operations, warehousing and distribution, and associated offices, and ancillary retail, may also be appropriate.

Finding No. 2: The proposed Amendment is internally consistent with the Zoning Ordinance.

Findings of Fact: The proposed amendment is internally consistent with the Zoning Ordinance. No development is proposed at this time and the existing uses would be brought into compliance with the uses allowed in the Industrial (I) zone.

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

Findings of Fact: See findings of fact in Section 1 of this Resolution.

SECTION 4: PLANNING COMMISSION ACTION - Approval of General Plan Amendment 18-2503 and Zone Change 18-3502: Based on the foregoing, the Planning Commission of the City of Banning hereby approves General Plan Amendment 18-2503 and Zone Change 18-3502 to amend the land use designation and zoning classification of two parcels totaling 5.14 acres, and developed with a recycling center and a vacant warehouse building, located at 200 S. Eighth Street and 679 W. Lincoln Street (APNs: 540-220-013 and 540-220-007) from General Commercial (GC) to Industrial (I),

consistent with the site plans attached hereto as Exhibit "A," and subject to the recommended Conditions of Approval attached hereto as Exhibit "B".

PASSED, APPROVED, AND ADOPTED this 5th day of June, 2019.

Eric Shaw, Chairman
Banning Planning Commission

APPROVED AS TO FORM
AND LEGAL CONTENT:

Serita R. Young, Assistant City Attorney
Richards, Watson & Gershon

ATTEST:

Sandra Calderon, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2019-12, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 5th day of June, 2019, by the following vote, to wit:

AYES:

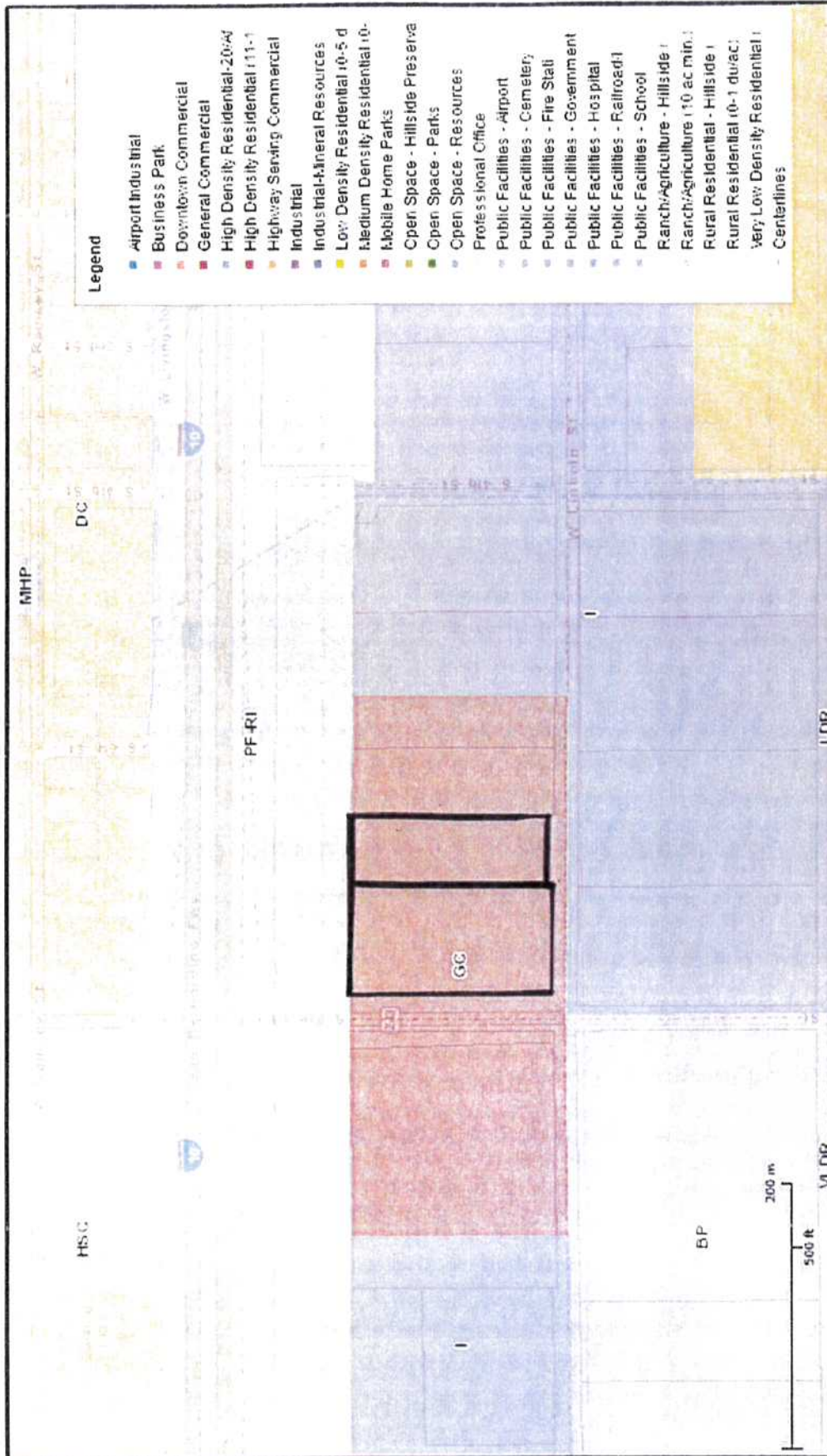
NOES:

ABSENT:

ABSTAIN:

Sandra Calderon, Recording Secretary
City of Banning, California

GPA 18-2503 / ZC18-3502



		<p>05/30/2019</p>	<p>From GC to I</p>	<p>1" = 376 ft</p>
<p>This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy please contact Banning staff for the most up-to-date information.</p>				

540-??

T.C.A. 100

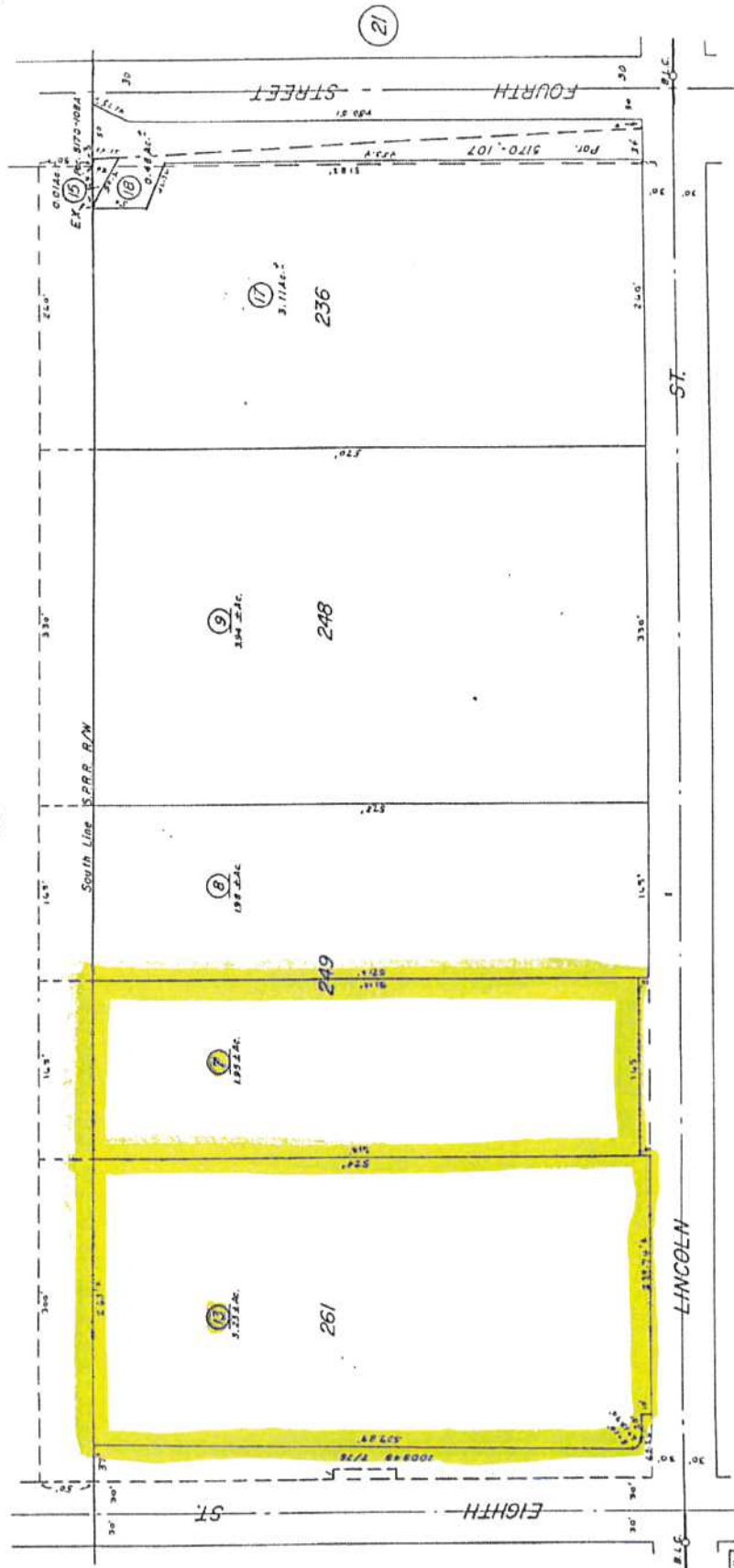
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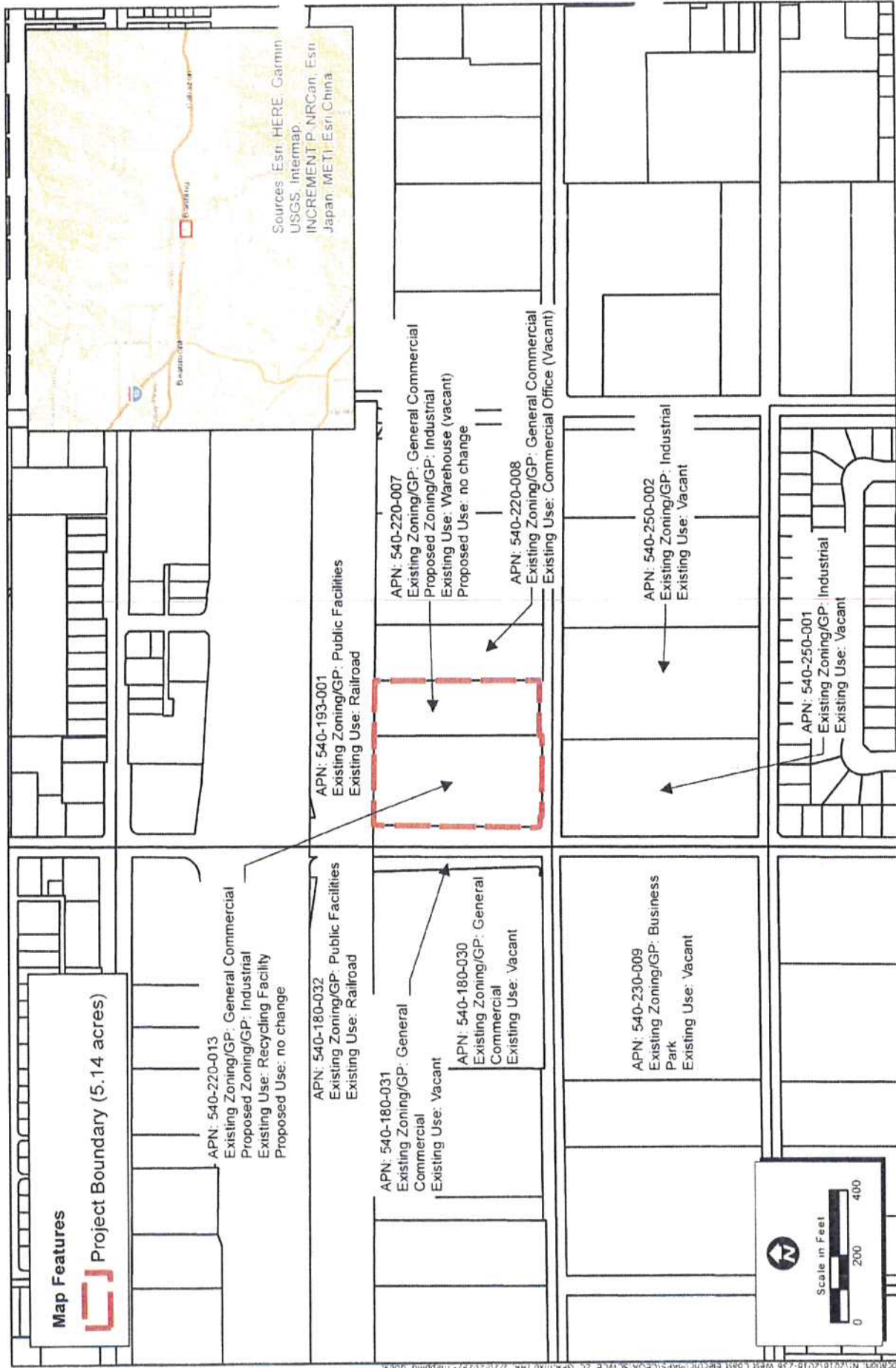
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7/74	DOB	11
7/74	DOB	12
7/74	DOB	13
7/74	DOB	14
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7/74	DOB	16
7/74	DOB	17
7/74	DOB	18
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7/74	DOB	22
7/74	DOB	23
7/74	DOB	24
7/74	DOB	25
7/74	DOB	26
7/74	DOB	27
7/74	DOB	28
7/74	DOB	29
7/74	DOB	30



M.B. 9/44 S.B. Amended Map of the Banning Land Co.
Data: S.B.E. Map 872-33-1

ASSESSOR'S MAP BK. 540 PG. 22
RIVERSIDE COUNTY, CALIF.
J.B.

AMOUNT 1020



Zone Change/General Plan Amendment Exhibit

2018-236 West Coast Electric



City of Banning

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

COMMUNITY DEVELOPMENT DEPARTMENT

PROJECT #: General Plan Amendment No. 18-2503 and Zone Change No. 18-3502

SUBJECT: Conditions of Approval (Planning Commission Resolution No. 2019-12)
Shawn Lathrom/ Andy Birchard (Southern California West Coast

APPLICANT: Electric)

LOCATION: APNs: 540-220-013 and 540-220-007

EXHIBIT B to Planning Commission Resolution No. 2019-12

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

Community Development Department

1. The project shall at all times comply with all federal, state, County and City laws, codes, regulations, and standards, including those that relate to hazardous materials.
2. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to, arbitrations, mediations, and other such procedures) (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California

Exhibit B
Conditions of Approval
General Plan Amendment No. 18-2503
Zone Change No. 18-3502
June 5, 2019
Page 2 of 2

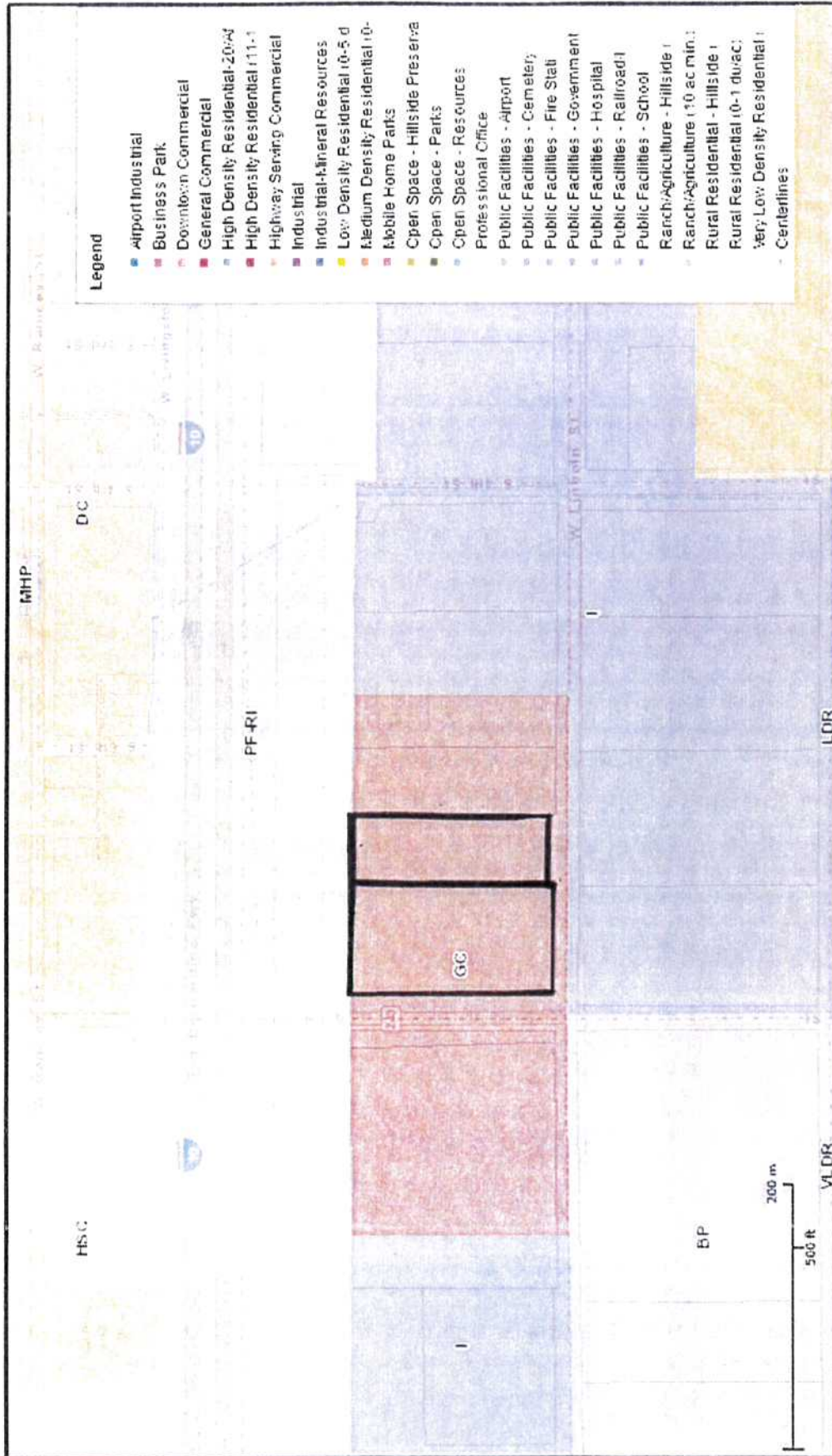
Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.

3. Any future development plans must be submitted to the Planning Commission for a full review, including environmental review, and further review by all applicable jurisdictions, including the Airport Land Use Commission (ALUC), as set forth in the Commission's March 14, 2019 staff report and the Native American Heritage Commission (NAHC).

END

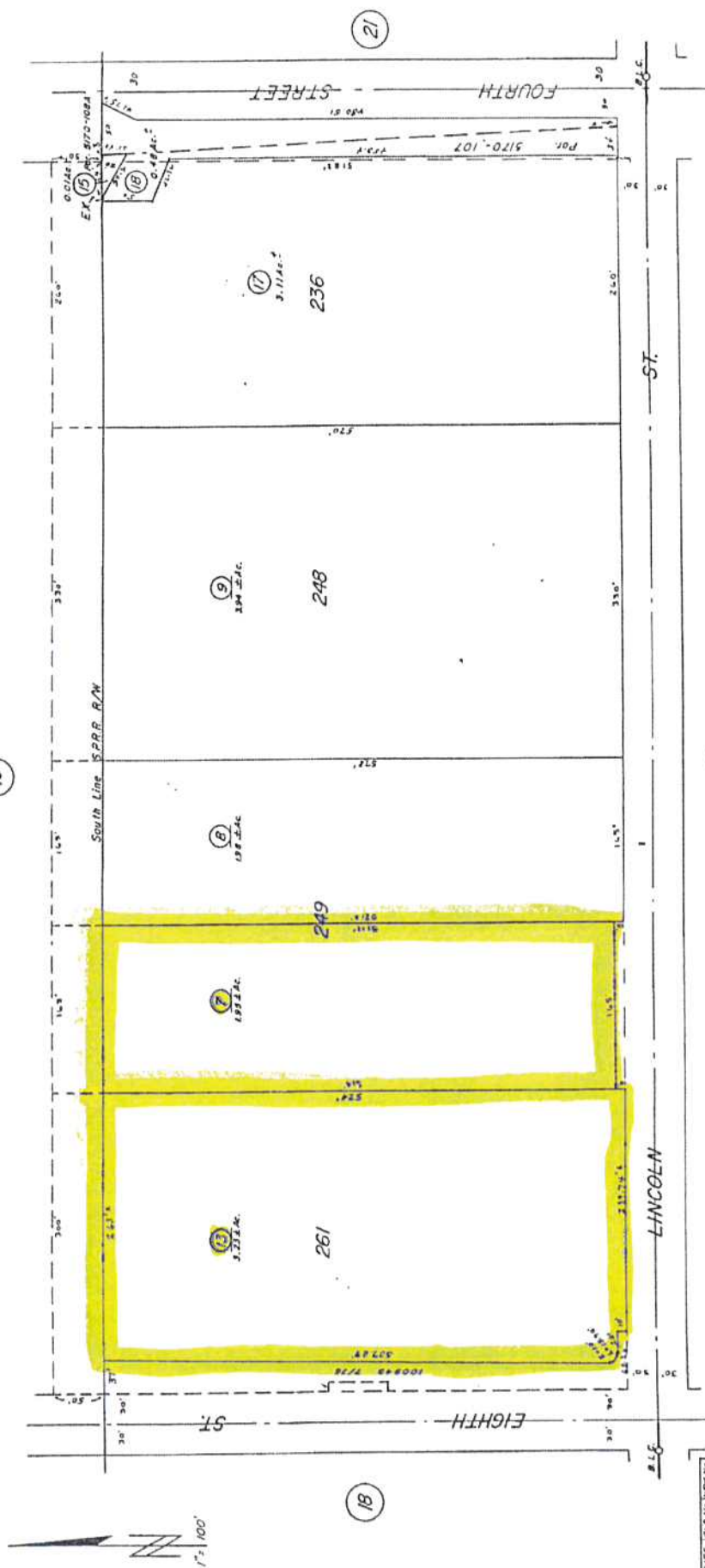
ATTACHMENT 2

Project Plans



1" = 376 ft	From GC to I	05/30/2019	
This map represents a visual display of related geographic information. Data provided hereon is not a guarantee of actual field conditions. To be sure of complete accuracy please contact Banning staff for the most up-to-date information.			

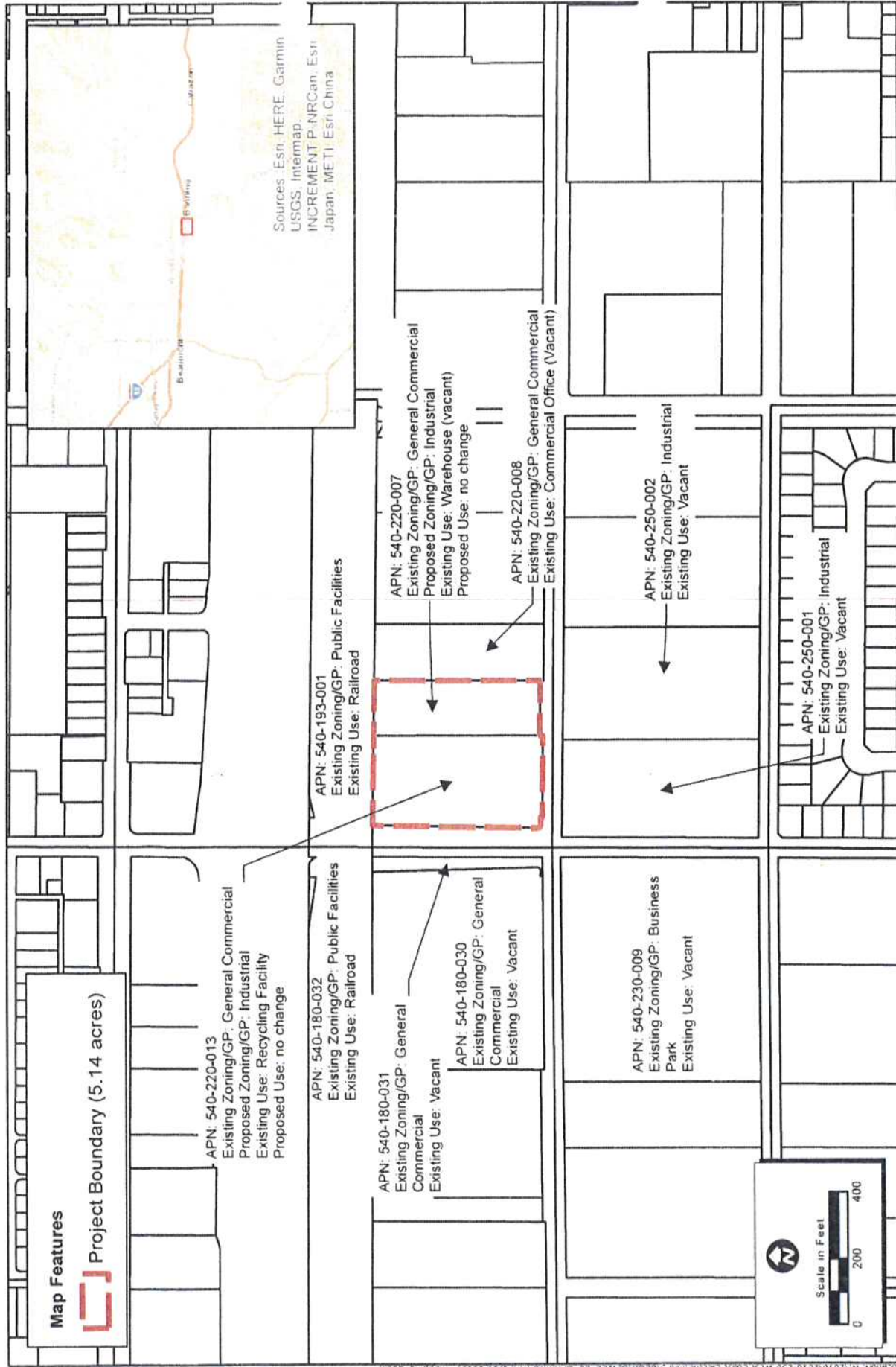
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Date: S.B.E. Map 872-33-1

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AUGUST 1950



Zone Change/General Plan Amendment Exhibit

2018-236 West Coast Electric

ATTACHMENT 3

Riverside County Airport Land Use Commission Report



AIRPORT LAND USE COMMISSION RIVERSIDE COUNTY

March 21, 2019



Ms. Sonia Pierce, Senior Planner
City of Banning Community Development Department – Planning Division
99 E. Ramsey Street
Banning, CA 92220

CHAIR
Steve Manos
Lake Elsinore

VICE CHAIR
Russell Betts
Desert Hot Springs

COMMISSIONERS

Arthur Butler
Riverside

John Lyon
Riverside

Steven Stewart
Palm Springs

Richard Stewart
Moreno Valley

Gary Youmans
Temecula

STAFF

Director
Simon A. Housman

John Guerin
Paul Rull
Barbara Santos

County Administrative Center
4080 Lemon St., 14th Floor
Riverside, CA 92501
(951) 955-5132

RE: AIRPORT LAND USE COMMISSION (ALUC) DEVELOPMENT REVIEW

File No.: ZAP1033BA19
Related File Nos.: GPA18-2503 (General Plan Amendment), ZC18-3502 (Zone Change)
APNs: 540-220-007; 540-220-013

Dear Ms. Pierce:

On March 14, 2019, the Riverside County Airport Land Use Commission (ALUC) found City of Banning Case Nos. GPA18-2503 (General Plan Amendment) and ZC18-3502 (Zone Change), a proposal to amend the City of Banning General Plan land use designation and zoning on 5.14 acres located northerly of Lincoln Street, easterly of 8th Street, westerly of 4th Street, and southerly of the Union Pacific Railroad and Interstate 10 from General Commercial to Industrial, **CONSISTENT** with the 2004 Banning Municipal Airport Land Use Compatibility Plan, as amended in 2016.

If you have any questions, please contact Paul Rull, ALUC Principal Planner, at (951) 955-6893.

Sincerely,
RIVERSIDE COUNTY AIRPORT LAND USE COMMISSION

Simon A. Housman, ALUC Director

www.rcaluc.org

Attachments: Notice of Airport in Vicinity

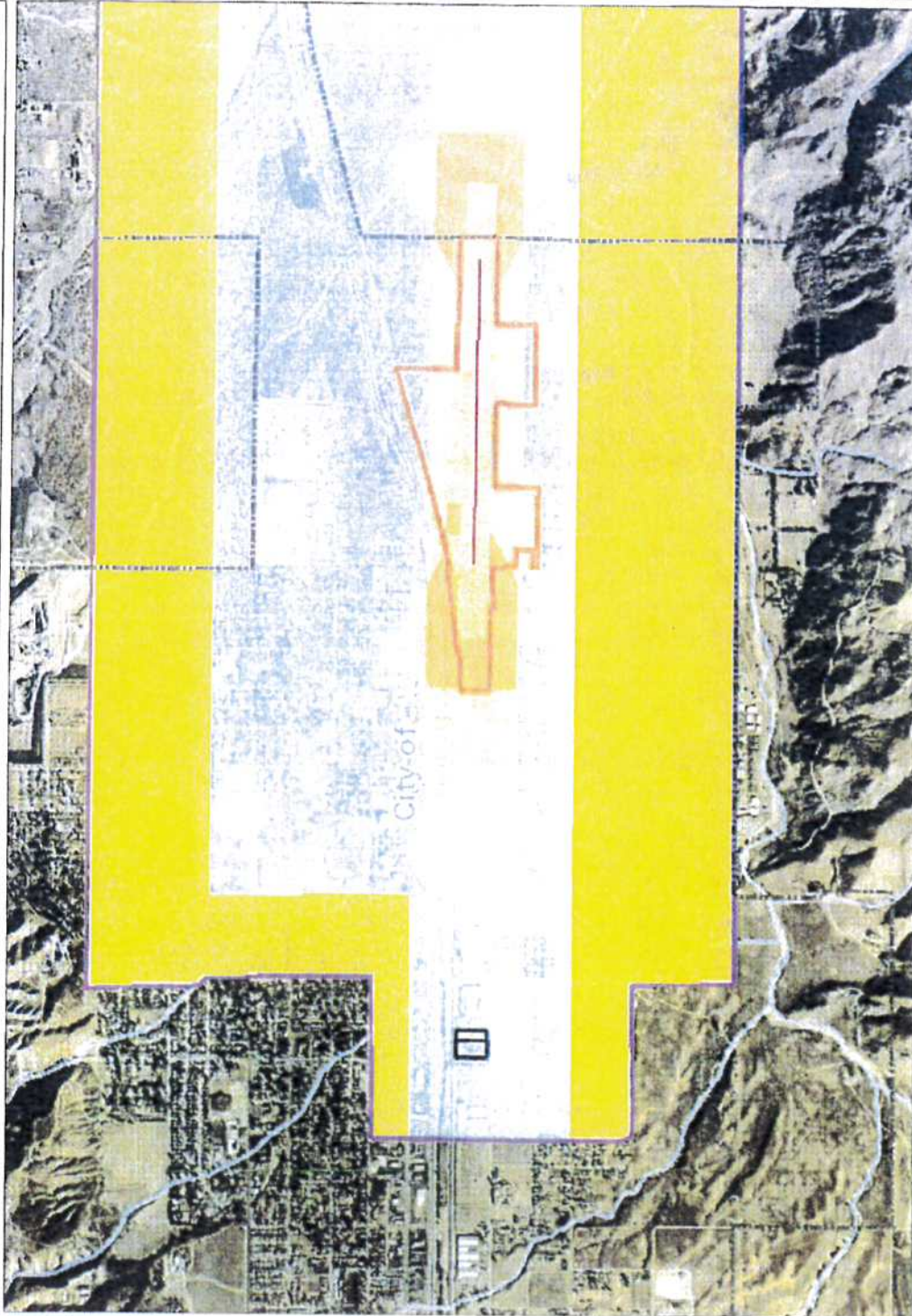
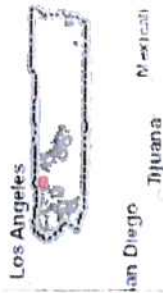
cc: Andy Birchard, Southern California West Coast Electric, Inc. (applicant)
Shawn Lathrom (representative)
Clyde and Suzanne Birchard (property owner)
Slade Lohman (property owner)
Mary E. Vrooman (property owner)
Michael and Mary Agahee (property owner)
Harry Reubush (property owner)
Art Vela, P.E., City of Banning Director of Public Works
Carl Szoyka, Manager, Banning Municipal Airport

Y:\AIRPORT CASE FILES\Banning\ZAP1033BA19\ZAP1033BA19.LTR.doc

NOTICE OF AIRPORT IN VICINITY

This property is presently located in the vicinity of a airport, within what is known as an airport influence area. For that reason, the property may be subject to some of the annoyances or inconveniences associated with proximity to airport operations (for example: noise vibration, or odors). Individual sensitivities to those annoyances [can vary from person to person. You may wish to consider what airport annoyances], if any, are associated with the property before you complete your purchase and determine whether they are acceptable to you. Business & Professions Code Section 11010 (b)(13)(A)

Map My County Map



- Legend**
- Runways
 - Airports
 - Airport Influence Areas
 - Airport Compatibility Zones
 - OTHER COMPATIBILITY ZONE
- | | |
|---------------|---------------|
| A | A-EXC1 |
| B1 | B1 |
| B1APZ I | B1APZ I |
| B1APZ I-EXC1 | B1APZ I-EXC1 |
| B1APZ II | B1APZ II |
| B1APZ II-EXC1 | B1APZ II-EXC1 |
| B1-EXC1 | B1-EXC1 |
| B2 | B2 |
| B2-EXC1 | B2-EXC1 |
| C | C |
| C1 | C1 |
| C1-EXC1 | C1-EXC1 |
| C1-EXC3 | C1-EXC3 |
| C1-EXC4 | C1-EXC4 |
| C1-HIGH | C1-HIGH |
| C2 | C2 |
| C2-EXC1 | C2-EXC1 |
| C2-EXC2 | C2-EXC2 |
| C2-EXC3 | C2-EXC3 |
| C2-EXC5 | C2-EXC5 |
| C2-EXC6 | C2-EXC6 |

Notes

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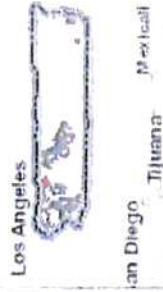


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Map My County Map



Legend

- Parcels
- Runways
- Airports
- Airport Influence Areas
- Airport Compatibility Zones
- OTHER COMPATIBILITY ZONE

- A
- A-EXC1
- B1
- B1-APZ I
- B1-APZ I-EXC1
- B1-APZ II
- B1-APZ II-EXC1
- B1-EXC1
- B2
- B2-EXC1
- C
- C1
- C1-EXC1
- C1-EXC3
- C1-EXC4
- C1-HIGH
- C2
- C2-EXC1
- C2-EXC2
- C2-EXC3
- C2-EXC5

Notes

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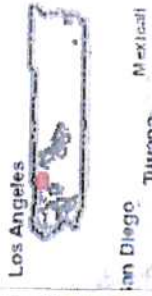
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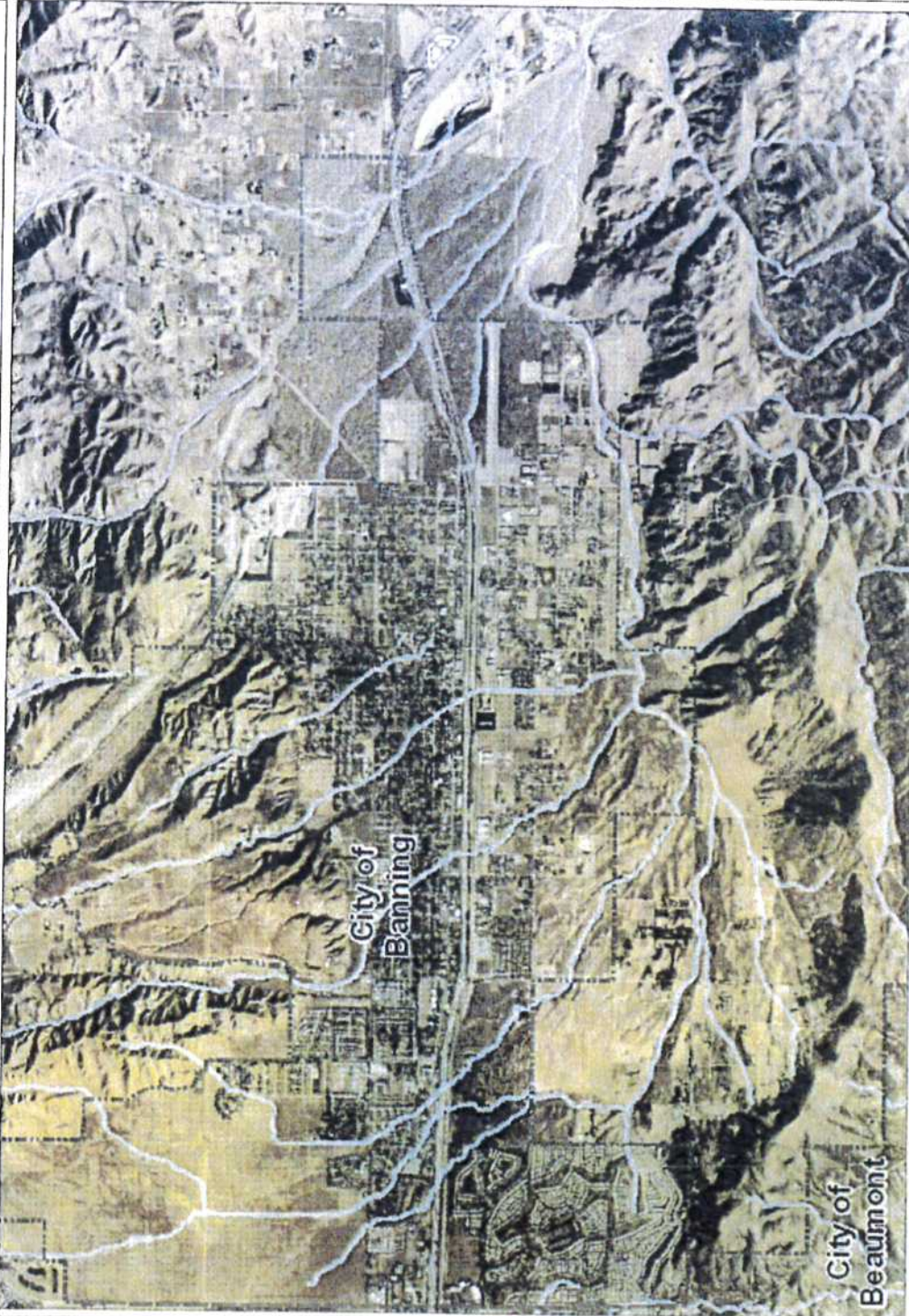


Map My County Map



- Legend**
- Blue Line Streams
 - City Areas
 - World Street Map

Notes



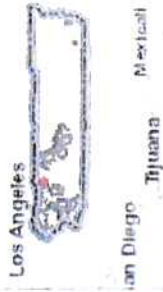
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Map My County Map



- Legend**
- Blue Line Streams
 - City Areas
 - World Street Map



Notes

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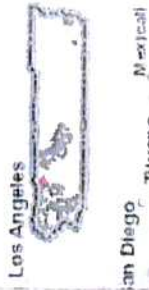
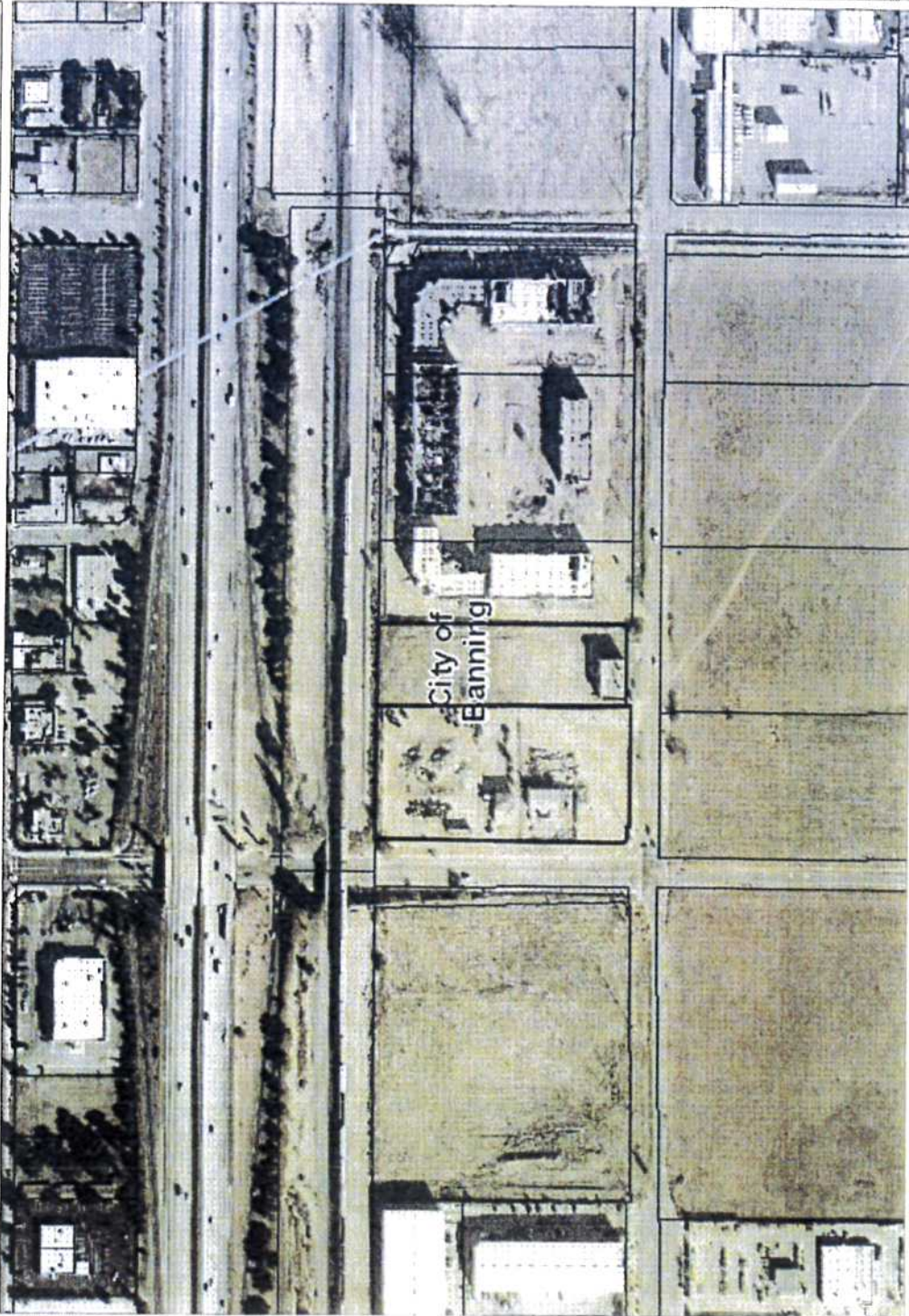


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Map My County Map



- Legend**
- ☐ Parcels
 - Blue Line Streams
 - City Areas
 - World Street Map

Notes

"IMPORTANT: Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user."

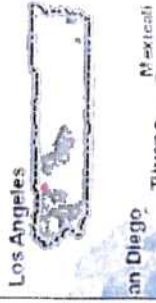
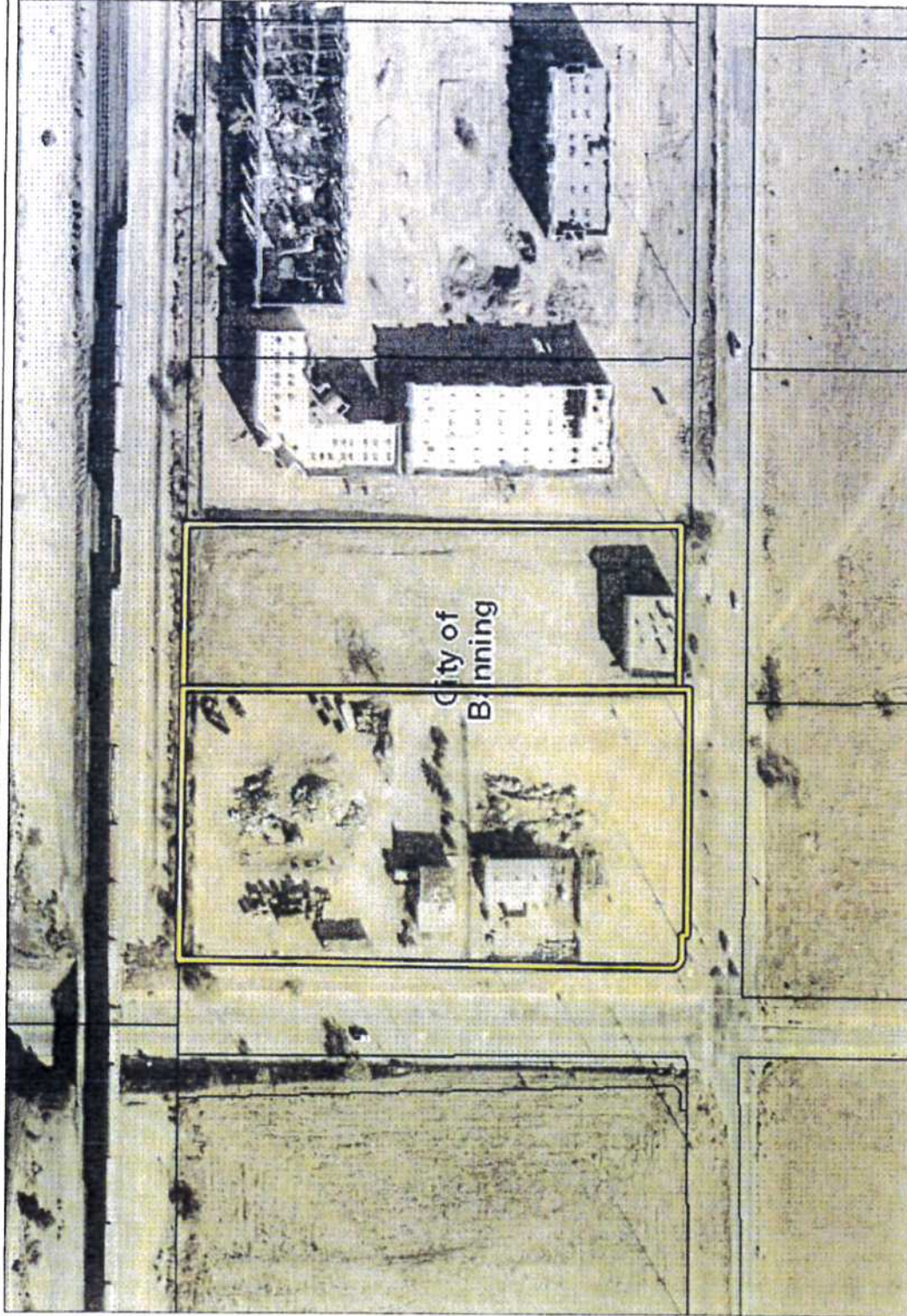
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Map My County Map



Legend

- Parcels
- Runways
- Airports
- Airport Influence Areas
- Blueline Streams
- City Areas
- World Street Map

Notes

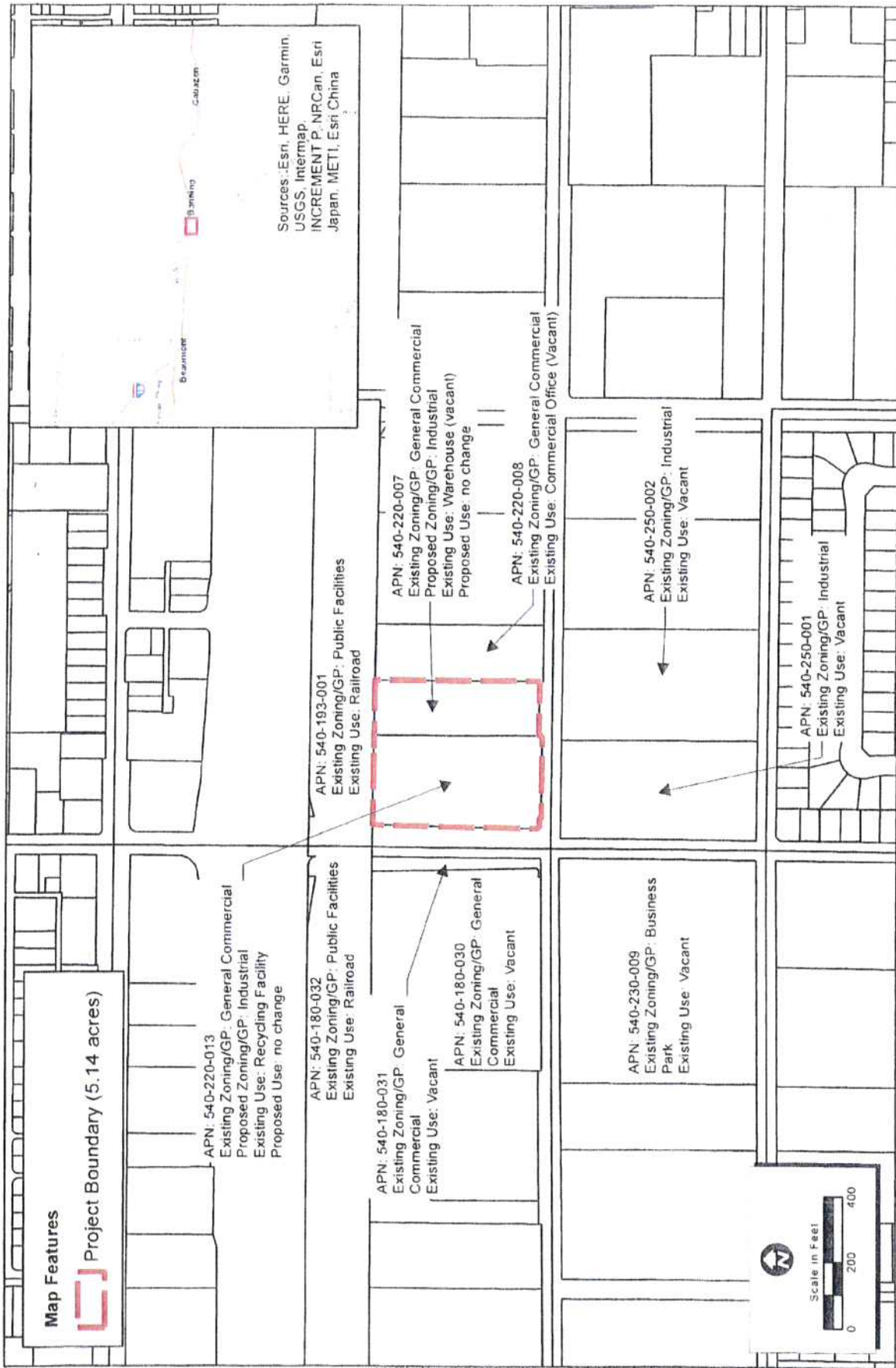
"IMPORTANT" Maps and data are to be used for reference purposes only. Map features are approximate, and are not necessarily accurate to surveying or engineering standards. The County of Riverside makes no warranty or guarantee as to the content (the source is often third party), accuracy, timeliness, or completeness of any of the data provided, and assumes no legal responsibility for the information contained on this map. Any use of this product with respect to accuracy and precision shall be the sole responsibility of the user.



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1.0 PROJECT DESCRIPTION

This project description has been prepared as part of the land use application for a proposed Zone Change and General Plan Amendment for two parcels (APN: 540-220-013 and 540-220-007) in the City of Banning.

1.1 Project Location

APN: 540-220-013 and 540-220-007, on the northeast corner of 8th Street and Lincoln Street in the City of Banning.

1.2 Project Description

The Proposed Project proposes a General Plan Amendment and Zone Change for two parcels (APN 540-220-013 and 540-220-007) on the northeast corner of 8th Street and Lincoln Street in the City of Banning. There are two existing metal structures on parcel 540-220-013; approximately two (2) acres of the 3.23-acre site is being used by an existing recycling facility (a nonconforming use). There is a vacant concrete block warehouse-type building on parcel 540-220-007. The proposal is to change the land use designations for both parcels from General Commercial to Industrial. Both parcels were originally designated as Industrial but were changed to Commercial during the last General Plan update in 2006. The proposal is to change the land use designations for both parcels from General Commercial to Industrial so that the existing recycling operation on 540-220-013 is no longer a non-conforming land use. Any future development on the parcels will be processed under separate application.

ATTACHMENT 4

Public Hearing Notice

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

165470 PHN GPA 18-2503

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:

May 24, 2019

Executed on: 05/24/2019

At Banning, CA

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



Signature

NOTICE OF PUBLIC HEARING AND NOTICE OF EXEMPTION FOR CONSIDERATION OF GENERAL PLAN AMENDMENT 18-2503 AND ZONE CHANGE 18-3502 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I) AND TO CHANGE THE ZONING FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), TO CONSIDER THE FUTURE CONSTRUCTION FOR INDUSTRIAL USES ON TWO PARCELS TOTALING APPROXIMATELY 5.14 ACRES OF LAND LOCATED AT 200 SOUTH EIGHT STREET AND 679 WEST LINCOLN STREET AT THE NORTHEASTERLY CORNER OF WEST LINCOLN STREET AND SOUTH EIGHT STREET IN THE CITY OF BANNING, CALIFORNIA (APN 540-220-013, 540-220-007).

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning Planning Commission, to be held on Wednesday, June 5, 2019, at 6:30 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed project. The subject parcel is located generally at the northeast corner Lincoln Street and Eight Street (APN 540-220-013 & 540-220-007).

Information regarding the Notice of Exemption, General Plan Amendment and Zone Change can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>. All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the Planning Commission makes its recommendation on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, M.A., AICP
Community Development Director

Dated: May 21, 2019

Publish: May 24, 2019

Published in
The Record Gazette

No. 165470

05/24/2019

ATTACHMENT 5

Notice of Exemption

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Drive

Riverside, CA, 92507

From: (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: General Plan Amendment 18-2503/Zone Change 18-3502 (So Cal West Coast Electric)

Project Applicant: Shawn Lathrom and Andy Birchard

Project Location - Specific:

200 S. 8th St./(APN: 540-220-013) and 679 W. Lincoln St./(APN: 540-220-007)

Project Location - City: Banning

Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

The project consists of a General Plan Amendment (GPA) to change the land use from General Commercial (GC) to Industrial (I) and a Zone Change to modify the zoning classification of the same parcels from General Commercial (GC) to Industrial (I)

Name of Public Agency Approving Project: Banning

Name of Person or Agency Carrying Out Project: Shawn Lathrom and Andy Birchard

Exempt Status: (check one):

- ☐ Ministerial (Sec. 21080(b)(1); 15268);
- ☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));
- ☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));
- ☐ Categorical Exemption. State type and section number: _____
- ☒ Statutory Exemptions. State code number: 15061(b)(3)

Reasons why project is exempt:

The project is exempt, under CEQA Guidelines Section 15061(b)(3) (General Rule) (Existing Facilities) because there is no possibility that the proposed General Plan Amendment and Zone Change, re-designating and re-classifying certain real property from General Commercial (GC) to Industrial (I), will not have a significant effect on the environment.

Lead Agency

Contact Person: Sonia Pierce

Area Code/Telephone/Extension: (951) 922-3152

If filed by applicant:

1. Attach certified document of exemption finding.
2. Has a Notice of Exemption been filed by the public agency approving the project? ☐ Yes ☐ No

Signature: _____ Date: May 31, 2019 Title: Senior Planner

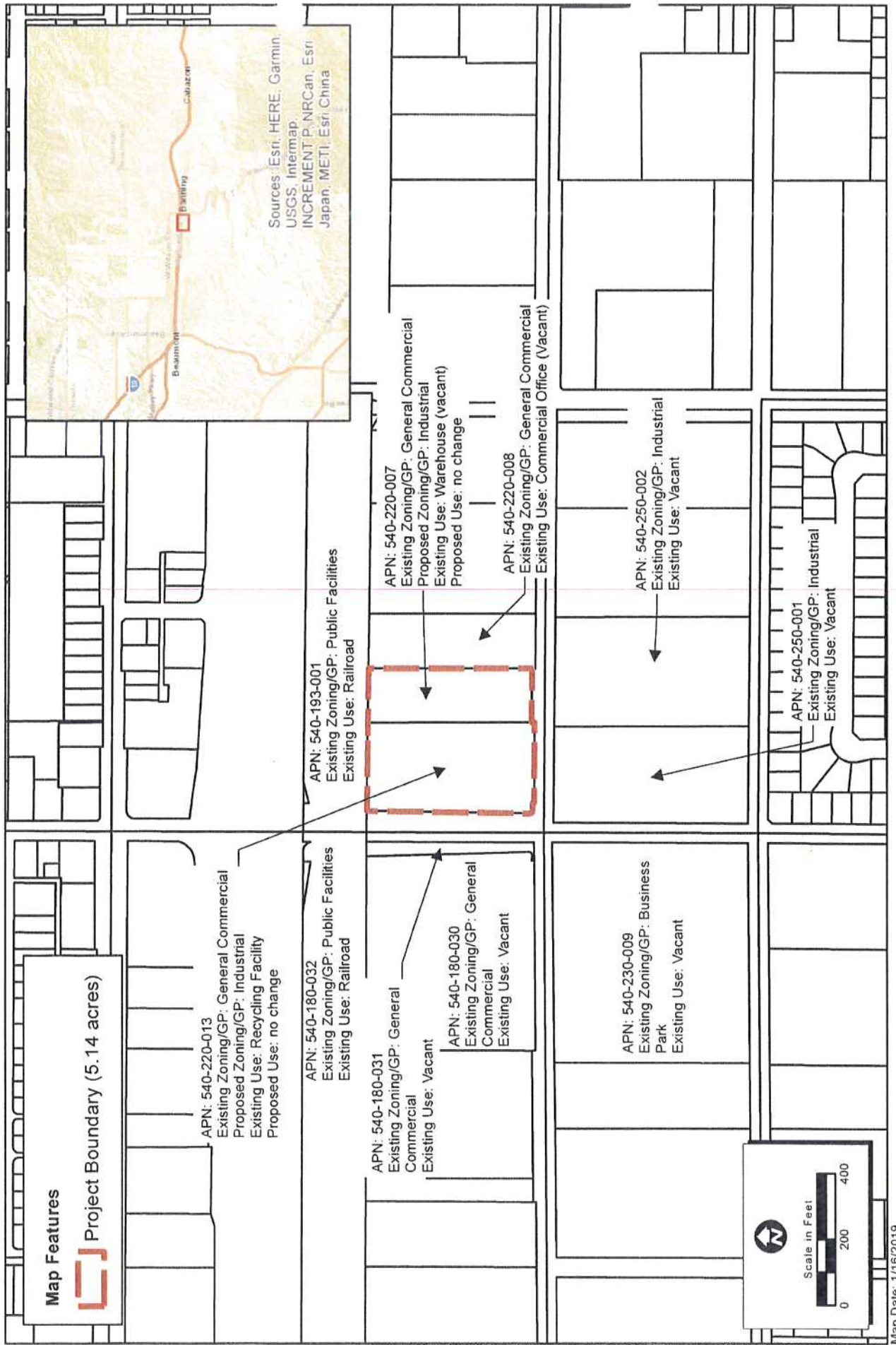
☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.
Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

Attachment 4

(Location Map)

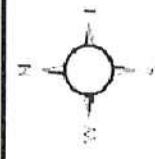
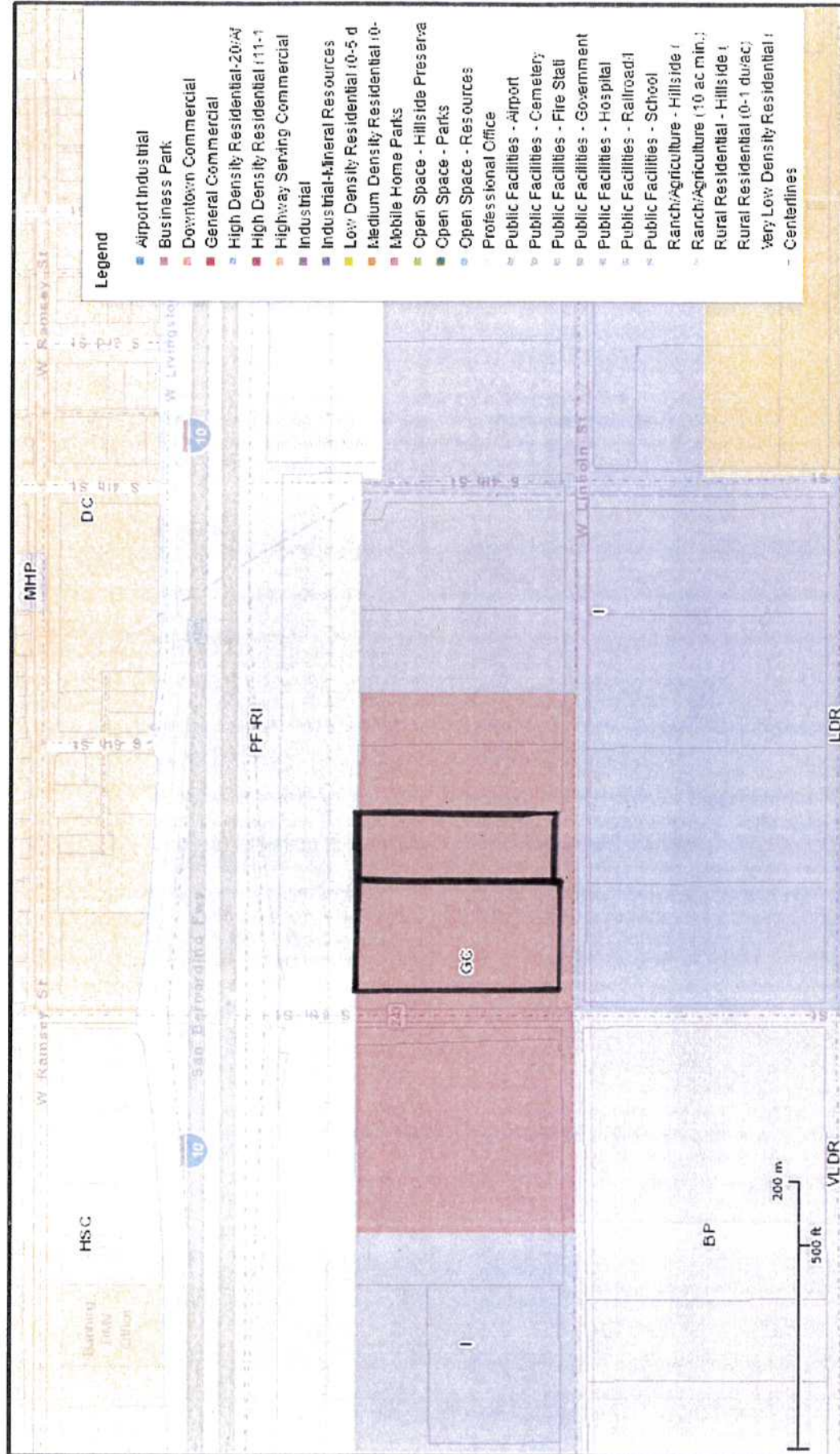


Location: N:\2018\2018-236 West Coast Electric\MAPS\CEOA\SC\WC 25 GFA.mxd (A4, 1/16/2019) - mapping guest

Attachment 5

(Area Land Use Plan)

GPA 18-2503 / ZC18-3502



05/30/2019

From GC to I

1" = 376 ft

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

T.C.A. 100

540. 2.



Date: S.B.E Map 872-33-1

DATE	GLD NO.	NEW NO.
5/74	000	011
7/76	11	12
7/76	008	13, 57
7/76	12	14, 15
11/76	4-57, 14	36
3/77	16	17, 18

05701 10501114

Attachment 6

(Public Hearing Notice)



City of Banning

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

COMMUNITY DEVELOPMENT DEPARTMENT

NOTICE OF PUBLIC HEARING AND NOTICE OF EXEMPTION FOR CONSIDERATION OF GENERAL PLAN AMENDMENT 18-2503 AND ZONE CHANGE 18-3502 TO AMEND THE GENERAL PLAN LAND USE DESIGNATION FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I) AND TO CHANGE THE ZONING FROM GENERAL COMMERCIAL (GC) TO INDUSTRIAL (I), TO CONSIDER THE FUTURE CONSTRUCTION FOR INDUSTRIAL USES ON TWO PARCELS TOTALING APPROXIMATELY 5.14 ACRES OF LAND LOCATED AT 200 SOUTH EIGHTH STREET AND 679 WEST LINCOLN STREET AT THE NORTHEASTERLY CORNER OF WEST LINCOLN STREET AND SOUTH EIGHTH STREET IN THE CITY OF BANNING, CALIFORNIA (APN 540-220-013, 540-220-007).

NOTICE IS HEREBY GIVEN of a public hearing before the City of Banning City Council, to be held on Tuesday, July 9, 2019, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the proposed project. The subject parcel is located generally at the northeast corner Lincoln Street and Eighth Street (APN 540-220-013 & 540-220-007).

Information regarding the Notice of Exemption, General Plan Amendment and Zone Change can be obtained by contacting the City's Community Development Department, Planning Division at (951) 922-3125, or by visiting the City Hall located at 99 East Ramsey Street, Banning. You may also go to the City of Banning website at <http://www.banningca.gov/>.

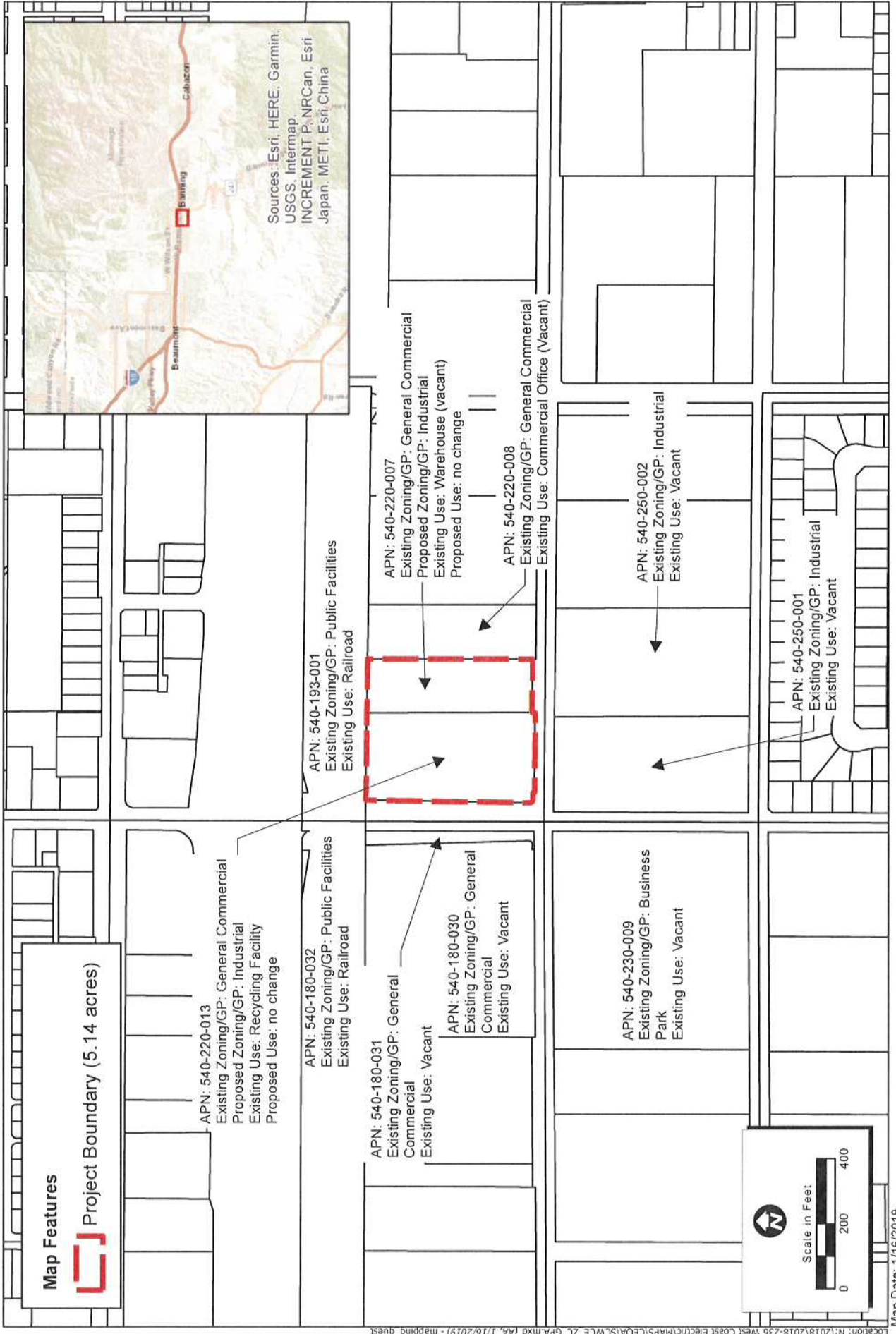
All parties interested in speaking either in support of or in opposition to this item are invited to attend the hearing, or to send their written comments to the Community Development Department, Planning Division, City of Banning at 99 E. Ramsey Street, P.O. Box 998, Banning, California, 92220.

If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the City Clerk at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009).

BY ORDER OF THE COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA

Adam B. Rush, M.A., AICP
Community Development Director

Dated: 06/25/2019
Publish: 06/28/2019



540 180 030
Aagaard Gail Selby
3895 Morrow Ln
Chico CA 95928

540 180 031
City Of Banning
Po Box 998
Banning CA 92220

540 180 032
Southern Pacific Transportation
1700 Farnam St 10th #S
Omaha NE 68102

540 180 033
State Of Calif
Po Box 1799
Sacramento CA 95812

540 193 001
Southern Pacific Transportation
1700 Farnam St 10th #S
Omaha NE 68102

540 193 002
State Of Calif
Po Box 1799
Sacramento CA 95812

540 220 007
Slade Lohman
530 Commerce Ave #B
Palmdale CA 93551

540 220 008
Zukaza Trust
23772 Coronel Dr
Mission Viejo CA 92691

540 220 009
40 Bruin Lancaster
12671 High Bluff Dr #150
San Diego CA 92130

540 220 013
Clyde Birchard
Po Box 746
Banning CA 92220

540 230 009
Malloy Partners
556 Malloy Ct
Corona CA 92880

540 250 001
Yellowjacket
430 Cambridge Ave #100
Palo Alto CA 94306

540 250 002
Alejandra Garza
10961 Larch Ave
Bloomington CA 92316

540 250 003
Gustavo Rosales
18004 Santa Ana Ave
Bloomington CA 92316

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Ted Shove, Economic Development Manager

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution No. 2019-__, Approving an Agreement for the Purchase of Real Property in an Amount Not to Exceed \$150,020 (APN: 534-152-025)

RECOMMENDED ACTION:

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

1. Approving the "Agreement for Purchase and Sale and Escrow Instructions for Real Property, Assessor's Parcel Number 534-152-025"; and
2. Authorize the City Manager to execute the Agreement for Purchase and Sale and Escrow Instructions and Certificate of Acceptance for Real Property (APN 543-090-0088); and
3. Authorize Administrative Services Director to make necessary budget adjustments and appropriations for FY 2020.

BACKGROUND:

Banning Electric Utility Department is strategically upgrading its aging infrastructure to increase system reliability. In anticipation of future growth and to increase safety and security of system infrastructure, a new substation has been planned near the intersection of E. Theodore Street and Hargrave Street. This new site would replace the Alola Substation once it is placed online. The proposed site lies along one of the main routes for transmission lines used for connection into the distribution system.

City staff has contacted several property owners to discuss partial or whole acquisition of real property in the area for a proposed expanded substation, with very limited responses. The property consists of approximately 1.21 Acres.

Upon Council direction earlier this year, Staff commissioned an appraisal by a state licensed real estate appraiser to determine the value of the property. The purchase price for this property was established at \$150,020 and was based on the fair market value estimate determined by the City's independent appraiser. The Agreement also calls for the Seller to pay all closing costs and commissions and includes a closing date of August 31, 2019.

Government Code Section 65402 requires that a jurisdiction's planning agency (i.e. Planning Commission) review and report upon whether the proposed acquisition of real property for public purposes is consistent with the adopted General Plan. The proposed acquisition of this property is scheduled to be considered by the Planning Commission at its August 7, 2019 meeting.

Staff has reviewed the contemplated property acquisition pursuant to the guidelines of the California Environmental Quality Act (CEQA) and determined that its acquisition to be Categorically Exempt pursuant to Section 15061(b)(3): "Review for Exemption" of the California Environmental Quality Act Guidelines. The acquisition of the property is exempt from review under CEQA because the purchase will not have a significant effect on the environment since the subject action only relates to the purchase of the property. Further environmental review may be conducted at such time as the City formally considers its development.

Staff recommends approving this acquisition for long term infrastructure growth needs.

FISCAL IMPACT:

The purchase price is \$150,020. Funds to be sourced from Account 674-7000-473.96-33.

ATTACHMENTS:

1. Resolution No. 2019-__
2. Purchase and Sale and Escrow Instructions Agreement – Partially Executed

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-__

RESOLUTION 2019-__

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA, APPROVING AN AGREEMENT FOR THE PURCHASE OF
REAL PROPERTY, ASSESSORS PARCEL NUMBER 534-152-025)**

WHEREAS, the City of Banning seeks to acquire real property for a proposed future project relating to the City's Electric Utility operations; and

WHEREAS, the City extended an offer to purchase real property to the owner of record, Mousa Rifai for real property identified as Riverside County Tax Assessor's Parcel Number 534-152-025 ("Rifai Parcel"). The Agreement for Purchase and Sale and Escrow Instructions is attached as Attachment 2 to the staff report. The City's offer was based on the fair market value estimate determined by the City's independent appraiser; and

WHEREAS, the property acquisition was reviewed pursuant to the State Guidelines for the California Environmental Quality Act (CEQA) and determined by staff to be Categorically Exempt pursuant to Section 15061(b)(3): "Review for Exemption" of the California Environmental Quality Act Guidelines. The acquisition of the property is exempt from review under CEQA because the purchase will not have a significant effect on the environment since the subject action only relates to the purchase of the property. Further environmental review may be conducted at such time as the City formally considers its development; and

WHEREAS, Government Code Section 65402 requires that a jurisdiction's planning agency (i.e. Planning Commission) review and report upon whether the proposed acquisition of real property for public purposes is consistent with the adopted General Plan. The proposed acquisition of this property is scheduled to be considered by the Planning Commission at its August 7, 2019 meeting.

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-__ approving the Agreement for Purchase and Sale and Escrow Instructions between City of Banning and Mousa Rifai for the purchase of the Subject Fee Property for the sum of \$150,020. A copy of the Agreement is attached as Attachment 2 to the staff report that accompanies this Resolution.

SECTION 2. The environmental impacts of the real property acquisition from this action were determined to be Categorically Exempt pursuant to Section 15061(b)(3) of the California Environmental Quality Act Guidelines. The acquisition is exempt from review under CEQA because the purchase will not have a significant effect on the environment since the subject action only relates to the purchase of the property. The City Council concurs with City Staff's determination that the acquisition qualifies as exempt from CEQA pursuant to Section 15061(b)(3) of the State CEQA Guidelines because the subject action

only relates to the purchase of the property. Further environmental review may be conducted at such time as the City formally considers its development.

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

SECTION 4. The Administrative Services Director is authorized to make necessary budget adjustments, appropriations and transfers to effectuate the property transactions contemplated in the Agreement, including but not limited to the payment of the Purchase Price of \$150,020.

SECTION 5. 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 July, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-___, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of July 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Purchase and Sale and
Escrow Instructions
Agreement
Partially Executed

**AGREEMENT FOR PURCHASE AND SALE
AND ESCROW INSTRUCTIONS**

THIS AGREEMENT FOR PURCHASE AND SALE AND ESCROW INSTRUCTIONS (this "Agreement") is dated as of July __, 2019, and is entered into by and between the CITY OF BANNING ("Buyer"), and MOUSA RIFAI, a married man, as to his sole and separate property ("Seller"). Upon execution of this Agreement by Buyer, Buyer shall promptly deliver a copy of this executed Agreement to Seller.

RECITALS

A. Seller is the owner of the land described on Exhibit "A" and the improvements, fixtures and personal property (if any) thereon (collectively, the "Property").

B. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer.

NOW, THEREFORE, in consideration of the Independent Consideration set forth in Section 1.2.2 below, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. **SALE AND PURCHASE PRICE.**

1.1 **Sale and Purchase.** Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property upon the terms and conditions hereafter set forth.

1.2 **Purchase Price; Consideration for Agreement.**

1.2.1 The purchase price ("Purchase Price") for the Property shall be One Hundred Fifty Thousand and No/100 Dollars (\$150,000.00).

1.2.2 Notwithstanding anything in this Agreement to the contrary, upon execution of this Agreement by Buyer, Twenty and No/100 Dollars (\$20.00) shall be delivered by Buyer to Escrow Agent for delivery to Seller as non-refundable independent contract consideration (the "Independent Consideration"), which is in addition to the Purchase Price, and which amount has been bargained for and agreed to as consideration for Seller's execution and delivery of this Agreement and for the rights and privileges granted to Buyer herein, including, without limitation, any and all rights granted to Buyer to terminate this Agreement during certain periods hereunder. If Buyer elects to terminate this Agreement for any reason other than Seller's default, Seller shall retain the Independent Consideration. The Independent Consideration shall not be applicable towards the Purchase Price.

2. **TITLE.**

2.1 **General.** Title to the Property shall be conveyed by a grant deed in the form attached hereto as Exhibit "B" and shall be evidenced by a CLTA Standard Coverage Form of Owner's Policy of Title Insurance (or an ALTA Extended Coverage Form Policy, if Buyer elects such coverage as provided in Section 2.3 hereof) ("Title Policy"), and the cost of the Title

Policy shall be borne by Seller as described in Section 4.9 below. The Title Policy shall be issued by First American Title Insurance Company, 323 Court Street, San Bernardino, CA 92401; Title Officer(s): Tammy Kerr or Cheryl Campbee ("Title Company"), with liability in the full amount of the Purchase Price, insuring title to the Property as vested in Buyer, free and clear of all liens and encumbrances and other matters affecting title to the Property, except title exceptions which Buyer has approved in writing (which shall constitute "Approved Title Exceptions").

If Buyer disapproves any matter affecting title (except liens to be released or reconveyed upon Close of Escrow), then Buyer may terminate this Agreement by written notice to Seller.

2.2 Acts After Date of Agreement. During the period from the date of this Agreement through the Close of Escrow, Seller shall not record or permit to be recorded any document or instrument relating to the Property or physically alter the Property or permit or cause to be altered without the prior written consent of the Buyer, which consent may be withheld in Buyer's sole and absolute discretion.

3. LIMITED REPRESENTATIONS BY SELLER ("AS IS" SALE); INSPECTIONS. Buyer acknowledges that except as provided in Section 17 below, Seller is making no representations or warranties about the Property, express or implied; provided, however, that Buyer does not waive Seller's obligations under applicable law to promptly disclose to Buyer all material facts known to Seller about the Property.

3.1 Inspection Period. Buyer may, the date that is forty (40) days after the date of this Agreement ("Inspection Period"), conduct, at Buyer's sole expense, such inspections and testing of the Property, including any improvements thereon, soils and ground water, as Buyer may desire or deem appropriate, in Buyer's sole discretion, to determine the suitability of the Property for Buyer's intended use. In conducting such inspections and testing, the Buyer shall endeavor to minimize damage to the Property, and any improvements thereon, and shall, in the event escrow fails to close, return the Property, including the improvements thereon, if any, to its condition prior to Buyer's inspections and testing. Seller hereby grants to Buyer and its authorized employees, representatives, agents and contractors, permission and a license to enter upon the Property at all reasonable times prior to the end of the Inspection Period for the purpose of conducting such inspections and testing. In the event the Property is occupied by any person(s) other than Seller, Seller shall make arrangements with such person(s) to ensure access by Seller its authorized employees, representatives, agents and contractors in order to conduct the inspections and testing pursuant to this section. Buyer shall indemnify, protect, defend (with legal counsel reasonably acceptable to Seller) and hold Seller harmless from and against any and all claims, liabilities, losses, damages, costs and expenses arising from, related to or caused by, Buyer's entry upon the Property or the performance of any inspection or test conducted by or at the request of Buyer or its contractors or agents (but not the results thereof). In the event Buyer determines the Property is not suitable, then Buyer may terminate this Agreement by written notice to Seller given prior to the end of the Inspection Period.

Notwithstanding California Civil Code Section 1103.1(a)(9), Seller shall deliver to Buyer, with reasonable diligence after the execution of this Agreement and at Seller's cost, a Natural Hazard Disclosure Statement (described in California Civil Code Section 1103.2).

4. ESCROW.

4.1 Escrow Holder. The escrow shall be opened with Sentry Escrow Service, Inc., 300 S. Highland Spring Ave., #10C, Banning, CA 92220, Attn: Judy A. Russel ("Escrow Holder"), within five (5) business days after the execution of this Agreement by Buyer and Seller depositing an executed copy or executed counterparts of this Agreement with Escrow Holder. This document shall be considered as the escrow instructions between the parties, with such further instructions as Escrow Holder requires in order to clarify the duties and responsibilities of Escrow Holder.

4.2 Close of Escrow. For the purposes of this Agreement, "Close of Escrow" shall be the date on which a grant deed for the Property in favor of Buyer is recorded in the Official Records of the Riverside County Recorder's Office. Provided all of Seller's and Buyer's obligations to be performed on or before Close of Escrow have been performed and all the conditions to the Close of Escrow set forth in this Agreement have been satisfied, escrow shall close on or before the later of (i) August 31, 2019, or (ii) five (5) business days after Buyer received approval from Southern California Edison of electrical connections/service for/to the Property ("Closing Date"); however, if such approval is not provided by December 31, 2019, then either Seller or Buyer may terminate this Agreement by written notice to the other. All risk of loss or damage with respect to the Property shall pass from Seller to Buyer at the Close of Escrow. Possession of the Property shall be delivered to Buyer upon the Close of Escrow.

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

4.3.1 A grant deed conveying the Property to Buyer, in the form attached hereto as Exhibit "B", duly executed by Seller and acknowledged (the "Grant Deed"), which includes a reservation of the Sign Easement;

4.3.2 A California 593 certificate and federal non-foreign affidavit (with respect to Seller); and

4.3.3 Any other documents reasonably required by Escrow Holder or the Title Company to be deposited by Buyer to carry out this escrow.

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

4.4.1 An executed and acknowledged "Certificate of Acceptance" in the form attached to the Grant Deed (attached hereto as Exhibit "B");

4.4.2 The Purchase Price; and

4.4.3 Any other documents reasonably required by Escrow Holder to be deposited by Buyer to carry out this escrow.

4.5 Conditions to the Close of Escrow. Escrow shall not close unless and until both parties have deposited with Escrow Holder all sums and documents required to be deposited as provided in this Agreement. Additionally, Buyer's obligation to proceed with the transaction contemplated by this Agreement is subject to the satisfaction of all of the following conditions precedent, which are for Buyer's benefit and may be waived only by Buyer:

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

4.5.2 Title Company shall have issued or shall have committed to issue the Title Policy to Buyer, for the amount of the Purchase Price, showing fee title to the Property to be vested in Buyer subject only to the Approved Title Exceptions.

If any of the conditions to Close of Escrow are not timely satisfied for a reason other than a default of Buyer or Seller under this Agreement, and this Agreement is terminated, then upon termination of this Agreement, Escrow Holder shall promptly return to Buyer all funds (and all interest accrued thereon) and documents deposited by Buyer in escrow and to return to Seller all funds and documents deposited by Seller in escrow and which are held by Escrow Holder on the date of the termination (less, in the case of the party otherwise entitled to such funds, however, the amount of any cancellation charges required to be paid by such party under Section 4.11 below).

4.6 Recordation of Grant Deed; Delivery of Funds and Possession. Upon receipt of the funds and instruments described in this Section 4, Escrow Holder shall cause the Grant Deed and then the Easement to be recorded in the office of the County Recorder of Riverside County, California. Thereafter, Escrow Holder shall deliver the proceeds of this escrow (less appropriate charges as shown on a preliminary Settlement Statement executed by Buyer and Seller) to Seller, and Seller shall deliver possession of the Property to Buyer free and clear of all occupants.

4.7 Prorations. Property taxes shall not be prorated as Buyer is exempt from property taxes; Seller may apply for a refund, if Seller has paid property taxes that are allocable to the period after the Close of Escrow and Buyer shall reasonably cooperate therewith. All property assessments shall be prorated between Buyer and Seller as of the Close of Escrow based on the latest available tax information. All prorations shall be determined on the basis of a 360-day year.

4.8 Costs of Escrow. Seller shall pay the premium for the Title Policy (excluding the cost of extended coverage and the cost of any survey obtained by Buyer in connection with such extended coverage), the escrow fees, the recording costs (if any), and any other closing costs or charges not expressly provided for herein.

4.9 Brokers. Buyer and Seller represent to one another that except for any broker engaged by Seller, no broker or finder has been engaged by it in connection with the transaction contemplated by this Agreement, or to its knowledge is in any way connected with

such transaction. Seller shall pay commissions to any broker engaged by Seller in accordance with the agreement between Seller and such Broker. Each party covenants and agrees that any other broker fee or commission, which may be due or payable in connection with the closing of the transaction contemplated by this Agreement through its dealings with that party, shall be borne solely by that party. Each party agrees to defend, indemnify and hold harmless the other party and its respective employees, agents, representatives, council members, attorneys, successors and assigns, from and against all claims of any agent, broker, finder or other similar party arising from or in connection with its activities relating to the sale of the Property to Buyer.

4.10 Escrow Cancellation Charges. In the event that this escrow shall fail to close by reason of the default of either party hereunder, the defaulting party shall be liable for all escrow and title cancellation charges. In the event that the escrow shall fail to close for any other reason, each party shall pay one-half (1/2) of all escrow and title cancellation charges.

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

6. NOTICES. All notices, requests, demands and other communication given or required to be given hereunder shall be in writing and sent by first class United States registered or certified mail, postage prepaid, return receipt requested, or sent by a nationally recognized courier service such as Federal Express, duly addressed to the parties as follows:

To Seller: Mr. Mousa Rifai
9741 Queen Annes Ct.
Garden Grove, CA 92844

To Buyer: City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attn: City Manager

Delivery of any notice or other communication hereunder shall be deemed made on the date indicated in the return receipt or courier's records as the date of delivery or as the date of first attempted delivery, if sent by mail or courier service. Any party may change its address for purposes of this Section by giving notice to the other party as herein provided.

7. ASSIGNMENT. Neither this Agreement nor any interest herein may be assigned by either party without the prior written consent of the other party.

8. ENTIRE AGREEMENT. This Agreement contains all of the agreements of the parties hereto with respect to the matters contained herein, and all prior or contemporaneous agreements or understandings, oral or written, pertaining to any such matters are merged herein and shall not be effective for any purpose. No provision of this Agreement may be amended, supplemented or in any way modified except by an agreement in writing signed by the parties

hereto or their respective successors in interest and expressly stating that it is an amendment of this Agreement.

9. COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

10. EMAIL DELIVERY. This executed Agreement (and executed counterparts of this Agreement), may be delivered by email.

11. TIME OF THE ESSENCE. Time is of the essence of this Agreement.

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

13. SEVERABILITY. If any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein, unless such invalidity, illegality or unenforceability materially affects the economic terms of the transactions contemplated by this Agreement or the ability of either party to perform its obligations under this Agreement. In such case, either party may terminate this Agreement and the escrow upon written notice to the other party given no later than ten (10) business days after the party giving such notice becomes aware of such invalidity, illegality or unenforceability. In the event of such termination, all funds deposited with Escrow Holder by Buyer and any interest accrued thereon shall be returned to Buyer.

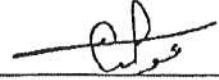
14. ADDITIONAL DOCUMENTS. Each party hereto agrees to perform any further acts and to execute, acknowledge and deliver any further documents that may be reasonably necessary to carry out the provisions of this Agreement.

15. AUTHORITY OF CITY MANAGER. The City Manager of Buyer may give any and all notices, consents and terminations hereunder on behalf of Buyer provided they are in writing.

16. DUE AUTHORIZATION/EXECUTION. Upon execution hereof, each party shall promptly provide to the other party reasonable evidence of its due authorization of this Agreement.

17. LIMITED HAZMAT REPRESENTATION BY SELLER. Seller hereby represents and warrants that to the knowledge of Seller, the Property does not contain any hazardous materials. The foregoing representation and warranty shall survive the Close of Escrow.

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

SELLER:_____
Mousa Rifai**BUYER:**

CITY OF BANNING

By: _____

Print Name: _____

Title: _____

Attest:

Daryl Betancur, Deputy City Clerk

APPROVED AS TO FORM:

Kevin G. Ennis, City Attorney

EXHIBIT "A"LEGAL DESCRIPTION OF THE LAND

Real property in the City of Banning, County of Riverside, State of California, described as follows:

THAT PORTION OF BLOCK 130 OF BANNING COLONY LANDS, IN THE CITY OF BANNING, 0 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 149 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHEAST CORNER OF SAID BLOCK 130;
THENCE NORTH ALONG THE EAST LINE OF SAID BLOCK, 310 FEET;
THENCE WEST AND PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 354 FEET;
THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID BLOCK 310 FEET TO THE SOUTH LINE OF SAID BLOCK;
THENCE EAST ALONG THE SOUTH LINE OF SAID BLOCK, 354 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE PROPERTY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 130;
THENCE NORTH ALONG THE EAST LINE OF SAID BLOCK 130, 150 FEET;
THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID BLOCK, 330 FEET;
THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK, 150 FEET TO THE SOUTH LINE OF SAID BLOCK;
THENCE EAST ALONG THE SOUTH LINE, 330 FEET TO THE POINT OF BEGINNING.

APN: 534-152-025

EXHIBIT "B"

FORM OF GRANT DEED

(Attached.)

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

City of Banning
99 E. Ramsey Street
Banning, CA 92220
Attention: City Clerk

APN(s): 543-152-025

[SPACE ABOVE FOR RECORDER'S USE ONLY]

THE UNDERSIGNED GRANTOR DECLARES AS FOLLOWS:

This Grant Deed is exempt from Recording Fees pursuant to California Government Code Section 27383.

Documentary Transfer Tax is \$0 (exempt; conveyance to a public entity).

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MOUSA RIFAI, a married man, as to his sole and separate property, hereby grant to the CITY OF BANNING ("Grantee"), the land located in the City of Banning, County of Riverside, State of California, more particularly described on **Exhibit A** attached hereto and incorporated herein by reference and all improvements thereon (collectively, the "Property").

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

Dated: _____, 2019

GRANTOR:

Mousa Rifai, a married man, as to his sole and separate property

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 the document.

STATE OF CALIFORNIA
COUNTY OF _____

On _____, 20____ before me, _____, Notary Public, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(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: _____

(affix seal in above space)

Exhibit "A"
to Grant Deed

LEGAL DESCRIPTION

Real property in the City of Banning, County of Riverside, State of California, described as follows:

THAT PORTION OF BLOCK 130 OF BANNING COLONY LANDS, IN THE CITY OF BANNING, 0 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, AS PER MAP RECORDED IN BOOK 3, PAGE 149 OF MAPS, IN THE OFFICE OF THE COUNTY RECORDER OF RIVERSIDE COUNTY, DESCRIBED AS FOLLOWS:

COMMENCING AT SOUTHEAST CORNER OF SAID BLOCK 130;
THENCE NORTH ALONG THE EAST LINE OF SAID BLOCK, 310 FEET;
THENCE WEST AND PARALLEL WITH THE SOUTH LINE OF SAID BLOCK 354 FEET;
THENCE SOUTH AND PARALLEL WITH THE EAST LINE OF SAID BLOCK 310 FEET TO THE SOUTH LINE OF SAID BLOCK;
THENCE EAST ALONG THE SOUTH LINE OF SAID BLOCK, 354 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE PROPERTY DESCRIBED AS FOLLOWS:
BEGINNING AT THE SOUTHEAST CORNER OF SAID BLOCK 130;
THENCE NORTH ALONG THE EAST LINE OF SAID BLOCK 130, 150 FEET;
THENCE WEST PARALLEL WITH THE SOUTH LINE OF SAID BLOCK, 330 FEET;
THENCE SOUTH PARALLEL WITH THE EAST LINE OF SAID BLOCK, 150 FEET TO THE SOUTH LINE OF SAID BLOCK;
THENCE EAST ALONG THE SOUTH LINE, 330 FEET TO THE POINT OF BEGINNING.

APN: 534-152-025

CERTIFICATE OF ACCEPTANCE

(California Government Code Section 27281)

This is to certify that the interest in real property conveyed by that certain Grant Deed dated _____, 2019, from Mousa Rifai to the City of Banning, which is a political corporation, is hereby accepted by the undersigned officer on behalf of the City of Banning pursuant to the authority conferred by action of the City of Banning on July ___, 2019, and the grantee consents to recordation thereof by its duly authorized officer.

Dated: _____, 2019

City Manager

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

State of California)
County of _____)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____ (Seal)

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**CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT**

TO: BANNING UTILITY AUTHORITY

FROM: Douglas Schulze, City Manager

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

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution 2019-__ UA, Approving the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. to Extend the Term of the Agreement

RECOMMENDED ACTION:

Staff Recommends that the Banning Utility Authority adopt Resolution 2019-__ UA:

1. Approving the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. to extend the term of the agreement for one (1) additional year and thereby amending the termination date of the original Agreement to September 30, 2020.
2. Authorizing the City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement.
3. Authorizing the City Manager to execute the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc.

COMMITTEE RECOMMENDATION:

The recommendation to extend the existing operation and maintenance agreement was presented by staff to the Budget and Finance Committee ("Committee") at their December, 2017 meeting. Concluding the discussion, the Committee made a recommendation to approve the extension of the Operation and Maintenance Agreement with Suez Water Environmental Services, Inc. for an additional two (2) years which would extend the agreement termination date to September 30, 2020.

BACKGROUND:

The City of Banning initially contracted out the operation and maintenance of the WWTP in September of 1993 to JMM Operational Services, Inc. (JMM) for a period of five (5) years. JMM was later acquired by United Water Services, Inc. (United Water) and subsequently the City renewed the agreement for an additional 5 years.

On September 23, 2003, under Resolution 2003-90, City Council approved a ten (10) year agreement for the Operation and Maintenance of the City of Banning Wastewater Treatment Plant to United Water for a monthly amount of \$41,500 and an annual total cost of \$498,000. On September 10, 2013, under Resolution No. 2013-16 UA, Banning Utility Authority approved a five (5) year contract term extension (first amendment to the 2003 contract) with United Water to September 30, 2018.

In May of 2016, United Water notified the City of its name change to Suez Water Environmental Services, Inc. (Suez) confirming that employees and business practices would remain the same and that operations would remain unchanged with the exception of the name change.

On September 10, 2018, the Banning Utility Authority approved the second amendment to the 2003 contract ("Current Agreement"), extending the term for one (1) additional year and increasing the compensation to account for prevailing wage rates and Consumer Price Index (CPI). Currently, the base monthly rate is \$62,182 for an annual expense amounting to \$746,184.

Since outsourcing the operations and maintenance of the WWTP in 1993, the City has maintained compliance with the Waste Discharge Requirements (WDR) issued to the City by the California Regional Water Quality Control Board (RWQCB). Suez has also contributed to the City being the recipient of several regional awards such as, the WWTP Plant of the Year in 2007 (less than 5 MGD) and 2nd place for this same award in 2008. Additionally, in 2008 the WWTP received a safety award from the Colorado River Basin Section for its operation procedures. Again in 2016, the WWTP received the Plant of the Year (less than 5 MGD) award.

Scope of Work

Suez, under the Current Agreement, is responsible for the operation and maintenance of the City's WWTP and four wastewater lift stations located throughout the City. As stated in the Current Agreement, Suez is responsible for several maintenance activities including treatment plant equipment maintenance, building maintenance and site maintenance. Suez is responsible for providing five (5) full-time employees to staff the WWTP 7 days a week, eight (8) hour days including providing the City with 24 hour, 7 days per week, on-call operational coverage. In addition to the 5 full time employees Suez also provides technical assistance utilizing their professional in-house resources for various wastewater programs such as pre-treatment, industrial waste discharges, preventative maintenance and capital improvement planning.

Suez is also obligated to pay for expenses related to consumables such as, chemicals, lubricants and contracted services (e.g. lab services) as well as capital expenses of up to \$2,000 per occurrence at the WWTP or up to \$1,500 during a twelve (12) month period for expense related to the wastewater lift stations.

Further details of the Suez' contract obligations are identified in the Current Agreement included herein as Attachment 2.

Prevailing Wage

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

Suez and City staff, including legal counsel for both parties, discussed the applicability of prevailing wages to the services provided by Suez as part of the Current Agreement. Both parties developed and agreed to a list of tasks and hours, included herein as Attachment 3, for activities that would be required to comply with prevailing wage law. It is estimated that, on an average year, 1,758 hours are spent on said prevailing wage tasks.

JUSTIFICATION:

Since 1993 JMM/United Water/Suez has proven to be a responsible contractor capable of effectively and successfully managing the operation and maintenance of the City's WWTP. The existing contract is set to expire on September 30, 2019 and it is essential that the City preserve the continued operation and maintenance of the WWTP.

The third amendment, if approved, will allow the continued operation and maintenance of the City's WWTP until September 30, 2020. This will allow for the ongoing Nitrogen Removal Feasibility Study to be completed, and a clear path forward to be identified for necessary upgrades to the WWTP.

Staff is also seeking the City Council's direction on how to proceed with the maintenance of WWTP after the September 30, 2020 expiration. Possible options include:

- Extending the Suez Agreement for additional years.
- Soliciting proposals through the development and advertising of a new RFP.
- Maintaining the facility with in house staff. This option has been considered in the past and not recommended at this time.

FISCAL IMPACT:

The Wastewater Division Operational Fund, Account No. 680.8000-454.23-38 (contracted wastewater plant services) will fund the Operation and Maintenance Agreement. The base annual agreement amounts to \$766,332, an increase of \$20,148

from the Current Agreement. The increase reflects a CPI increase of 2.7% and includes costs to cover services where prevailing wage rates apply.

ALTERNATIVES:

1. Approve Resolution 2019-__ UA and direct staff to prepare a Request for Proposals with an updated scope of services for a new 5-year contract within one year's time.
2. Approve Resolution 2019-__ UA and direct staff to further investigate the impacts associated with operating and maintaining the WWTP with in-house staff.
3. Reject Resolution 2019-__ UA. If rejected, the City will have 300 days to replace Suez per the Current Agreement.

ATTACHMENTS:

1. Resolution 2019-__ UA
2. Current Agreement for O&M of the City's WWTP
3. Prevailing Wage Task List
4. Third Amendment to Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-__ UA)

RESOLUTION 2019-__ UA

A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE THIRD AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT WITH SUEZ WATER ENVIRONMENTAL SERVICES, INC. FOR AN ADJUSTMENT IN COMPENSATION AND TO EXTEND THE TERM OF THE AGREEMENT;

WHEREAS, the City of Banning initially contracted out the operation and maintenance of the Wastewater Treatment Plant (WWTP) in September of 1993 to JMM Operational Services, Inc. (JMM) for a period of five (5) years. JMM was later acquired by United Water Services, Inc. (United Water) and subsequently the City renewed the agreement for an additional 5 years; and

WHEREAS, on September 23, 2003, the City Council approved Resolution 2003-90, approving a ten (10) year agreement for operation and maintenance of the City of Banning Wastewater Treatment Plant ("Agreement"); and

WHEREAS, on September 10, 2013, the Banning Utility Authority approved Resolution 2013-16 UA, approving the first amendment to the Agreement with United Water Environmental Services, Inc. for an additional five (5) year term; and

WHEREAS, in May of 2016, United Water notified the City of its name change to Suez Water Environmental Services, Inc. confirming that employees and business practices would remain the same and that operations would remain unchanged with the exception of the name modification; and

WHEREAS, since 1993, Suez Water Environmental Services, Inc. has provided and continues to provide quality services to the City of Banning related to the operation and maintenance of the Wastewater Treatment Plant; and

WHEREAS, on December 12, 2017 the Budget and Finance Committee of the City of Banning discussed, supported and made a recommendation that the City Council approve the extension of the Agreement with Suez Water Environmental Services, Inc.; and

WHEREAS, on September 10, 2018, the Banning Utility Authority approved the second amendment to the Agreement with Suez, including an increase that reflects additional costs related to prevailing wages for specific tasks included in the Agreement, for a one (1) year term with the option to extend the contract one (1) additional year; and

WHEREAS, the agreement allows the contract amount to be adjusted annually by the Consumer Price Index (CPI), and the estimated cost for one additional year of maintenance, through September 30, 2020 is \$766,332.

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

SECTION 1. Banning Utility Authority adopts Resolution 2019-__ UA, approving the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc. thereby adjusting the compensation and extending the term of the agreement for one (1) additional year and thereby amending the termination date of the original Agreement to September 30, 2020.

SECTION 2. The City Manager, or designee, is authorized to make necessary budget adjustments, appropriations and transfers related to the Maintenance and Operations Agreement.

SECTION 3. The City Manager is authorized to execute the Third Amendment to the Maintenance and Operations Agreement with Suez Water Environmental Services, Inc.

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 July, 2019.

Arthur L. Welch, Chairman
Banning Utility Authority

ATTEST:

Daryl Betancur, Deputy Secretary
Banning Utility Authority

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

Kevin G. Ennis, Authority Counsel
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl Betancur, Deputy Secretary of the Banning Utility Authority of Banning, California, do hereby certify that the foregoing Resolution 2019-__ UA, was duly adopted by the Banning Utility Authority of the City of Banning, California, at a Regular Meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy Secretary
Banning Utility Authority
City of Banning, California

ATTACHMENT 2

(Current Agreement for O&M of the City's WWTP)

ORIGINAL

AGREEMENT

FOR

CONTRACT OPERATION AND MAINTENANCE

OF

CITY OF BANNING

WASTEWATER TREATMENT PLANT

OCTOBER 1, 2003

**AGREEMENT FOR CONTRACT
OPERATION AND MAINTENANCE OF THE
CITY OF BANNING WASTEWATER TREATMENT PLANT**

THIS AGREEMENT is made and entered into this 1st day of October, 2003, by and between the CITY OF BANNING herein referred to as "OWNER" and UNITED WATER SERVICES, INC., a California Corporation, herein referred to as "CONTRACTOR", sometimes jointly referred to as the "Parties."

WITNESSETH

WHEREAS, OWNER owns a Wastewater Treatment Plant, certain auxiliary equipment; and wastewater collection system.

WHEREAS, CONTRACTOR is a corporation offering professional services necessary for the operation and maintenance of **Wastewater Treatment Plant**.

WHEREAS, OWNER desires to employ CONTRACTOR for the Operation and Maintenance of the aforesaid Wastewater Treatment Plant.

NOW, THEREFORE, in consideration of the mutual agreements herein contained and subject to the terms and conditions herein stated, it is hereby understood and agreed by the parties hereto as follows:

I. EMPLOYMENT

OWNER engages CONTRACTOR to furnish the services hereinafter mentioned at and for the compensation herein provided, and CONTRACTOR accepts said engagement upon said terms.

II. WASTEWATER FACILITY LOCATION

CONTRACTOR agrees to furnish services of its various qualified employees, associates, and staff in the operation and maintenance of the following facilities:

- a) All equipment and facilities of the City of Banning Wastewater Treatment Plant located at 2242 E. Charles Street, Banning, CA.
- b) The lift station located on Westward Avenue west of Sunset Avenue.
- c) The lift station located on Riviera Avenue in the area commonly known as the Sun Lakes Development.
- d) The lift station located on East Ramsey Street immediately west of the California Department of Transportation Maintenance Facility.
- e) The lift station located on Breckenridge Avenue in the area commonly known as the Sun Lakes Development.

The facilities described above shall be jointly referred to herein as the "Wastewater Treatment Plant."

III. TERM, DURATION, AND RENEWAL OF AGREEMENT

A. TERM

Except as otherwise provided herein, services under this Agreement shall commence on October 1, 2003, and terminate on September 30, 2013.

B. RENEWAL

Subject to the provision for Termination set forth in Section IX hereof, this Agreement shall be for a period of ten (10) years. For renewal of the Agreement, one of the parties must first give written notice of its intent to the other at least one hundred and twenty (120) days prior to the above termination date of the agreement. Upon receipt of the notice, the receiving party shall notify the sending party of its acceptance of the offer to renew; the parties shall thereafter enter into negotiation of the terms of the renewal. Unless otherwise agreed to by the parties in writing, during the period of negotiation the agreement shall continue on the same terms and conditions. If agreement is not reached on new terms and conditions within one hundred eighty (180) days of the date of expiration of this

Agreement or any extension, there shall be no renewal of the Agreement and it shall be deemed to expire three hundred (300) days following date of expiration.

IV. SCOPE OF SERVICES

- A. CONTRACTOR shall operate and maintain the Wastewater Treatment Plant in a cost-effective and professional manner. Such operation and maintenance shall be in accordance with generally accepted practices for wastewater treatment. The wastewater effluent discharged from the Wastewater Treatment Plant and other operational characteristics shall at all times meet the requirements of all governmental regulatory agencies in effect on date of execution of this Agreement, and as may at anytime be require by law, subject to Section IV (B) below, including those requirements as specified in California Regional Water Quality Control Board Order No. 01-022 within the limits of the operating capability of the Wastewater Treatment Plant.

CONTRACTOR shall not be responsible for removal of abnormal or biologically toxic substances, which cannot be treated or removed in the OWNER's Wastewater Treatment Plant using the processing capability of the Wastewater Treatment Plant. Also, CONTRACTOR shall not be held liable hereunder for failure to maintain the standards described herein above if the Wastewater Treatment Plant shall be rendered inoperable for any reason not within the control of the CONTRACTOR. Further, the CONTRACTOR shall not be held liable hereunder for failure to conform to the above-described standards if the average daily influent flow, influent BOD₅, and influent suspended solids at the Wastewater Treatment Plant exceed the plant processing capacity (3.6 mgd) as of date of execution of this agreement.

The current daily average influent flow, influent BOD₅, and influent suspended solids at the date of execution of this agreement are as follows:

Average Dry Weather Flow

2.260 mgd

Average Influent Total Suspended Solids (TSS) (265 mg/l) 4,995 lb/day

Average Influent BOD₅ (341 mg/l) 6,427 lb/day

At such times as the capabilities and limits of the Wastewater Treatment Facilities as described above are exceeded, CONTRACTOR shall take reasonable steps to either prevent effluent violations or keep the number and duration of violations to a minimum.

- B. Operating processes agreed to be performed by CONTRACTOR include, but are not limited to, the Wastewater Treatment processes of preliminary treatment, influent pumping, trickling filtration, secondary clarification, anaerobic digestion, solids thickening, drying beds, and disposal of all screening, grit, and sludge. Maintenance activities agreed to be performed by CONTRACTOR include, but are not limited to, treatment plant equipment maintenance, building maintenance, and landscape maintenance.
- C. CONTRACTOR shall, at its sole cost and expense, pay all expenses incurred in usual treatment plant operations including, but not limited to, wages, salaries, utilities, consumables such as chemicals, lubricants and contracted services, if any, except as otherwise limited herein. Save that OWNER shall pay all electric billing for the Wastewater Treatment Facilities and Collection System Pump Stations. OWNER shall also pay for cost of disposal of screening, grit, and sludge.
- D. Maintenance and repairs for all equipment, structures, and vehicles shall be provided by CONTRACTOR for normal wear and tear and usage within the limits defined herein. Such maintenance and repair shall not include costs associated with flood, fire or other abnormal or extraordinary occurrences not within the control of CONTRACTOR.

CONTRACTOR shall provide copies of signed declarations, at the beginning of each contract year, from each and all employees who operate any

City-owned vehicle or equipment, including any such vehicles leased to CONTRACTOR by the City, declaring that they have a California Driver's License, which is in effect, and that they are licensed to drive all vehicles, which they may be required to operate under this Agreement. All employees shall also agree to advise CONTRACTOR within one (1) working day of their loss of the California Drivers License of the classification needed to operate vehicles under this Agreement.

CONTRACTOR shall prepare a preventive maintenance schedule for each major piece of equipment located at the Wastewater Treatment Plant for the OWNER's approval by the end of the second month of this Agreement or its extension. For purposes of this agreement, "major piece of equipment" is defined as any vehicle, tool or other equipment with a replacement cost in excess of two thousand dollars (\$2,000.00). Maintenance records will be kept up to date and will be available for inspection by a representative of the OWNER at all reasonable times.

CONTRACTOR shall manage, operate, and maintain the above-described Wastewater Treatment Plant in good working order and repair so that the Wastewater Treatment Plant will not deteriorate in appearance and mechanical condition, other than from normal wear.

Inventory of equipment and vehicles and documentation of operation and maintenance will be maintained by the CONTRACTOR. CONTRACTOR shall submit a report at the end of each contract year as to operation and maintenance and such reports shall be made available for inspection by OWNER at all reasonable times.

Costs for capital items and major maintenance items are not included within the scope of services and expenditures for those items shall be subject to prior approval and funding by the OWNER. For purposes of this agreement, "capital items and major maintenance items" is defined as parts or any new

equipment or Wastewater Treatment Plant components that significantly extend the service life of the Wastewater Treatment Plant; that are considered capital expenditures in accordance with standard accounting practices, that are a non-routine type of expenditure on the annual basis, and/or that are pre-programmed for expenditure by OWNER and cost more to repair or replace than two thousand (\$2,000.00) per occurrence not including costs of labor.

CONTRACTOR shall be responsible for the routine maintenance of the four lift stations [items (b), (c), (d), and (e) of Section II] as set forth in the contract. However, the CONTRACTOR shall not be responsible for the annual costs of major repairs or non-routine maintenance in excess of \$1,500.00 for the said lift stations. The CONTRACTOR shall provide a monthly report to the OWNER reflecting major repairs or non-routine expenditures incurred during the 12-month period starting October 1, 2003. Any expenditures for major repairs or non-routine maintenance, in excess of \$1,500.00 during the 12-month period, shall be borne by the OWNER and shall be subject to prior approval of the OWNER.

OWNER shall pay for the cost and installation of the telemetry control system for said lift stations.

CONTRACTOR will submit, upon request, present documentation of the cost effectiveness of "repair versus replace" decisions made by CONTRACTOR.

Capital items may be purchased directly by the OWNER, or by the CONTRACTOR after approval to purchase said items has been expressly granted by the OWNER pursuant to procedure established by OWNER. CONTRACTOR shall not be entitled to receive any mark-up on the cost of items purchased by CONTRACTOR, under this procedure.

- E. CONTRACTOR shall staff the Wastewater Treatment Plant seven (7) days per week, eight (8) hours per day with sufficient number of full time employees (a minimum staffing level of five (5) full time certified qualified personnel including

a Plant Manager) to fully monitor the operations of the Wastewater Treatment Plant or as otherwise mutually agreed by the parties. All such employees shall be experienced in wastewater treatment procedures and practices, and possess qualifications and certifications sufficient to meet all applicable Federal and State regulatory agency requirements. The Plant Manager appointed by CONTRACTOR is Manuel Benitez. Said Plant Manager shall not be replaced by CONTRACTOR except upon thirty (30) calendar days prior written notice to OWNER of such replacement. CONTRACTOR shall provide the OWNER a 24 hour per day, seven (7) days per week, on-call operational coverage for the facility.

CONTRACTOR and subcontractors shall at all times enforce strict discipline and good order among their employees and shall not employ any person that is not knowledgeable or skilled in the work assigned to such person. It shall be the responsibility of the CONTRACTOR to insure compliance with this section.

Any person in the employ of the CONTRACTOR or sub-contractors whom OWNER may reasonably deem unfit shall be excluded from the Wastewater Treatment Plant and shall not again be employed on it except with written consent of OWNER. As used in this subsection "unfit" means any person who the OWNER reasonably concludes is either not, or improperly, skilled for the task assigned to that person, who fails to comply with the requirements of this agreement, or who creates safety hazards which jeopardize other persons and/or property.

- F. CONTRACTOR shall devise and prepare in writing, appropriate operating procedures and shall place a copy of such procedures on file with OWNER. CONTRACTOR shall prepare environmental and monitoring reports and shall file such reports at OWNER's office monthly.

CONTRACTOR shall maintain the laboratory analysis program in place on date hereof. Said Program shall be continued in accordance with the latest revision of Standard Methods for Wastewater Analysis Procedures or in accordance with the other testing requirements of the water quality of the Waste Discharge Requirements (WDR) and NPDES, if any, waste discharge permits are issued. CONTRACTOR shall familiarize itself with the monitoring reports required to be made by OWNER as specified in the water quality of the WDR and NPDES permits, if any, referenced above, and shall furnish to OWNER's office copies of all completed reports filed in accord with those permits. Said reports shall be filed with OWNER within five (5) days following date of completion by CONTRACTOR. CONTRACTOR shall prepare and file monitoring reports that may be required by any governmental agency having jurisdiction, and will provide record copies to OWNER within five (5) days of date of filing of such report.

- G. OWNER shall maintain all existing warranties, guarantees, contracts, easements, and licenses that have been granted to OWNER as owners or lessors of the equipment and facilities. OWNER shall procure all other warranties, guarantees, contracts, easements, and licenses necessary to operate facility covered by this Agreement for the benefit of CONTRACTOR during the term of this Agreement. CONTRACTOR shall secure a business license and pay any applicable fee required to conduct business in the City of Banning prior to date of commencement of work under this agreement and shall maintain such license in effect during the life of this agreement.

OWNER shall make the items described immediately above, as well as the Wastewater Treatment Plant, collection and distribution system drawings, calculations, maintenance manuals, operational records, logs, reports submittal's, effluent test records, repair records, costs records, audits and general correspondence; which may be in OWNER's possession or that of their agents, related to the design, condition or operation of the Wastewater Treatment Plant and discussed appurtenances available to the CONTRACTOR.

- H. Screenings, grits, and sludges shall not be stockpiled at the Wastewater Treatment Plant at any time during the term of this agreement. CONTRACTOR is responsible for the disposal of the screening, grits, and sludges in a timely manner during the term of this agreement.

OWNER will pay all the expenses incurred in the disposal of screenings, grits, and sludges.

- I. CONTRACTOR shall provide review comments and technical assistance regarding any new industrial waste discharges, pre-treatment program or significant changes in existing influent wastewater discharges. CONTRACTOR's comments shall address such subjects as compatibility, operability, toxicity, plant capacity, operation and maintenance problems, cost, effluent quality, and other items as they relate to the Wastewater Treatment Plant. If new influents affect the ability of CONTRACTOR to meet the discharge requirements set forth herein, OWNER shall use its best efforts as determined by OWNER in its sole discretion, to correct such problems.
- J. CONTRACTOR shall conduct a Public Relations Program for the Wastewater Treatment Plant. The program shall include: 1) conducting an open house annually to "show-case" the plant to the public; 2) providing facility tours for community groups; 3) producing informational plant brochures describing how the facilities operate; 4) maintaining a plant information center that includes brochures, schematics, and fact sheets about the plant; 5) attending meetings and hearings to inform the community about issues concerning the facilities; 6) responding to any odor or noise complaints from the public; 7) participating in an adopt-a-high school program (teaching basic principals of wastewater treatment with an Operator-in-Training Program paid for by OWNER) with a local high school; and 8) with the OWNER's approval establishing a line of communications with the local media to present positive information about the Wastewater Treatment Plant.

- K. Construction and/or plant additions and modifications conducted by the OWNER shall be conducted in such manner as not to interfere with the CONTRACTOR in the production of the required quality and amount of wastewater effluent. Mutual coordination must be conducted so that construction may progress economically, while allowing production of a wastewater effluent that complies with requirement set forth in this agreement in a cost-effective manner.
- L. CONTRACTOR shall implement a proven, formal safety program including written procedures, policies, and record of periodic employee meetings. A copy of such safety program shall be placed on file with the OWNER within thirty (30) days following execution of this agreement.
- M. CONTRACTOR shall assist and make recommendations to the OWNER for development of User Fee Rate Studies on an as needed basis.
- N. CONTRACTOR shall take possession and maintain all existing hand tools and laboratory and office equipment in a good condition during the period of this contract, except normal wear and tear. An inventory shall be prepared of all hand tools, laboratory equipment, and other equipment and tools at the Wastewater Treatment Facilities, which are to be used by CONTRACTOR. This inventory shall be prepared within ninety (90) days of the commencement date of this contract by CONTRACTOR and representatives of OWNER; and CONTRACTOR shall approve such inventory in writing. At time of termination of contract, another inventory shall be taken and approved in writing by both parties. All items listed at the time of commencement of contract, along with items acquired by CONTRACTOR for OWNER's account, less items costing less than \$200.00 each, shall be turned over to OWNER, or CONTRACTOR shall pay to OWNER the replacement cost of any missing items.
- O. If the parties agree, the CONTRACTOR may rent certain City-owned equipment and vehicles; such as, autos, pickup trucks, dump trucks, dumpster, trailer, tractors, and sewer rooters; presently assigned to the facilities for use in providing

services for the Wastewater Treatment Plant. Any such lease shall be for a period not to exceed one year. The lease of the equipment shall be negotiated at the beginning of the contract year. All said equipment and vehicles transferred to CONTRACTOR for use shall be in good working order. CONTRACTOR will inspect the equipment, vehicles, and maintenance records. Under any lease, CONTRACTOR will assume maintenance responsibility for equipment and vehicles so leased and hereby assumes all liability in connection with the operation of any such equipment and vehicles.

- P. CONTRACTOR assumes responsibility for wastewater effluent discharge as described herein, including regulatory agency fine liability, if such, fine liability is the result of the negligence, error or omission of the CONTRACTOR. CONTRACTOR reserves the right to contest any fines in administrative proceeding brought by the agency and/or in Court proceedings instituted by such agency prior to payment of fine.
- Q. CONTRACTOR shall meet at least once a month with the Public Works Director or designee at a regularly scheduled meeting. The purpose of the meeting will be to discuss the issues relative to the operation and maintenance of the treatment facility and collection system.
- R. CONTRACTOR shall submit and obtain City's prior approval of any modifications or major maintenance affecting the appearance of the Wastewater Treatment Plant. The CONTRACTOR recognizes the concern of the City about the appearance of the grounds, buildings, and structures; and agrees to maintain the cleanliness and appearance of the plant and lift station sites in a professional manner.
- S. CONTRACTOR shall operate the Wastewater Treatment Plant in a manner to prevent and/or minimize the generation of odors through an on-going odor control program. In connection with its odor control effort, CONTRACTOR shall deal in

a professional manner with the community groups and individuals concerned with odors or any other facts of systems operation.

- T. CONTRACTOR shall utilize local purchasing and banking; and hire staff from the local area to whatever extent is practical and legal.

V. COMPENSATION

A. BASIC COMPENSATION

OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of \$41,500.00 per month with additional adjustments as specified hereinafter.

Compensation shall be adjusted annually, on July 1st of each year commencing on July 1, 2004, during the term of this Agreement to reflect annual changes in the U.S. Department of Labor, Bureau of Labor Statistics, Consumer Price Index Los Angeles-Long Beach Area, or any successor index, as set forth for the month of March prior to date of adjustment.

In the event the unit cost of any of the utilities or chemicals which CONTRACTOR is required to provide under this agreement experiences a year to year change in price of more than 10.0% as measured from the date of the proposed purchase, an adjustment in compensation corresponding to the change in cost shall be made by the City. CONTRACTOR shall notify City in writing of any increase or decrease in cost prior to submitting an invoice containing a direct or indirect request for reimbursement of any cost affected by this paragraph.

City shall thereafter have thirty (30) days within which to independently verify such change in costs and notify CONTRACTOR of its findings. If the City agrees with the adjustment, monthly invoices shall thereafter reflect any such adjustments. CONTRACTOR shall not be entitled to receive any additional compensation in addition to any adjustment in compensation made under this

section to reflect the actual change in costs net of the change in the consumer price index referenced above.

If the City does not agree with the adjustment, the City shall notify the CONTRACTOR in writing of the basis for its disagreement. CONTRACTOR may thereafter meet and confer with the City Manager regarding the adjustment. The determination of the City Manager or his designee shall be the final response of the City.

B. ADJUSTED COMPENSATION

In the event of a change in scope of service or type of service, which results in a change in the cost to CONTRACTOR of providing the services described in the SCOPE OF SERVICES, CONTRACTOR shall be paid an adjusted compensation, in the form of an addition or subtraction from the basic compensation described above. That adjusted compensation may be a mutually agreeable lump sum payment or deduction or other arrangement as agreed upon by the parties and made a written amendment to this agreement.

If a lump sum payment or deduction is not mutually agreeable, a cost monitoring period shall be established by mutual agreement and used to assess actual costs on a time-and-materials expended basis.

If the adjustment results in additional compensation to the CONTRACTOR, such additional compensation shall not be in excess of CONTRACTOR'S direct cost plus direct overhead and profit calculated at 15.0% of the direct cost. CONTRACTOR shall be required to produce documentation in support of all or any component of such adjustment for inspection by the City before payment by City of such adjustment.

C. PAYMENT

CONTRACTOR shall submit monthly invoices for Basic Compensation and Adjusted Compensation on or before the 15th day of the month following that in

which the services were rendered. The OWNER shall thereafter have thirty (30) days within which to make payment to CONTRACTOR. Invoices left overdue and unpaid shall bear interest at the rate of 1 ½ per cent per month for each full month that such invoice remains outstanding and unpaid. However, such period shall not commence to run as to any amount in dispute if before the expiration of thirty (30) days following receipt of the invoice, the OWNER notifies CONTRACTOR in writing of a disagreement with the amount of such invoice. OWNER shall make timely payment to CONTRACTOR of any amounts not in dispute. OWNER shall thereafter have thirty (30) days unless otherwise extended by agreement of the parties, within which to notify CONTRACTOR of its determination as to the amounts in dispute. The CONTRACTOR may appeal any adverse determination made hereunder to the City Council, if such appeal is filed with the City Clerk within ten (10) days following date of notification from the City Manager or his designee of OWNER's final determination of the compensation dispute. Such appeal shall not constitute a public hearing. CONTRACTOR shall be heard on its position and a representative of the OWNER shall be heard as to the OWNER's position. The City Council shall thereafter make a determination, which shall be final.

VI. CHANGE IN SCOPE OF SERVICES OR SERVICE TYPE

A. GENERAL

Any change in scope of the Wastewater Treatment Plant operation, wastewater treatment and solids handling methods or amounts, WDR and NPDES requirements, reporting requirements, or personnel qualifications required by OWNER or by a governmental agency having jurisdiction to order such changes shall be a change in services.

If OWNER requests that CONTRACTOR provide expert testimony on any matter relating to services provided under this Agreement, CONTRACTOR shall provide said services. A request to appear by subpoena received from a party opposing the OWNER in an administrative proceeding or litigation shall not

constitute a request hereunder by the OWNER to CONTRACTOR to appear as an expert witness. Compensation for the requests from the OWNER for such services shall be paid as adjusted compensation in accordance with Section V (B).

B. EMERGENCY CONDITIONS

An "emergency condition" is, for purposes of this section, defined as a sudden and unexpected event, beyond the control of the CONTRACTOR, which if not immediately corrected, will result in the discharge of effluent from the Wastewater Treatment Plant, which effluent is in such condition as to pose an immediate threat to the health and safety of persons coming in contact with the effluent or to otherwise expose OWNER to significant penalties by agencies charged with monitoring such effluent discharges. An emergency condition shall constitute a change in scope of service. In the event of an emergency condition, CONTRACTOR shall make every effort to contact the OWNER through its City Manager, Public Works Director or Designee, and its Mayor or anyone having sufficient authority during times of disaster, to authorize needed emergency expenditures. Should the OWNER not be available to authorize needed emergency expenditure, CONTRACTOR shall have the right to proceed without OWNER's prior authorization to make the level of expenditure needed to return the Wastewater Treatment Plant to operation at acceptable levels of effluent discharge. CONTRACTOR shall provide the OWNER a written report detailing these actions within 24 hours of such occurrence. OWNER shall be liable for the cost of all such emergency measures provided that such situation was not due to the fault or negligence of CONTRACTOR. The resulting compensation shall be determined in accordance with Section V (B).

- C. In the event there is a ten percent increase or decrease in influent total flow, total BOD₅, total suspended solids, or ammonia nitrogen at the Wastewater Treatment Plant, in any six-month period, either party shall have the right hereunder to an adjustment in compensation. The party desiring the adjustment shall give thirty (30) days prior written notice of the desire to negotiate such adjustment and the basis therefore. The resulting change in compensation shall be based on the actual

increase/decrease in cost to handle the said increase or decrease in total flow or other changes in quality of influent stated above.

If a lump sum payment or deduction is not mutually agreeable, a cost monitoring period shall be established by mutual agreement and used to assess actual costs on a time-and-materials expended basis. In case, within thirty (30) days of the request, the matter cannot be resolved to the satisfaction of the parties, the issue may be submitted to the City Council for determination in the manner set forth in Section V (C) above.

D. OPTIONAL SERVICES

Upon mutual agreement, OWNER and CONTRACTOR may agree to the modification of the scope of services to include such public works functions as determined by OWNER. OWNER and CONTRACTOR shall negotiate the scope and cost of such modified services and shall include same as an amendment to this agreement.

E. AUTHORIZING CHANGES IN SERVICES

All changes must be authorized in accordance with Section VI with adjusted compensation determined in accordance with Section V.

VII. HOLD HARMLESS AGREEMENT

- A. CONTRACTOR agrees that it shall protect, defend with counsel approved by OWNER, indemnify and hold harmless OWNER, its officers, employees, and agents from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs and expenses (including reasonable attorney's fees) or judgments arising out of or resulting in any way from CONTRACTOR's negligent acts, errors, or omissions in performance of services under this agreement, unless such claim is due to the active negligence or willful acts of the City, its officers, employees, agents or contractors. Subject to the scope of this indemnification and upon demand of the OWNER, made by and through the City

Attorney, the CONTRACTOR shall appear in and defend the OWNER and its officers, employees and agents in any claims or actions, whether judicial, administrative or otherwise arising out of the exercise of this agreement.

B. Indemnification of Grantee

The City shall indemnify, defend and hold the CONTRACTOR harmless from and against any and all liabilities, losses, damages, claims, actions, causes of action, costs and expenses (including reasonable attorneys' fees) arising from or in any manner related to the sole negligence or willful acts of the OWNER its officers, employees, agents or contractors.

VIII. INSURANCE/BONDING

A. WORKER'S COMPENSATION INSURANCE

CONTRACTOR shall obtain and maintain in full force and effect throughout the entire term of this Agreement full workers compensation insurance in accordance with the provisions and requirements of the Labor Code of the State of California. Endorsements that implement the required coverage shall be filed and maintained with the City Clerk throughout the term of this Agreement. The policy providing coverage shall be amended to provide that the insurance shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) day's prior written notice by certified mail return receipt requested has been given to OWNER. The policy shall also be amended to waive all rights of subrogation against the OWNER, its elected or appointed officials, employees, agents or Grantees for losses which arise from work performed by the named insured for the OWNER.

CONTRACTOR shall require its subcontractors similarly to provide Worker's Compensation insurance for all of the latter's employees. In case any class of employees engaged in work under this Agreement at the Wastewater Treatment Plant is not protected under any Worker's Compensation Law,

CONTRACTOR shall provide, and shall cause each subcontractor to provide, adequate insurance for the protection of employees not otherwise protected.

B. LIABILITY COVERAGE

CONTRACTOR shall procure and maintain for the duration of this contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the CONTRACTOR or its agents, representatives, employees or subcontractors.

1. Minimum Scope of Insurance

- a) Commercial General Liability coverage on an occurrence basis, including contractual liability.
- b) Automobile Liability coverage for any auto.
- c) Worker's Compensation coverage as required by the State of California and Employer's Legal Liability, including a waiver of subrogation against the City of Banning.
- d) Professional Liability coverage on either a claims made or occurrence basis.
- e) Umbrella Liability, on either a claims made or occurrence basis.

2. Minimum Limits of Insurance

- a) General Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage and \$1,000,000 per occurrence personal injury. If the CGL or other form with a general aggregate limit is used, either the general aggregate limit shall apply separately to this location or the general aggregate limit shall be twice the required occurrence limits.
- b) Automobile Liability: \$1,000,000 per occurrence combined single limit for bodily injury and property damage.
- c) Employer's Liability: \$1,000,000 per accident for bodily injury or disease.

- d) Professional Liability: \$2,000,000 per occurrence.
- e) Umbrella Liability: \$5,000,000.

3. Deductibles and Self-Insured Retention's

Any deductibles of self-insured retentions must be declared to and approved by the City. At the option of the City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respect to the City, its officers, officials, employees, and volunteers; or the CONTRACTOR shall provide a financial guarantee satisfactory to the City guaranteeing payment of losses and related investigations, claim administration, and defense expense.

CONTRACTOR has declared that he shall maintain retentions and deductibles of up to \$250,000.00, which is acceptable to the City on the basis of the CONTRACTOR's Letter of Credit/Insurance Guarantee and posting of Faithful Performance Bond.

4. Other Insurance Provisions

- a) The City, its officers, officials, employees, and volunteers shall be additional insured with respect to either liability arising out of automobiles owned, leased, hired or borrowed by or on behalf of the CONTRACTOR or liability arising out of work or operation performed by or on behalf of the CONTRACTOR, including materials, parts or equipment furnished in connection with such work or operations, excepting professional liability coverage, Worker's Compensation, and Employer's Liability.
- b) For any claims arising out of the CONTRACTOR's performance pursuant to this contract, the CONTRACTOR's insurance coverage shall be primary insurance as respects to the City, its officers, officials, employees, and volunteers. Any insurance or

self-insurance maintained by the City, its officers, officials, employees, or volunteers shall be in excess of the CONTRACTOR's insurance and shall not contribute with it.

- c) Each insurance policy required by this clause shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice to the City, with the exception of Notice of Cancellation for Non-Payment of premium, which shall be ten (10) days.

5. Acceptability of Insurers

Insurance is to be placed with insurers with a current A.M. Best's rating of not less than A:VII.

6. Verification of Coverage

CONTRACTOR shall furnish the City with original certificates and amendatory endorsements effecting coverage required by this clause. All certificates and endorsements are to be received and approved by the City before work commences. The City reserves the right to require completed copies of all required insurance policies, including endorsements affecting the coverage required by this Agreement at any time.

C. PROPERTY INSURANCE

OWNER shall maintain property damage insurance on all OWNER-owned property contemplated by this Agreement. Any property not properly insured shall be the financial responsibility of the OWNER.

D. PERFORMANCE BOND

CONTRACTOR shall provide a performance bond or letter of credit before commencement of the work hereunder. The bond/letter of credit shall guarantee the faithful performance by the contractor of all the work required under the

contract for the first year of the contract term. Annually thereafter the contractor shall provide either a renewal of the existing bond/letter of credit or a new bond/letter of credit. Said performance bond/letter of credit shall be in a form satisfactory to the City Attorney of OWNER.

IX. TERMINATION

- A. Any other provision contained in this Agreement to the contrary notwithstanding, this Agreement may be terminated by either party, at any time and without cause, upon one hundred twenty (120) days prior written notice to the other party.
- B. If this Agreement is terminated either by CONTRACTOR or OWNER, CONTRACTOR shall furnish the services necessary to continue normal operations for a period of sixty (60) days after the termination date. This sixty (60) day period will commence only at the OWNER's written request. Such period shall be for the purpose of continued supervision and of assisting in the placement and training of Wastewater Treatment Plant personnel to be furnished by OWNER or other persons. In such event, OWNER shall pay CONTRACTOR at then existing rates of compensation during such sixty (60) day period.
- C. Upon termination by either OWNER OR CONTRACTOR, the OWNER may employ, at OWNER's sole discretion, as OWNER's employees, all or any personnel then employed by CONTRACTOR for OWNER's operation of the Wastewater Treatment Plant.
- D. This Agreement may be terminated upon thirty (30) days prior written notice by the non-breaching party, for cause, based upon a proven breach of contract by CONTRACTOR or by the OWNER. Prior to termination for cause, the non-breaching party shall give written notice of the breach. The party allegedly in breach shall thereafter have forty five (45) days within which to correct such breach. Upon failure to either correct the breach or commence upon a substantial course of compliance within the period or such breach, the non-breaching party may provide the thirty (30) days notice described herein above.

X. AMENDMENT

This document expresses the entire Agreement between OWNER and CONTRACTOR and supersedes any previous or contemporaneous communications, representations or agreements. This Agreement may be amended or modified only by written agreement signed by both parties, and failure on the part of either party to enforce any provision of this Agreement shall not be construed as a waiver of the right to compel enforcement of such provision or provisions.

XI WORK STOPPAGE

In the event concerted activities by labor groups (e.g., picketing) results in CONTRACTOR's employees not entering and working at the Wastewater Treatment Plant, the OWNER and CONTRACTOR shall seek appropriate administrative or court orders at CONTRACTOR's expense, to return to normal operations. During such a period, CONTRACTOR shall operate the Wastewater Treatment Plant on a best effort basis until labor relations are normalized. However, if it appears to OWNER that operations will be such as to create a significant danger of the Wastewater Treatment Plant operating below safe levels, the OWNER may take such action as it shall deem appropriate to insure continued safe operation of the Wastewater Treatment Plant. The OWNER may thereafter make an adjustment in CONTRACTOR's compensation to recover any additional costs to OWNER over and above those costs, which OWNER would have been required to pay under this agreement.

XII RELATIONSHIP

It is understood that the relationship of CONTRACTOR to OWNER is that of an independent contractor and this agreement does not create the relationship of partner, joint venturer or any other joint business entity.

XIII. FORCE MAJEURE

CONTRACTOR shall be excused from strict performance hereunder, to the extent that such performance is impeded or prevented by occurrence of force majeure, which shall

be deemed to include, without limitation, act of God, acts of the Government, in its sovereign capacity, fire, flood, earthquake, epidemic, war, and any other similar cause beyond the control of CONTRACTOR.

XIV. ASSIGNMENT

CONTRACTOR binds itself and its successors and assigns to OWNER, in respect to all provisions of this Agreement. Except for the foregoing, neither OWNER nor CONTRACTOR shall assign, subcontract or transfer their interests in this Agreement without the prior written consent of the other.

XV. ENTIRE AGREEMENT

This instrument contains the entire agreement between the parties relating to the rights herein granted and the obligations herein assumed. Any oral representations or modifications concerning this instrument shall be of no force or effect excepting a subsequent modification in writing, signed by the party to be charged.

XVI. PARTIAL INVALIDITY

If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

XVII. ATTORNEY'S FEES

If any legal action is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

XVIII. NOTICES

All notices shall be in writing and delivered in person or transmitted by Certified Mail, return receipt, postage prepaid.

Notices required to be given to OWNER shall be addressed to the designated representative identified below:

Paul Toor, Assistant City Manager/Public Works Director
 City of Banning
 P.O. Box 998
 99 E. Ramsey Street
 Banning, CA 92220
 Phone: (909) 922-3130

Notices required to be given to CONTRACTOR shall be addressed to the designated representative identified below:

Benoit Clocheret, General Manager
 United Water Services, Inc.
 629 Via del Monte
 Palos Verdes Estates, CA 90274
 Phone: (310) 874-2549
 Fax: (310) 426-6154

or such other designated representatives and addresses as may be written noticed by either party to the other, and acknowledged by the other.

XIX. INTERPRETATION

As used herein any gender includes each other gender; the singular includes the plural, and vice versa. Headings are for purposes of indexing only and do not set forth any special intent of the parties.

XX. PERFORMANCE AUDIT


The OWNER shall have the right to conduct a performance audit and evaluation of CONTRACTOR, at such times as the OWNER deems necessary. CONTRACTOR agrees to fully cooperate with any such audit. CONTRACTOR agrees to give OWNER access to Wastewater Treatment Plant at all reasonable times.

XXI. RIGHT OF OWNERSHIP


- A. All facilities and equipment within the Wastewater Treatment Plant and discussed appurtenances shall remain the property of the OWNER, and such property cannot be disposed of by CONTRACTOR without the express prior approval of the City Council of OWNER.
- B. Any capital equipment provided by CONTRACTOR, at his sole expense, shall remain the property of CONTRACTOR; however, the OWNER shall have the option to purchase the capital equipment at its depreciated value at the termination of the Agreement.

IN WITNESS WHEREOF, two identical counterparts of this Agreement consisting of twenty six (26) pages, each of which counterparts shall, for all purposes, be deemed an original of said Agreement, have been duly executed by the parties herein above named on the day and year first herein above written.

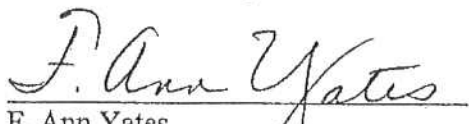
CITY OF BANNING


 Arthur L. Welch,
 Mayor

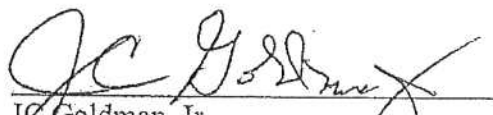
ATTEST:


 Marie A. Calderon
 City Clerk


APPROVAL AS TO
 INSURANCE REQUIREMENTS:


 F. Ann Yates
 Risk Management Division

UNITED WATER SERVICES, INC.


 JC Goldman, Jr.,
 West Region President

APPROVED AS TO FORM
 AND LEGAL CONTENT:


 John F. Wilson
 City Attorney

STATE OF NEW JERSEY)
) ss.:
COUNTY OF BERGEN)

On this 18th day of September, 2003, before me the subscriber personally appeared JC GOLDMAN, JR., who being by me duly sworn, did depose and say: that he is the West Region President of United Water Services Inc., the Corporation described in and which executed the foregoing instrument; and that he signed his name thereto as his voluntary act and deed and as and for the voluntary act and deed of said Corporation

Elaine J. O'Brien

Notary Public of the State of New Jersey

ELAINE J. O'BRIEN
A Notary Public of New Jersey
My Commission Expires Aug. 31, 2007

SOCIETE GENERALE

560 Lexington Avenue, 4th Floor
New York, New York 10022

Irrevocable Letter of Credit Number 53961

Issuance Date: October 20, 2003

Effective Date: October 1, 2003

Beneficiary: City of Banning

P.O. Box 998

99 E. Ramsey Street

Banning, CA 92220

For USD 498,000.00

(Four hundred and Ninety-Eight thousand 00/100 U.S. Dollars)

Initial Expiration Date: October 1, 2004

Place of Expiration: Counters of Issuing Bank

At the request and for the account of United Water Services Inc., we hereby establish our Irrevocable Letter of Credit No. 53961 (this "Letter of Credit") in your favor for one or more drawings in the aggregate amount of up to Four hundred and Ninety-Eight thousand 00/100 U.S. Dollars (USD 498,000.00). Funds under this Letter of Credit will be made available to you against presentation to us of a certificate of completion in the form of Annex A hereto (each such certificate, a "Certificate") in an amount equal to the amount demanded in such Certificate. Partial drawings are permitted hereunder.

This Letter of Credit expires on the Initial Expiration Date specified above or on such later date to which the expiration date of this Letter of Credit may be extended pursuant to the immediately following sentence (the "Expiration Date"). The Expiration Date shall be automatically extended for successive periods of one year on each anniversary of the Initial Expiration Date unless we give you written notice to the contrary (a "Termination Notice") no fewer than sixty (60) days prior to the then current Expiration Date; provided, that in no event will the Expiration Date extend beyond October 1, 2014.

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (1993 Revision), International Chamber of Commerce Publication 500.

We hereby agree with you that each draft drawn in compliance with the terms of this Letter of Credit will be duly honored by payment to you in immediately available funds upon presentation and delivery of a Certificate to Societe Generale on or before the Termination Date.

Sincerely,
Societe Generale New York Branch

Authorized Signatures

SOCIETE GENERALE

ANNEX A

Form of Certificate

On this 10th day of October, 2003, the undersigned, THE CITY OF BANNING (the Beneficiary) hereby makes reference to that certain Irrevocable Letter of Credit No. 53961 issued by Societe Generale (the "Issuer") in the favor of the Beneficiary and dated October 20, 2003 (the "Letter of Credit"). Unless otherwise defined herein, capitalized terms used herein shall have the meanings set forth in the Letter of Credit.

This Certificate is being issued to you in connection with a drawing by the Beneficiary under the Letter of Credit.

The Beneficiary hereby demands to draw an amount under the Letter of Credit equal to [Specify Amount in United States Dollars in Words and Figures] (the "Demanded Amount").

The Beneficiary hereby certifies to you that on and as of the date hereof, [Check Either of the Following]

United Water Services Inc. has failed to comply with existing obligations owed to the Beneficiary pursuant to an Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant dated October 1, 2003; and the Demanded Amount does not exceed the amounts due and owing to the Beneficiary.

The Issuer has given a Termination Notice.

The Beneficiary further certifies to you that the Demanded Amount does not exceed the remaining undrawn amount of the Letter of Credit.

Duly executed by the undersigned as of the date first set forth above.

THE CITY OF BANNING

By _____

Name: _____

Title: _____

RESOLUTION NO. 2003-90

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING
APPROVING THE AGREEMENT FOR CONTRACT OPERATION AND
MAINTENANCE OF CITY OF BANNING WASTEWATER TREATMENT PLANT**

WHEREAS, on or about September 1, 1993, the City of Banning (hereinafter "Owner" or "City"; and JMM Operational Services, Inc., a California Corporation, enter into an Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant (hereinafter "Contractor"); and

WHEREAS, United Water Services, Inc. (hereinafter "Contractor") is the successor in interest under the Agreement to JMM Operational Services, Inc.; and

WHEREAS, on August 25, 1998, the City renewed the Agreement with the Contractor subject to amendments of the Agreement; and

WHEREAS, Section III (B) of the Agreement provides that "...this Agreement shall be for a period of five (5) years unless one of the parties first gives written notice to the other at least one hundred and twenty (120) days prior to the termination date of the intent to renew the Agreement."; and

WHEREAS, in February 2003, Contractor submitted a request to renew the First Renewal Agreement for Contract Operation and Maintenance of City of Banning Wastewater Treatment Plant and to increase the Basic Compensation with reasons to support the additional amount; and


WHEREAS, it is the intent of the City to renew the present Agreements with a new integrated and updated single Agreement in concurrence with the Contractor; and

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

Section I. The Agreement for Contract Operation and Maintenance of City of Banning Wastewater Treatment Plant is hereby awarded to United Water Services, Inc.

Section II. That the Mayor is authorized to execute the contract agreement with United Water Services, Inc. as enclosed herein as Attachment "A". This authorization will be rescinded if the contract agreement is not executed by the parties within Thirty (30) days of the date of this resolution.

PASSED, APPROVED, AND ADOPTED this 23rd day of September, 2003.



Arthur L. Welch, Mayor
City of Banning, California

APPROVED AS TO FORM
AND LEGAL CONTENT:



John F. Wilson, City Attorney

ATTEST:



Marie A. Calderon, City Clerk

CERTIFICATION


I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2003-90 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 23rd day of September, 2003 by the following vote, to wit:

AYES: Councilmembers Jenkins, Machisic, Palmer, Salas, Mayor Welch

NOES: None

ABSTAIN: None

ABSENT: None



Marie A. Calderon, City Clerk
City of Banning, California

Resolution No. 2003-90

Attachment "A"

AMENDMENT TO AGREEMENT FOR CONTRACTUAL SERVICES

THIS FIRST AMENDMENT TO THE MAINTENANCE AND OPERATIONS AGREEMENT ("Amendment") by and between the **CITY OF BANNING** ("City") and **UNITED WATER ENVIRONMENTAL SERVICES, INC.**, a Delaware corporation ("Contractor") is effective as of the 1st day of October, 2013.

RECITALS

A. City and Contractor entered into that certain Agreement for Contractual Services dated October, 1, 2003 ("Agreement"), whereby Contractor agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning.

B. City and Contractor now desire to amend the Agreement to extend the scope of services an additional five (5) years and thereby amending the termination date of the Agreement of the original Contract to September 30, 2018. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

1. **Contract Changes.** The Agreement is amended as provided herein.

(a) **Termination Date Extension:** In the Original Agreement, Section III-A TERM is hereby amended by deleting the sentence in its entirety and replacing it with: "Except as otherwise provided herein, services under this Agreement shall commence on October 1, 2003, and terminate on September 30, 2018."

These exhibits do not amend the existing exhibits but pertain to the additional services performed hereunder.

2. **Continuing Effect of Agreement.** Except as amended by this Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by this Amendment to the Contractual Services Agreement.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** City and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid and binding obligation.

Contractor represents and warrants to City that, as of the date of this Amendment, City is not in default of any material term of the Agreement and that there have been no events that,

with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

City represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been not events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment.

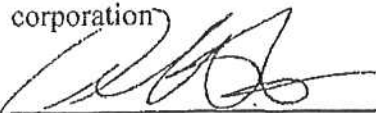
5. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 10th day of September, 2013.

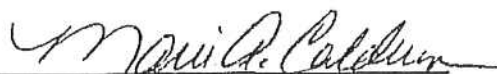
CITY:

CITY OF BANNING, a municipal corporation



City Manager


ATTEST:



City Clerk

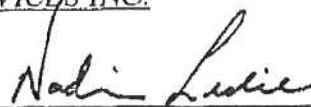
APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP


David Aleshire, City Attorney

CONTRACTOR:

UNITED WATER ENVIRONMENTAL SERVICES INC.

By: 

Name:

Title:

By: 

Name: CARLA E Hjelm

Title: Secretary

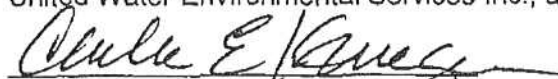
Address: 200 OLD HOOK RD
Harrington Park NJ
07640

Two signatures are required if a corporation

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

State of New Jersey
County of Bergen

On this 15th day of November, 2013, before me, the undersigned notary,
Personally appeared Nadine Leslie, who is personally known to me, Carla Krueger, Notary and
is to be the person whose name is signed on the preceding or attached document, and
acknowledged to me that (he)(she) signed it voluntarily for its stated purpose as President for
United Water Environmental Services Inc., a corporation.



(Official signature and seal of notary)

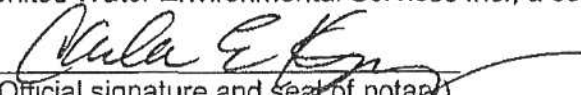
SEAL

STAMP



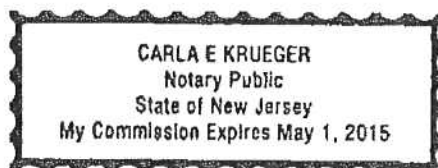
State of New Jersey
County of Bergen

On this 15th day of November, 2013, before me, the undersigned notary,
Personally appeared Carla E Hjelm, who is personally known to me, Carla Krueger, Notary and
is to be the person whose name is signed on the preceding or attached document, and
acknowledged to me that (he)(she) signed it voluntarily for its stated purpose as Secretary, for
United Water Environmental Services Inc., a corporation.


(Official signature and seal of notary)

SEAL

STAMP



AMENDMENT NO. 2 TO
AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE
OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT

THIS AMENDMENT NO. 2 TO THE AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT ("Second Amendment") by and between the CITY OF BANNING, CALIFORNIA ("CITY" or "OWNER") and SUEZ WATER ENVIRONMENTAL SERVICES, INC., a Delaware Corporation ("Contractor") with an address of 461 From Road Suite 400 Paramus, New Jersey 07652 is effective as of October 1, 2018 (together, the "Parties").

RECITALS

A. CITY and United Water Services, Inc., a California corporation ("United Water") entered into that certain Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant dated October 1, 2003 ("Agreement") whereby United Water agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning, California.

B. United Water was merged into United Water Environmental Services, Inc., a Delaware corporation ("United Environmental"), effective December 31, 2009.

C. United Environmental changed its name to Suez Water Environmental Services, Inc., a Delaware corporation, effective November 9, 2015.

D. CITY and Contractor entered into the First Amendment to the Agreement dated October 1, 2013 to extend the scope of services an additional five (5) years thereby amending the termination date of the Agreement to September 30, 2018. The original Scope of Work and tasks remained in full force and effect in accordance with its terms.

E. CITY and Contractor now desire to amend the Agreement to extend the term of the Agreement, set new compensation consideration for the extension term, and specify that Contractor must comply with certain California Labor Code requirements, including the payment of prevailing wages on maintenance activities. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

1. **Name of Agreement.** The name of this Agreement is amended to "Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY OF BANNING and Suez Water Environmental Services, Inc., a Delaware corporation". Hereafter, all references in the Agreement to "Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY OF BANNING and United Water Services, Inc., a California corporation", or "Maintenance and Operations Agreement by and between the City of Banning and United Water Environmental Services, Inc., a Delaware corporation", or "Agreement for Contractual Services" shall be understood to refer to this Agreement, as amended.

2. Extension Term: Section III-A TERM of the Agreement is hereby amended to extend the Agreement term for one (1) year commencing on October 1, 2018 and effective through September 30, 2019 ("First Extension Term"). Upon agreement by the Parties, the Agreement may be extended by one additional year, commencing on October 1, 2019 and effective through September 30, 2020 ("Second Extension Term"). Subsequent extensions of the Term may be made upon mutual agreement of the Parties.

3. Renewal: Section III-B RENEWAL of the Agreement is amended to revise the last sentence of that Subsection B and to add an additional sentence to the end of that Subsection B to read as follows:

"Upon the expiration date set forth in the Agreement, the Agreement shall not terminate but shall continue in effect for one hundred eighty (180) days. If the parties have not reached an agreement on new terms and conditions within the one hundred eighty (180) day period, or any agreed upon extension thereof, then the parties shall have an additional one-hundred twenty (120) days to agree upon new terms and conditions. If new terms and conditions are not agreed upon in writing within the one-hundred twenty (120) day period, then the Agreement shall expire at the end of that 120 day period which equals three hundred (300) days following the date of expiration of the Agreement. In the event either party has terminated the Agreement pursuant to the provisions of Section IX (Termination), the 300-day period for expiration of the Agreement provided in this subsection shall not apply and the Agreement will terminate on the date specified in the notice provided in Subsection A or D of Section IX and pursuant to any extension thereof as provided in Subsection B of Section IX."

4. Compensation. The first paragraph of Article V, Section A, as to Basic Compensation is hereby amended to read as follows:

A. "BASIC COMPENSATION

Starting on October 1, 2018 and for every month during the First Extension Term (and Second Extension Term, if applicable) thereafter, OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of Sixty Two Thousand One Hundred Eighty Two Dollars (\$62,182.00) per month with additional adjustments as specified hereinafter."

5. Labor Code Compliance: New Section XXII is hereby added to the Agreement to read as follows:

"XXII. LABOR CODE REQUIREMENTS:

(a) This Agreement calls for services that, in whole or in part, constitute "public works" as defined in the California Labor Code. Therefore as to those services that are "public works," CONTRACTOR shall comply in all respects with all applicable provisions of Section 1720, et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements including those set forth in this Section 4. This Section pertains to maintenance activities performed under this Agreement, which are subject to the payment of prevailing rates of wages, pursuant to Labor Code section 1771. Prevailing wages shall be paid to CONTRACTOR's workers when performing those maintenance tasks set forth in Exhibit

"A" attached hereto and incorporated by reference herein. In the event of any change in the list of maintenance tasks set forth in Exhibit A hereto, the Parties' representatives may agree to the amendment of Exhibit A to reflect such change. In such event, Exhibit A hereto shall be replaced with the newly amended Exhibit A and the same shall be deemed incorporated herein by reference without further action of the Parties.

(b) **Prevailing Wages Generally**

(i) CONTRACTOR and its subcontractors will not pay less than the prevailing rates of wages for all maintenance activities performed under this Agreement and as listed in Exhibit A hereto. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the OWNER has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

(ii) CONTRACTOR shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. CONTRACTOR shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, CONTRACTOR shall forfeit to the OWNER, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

(c) In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].

(d) CONTRACTOR agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The CONTRACTOR shall, as a penalty to the OWNER, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the CONTRACTOR or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

(e) Certified Payrolls. Pursuant to Labor Code section 1776, CONTRACTOR shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by CONTRACTOR performing services covered by this Agreement. The CONTRACTOR is responsible for compliance with section 1776 by itself and all of its subcontractors. CONTRACTOR and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. Certified payroll

information for this project shall be submitted electronically through LCPtracker. No hard copy payrolls will be accepted. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(f) Apprentices. CONTRACTOR shall comply with Labor Code section 1777.5 concerning the employment of apprentices to the extent any workers are employed in performing services pursuant to this Agreement in any trade or craft subject to the apprentice requirement. Only bona-fide apprentices actively enrolled in an approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are employed on the project in excess of the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.

(g) Contractor shall defend, indemnify (including payment of actual attorneys' fees and costs), and hold the City, its elected officials, officers, and employees harmless with respect to any and all claims and liabilities arising from or related to any failure by Contractor to comply with any of the Labor Code requirements set forth in this Section 5 to the maximum extent permitted by law.

(h) In the event any task identified in Exhibit A is determined by the Director of Industrial Relations or any final court decision to not be subject to prevailing wages, then within thirty (30) days' of OWNER's written request, CONTRACTOR shall consent in writing to a reduction in the Contract price referenced in Section 3 of this Second Amendment that is equal to the pro-rata, net reduction in costs incurred by CONTRACTOR in providing the services required by the Agreement, resulting from such prevailing wage determination. If consent is not provided as set forth above, CONTRACTOR shall provide OWNER with a written explanation concerning its denial of consent. OWNER may deem a denial of consent by CONTRACTOR as a default if the OWNER determines that good cause does not exist for the denial."

6. Continuing Effect of Agreement. Except as expressly amended by this Second Amendment, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended.

7. Effective Date of Amendment. This Second Amendment shall become effective concurrent with the expiration of the First Amendment to the Agreement provided this Second Amendment has been a fully executed by all parties.

8. Affirmation of Agreement; Warranty Re Absence of Defaults. CITY and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Contractor represents and warrants to CITY that, as of the date of this Second Amendment, CITY is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

CITY represents and warrants to Contractor that, as of the date of this Second Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.


9. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

10. **Authority.** The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

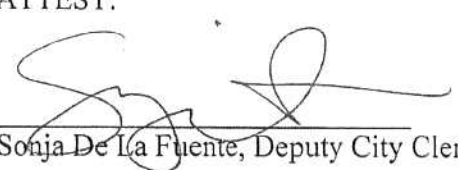
[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Second Amendment on the date and year first-above written.

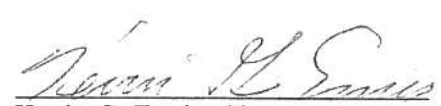
CITY/OWNER:
CITY OF BANNING


Rochelle Clayton, Interim City Manager

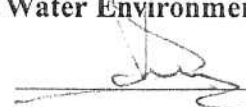
ATTEST:


Sonja De La Fuente, Deputy City Clerk


APPROVED AS TO FORM:
RICHARDS, WATSON & GERSHON, P.C.


Kevin G. Ennis, City Attorney

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: 
Name: Dominique Demessence
Title: President

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: 
Name: Jonathan Ponce
Title: Secretary

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

EXHIBIT "A"
MAINTENANCE TASKS

Type of work	Description of Task	Frequency	O&M Tech				OIT Vent
			Job	Tech III	Tech II	Tech I	
PM	Boiler Inspection and Safety Checks	Weekly	5 hr				
PM	Secondary Return Pump Packing/Lubrication	Weekly	25 hr (x-2)				
PM	Primary Effluent Pumps Packing Service	Monthly	1.0 hr (x-3)				
PM	Gas System Manometer - Zero Check	Monthly	25 hr (x-5)				
PM	Boiler Hot Water Pump Service/Lube	Quarterly	1.0 hr (x-2)				
PM	Air Blower Service	Quarterly	1.5 hr (x-2)				
PM	Sump Pump Checks and Pit Cleaning	Quarterly	1.0 hr (x-3)				
PM	Grit Tank Center Drive Checks/Inspection	Quarterly	1.0 hr				
PM	Headworks Gate Valve Lubrication	Quarterly	3.0 hr				
PM	Bar Screen Drive Lube Change	Annual	1.5 hr				
PM	Grit Classifier Cone Inspection	Bi-annual	1.5 hr (x-6)				
PM	Clarifier Center Drive Checks	Weekly	1.5 hr (x-5)				
PM	Clarifier Center Drive Lube Change	Annual	7.5 hr				
PM	Grit Pump Seal Water Line Service	Weekly	1.0 hr (x-2)				
PM	Grit Pump Ops Water Inspection Service	Quarterly	1.0 hr				
PM	Grit Conveyor Screw Inspection	Quarterly	7.5 hr (x-4)				
PM	Digester Mixing Pumps Seal Water Service	Quarterly	1.0 hr				
PM	Lab Exhaust Fan Service	Annual	1.0 hr				
PM	Equipment Motor Lubrication	Annual	1.0 hr (x-6)				
PM	Primary Effluent Pump Motor Lubrication	Quarterly	1.0 hr (x-3)				
PM	Sludge Bed Gate Valve Lubrication	Quarterly	1.0 hr				
PM	Trickling Filter Lubrication Change	Annual	2.0 hr (x-2)				
PM	Process Water Pump Motor Lube	Quarterly	5 hr				
PM	Case Loader Oil Change	Annual	1.5 hr				
PM	Flame Arrestor Service	Annual	7.5 hr (x-7)				
PM	Gas Flow Meter removal (for calibration)	Annual	1.0 hr (x-3)				
PM	Gas Flow Meter replace (after calibration)	Annual	1.0 hr (x-3)				
PM	Heat Exchanger Cleaning	Annual	3.0 hr (x-2)				
PM	Bar Screen Ops Service/Lube	Monthly	5 hr				
PM	Landscaping	Monthly	20 hr				
PM	Painting (as needed, 2 hr per mo max)	Monthly	2 hrs				
PM	Estimated Corrective Maint	Monthly	5 hrs				
CM	Assist John with PM/CM	Monthly					
			58.5 hrs/mo	16 hrs	16 hrs	16 hrs	
			58 hrs/mo	16 hr/mo	16 hr/mo	16 hr/mo	

		Monthly	Annual
Labels	Labeler Group 1	11.5	377.8
	Unidraging	26	240
	Painting	2	24
	Electrician/Plumber	5	60
Tools	Unidraging	40	480
	General laborer 1	16	192
	General laborer 2	16	192
Other	General laborer 1	16	192

Current wage rate covers PW (not included in cost analysis)

Current wage rate covers PW (not included in cost analysis)

~~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~~ New Jersey)
 County of ~~Riverside~~ Bergen)

On 9/27/2018, before me, CARLA E KRUEGER,
(insert name and title of the officer)

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

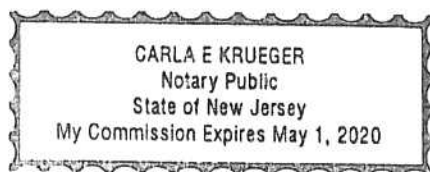
I certify under PENALTY OF PERJURY under the laws of the State of ~~California~~ New Jersey that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Carla E Krueger

(Seal)



~~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~~ New Jersey)
 County of ~~Riverside~~ Bergen)

On 9/27/2018, before me, CARLA E KRUEGER,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature

Carla E Krueger

(Seal)



ATTACHMENT 3

(Prevailing Wage Task List)

Banning Waste Water Treatment Plant and Lift Station Maintenance Task List

This is a list of maintenance tasks performed by Suez at the Banning Waste Water Treatment Plant and Lift Stations and is not a list of all operation, management or other tasks performed at or for the facility and the City's wastewater treatment operations. The total number of hours listed on this chart do not reflect the total number of hours performed by the staff of Suez at the Banning facility or in operations of the City's wastewater treatment system.

Type of work	Description of Task	Frequency	O&M Tech III John	O&M Tech Jose	O&M Tech II Ronnie	OIT Vacant	Monthly Hrs	Annual
PM	Boiler Inspection and Safety Checks	Weekly	.5 hr				2	24
PM	Secondary Return Pump Packing Lubrication	Weekly	.25 hr (x-3)				3	36
PM	Primary Effluent Pumps Packing Service	Monthly	1.0 hr (x-3)				3	36
PM	Gas System Manometer - Zero Check	Monthly	.25 hr (x-5)				1.25	15
PM	Boiler Hot Water Pump Service/Lube	Quarterly	1.0 hr (x-2)				0.5	6
PM	Air Blower Service	Quarterly	1.5 hr (x-2)				0.75	9
PM	Sump Pump Checks and Pit Cleaning	Quarterly	1.0 hr (x-3)				0.75	9
PM	Grit Tank Center Drive Checks/Inspection	Quarterly	1.0 hr				0.25	3
PM	Headworks Gate Valve Lubrication	Quarterly	1.0 hr				0.25	3
PM	Bar Screen Drive Lube Change	Annual	3.0 hr				0.25	3
PM	Grit Classifier Cone Inspection	Bi-annual	1.5 hr				0.25	3
PM	Clarifier Center Drive Checks	Weekly	.5 hr (x-5)				10	120
PM	Clarifier Center Drive Lube Change	Annual	1.5 hr (x-5)				0.625	7.5
PM	Grit Pump Seal Water line Service	Weekly	.75 hr				3	36
PM	Grit Pump Ops Inspection Service	Quarterly	1.0 hr (x-2)				0.5	6
PM	Grit Conveyor Screw Inspection	Quarterly	1.0 hr				0.25	3
PM	Digester Mixing Pumps Seal Water Service	Quarterly	.75 hr (x-4)				0.75	9
PM	Lab Exhaust Fan Service	Annual	1.0 hr				0.0833333333	1
PM	Equipment Motor Lubrication	Annual	1.0 hr (x-6)				0.5	6
PM	Primary Effluent Pump Motor Lubrication	Quarterly	1.0 hr (x-3)				0.75	9
PM	Sludge Bed Gate Valve Lubrication	Quarterly	1.0 hr				0.25	3
PM	Trickling Filter Lubrication Change	Annual	2.0 hr (x-2)				0.3333333333	4
PM	Process Water Pump Motor Lube	Quarterly	.5 hr				0.125	1.5
PM	Case Loader Oil Change	Annual	1.5 hr				0.4375	5.25
PM	Flame Arrestor Service	Annual	.75 hr (x-7)				0.25	3
PM	Gas Flow Meter removal (for calibration)	Annual	1.0 hr (x-3)				0.25	3
PM	Gas Flow Meter replace (after calibration)	Annual	1.0 hr (x-3)				0.5	6
PM	Heat Exchanger Cleaning	Annual	3.0 hr (x-2)				0.5	6
PM	Bar Screen Ops Service/Lube	Monthly	.5 hr				20	240
PM	Landscape	Monthly	20 Hr	40 hrs			2	24
PM	Painting (as needed, 2 hr per mo max)	Monthly	2 hrs				5	60
PM	Estimated Corrective Maint	Monthly	5 hrs					
CM	Assist John with PM/CM	Monthly		16 hrs	16 hrs	16 hrs		
Total			58.5 hrs/mo	56 hrs/mo	16 hr/mo	16 hrs/mo		

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

Current wage rate covers PW (not included in cost analysis)

Current wage rate covers PW (not included in cost analysis)

ATTACHMENT 4

(Third Amendment to Agreement)

AMENDMENT NO. 3 TO
AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE
OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT

THIS AMENDMENT NO. 3 TO THE AGREEMENT FOR CONTRACT OPERATION AND MAINTENANCE OF THE CITY OF BANNING WASTEWATER TREATMENT PLANT (“Third Amendment”) by and between the CITY OF BANNING, CALIFORNIA (“CITY” or “OWNER”) and SUEZ WATER ENVIRONMENTAL SERVICES, INC., a Delaware Corporation (“Contractor”) with an address of 461 From Road Suite 400 Paramus, New Jersey 07652 is effective as of October 1, 2019 (together, the “Parties”).

RECITALS

A. CITY and United Water Services, Inc., a California corporation (“United Water”) entered into that certain Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant dated October 1, 2003 (“Agreement”) whereby United Water agreed to provide professional services necessary for the operation and maintenance of the Wastewater Treatment Plant in the City of Banning, California.

B. United Water was merged into United Water Environmental Services, Inc., a Delaware corporation (“United Environmental”), effective December 31, 2009.

C. United Environmental changed its name to Suez Water Environmental Services, Inc., a Delaware corporation, effective November 9, 2015.

D. CITY and Contractor entered into the First Amendment to the Agreement dated October 1, 2013 to extend the scope of services an additional five (5) years thereby amending the termination date of the Agreement to September 30, 2018. The original Scope of Work and tasks remained in full force and effect in accordance with its terms.

E. CITY and Contractor entered into the Second Amendment to the Agreement dated October 1, 2018 to extend the scope of services an additional one (1) year thereby amending the termination date of the Agreement to September 30, 2019. The original Scope of Work and tasks remained in full force and effect in accordance with its terms.

F. CITY and Contractor now desire to amend the Agreement to extend the term of the Agreement, set new compensation consideration for the extension term, and specify that Contractor must comply with certain California Labor Code requirements, including the payment of prevailing wages on maintenance activities. The original Scope of Work and tasks shall remain in full force and effect in accordance with its terms.

TERMS

1. Name of Agreement. The name of this Agreement is amended to “Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY OF BANNING and Suez Water Environmental Services, Inc., a Delaware corporation”. Hereafter, all references in the Agreement to “Agreement for Contract Operation and Maintenance of the City of Banning Wastewater Treatment Plant by and between the CITY Banning-agreement-Suez-third amendment-rev 6-18-19-

OF BANNING and United Water Services, Inc., a California corporation”, or “Maintenance and Operations Agreement by and between the City of Banning and United Water Environmental Services, Inc., a Delaware corporation”, or “Agreement for Contractual Services” shall be understood to refer to this Agreement, as amended.

2. Extension Term: Section III-A TERM of the Agreement is hereby amended to extend the Agreement term for one (1) year commencing on October 1, 2019 and effective through September 30, 2020 (“Second Extension Term”). Subsequent extensions of the Term may be made upon mutual agreement of the Parties.

3. Renewal: Section III-B RENEWAL of the Agreement is amended to revise the last sentence of that Subsection B and to add an additional sentence to the end of that Subsection B to read as follows:

“Upon the expiration date set forth in the Agreement, the Agreement shall not terminate but shall continue in effect for one hundred eighty (180) days. If the parties have not reached an agreement on new terms and conditions within the one hundred eighty (180) day period, or any agreed upon extension thereof, then the parties shall have an additional one-hundred twenty (120) days to agree upon new terms and conditions. If new terms and conditions are not agreed upon in writing within the one-hundred twenty (120) day period, then the Agreement shall expire at the end of that 120 day period which equals three hundred (300) days following the date of expiration of the Agreement. In the event either party has terminated the Agreement pursuant to the provisions of Section IX (Termination), the 300-day period for expiration of the Agreement provided in this subsection shall not apply and the Agreement will terminate on the date specified in the notice provided in Subsection A or D of Section IX and pursuant to any extension thereof as provided in Subsection B of Section IX.”

4. Compensation. The first paragraph of Article V, Section A, as to Basic Compensation is hereby amended to read as follows:

A. “BASIC COMPENSATION

Starting on October 1, 2019 and for every month during the First Extension Term (and Second Extension Term, if applicable) thereafter, OWNER shall pay CONTRACTOR, as compensation for the services to be performed, the sum of Sixty Two Thousand One Hundred Eighty Two Dollars (\$63,861.00) per month with additional adjustments as specified hereinafter.”

5. Labor Code Compliance: New Section XXII is hereby added to the Agreement to read as follows:

“XXII. LABOR CODE REQUIREMENTS:

(a) This Agreement calls for services that, in whole or in part, constitute “public works” as defined in the California Labor Code. Therefore as to those services that are “public works,” Contractor shall comply in all respects with all applicable provisions of Section 1720, et seq. of the California Labor Code requiring the payment of prevailing wages, the training of apprentices, and compliance with other applicable requirements including those set forth in this Section 4. This Section pertains to maintenance activities performed

under this Agreement, which are subject to the payment of prevailing rates of wages, pursuant to Labor Code section 1771. Prevailing wages shall be paid to Contractor's workers when performing those maintenance tasks set forth in Exhibit "A" attached hereto and incorporated by reference herein. In the event of any change in the list of maintenance tasks set forth in Exhibit A hereto, the Parties' representatives may agree to the amendment of Exhibit A to reflect such change. In such event, Exhibit A hereto shall be replaced with the newly amended Exhibit A and the same shall be deemed incorporated herein by reference without further action of the Parties.

(b) **Prevailing Wages Generally**

(i) Contractor and its subcontractors will not pay less than the prevailing rates of wages for all maintenance activities performed under this Agreement and as listed in Exhibit A hereto. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the City has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with the City Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

(ii) Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to the City, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by him or by any subcontractor under him, in violation of the provisions of this Agreement.

(c) In accordance with Labor Code Sections 1725.5 and 1771.1, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any contract for public work, unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes only under Labor Code Section 1771.1(a)].

(d) Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to the City, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.

(e) Certified Payrolls. Pursuant to Labor Code section 1776, Contractor shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by Contractor performing services covered by this Agreement. The Contractor is responsible for compliance with section 1776

by itself and all of its subcontractors. Contractor and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. Certified payroll information for this project shall be submitted electronically through LCPtracker. No hard copy payrolls will be accepted. The project is subject to compliance monitoring and enforcement by the Department of Industrial Relations.

(f) Apprentices. Contractor shall comply with Labor Code section 1777.5 concerning the employment of apprentices to the extent any workers are employed in performing services pursuant to this Agreement in any trade or craft subject to the apprentice requirement. Only bona-fide apprentices actively enrolled in an approved program may be employed on the project as an apprentice and receive the applicable apprenticeship prevailing wage rates. Apprentices who are employed on the project in excess of the appropriate ratio shall be paid the full journeyman wages for the classification of work performed.

(g) Contractor shall defend, indemnify (including payment of actual attorneys' fees and costs), and hold the City, its elected officials, officers, and employees harmless with respect to any and all claims and liabilities arising from or related to any failure by Contractor to comply with any of the Labor Code requirements set forth in this Section 5 that the Parties have determined apply to the work/services performed by Contractor, as set forth in Exhibit A attached hereto, after the effective date and application of this Amendment. This provision and the Amendment itself does not apply or relate to any work/services performed by Contractor prior to the effective date of this Amendment.

(h) In the event any task identified in Exhibit A is determined by the Director of Industrial Relations or any final court decision to not be subject to prevailing wages, then within thirty (30) days' of City's written request, Contractor shall consent in writing to a reduction in the Contract price referenced in Section 3 of this Amendment No. 2 that is equal to the pro-rata, net reduction in costs incurred by Contractor in providing the services required by the Agreement, resulting from such prevailing wage determination. If consent is not provided as set forth above, Contractor shall provide City with a written explanation concerning its denial of consent. City may deem a denial of consent by Contractor as a default if the City determines that good cause does not exist for the denial."

5. Continuing Effect of Agreement. Except as expressly amended by this Agreement, all provisions of the Agreement shall remain unchanged and in full force and effect. From and after the date of this Second Amendment, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended.

6. Effective Date of Amendment. This Second Amendment shall become effective concurrent with the expiration of the First Amendment to the Agreement provided this Second Amendment has been a fully executed by all parties.

7. Affirmation of Agreement; Warranty Re Absence of Defaults. CITY and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Contractor represents and warrants to CITY that, as of the date of this Amendment No. 2, CITY is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

CITY represents and warrants to Contractor that, as of the date of this Second Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

8. Adequate Consideration. The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Second Amendment.

9. Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY/OWNER:
CITY OF BANNING

 Douglas Schulze, City Manager

ATTEST:

 Daryl Betancur, Deputy City Clerk

APPROVED AS TO FORM:
 RICHARDS, WATSON & GERSHON, P.C.

 Kevin G. Ennis, City Attorney

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: _____

Name: _____

Title: _____

CONTRACTOR:
SUEZ Water Environmental Services Inc.:

By: _____

Name: _____

Title: _____

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

EXHIBIT "A"
MAINTENANCE TASKS

Banning Waste Water Treatment Plant and Lift Station Maintenance Task List

This is a list of maintenance tasks performed by Suez at the Banning Waste Water Treatment Plant and Lift Stations and is not a list of all operation, management or other tasks performed at or for the facility and the City's wastewater treatment operations. The total number of hours listed on this chart do not reflect the total number of hours performed by the staff of Suez at the Banning facility or in operations of the City's wastewater treatment system.

Type of work		Discription of Task	Frequency	O&M Tech III John	O&M Tech Jose	O&M Tech II Ronnie	OIT Vacant
				Task Duration			
	PM	Boiler Inspection and Safety Checks	Weekly	.5 hr			
	PM	Secondary Return Pump Packing Lubrication	Weekly	.25 hr (x-3)			
	PM	Primary Effluent Pumps Packing Service	Monthly	1.0 hr (x-3)			
	PM	Gas System Manometer - Zero Check	Monthly	.25 hr (x-5)			
	PM	Boiler Hot Water Pump Service/Lube	Quarterly	1.0 hr (x-2)			
	PM	Air Blower Service	Quarterly	1.5 hr (x-2)			
	PM	Sump Pump Checks and Pit Cleaning	Quarterly	1.0 hr (x-3)			
	PM	Grit Tank Center Drive Checks/Inspection	Quarterly	1.0 hr			
	PM	Headworks Gate Valve Lubrication	Quarterly	1.0 hr			
	PM	Bar Screen Drive Lube Change	Annual	3.0 hr			
	PM	Grit Classifier Cone Inspection	Bi-annual	1.5 hr			
	PM	Clarifier Center Drive Checks	Weekly	.5 hr (x-5)			
	PM	Clarifier Center Drive Lube Change	Annual	1.5 hr (x-5)			
	PM	Grit Pump Seal Water line Service	Weekly	.75 hr			
	PM	Grit Pump Ops Inspection Service	Quarterly	1.0 hr (x-2)			
	PM	Digester Mixing Pumps Seal Water Service	Quarterly	.75 hr (x-4)			
	PM	Lab Exhaust Fan Service	Annual	1.0 hr			
	PM	Equipment Motor Lubrication	Annual	1.0 hr (x-6)			
	PM	Primary Effluent Pump Motor Lubrication	Quarterly	1.0 hr (x-3)			
	PM	Sludge Bed Gate Valve Lubrication	Quarterly	1.0 hr			
	PM	Trickling Filter Lubrication Change	Annual	2.0 hr (x-2)			
	PM	Process Water Pump Motor Lube	Quarterly	.5 hr			
	PM	Case Loader Oil Change	Annual	1.5 hr			
	PM	Flame Arrestor Service	Annual	.75 hr (x-7)			
	PM	Gas Flow Meter removal (for calibration)	Annual	1.0 hr (x-3)			
	PM	Gas Flow Meter replace (after calibration)	Annual	1.0 hr (x-3)			
	PM	Heat Exchanger Cleaning	Annual	3.0 hr (x-2)			
	PM	Bar Screen Ops Service/Lube	Monthly	.5 hr			
	PM	Landscape	Monthly	20 hr	40 hrs		
	PM	Painting (as needed, 2 hr per mo max)	Monthly	2 hrs			
	PM	Estimated Corrective Maint	Monthly	5 hrs			
	CM	Assist John with PM/CM	Monthly				
Total				58.5 hrs/mo	16 hrs	16 hrs	16 hrs
				56 hrs/mo	16 hr/mo	16 hr/mo	16 hrs/mo

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

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

State of California)
County of Riverside)

On _____, before me, _____,
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.

Signature _____

(Seal)

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: July 9, 2019

SUBJECT: Banning Police Officers' Association MOU

RECOMMENDED ACTION:

Adopt Resolution No. 2019-xx, approving the Memorandum of Understanding between the City of Banning and the Banning Police Officers' Association for 2019 – 2022.

BACKGROUND:

The current BPOA Memorandum of Understanding (MOU) expired on March 27, 2019. A proposal for a new MOU was received on January 22, 2019 and an initial meeting to discuss the proposal occurred in February. Typically, the City negotiating team would include the H.R. Deputy Director, Administrative Services Director, and Police Chief. Due to staff transition, the negotiating team will be the Finance Manager, Police Chief, and City Manager.

The original BPOA proposal was shared with the City Council in March. The original proposal included many items that exceeded the City's ability to pay. This was discussed with BPOA representatives as well as information regarding the cost of the current contract and proposed changes. Several good faith negotiation sessions were completed with BPOA representatives since February.

A tentative agreement was reached on June 12, 2019, and BPOA members have voted to accept the agreement pending City Council ratification.

FISCAL IMPACT:

Fiscal impact of the contract is approximately \$65,000 in 2019 – 2020. In addition, a 3% cost of living adjustment will be effective 3/27/2020 and a 2% cost of living adjustment will

be effective 3/27/2021. The original proposal from BPOA represented an annual cost of over \$700,000.

In addition to the cost of living adjustments, other changes to the MOU include:

- Notification of schedule changes reduced from 30 days to 14 days;
- POST Certified Field Training Officer receive 5% incentive pay;
- Longevity Pay 0.5% after 10 years, 1% after 15 years, 1.5% after 20 years and 2% after 25 years;
- On call duty pay for detective increased from 4 hours compensatory time to 8 hours for each scheduled day off when detective is assigned on call duty;
- Uniform allowance increased from \$110 per month to \$150 per month;
- Education Reimbursement increased from \$3,000 to \$4,000 annually;
- Probation period increase from 12 months to 18 months for entry level officers;
- Take-home vehicle policy added to MOU for maximum distance of 35 miles.

ATTACHMENTS:

1. Resolution 2019 – _____, Approving the 2019-2022 BPOA MOU
2. 2019 – 2022 Banning Police Officers' Association MOU

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution No. 2019-xx

RESOLUTION 2019-_____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING APPROVING A MEMORANDUM OF
UNDERSTANDING BETWEEN THE BANNING POLICE
OFFICERS' ASSOCIATION AND THE CITY OF BANNING FOR
THE PERIOD OF MARCH 28, 2019 THROUGH MARCH 27,
2022**

WHEREAS, the City of Banning ("City") has formally recognized the Banning Police Officers' Association ("BPOA") as the exclusive employee organization for the police bargaining unit; and

WHEREAS, the City and the BPOA were bound by a Memorandum of Understanding whose terms expired on March 27, 2019; and

WHEREAS, the City and BPOA have successfully met and conferred in good faith to negotiate a new Memorandum of Understanding (the "MOU"), effective retroactively from March 28, 2019, through March 27, 2022, pursuant to the Meyers-Milias-Brown Act (Govt. Code §§ 3500-3511) and the City's Employer-Employee Relations Resolution No. 2010-45; and

WHEREAS, Government Code section 3505.1 provides that: "If a tentative agreement is reached by the authorized representatives of the public agency and a recognized employee organization or recognized employee organizations, the governing body shall vote to accept or reject the tentative agreement within 30 days of the date it is first considered at a duly noticed public meeting. A decision by the governing body to reject the tentative agreement shall not bar the filing of a charge of unfair practice for failure to meet and confer in good faith. If the governing body adopts the tentative agreement, the parties shall jointly prepare a written memorandum of understanding"; and

WHEREAS, once approved by the governing body of a local agency, a memorandum of understanding becomes a binding agreement between the recognized employee organization and the local agency.

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

SECTION 1: The City Council hereby approves the tentative agreement between the BPOA and the City, and approves the jointly prepared MOU from March 28, 2019 through March 27, 2022, a fully executed copy of which is attached hereto as Exhibit A and incorporated herein by this reference.

SECTION 2: The Mayor is authorized to execute the MOU and the City Manager is authorized to deliver a copy of the fully executed MOU to the BPOA.

SECTION 3: The City Clerk shall certify to the adoption of this Resolution and shall cause a certified copy of this resolution to be filed in the book of original resolutions.

PASSED, APPROVED, and ADOPTED this 9th day of July, 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk

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

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-____ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

EXHIBIT A

(March 28, 2019 - March 27, 2022 MOU)

ATTACHMENT 2

2019 – 2022 Banning Police Officers' Association Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF BANNING
AND
THE CITY OF BANNING POLICE OFFICERS' ASSOCIATION
MARCH 28, 2019 – MARCH 27, 2022

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ARTICLE 1 – PREAMBLE

- 1.1 – Agreement – This Memorandum of Understanding (“MOU” or “Agreement”) is entered into between the City of Banning, a Municipal Corporation, hereinafter known as “the City” or “City” and the authorized representatives of the Banning Police Officers’ Association, the recognized employee organization of the Police Unit, hereinafter known as “BPOA” or “Union”, relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 – 3511 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act.
- 1.2 – Recognition – The City continues to formally recognize the Banning Police Officers’ Association as the only Recognized Employee Organization representing employees in the unit of representation presently or hereafter employed by the City and eligible for inclusion in the Police Unit. It is understood that this Agreement shall constitute a bar to any petition or request for recognition of any unit which includes classifications of employees covered by this Agreement or such petitions to represent such employees at any time during the term hereof. This provision shall not preclude employees from otherwise exercising their rights as may be provided by the Meyers-Milias-Brown Act or the Employer-Employee Relations Resolution of the City.
- 1.3 – Term – Except as otherwise provided herein, this MOU between the City and the Union relative to wages, hours, and other terms and conditions of employment shall be for the period March 28, 2019 through March 27, 2022.
- 1.4 – Represented Classifications – This Agreement covers employees in the following classifications: Police Sergeant, Police Staff Sergeant, Police Master Sergeant, Police Corporal, and Police Officer; ~~Community Service Officer and Evidence Technician.~~

ARTICLE 2 – CONTINUATION OF RULES & POLICIES

- 2.1 – Other Written Policies - Subject to the terms of this Agreement, all City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department shall apply during the term of this Agreement.
- 2.2 - Meet and Confer - The Union and the City agree to meet and confer during the term of this MOU over the adoption, amendment or revision, including repeal, of City ordinances, resolutions, rules and regulations, including the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2010-45) and the Administrative Policies of the City of Banning and the Banning Police Department, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Milias-Brown

Act. Should an impasse be reached following such meet and confer sessions, the provisions of the Employer - Employee Relations Resolution (Resolution No. 2010-45) or any amendment thereto or successor Employer- Employee Relations Resolution will apply.

2.3 - - Past Practice - For purposes of this Agreement, a "past practice" shall be defined as an unwritten policy, procedure or work rule, whether or not it affects a mandatory subject of bargaining, and upon which the City, the Union and the bargaining unit employees may have relied through a course of conduct. As of the effective date of this Agreement, all past practices are void, and of no further force or effect.

ARTICLE 3 – EMPLOYEE RIGHTS

3.1 – Non-Discrimination – The provisions of this Agreement shall apply to bargaining unit employees without illegal discrimination based on race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, citizenship status, or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or non-membership in the Union, or because of any activities or refraining from activities on behalf of the Union.

3.2 – Union Membership – The Union will accept into membership all eligible persons of the bargaining unit without regard to, race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, sex (including pregnancy, childbirth and related medical condition), sexual orientation, age, or any other basis protected by applicable law.

3.3 – Rights Granted by State and Federal Law – Except as otherwise provided in this Agreement, the employees covered by this Agreement shall have all rights which may be exercised in accordance with State and Federal Law, and applicable ordinances, resolutions, rules and regulations. However, employees covered by this Agreement shall not have the right to a grievance for violation of any such law, ordinance, resolution or rule, except as specifically set forth herein.

3.4 – Gov't Code Section 3502 – Employees shall have the rights provided to them under Government Code section 3502 of the Meyers-Milias-Brown Act.

ARTICLE 4 – MANAGEMENT RIGHTS

4.1 – The Union recognizes and agrees that the City and its representatives have the responsibility and the authority to manage and direct all operations and activities of the City including, but not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards and the processes and the materials to be employed; the right to subcontract any work or operation; to expand or diminish

services; to determine the procedures and standards of selection for employment and promotion; determine classifications; direct its employees; take disciplinary action; relieve its employees of duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted and to assign work to employees and to establish and change work schedules and assignments and to determine the days and hours when the employees shall work; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and work performance technology.

ARTICLE 5 – DUES DEDUCTION

5.1 – Dues Deduction – The City shall deduct one (1) month's current and periodic Union dues from the wages and/or Leave benefits of each employee who voluntarily executes and delivers to the City a payroll deduction authorization form.

5.2 – Sufficient Earnings – The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings.

5.3 – Non-Pay Status – In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Union dues.

5.4 – Cancellation – An employee's authorization for deduction of dues may be canceled at any time by written notice from the employee to the City with a copy to the Union. An Employee's deduction authorization shall automatically be canceled if the employee leaves the employ of the City or is transferred out of the representation unit.

5.5 – Funds Transmission – The aggregate amount of such deductions by the City shall be transmitted monthly to the President of the Union or his or her designee. The City shall provide the President of the Union or his or her designee with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 5.2 and 5.3. The Union shall notify the City of the names of its President and other officers and designees each year following election of the board and appointment of members to committees to which the Union is entitled to appoint members under this Agreement.

5.6 – Indemnification – The Union shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of deduction of employee organization dues. In addition, the Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

ARTICLE 6 – UNION REPRESENTATIVES

6.1 – Two (2) employees selected by the Union may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first providing twenty-four (24) hour notice to the Department Head. Additional employees who are not on duty may participate at no additional cost to the City. Such meetings shall be scheduled in a manner consistent with the City's operating requirements and work schedules. Nothing herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

ARTICLE 7 – BULLETIN BOARDS

7.1 – Authorized Postings – The City will furnish adequate bulletin board space where currently available. The Department Head shall designate the bulletin boards to be used for posting notices. Bulletin boards may be used for the following notices:

- (a) Scheduled Union Meetings, Agenda and Minutes.
- (b) Information on Union Elections and the Results.
- (c) Posting of Union special, recreational, and related bulletins.
- (d) Reports of Official Business of Union including Reports of Committees or the Board of Directors.
- (e) MOU, Pay Scales, Job Announcements, Promotions Lists, etc.
- (f) Such other items as may be approved by the Department Head upon request of the Union.

7.2 – Posted Notices – Posted notices shall not be defamatory or violate any of the City's policies, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed by an authorized representative of the Union. The Union may give notices to the represented employees through the use of the City mail system and/or the City computer e-mail system.

ARTICLE 8 – MEMORANDUM OF UNDERSTANDING COPIES

8.1 – The City shall provide the Union with one (1) original and one (1) electronic (PDF) copy of this Memorandum after it has been fully executed by the parties. The City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the representation unit after the effective date of the Agreement. The City may charge for any additional hard copies. The Union shall be responsible for providing hard copies

of this MOU to current represented employees at Union expense. Electronic copies shall be no charge.

ARTICLE 9 – MEETINGS

9.1 – Items of Mutual Concern – Upon mutual agreement of both the City and the Union, the parties may meet to discuss items of mutual concern. A meeting conducted under this section shall not constitute a meet and confer or hearing under any grievance procedure.

9.2 – Use of City Facilities – The Union may be granted permission to use City facilities for the purpose of meeting with employees to conduct Union business provided space for such meetings can be made available without interfering with City needs. The Union shall be held fully responsible for any damages to and security of any facility that is used by the Union.

9.3 – Budget Oversight Committee – The City agrees to the creation of a Budget Oversight Committee, with the Union entitled to appoint one (1) member. Said Committee shall have an equal number of members appointed by the City's recognized Employee Associations and the City. Said Committee shall be advisory only to the City Manager.

ARTICLE 10 – HOURS OF WORK

10.1 – Schedules – Unless modified by the Department Head as set forth in section 10.2 and 10.4 below, the Police Unit employees described below shall work the following work periods:

- (a) Employees assigned to uniform patrol shall have a work schedule of seven (7) twelve (12) hour shifts each fourteen (14)-day work period.
- (b) Employees assigned to the detective bureau shall have a work schedule as assigned by the Department Head.

10.2 – Department Head Discretion – Employees may be assigned to a work schedule consisting of the days and hours as determined by the Department Head.

10.3 – Briefing – Pre-shift briefing shall be at the discretion of the Department Head and if required, shall count as hours worked.

10.4 – Schedule Changes – The Department Head, in the exercise of his or her discretion may change the work schedule and/or work period of Police Unit employees. Accordingly, work schedule and work period changes are not subject to meet and confer requirements. The Department Head shall notify the Union regarding any change in work schedule and/or work period no later than fourteen (14) days before the date the change is implemented.

10.5 – Shift Assignments – Each year, the Department Head shall post a shift assignment

notice on which officers shall indicate their shift assignment preference. The Notice will solicit three shift preferences and any additional information regarding their reasons for requesting a particular shift. The Department Head shall consider each request, giving those with seniority a higher priority, and make an effort to accommodate individual preferences. However, it is recognized that the Department Head shall have the ultimate authority to make shift assignments based on the needs of the Department. These shift assignments shall be for the full year except for individual changes as determined by the Department Head.

10.6 – Outside Employment – Prior to any bargaining unit employee accepting outside employment, he or she shall request and receive authorization from the Department Head. Authorization for outside employment shall be made according to the policies and procedures in place at the time of request.

ARTICLE 11 – SHIFT EXCHANGE

Employees may be permitted to trade shifts provided that:

- (a) No additional compensation or other cost to the City results from such assignment;
- (b) Exchanging employees are fully qualified to perform the required tasks of both assignments; and
- (c) Written requests for shift representation must be submitted on the prescribed Department form and approved by the Department Head or his/her designee prior to the start of the requested shift.

ARTICLE 12 – SALARIES, PERFORMANCE EVALUATIONS, INCENTIVE PAY

12.1 – Salary Adjustment – All BPOA represented Unit members shall receive a cost of living (COLA) salary increase of three percent (3%) of base pay for the period March 28, 2019 – March 27, 2020; and an additional salary increase of three percent (3%) of base pay for the period March 28, 2020 – March 27, 2021 and a final additional salary increase of two percent (2%) of base pay for the period March 28, 2021 – March 27, 2022.

12.2 – Assignment to Ranges – All employees have been placed on ranges with defined steps as shown on the attached salary schedule. The salary table is calibrated in approximate 2.5% increments. Subsequent annual increase for satisfactory performance will be two (2) steps or approximately 5%.

- (a) No employee shall be granted a step increase unless and until such employee has obtained an acceptable evaluation consistent with the applicable administrative policies of City.
- (b) A first denial of a step increase shall not be an allowable subject of the exercise of

employee rights under any grievance procedure afforded by the City or collective bargaining agreement.

- (c) An employee denied a step increase for unacceptable performance shall be entitled to be re-evaluated in six (6) months from the date of the performance evaluation which led to the denial of the step increase. If the employee's overall performance is rated acceptable, the employee shall be granted the appropriate step increase effective the first pay period following the six month re-evaluation period. Such step increase shall not be retroactive.
- (d) If the employee's performance continues to be unacceptable after the six (6) month re-evaluation period, the employee shall be given a final denial of a step increase for the remainder of the regular evaluation period. Denial of a step increase under this subsection may, at the employee's option, be subject to the collective bargained grievance procedure for unit members.
- (e) An employee at the top of his or her range shall have his or her performance evaluated at least annually within thirty (30) days of his or her anniversary date.

12.3 – Premium Pay – City shall additionally pay a five percent (5%) premium for the following special assignments, provided that no such premium shall attach when the officer is otherwise working an eighty-four (84) hour shift:

- Professional Standards Supervisor (Sgt. Rank only)
- Detective Sergeant
- Detective (ARCNET)
- K-9 Officer
- Motor Officer
- School Resource Officer
- CET
- Any other assignment determined to be appropriate and approved by the Chief of Police in consultation with the Human Resources Department.

12.4 – Field Training Officer (FTO) – Any Police Unit member who is assigned as a Banning Police Department Field Training Officer and who is a California Police Officer Standards and Training (POST) Certified FTO, shall receive additional pay of five percent (5%) as long as certification is current and maintained. This percentage is in effect with or without a trainee as the FTO is expected to help teach and guide less experienced Officers during the course of their duties. If an FTO denies a trainee or chooses not to teach or guide less experienced Officers, the Police Chief or designee can remove the FTO from the training program and deny the FTO incentive pay increase of five percent (5%), even if the FTO holds a current FTO certification.

12.5 – Bilingual Pay – Employees certified to use sign language or to speak Spanish, or any of the Hmong languages (Chinese, White Lao, Blue Lao), or any other foreign language designated for Bilingual Pay by the City Manager, shall be paid a bonus equivalent to five percent (5%) of their base salary for such use on the job. Initial certification and any requirement with respect to demonstration of the continuing ability to use sign language or to speak the foreign language shall be determined by the City using methods selected by the Human Resources Department.

12.6 – Disciplinary Reductions in Pay – Any disciplinary reduction in pay due to a formal disciplinary action may be satisfied in the form of the following: (a) Payment based upon a lump sum amount to be deducted in one paycheck provided that the deduction does not violate minimum wage laws or the Fair Labor Standards Act; OR, (b) Payment over a period of pay periods based on a case by case basis provided that there is extraordinary financial hardship and that the maximum number for payment is ten (1) pay periods. Extraordinary financial hardships will be determined by the City Manager.

12.7 – Longevity Pay – Employees shall receive additional compensation, effective on the employee's employment anniversary date, for Longevity as follows:

- (a) Upon completion of ten (10) years of continuous service employees will receive additional pay of one-half percent (0.5%) of base salary;
- (b) Upon completion of fifteen (15) years of continuous service employees will receive additional pay of one percent (1.0%) of base salary;
- (c) Upon completion of twenty (20) years of continuous service employees will receive additional pay of one and one-half percent (1.5%) of base salary;
- (d) Upon completion of twenty-five (25) years of continuous service employees will receive additional pay of two percent (2.0%) of base salary.

ARTICLE 13 – OVERTIME

13.1 – 7(k) Exemption – The City has adopted a fourteen (14) day work period pursuant to the “7k exemption” of 29 U.S.C. section 207(k) under the Fair Labor Standards Act (FLSA). Except as provided below in connection with uniformed patrol officers, an employee shall be paid at the rate of one and one-half (1-1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty (80) hours in the fourteen(14) day work period. Uniformed patrol officers assigned to work twelve (12) hour shifts as outlined in Article 10.1 above, shall be paid at the rate of one and one-half (1- 1/2) times the employee's regular hourly base rate of pay for all hours worked in excess of eighty-four (84) hours in the fourteen (14) day work period. This section 13.1 does not preclude the Chief of Police from establishing the practice of scheduling an employee to work a payperiod of any duration which is not less than eighty (80) hours and not more than eighty-four (84) hours, subject to the shift change provisions of the MOU. At all times, the full eighty-four (84) hours shall be

accounted for on the time card. Unassigned hours of the eighty-four(84) shall be so indicated.

- (a) The City shall pay the employer CalPERS contribution, as required by the MOU, for the first eighty-four (84) hours of CalPERS eligible time worked during a pay period. Hours earned as overtime and paid at time and one-half (1/2) shall not be counted as CalPERS eligible hours. All overtime worked shall be authorized by a supervisor in advance, if possible. Otherwise, the claim for overtime shall be subject to review by the Department Head. Overtime may be paid as accrued compensatory time subject to the following: Compensatory time may not be accumulated in excess of two hundred forty (240) hours. Employees may cash out accumulated comp time twice per year (July and December) up to a maximum of eighty (80) hours per year unless otherwise restricted herein. Any cash out will be at the employee's current rate of pay inclusive of all premium pay.
 - (i) The "regular hourly base rate of pay" includes only salary as described in Article 13.1. Acting pay as set forth in Section 14.1 and educational incentive pay as provided in Article 18.4.
- (b) In calculating overtime, the practice of the Finance Department shall be as follows:
 - (i) All hours appearing on the time card as "Reg Hours" shall first be totaled.
 - (ii) All hours otherwise defined as "hours worked" under the MOU shall then be totaled.
 - (iii) Finally, all hours recorded as overtime on the time card shall be totaled.
 - (iv) All hours totaled above, which are in excess of eighty-four (84) hours for patrol personnel and eighty (80) hours for special assignments during the pay period, shall be treated as overtime.
 - (v) In the case of correction of the time card by the Finance Department, the affected employee shall be given timely notice of such correction prior to the preparation of the pay check.
- (c) Any assigned hours which are not worked, and are not otherwise accounted for through a reduction in accrued leave, shall be treated as Leave-Without-Pay ("LWOP") and the employee may be subject to a personnel action as prescribed in the personnel policies of the City.

- (d) Accruals, and reductions in accruals, are based on an eighty (80) hour pay period.

13.2 – Hours Worked – “Hours worked” means time spent in required court appearances as set forth in Article 15, and time paid for vacation, holidays, sick leave, CTO and administrative leave for officer involved shooting or other non-disciplinary leave.

13.3 – Call Out Minimum – Bargaining Unit employees shall be paid a minimum of two (2) hours' pay for any time worked during the first hour when called-out for emergencies, and time and one-half (1/2) for each hour worked thereafter. For example, should an employee be called-out to work two (2) hours of emergency duty he or she would be compensated with three and one-half (3 1/2) hours' pay at the regular hourly base rate of pay; two (2) hours' pay for the first hour worked and one and one-half (1.5) hours pay for the second hour worked.

13.4 – Pyramiding of Overtime – There shall be no pyramiding or duplication of overtime payments and other premiums for the same hour worked.

13.5 – Compensatory Time – Accrued compensatory time may be taken by the employee on an "hour accrued/hour off" basis. However, in the event an employee terminates his employment and/or the City is otherwise obligated or desires to "cash out" accrued compensatory time, the employee shall be paid for any accrued time at his or her then regular hourly base rate of pay.

13.6 – Maximum Comp Time Accrual – Comp time may be accrued to a maximum of two-hundred-forty (240) hours.

ARTICLE 14 – ACTING PAY AND PROMOTION PAY

14.1 – Represented employees temporarily assigned to work in a higher classification by management shall be compensated for working their thirty-first (31st) consecutive day of such assignment within the fiscal year, and consecutive days worked thereafter, at a rate of five percent (5%) above their normal rate of compensation while working in the higher classification. The conditions of this subsection are prerequisites to the receipt of any higher acting pay. At such time as an employee is no longer performing work out of his or her pertinent classification, he or she shall be compensated at his or her regular rate of pay for his or her pertinent classification.

14.2 – Represented employees promoted to work in a higher classification shall be placed in the lowest step of the higher classification that pays more than the employee received in the lower classification but not less than five percent (5%) more than the employee received in the lower classification.

ARTICLE 15 – PAY FOR JURY DUTY: COURT APPEARANCES, “ON CALL” DUTY

15.1 – Any employee who shall be summoned for attendance to any court for jury duty during his or her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him or her shall be paid into the City treasury. Any employee who shall be called as a witness arising out of and in the course of his or her City employment shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him or her, shall be paid into the City treasury. An employee absent as a witness in a private matter shall not be entitled to be paid during such absence, except that he or she may, however, use Vacation Leave, Holiday Leave and Compensatory Leave for such absence.

15.2 – Represented employees shall be compensated for off-duty court appearances. The City will pay a minimum of three (3) hours for travel to and appearances in court at a rate of one and one-half (1.5) times the base rate of pay. All travel shall be calculated based on the time required to travel from any Banning Police Station to the destination. All hours required in excess of three (3) hours shall be compensated at one and one-half (1.5) times the base rate of pay.

15.3 – Employees required to be on call for court appearances before noon shall be compensated for one (1) hour. Those required to be on call for court purposes after noon shall be compensated for one (1) hour. Requirement for multiple court appearances in the same time frame shall constitute one (1) period of on call. For purposes of this section, an employee shall not be deemed to be on call while appearing in court. Employees shall not be paid for being on call under this Section for a day on which the employee is compensated for being in court under Section 15.2.

15.4 – Any detective scheduled for “on call” duty shall receive eight (8) hours of either compensatory time off or pay for each scheduled day off on which the detective or detective sergeant is assigned to “on call” duty, other than for court appearances as outlined above.

15.5 – An employee shall be on call for purposes of the receipt of the four (4) hours where:

- (a) The employee is scheduled to provide a mandatory response; and
- (b) That response is to be to the station, or other designated location within two (2) hours; and

- (c) The employee is required to provide the Department Head with sufficient information to obtain immediate contact with the employee.

15.6 – All Police Unit members who are required to respond to a traffic accident call out would receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before their arrival time. The Evidence Technician will be entitled to receive a minimum of two (2) hours double time pay commencing thirty (30) minutes before his/her arrival for any callouts.

15.7 – Scheduled Training – Any employee who is scheduled by the Department to attend day long training during his or her normal shift or working hours shall be deemed to be on duty and there shall be no loss of salary. The Department will abide by the "day for a day" theory for any day long training not lasting more than four (4) days. This policy provides that the employee will not owe the Department time should the day long training course be shorter than the officer's regularly scheduled work day. This theory applies only to scheduled full-day training courses. For overtime calculation purposes, only actual hours in training will count as actual hours worked.

ARTICLE 16 – EQUIPMENT, UNIFORM ALLOWANCE, SAFETY AND TRAINING

16.1 – The City will provide covered employees safety equipment in accordance with California State Law. Said safety devices and safeguards shall remain the property of the City of Banning and their use may be required and regulated by the Department Head or his or her designee.

16.2 – The Department Head or his or her designee shall have sole authority to assign the use of or regulate the use of City property by represented employees including but not limited to City vehicles.

16.3 – The City agrees to pay a uniform allowance of one-hundred-fifty dollars (\$150) per month to Police Unit members. Payment of the uniform allowance will be paid equally between the first two pay periods each month. Such money shall be used for the purpose of purchasing and maintaining uniforms in order that individual officers and civilian employees who wear regulation uniforms may maintain a professional appearance.

16.4 – The City shall reimburse Police Unit employees the reasonable replacement value of personal property, not including uniforms for which the above uniform allowance is paid, which is destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the Department Head the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to two-hundred dollars (\$200) per pair. Replacement for watches is limited to fifty dollars (\$50). Sums paid hereunder shall be secondary to any applicable insurance. If an individual pays a sum of money to the City

pursuant to a court order as restitution for damaging the uniform of a bargaining unit employee, then the City will reimburse that amount to the Police Unit employee.

16.5 – The Department Head or his designee may at his or her discretion authorize an employee to carry optional weapons. Nothing in this Agreement shall require the Chief of Police to approve the use of any specific weapon or ammunition.

ARTICLE 17 – MILEAGE, MEALS AND OTHER TRAVEL REIMBURSEMENT

17.1 – The City will reimburse expenses for meals, lodging and tuition when a Police Unit employee attends a City directed educational program. Reimbursement shall be equal to but not exceed the amount permitted under applicable P.O.S.T. standards. If the employee's meals and lodging expenses exceed reimbursement provided by P.O.S.T., then the employee may be required to demonstrate that such expenses are reasonable by providing receipts for all expenses and written justification. Only reasonable expenses will be reimbursed.

17.2 – Accommodation arrangements for attendance at a City directed educational program shall be made by the Police Unit employee. The City agrees to provide any accompanying information concerning available lodging arrangements for the program to the employee as soon as it becomes available to the City.

17.3 – Upon request, an employee attending a City directed educational program shall receive an advance up to the P.O.S.T. established limits established for the particular educational program.

17.4 – At the conclusion of the educational program, the employee shall show by certificate awarded or some other manner that the program was attended and completed.

17.5 – Except as otherwise set forth in this MOU, the scheduling of training/educational programs shall be done in accordance with Departmental procedures.

ARTICLE 18 – TUITION AND BOOKS REIMBURSEMENT; EDUCATION INCENTIVE

18.1 – Qualifications – All Police Unit employees enrolled in an approved Associate of Arts/Sciences degree coursework and community colleges or Bachelor of Arts/Science Degree or Master of Arts/Science Degree programs shall be eligible to receive reimbursement for tuition and cost of books actually paid for their approved professional and technical courses subject to the provisions below.

- (a) The employee has furnished evidence that the course has been completed with at least a "C" grade or "pass."
- (b) Police Unit employees will receive a maximum of four-thousand dollars (\$4,000) for tuition and actual expenses paid for books for expenses incurred per fiscal year for

any academic training in a university or college recognized by an accrediting institution as determined by the Human Resources Director.

18.2 – Reimbursement Requirements.

- (a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).
- (b) Reimbursements will be made only after proof of completion of course with a minimum of "C" average or "pass" and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

18.3 – Attendance – Employees may utilize shift changes and one (1) hour or more increments of Vacation or Holiday Leave to attend courses that have been approved under this Article. Employees may also convert Sick Leave to Vacation Leave for this purpose.

18.4 – Education Incentive Pay – Educational incentive pay shall be earned as follows:

- (a) Possession of an Intermediate POST Certificate entitles the unit member to two-hundred dollars (\$200) a month; and possession of a Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, entitles the employee to three-hundred dollars (\$300) a month.
- (b) Possession of an Associate of Arts/Science Degree in any academic field entitles the employee to seventy-five dollars (\$75) per month.
- (c) Possession of a Bachelors of Arts/Science Degree in any academic field entitles the employee to one-hundred-fifty dollars (\$150) per month.
- (d) Possession of a Masters of Arts/Science Degree in any academic field entitles the employee to two-hundred-twenty-five dollars (\$225) per month.
- (e) Possession of a Ph.D. in any academic field entitles the employee to three-hundred dollars (\$300) per month.
- (f) Possession of an Intermediate POST Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to \$275 per month; Possession of an Intermediate POST Certificate and a Bachelors of Arts/Science Degree in any academic field entitles the employee to three-hundred-fifty dollars (\$350) per month; Possession of an Intermediate POST Certificate and a Masters of

Arts/Science Degree in any academic field entitles the employee to four-hundred-twenty-five dollars (\$425) per month; Possession of an Intermediate POST Certificate, and a Ph.D. in any academic field entitles the employee to five-hundred dollars (\$500) per month.

- (g) Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate and an Associate of Arts/Science Degree in any academic field entitles the employee to three-hundred-seventy-five dollars (\$375) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Bachelors of Arts/Science Degree in any academic field entitles the employee to four-hundred-fifty dollars (\$450) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Masters of Arts/Science Degree in any academic field entitles the employee to five-hundred-twenty-five dollars (\$525) per month; Possession of the Regular or Specialized Advanced Certificate, Regular or Specialized Supervisory Certificate, Regular or Specialized Management Certificate, Regular or Specialized Executive Certificate, and a Ph.D. in any academic field entitles the employee to six-hundred dollars (\$600) per month.
- (h) For all Police Unit members who are employed with the City at the time of the execution of this MOU, possession of sixty (60) semester units from an accredited college with a minimum of thirty-nine (39) units being in an occupationally related field (i.e. Police Science, Social Science, Political Science, Public Administration, etc.) shall entitle the employee to receive pay of one-hundred dollars (\$100) per month. Determination as to whether courses are occupationally related will be made by the Department Head with right of appeal to the City Manager.
- (i) The amounts in this article shall not be pyramided except as set forth above.

ARTICLE 19 – SICK AND BEREAVEMENT LEAVE

19.1 – Sick Leave Accrual – Represented employees shall accrue three and sixty-nine hundredth (3.69) hours of Sick leave per pay period. Sick leave shall accrue without limit.

19.2 – Use of Sick Leave – Sick Leave shall be granted only where consistent with the City's sick leave and Pregnancy Leave policy (currently AP-1 and AP-02).

19.3 – [Intentionally left blank]

19.4 – Conversion to Vacation – Any employee who has taken forty (40) hours of Sick Leave

or less during the fiscal year ending June 30 of each year shall be entitled to convert up to forty (40) hours of unused sick leave to vacation. The month of August will be the month for annual conversion. Only those employees who have completed twelve (12) months of service with the City as of June 30th of any year will be eligible for such annual conversion and there shall be no interim pro-rata conversion.

19.5 – Cash Out Upon Separation – After ten (10) years continuous City service, and upon voluntary separation under satisfactory conditions or involuntary disability retirement, sworn personnel shall be eligible to receive a cash payment equivalent to forty percent (40%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Civilian personnel shall be eligible to receive a cash payment equivalent to thirty percent (30%) of all unused sick leave less the total number of hours converted to vacation, as set forth above. Such reimbursement will be computed based upon the employee's final compensation rate.

19.6 – Conversion to Deferred Compensation – Beginning with the 11th year of City service, unit members may convert the value of the total amount of their sick leave bank, minus forty (40) hours, to either Deferred Compensation, or the Retiree Health Savings. Thereafter, the employee may contribute one hundred percent (100%) of the value of unused sick leave, minus forty (40) hours for such purposes.

19.7 – Use of Other Leave – An employee who has exhausted all accumulated Sick leave while on Sick leave may utilize accrued Vacation or Holiday Leave or accrued compensated time off for the purposes described in 19.2 above or 19.8 below.

19.8 – Bereavement Leave – Employees covered by this Agreement will be allowed three (3) shifts off duty with pay for Bereavement leave upon the death of a member of their family. For the purpose of this subsection, "family" includes the following persons: spouse, domestic partner, mother, father, brother, sister, child, stepchild, grandchild, or grandparent of the employee or any one of the same relatives of the employee's spouse or domestic partner.

19.9 – Military Leave – Banning's policy relating to military leave and compensation therefore, shall be in accordance with the provisions of the Military and Veteran's Code of the State of California (Section 389-399.5) and with all Federal provisions (the Uniformed Services Employment and Reemployment Rights Act of 1994, USERRA, Pub.L. 103- 353, codified as amended at 38 U.S.C. §§ 4301-4335).

ARTICLE 20 – VACATION AND HOLIDAY LEAVE

20.1 – Vacation Leave Accrual – For employees of the City as of date of this Agreement, Vacation Leave shall accrue in accordance with the following schedules:

- (a) One (1) through four (4) years of service: ten (10) days per year = three and eight-hundredth (3.08) hours per pay period;
- (b) Beginning the fifth (5th) year through the ninth (9th) year: fifteen (15) days per year = four and sixty-two hundredth (4.62) hours per pay period;
- (c) Beginning the tenth (10th) year & thereafter: twenty (20) days per year = six and fifteen hundredth (6.15) hours per pay period.

20.2 – Maximum Accrual – Vacation Leave may be accrued to a maximum of three- hundred twenty (320) hours for non-supervisory personnel and three-hundred thirty-six (336) hours for supervisory personnel. Holiday leave may be accrued to a maximum of one-hundred sixty (160) hours per employee.

20.3 – Approval Required – Vacation Leave shall be taken with approval of the Department Head at any time following the completion of the eighteen (18) month probationary period for entry-level Unit members and one (1) year probationary period for lateral hire Unit members, but the Vacation Leave taken shall not be in excess of that actually accrued at the time such Vacation Leave is taken. Vacation Leave must be approved a minimum of fourteen (14) days in advance of the first day of such Vacation by the Department Head or his or her designee. Exceptions may be made to the fourteen (14)-day notice requirement for emergencies or at the discretion of the City by the Department Head or Division Supervisor.

20.4 – Payment Upon Separation – Any employee, who has been in continuous full-time service of the City for a period of 1 year or more, who is about to separate from his or her employment and has earned Vacation Leave to his or her credit, shall be paid for such Vacation Leave on the effective date of such separation up to the maximum accrual. It shall not be necessary to carry such employee on the payroll for the Vacation Leave period, and the vacancy created may be filled at any time after the employee ceases to perform the duties of his or her office or employment. When separation is caused by death, payment of all outstanding compensation, including Salary and all remaining Sick Leave, Vacation, Comp Time or Holiday Time accruals shall be paid into the employee's direct deposit account the same as regular payroll.

20.5 – Payment of Excess Hours – Unused vacation accrual in excess of the employee's annual entitlement, if any, may be paid off at the option of the employee up to a maximum of forty (40) hours every twelve (12) months. The employee may otherwise be scheduled for mandatory vacation time off by the Department Head for a period of time equal to the excess accrual.

20.6 – Holidays – City Holidays are as follows:

- New Year's Day
- Martin Luther King Day
- Presidents' Day
- Memorial Day
- Fourth of July
- Labor Day
- Veterans' Day
- Thanksgiving Day
- Day after Thanksgiving
- Christmas
- One (1) floating holiday

20.7 – Holiday Accrual – Employees shall accrue Holiday Leave at the rate of three and thirty-eight hundredths (3.38) hours per pay period.

20.8 – Approval Required – Holiday Leave must be approved a minimum of fourteen (14) days in advance by the Department Head or his or her designee of the first day of such Holiday leave. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the City by the Department Head or immediate supervisor.

20.9 – Cash Out – Employees may cash out accrued holiday leave twice per year (July and December) up to a maximum of eighty-eight (88) hours per calendar year.

20.10 – Payment Upon Termination – Any employee who is about to terminate his or her employment, and has earned Holiday Leave to his or her credit, shall be paid for such Holiday Leave on the effective date of such termination.

ARTICLE 21 – MEDICAL AND DENTAL INSURANCE

21.1 – City Contributions to Cafeteria Plan – The City agrees to the following contribution to each employee's cafeteria account: The City will contribute to each employee's cafeteria account an amount equal to the payment of that employee's medical insurance premium related to a City sponsored medical plan (excludes dental) up to a maximum of \$16,200.00 annually. The City contribution will increase to \$16,800.00 effective July 1, 2019. An employee opting out of a City sponsored medical plan, i.e. demonstrating proof of medical coverage from another plan, will receive a cafeteria contribution equal to \$6,352.00. The City's contribution may be used toward any City benefit offered under the cafeteria plan. All dollars will be allocated equally on a monthly basis. No cafeteria plan contributions may be converted to cash and taken as income. Employees will be responsible for all taxes associated with this payment.

- (a) The contribution shall first be used to provide for health insurance for the employee. The employee shall be covered by health insurance with a City approved health insurance plan unless the employee provides proof to the City that the employee is covered by another acceptable health plan as determined by the City's Human Resource Department. Additionally, all members of the Police Unit shall participate in a long-term disability plan approved for participation by the members of the Police Unit, provided that such plan does not require the City to incur costs for its administration.
- (b) The balance may be used for any of the following or any combination thereof:
 - a. Health insurance for the employee's spouse and/or dependents.
 - b. Dental Plan for the employee and the employee's spouse and/or dependents.
 - c. Eye care plan for the employee and the employee's spouse and/or dependents.
 - d. Deferred compensation program.

21.2 – IRS 125 Plan – Police Unit employees may participate in the City's Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pretax salary or wages for the reimbursement of medical care expenses, dependent care expenses, or both. Premiums for LTO are excluded from the pretax provisions of the Section 125 program.

21.3 – Insurance Advisory Committee – The City shall maintain the Insurance Advisory Committee to which the Association may appoint two (2) representatives.

21.3.1 – Purpose – The purpose of the Advisory Insurance Committee shall be to advise the City relative to health, life, and related insurance plans which may be provided to employees of the City of Banning including the type of plans, scope of coverage, and the selection of insurance carriers.

21.3.2 – Voting – The Insurance Committee shall determine issues by a majority vote of the members, each member having one (1) vote, except that any such determination shall constitute an advisory recommendation only to the City Manager.

21.3.3 – Selection of Members – Insurance Committee Members shall be selected as follows:

- (a) Representatives of bargaining units shall be selected in a manner to be determined by each respective unit.
- (b) The City's Representative shall be the City Manager or his/her designee.

21.3.4 – Meetings – The Insurance Advisory Committee shall meet as may be necessary to conduct the business of the Committee.

21.3.5 – Status – The Insurance Advisory Committee will be advisory only, with no power or prerogative to decide on behalf of the City on issues pertaining to employee insurance coverage.

ARTICLE 22 – RETIREMENT AND MEDICARE

22.1 – Contributions to CalPERS.

- (a) All CalPERS Classic employees are responsible for paying their contributions for their respective retirement plans to CalPERS at five percent (5%) for safety members and eight percent (8%) for non-sworn miscellaneous members. The City shall contribute four percent (4%) for safety members, to total the required nine percent (9%) contribution.
- (b) Per the Public Employees' Pension Reform Act of 2013 and related laws and regulations, new employees hired after January 1, 2013 are subject to paying at least 50% of the normal costs or as otherwise determined by CalPERS.

22.2 – CalPERS Formulas.

- (a) The City agrees to continue to pay the employer's portion of the CalPERS "Three Percent at Fifty" (3% @ 50) public safety retirement formula and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) public miscellaneous retirement formula for employees hired on or before December 20, 2012. All employees shall pay their full member contributions under their respective retirement plans.
- (b) The City previously adopted Resolution 2012-99 approving the Side Letter Agreement between the City and the BPOA which authorized implementation of a two tiered retirement plan providing the CalPERS "Two Percent at Fifty" (2% @ 50) retirement formula for public safety employees and the "Two Percent at Sixty" (2% @ 60) retirement formula for public miscellaneous employees. The new two tiered retirement plans applied to all new employees hired after December 20, 2012. All Unit employees hired on or before December 20, 2012 remained at the previously existing "Three Percent at Fifty" (3% @ 50) retirement formula for public safety employees and the "Two Point Five Percent at Fifty-Five" (2.5% @ 55) formula for public miscellaneous employees.
- (c) Unit employees hired on or after January 1, 2013 shall be enrolled in either the

"Two Percent at Fifty" (2% @ 50) formula for public safety employees and the "Two Percent at Sixty" (2% @ 60) formula for public miscellaneous employees or the 'Two Point Seven Percent at Fifty- Seven" (2.7% @ 57) formula for public safety employees and the "Two Percent at Sixty-Two" (2% @ 62) formula for public miscellaneous employees depending upon eligibility rules as established by CalPERS under the Public Employees' Pension Reform Act of 2013 and related laws and regulations.

- (d) Per the Public Employees' Pension Reform Act of 2013 and related laws and regulations, all Unit employees hired on or after January 1, 2013 shall also be required to have their final compensation defined as the highest average annual final compensation during a consecutive thirty- six (36) month period, subject to the cap. Unit employees hired before January 1, 2013 will maintain the "single highest year" benefit.

22.3 – F.I.C.A. – Police Unit employees will pay employee portion of FICA and the City shall be responsible for payment of the employer's portion.

ARTICLE 23 – MISCELLANEOUS BENEFITS

23.1 – Life Insurance – The City shall provide a life insurance policy to each employee in the Police Unit in the amount of \$50,000.00.

23.2 – Direct Deposit – All Police Unit employees shall be paid by direct deposit of their payroll check into an account of their choice, except those employees who either do not hold an account with a financial institution that offers direct deposit or who do not hold an account of any type and such employees will be required to pay a \$10 administration fee per payroll. It shall be the responsibility of the employee to establish and maintain such account.

23.3 – Computer Loan – Every Police Unit employee shall be entitled to participate in an interest free loan program for the purchase of a computer. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. The cumulative amount of loans outstanding hereunder shall not exceed \$20,000. The loan shall be upon the terms and conditions established by the City. These conditions shall include the prohibition against developing, maintaining or storing any department files or department related files or information or any criminal justice files, including but not limited to Megan's Law files and information, on such equipment. Wrongful possession of such information on the equipment shall constitute grounds for discipline up to and including dismissal. For purposes of this section "department files or department related files" are information concerning any individual or group of individuals, developed or obtained in the course and scope of the duties of the owner of the equipment purchased hereunder, or the course and scope of the duties of the provider of the information to such owner, as a law enforcement officer or employee of a law enforcement agency. The definition includes, but is not limited to,

information regarding an individual or group of individuals which is not available to the general public and which is available to the owner of the equipment because, and not necessarily solely because, of their status as a public safety officer.

23.4 – Utility Allowance – Any Police Unit employee who resides within the City shall receive one-hundred-fifty dollars (\$150) per month as a discount against the cost of electric and water service during the period of such residency.

23.5 – Deferred Compensation Plan – The City has established a deferred compensation plan under Section 457 of the IRS code. Police Unit employees may participate in this plan at their own expense and at their option. Employees may opt to deposit into their established deferred compensation account, any funds paid to them under any leave pay out provisions in this MOU. Deposits into deferred compensation accounts shall be subject to IRS rules and regulations.

23.6 – Gun Loan – The City has established a loan program for those police officers approved by the Chief of Police who wish to purchase a weapon. Repayment of the loan shall be through payroll deduction. The complete policy is established in Resolution 2005- 66.

23.7 – Take Home Vehicles – The City has established a program for those police officers living within thirty-five (35) miles driving distance to take home marked police vehicles. The complete policy is established in Departmental Policies.

ARTICLE 24 – LAYOFFS AND RE-EMPLOYMENT

24.1 – Purpose – The purpose of this Article is to provide a fair and equitable basis for the reduction in force of full-time classified personnel due to insufficient work or lack of funds.

24.2 – Reasons for Lay Off – The City of Banning retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at a level of service acceptable to the City. Lack of funds means that the City in its sole discretion has determined that it cannot sustain operations at the current level of employment within the funding available. For the purpose of this subsection, the determination of the City shall be binding.

24.3 – Notice of Lay Off – Any lay off initiated under the provisions of this Agreement can take place at any time during the year. The City shall notify the affected employees in writing at least ten (10) working days prior to the employee's last day of work. The City reserves the right to pay the employee for such ten (10) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate Police Unit representative. Any notice of lay off shall specify the reason for the lay off and the effective date. The form and timing of any such notice shall be subject to the established grievance procedure, provided however, the City's decision to lay off is not subject to the grievance procedure. The date of the layoff

shall not be delayed by the pendency of a grievance.

24.4 – Order of Lay Off – Any lay off shall be effective within the job classification or job classifications selected by the City. Once the City has determined which classification or classifications will be affected by the layoff, the order of lay off shall be based on seniority among employees in the classification with "satisfactory job performance." "Satisfactory job performance" as used in this section shall be established when an employee has not more than two (2) overall less than satisfactory evaluations within the past five (5) years. For purposes of this Article, seniority is defined as the length of uninterrupted service within the classification of employees to be laid off as measured from the date of the layoff notice.

24.5 – Reduction of Class – Any employee who has been designated to be laid off may choose to be reduced in class and compensation if the employee has greater seniority in a class than those employees in a lower class or position.

24.6 – Equal Seniority – If two (2) or more employees subject to lay off have equal class seniority, then the determination as to who has greater seniority shall be based upon total length of uninterrupted service with the City.

24.7 – Reemployment Rights – Laid off employees will be eligible for reemployment under the provisions of the Personnel Rules.

24.8 – Reduction in Work Week – The Personnel Rules authorize the City Council to change or alter the work week by resolution.

24.9 – Probationary Period – The Probationary Period for entry-level Unit members shall be eighteen (18) months and for lateral hired Unit members the Probationary Period shall be twelve (12) months.

ARTICLE 25 – GRIEVANCE AND DISCIPLINE APPEALS PROCEDURE

25.1 – Procedure – Subject to the provisions of this MOU, any permanent Police Unit employee who has a grievance, as defined below, or has been disciplined, as defined below, shall be entitled to have the matter reviewed through the procedures outlined in this Article. This Article shall also include and satisfy all rights which a permanent bargaining unit employee may have under California Government Code Section 3304(b).

25.2 – Definitions:

- (a) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "grievance" is defined as a dispute between the employee and the City, or the Union and the City, over the interpretation or application of this MOU, or the second denial of a step increase to an employee. The term "grievance" does not include "discipline" as defined herein.

- (b) For the purposes of, and subject to the terms, provisions and conditions of, this MOU, "discipline" is limited to any action taken by the City against a permanent Police Unit employee which (1) is punishment or discipline of the employee, (2) will result in a reduction or loss in the employee's salary, (3) is either (i) an involuntary termination from City employment (ii) involuntary suspension from employment without pay, (iii) involuntary move from one (1) job classification to another job classification where the second job classification has a lower rate of pay at the top step than the top step of the job classification from which the employee was moved, or (iv) involuntary reduction in step within a job classification, and (4) is not the result of a lay off or (v) a written reprimand.

25.3 – Informal Step – An attempt shall be made to ascertain all facts and adjust such grievance or discipline on an informal basis between the employee and, if he or she desires, the employee's representative, on the one hand, and the immediate supervisor, on the other hand. Presentation of such grievance or discipline shall be made within fourteen (14) calendar days of the incident causing the grievance or discipline, or the date on which the employee first became aware of it.

25.4 – Step One – If the grievance or discipline is not adjusted to the satisfaction of the employee within seven (7) calendar days after presentation to the grievance or discipline to the immediate supervisor, and if the employee or the Union wishes to resolve the matter, the grievance or discipline shall be submitted in writing by the employee or his or her representative to the Police Chief in consultation with the Human Resources Director within the next fourteen (14) calendar days. The Police Chief shall meet with the employee, his or her representative or both within seven (7) calendar days of receipt of such written grievance; and deliver his or her decision in writing to the employee, along with reasons for such decision, within seven (7) calendar days after meeting.

25.5 – Step Two – If the grievance or discipline dispute is not adjusted to the satisfaction of the employee and the union under the procedures set forth immediately above, the employee or his/her representative may submit written notice to the City Manager of his/her intent to submit the matter to mediation. Such written notice must be delivered to the City Manager within fourteen (14) calendar days after the date of the Chief of Police's written decision. The Union agrees that submission of any matter to mediation must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory

arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.

- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

25.6 – Grievances Related to MOU Interpretation – The Union agrees that submission to mediation of any grievance related to MOU interpretation or administration must be by mutual agreement of the Union and the City, with each party to bear their own costs. If the parties mutually agree to mediation, the following procedures apply:

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.
- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

On grievances pertaining to the interpretation or administration of this MOU, the Union agrees that the decision of the arbitrator shall be final and binding upon the City.

25.7 – Grievances Related to Discipline – On grievances related to discipline, the written notice in Step Three below shall set forth in detail the employee's and/or Union's view of the basis for the disciplinary dispute and shall separately set forth the issue or issues to be submitted to the advisory arbitrator. The procedures set forth below shall be followed thereafter.

- (a) Within seven (7) calendar days of receipt of the written notice, the Union and the City shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service.
- (b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to agree on an arbitrator to preside at the advisory

arbitration hearing. If the parties do not agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.

- (c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the advisory arbitration hearing.
- (d) The City shall pay for the costs of the advisory arbitrator.

On disputes related to discipline, the decision of the arbitrator shall be advisory to the City Manager, whose decision shall be the final decision of the City.

25.8 – Step 3 – Within seven (7) calendar days after the Union and City receive the advisory arbitrator's recommendation on the dispute related to discipline, either the Union or the Department Head may submit written argument to the City Manager as to whether the arbitrator's opinion should be accepted, rejected or modified. Within fourteen (14) calendar days after the seven (7) day-period above has expired, the City Manager shall advise the Union and the Department Head whether the City Manager is accepting, rejecting, or modifying the advisory arbitrator's recommended decision. The decision of the City Manager shall be final and binding.

25.9 – Modification of Time Limits – The above time limits may be modified by mutual agreement.

ARTICLE 26 – SEVERABILITY CLAUSE

26.1 – Severability – If any of the provisions contained in this MOU are determined to be unlawful, then only such provision(s) shall be deleted from this MOU with the remainder of this MOU remaining in force and effect. Upon the issuance of a decision by a Court of Competent Jurisdiction declaring any section of this MOU to be unlawful, unenforceable, unconstitutional, or not applicable, the parties agree to meet and confer as soon as possible concerning only those sections.

ARTICLE 27 – COMPLETE AGREEMENT

27.1 – Entire Agreement – This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

27.2 – Items Not Covered – All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control.

27.3 – Vacant Positions – The level of service and number of employees remain a management prerogative and the parties agree that the City may elect not to fill four (4) current or soon to be vacant police officer positions as a cost saving mechanism.

ARTICLE 28 – INVESTIGATION DOCUMENTS AND MATERIALS

The City shall continue to maintain investigation documents and material in accordance with its Records Management Program. No. A-28 in the Administrative Policy which was adopted by Resolution No. 2003-26.

ARTICLE 29 – RE-OPENERS

During the term of this MOU, unless otherwise provided, the parties shall not meet and confer with respect to any subject or matter (except if other labor groups receive an increase in the employee cafeteria account above \$14,450.00, then an automatic reopener would be triggered) whether or not referred to in this MOU, unless mutually agreed to otherwise.

ARTICLE 30 – RATIFICATION AND EXECUTION

This MOU has been developed as a result of meet and confer sessions between representatives of the City and the Union regarding issues related to wages, hours and other terms and conditions of employment. The City's representatives and the Union have reached an understanding as to certain recommendations to be made to the City Council for the City of Banning and have agreed that the parties hereto will jointly urge said Council to adopt a new wage and benefit resolution which will provide for the changes contained in said joint recommendation. The parties hereto acknowledge that this MOU shall not be in full force and effect until adoption by the Banning City Council.

In witness whereof the parties have caused their signatures to be affixed this 10th day of July, 2019.

For the City of Banning

For the Banning POA

Douglas Schulze
City Manager

Derek Thesier
Lead Negotiator

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: July 9, 2019

SUBJECT: PROPOSED ORDINANCE TO INCLUDE A PROCESS FOR WRCOG CALCULATION AND COLLECTION OF FEES UNDER THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM.

RECOMMENDED ACTION:

The City Council approve:

1. Staff recommends that the City Council waive further reading and adopt Ordinance No. 1549, an Ordinance of the City of Banning, amending chapter 15.76 of the Banning Municipal Code to update participation in the Western Riverside County Transportation Uniform Mitigation Fee (TUMF) Program to include a process for WRCOG calculation and collection of fees under the program; and,
2. Find that in accordance with CEQA Guidelines Section of the California Environmental Quality Act (CEQA) Guidelines that the Transportation Uniform Mitigation Fee (TUMF) Program is not a "project" within the meaning of Section 15378 and Section 15061(b)(3) of the CEQA Guidelines and is therefore exempt from the requirements of CEQA. Ordinance No. 1549 will have no effect on the environment. The adoption of this Ordinance approves and sets forth a procedure for determining fees for the purpose of obtaining funds for capital projects necessary to maintain service within existing service areas and is statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273(a)(4).

BACKGROUND:

The City is a Member Jurisdiction of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and eighteen (18) cities located in Western Riverside County. Acting in concert, the WRCOG Member

Jurisdictions approved a plan in 2002-2003 whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials due to new development in Western Riverside County could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial and industrial development. WRCOG, upon recommendation by the WRCOG Executive Committee, recently adopted a revision to the TUMF calculation and collection process to provide agencies an option in which WRCOG calculates and collects TUMF on behalf of member agencies that elect to delegate the fee calculation and collection to WRCOG.

DISCUSSION:

Member agency staff are currently responsible for calculating and collecting TUMF for all new development within its jurisdiction. TUMF funds are remitted to WRCOG monthly, and in-depth reviews are conducted on an annual basis. On October 1, 2018, WRCOG approved a policy change to the TUMF calculation process to allow member agencies the option to shift responsibility for TUMF calculations and collections to WRCOG in an effort to improve the cost-effectiveness of the process for WRCOG and its member agencies.

The option to delegate the TUMF calculation and collection to WRCOG provides numerous benefits, including a significant reduction in local agency staff time required to calculate and collect the TUMF, elimination of the need for extensive end of the year reviews, and a shift of the responsibility for errors from the member agency to WRCOG. Under the current process, member agency's bear the responsibility for any errors related to TUMF calculations and collections. This update to the process will result in savings to member agency planning and public work resources, in addition to the member agency's finance department resources.

The general process for TUMF calculations by WRCOG will require member agency staff to electronically complete TUMF calculation worksheets, with project-specific details, and submit to WRCOG. WRCOG staff has committed to a 48-hour response time – wherein most calculations will be completed within 48 hours, or additional information will be requested by WRCOG within 48 hours if there are unique project circumstances to consider. WRCOG staff will maintain a database of all credit agreements and the credit agreement process will not change significantly. WRCOG will host a secure, online web portal to provide the option for electronic fee payment by developers. Developers will also have the option of going to the WRCOG office to make TUMF payments in person. Once a project has paid TUMF, receipt of payment will be forwarded to the developer and applicable member agency staff. Because WRCOG will be responsible for all calculations and collections, member agency staff time required for TUMF monthly reports and annual reviews would be dramatically reduced.

In the event of a TUMF assessment dispute, developers will retain the option to appeal the assessment by WRCOG and pay the TUMF in protest, so that the project can still move forward. The TUMF dispute resolution process will be streamlined, allowing developers to go directly to WRCOG with disputes. Most notably, responsibility for

TUMF miscalculations will shift from the member agency to WRCOG, given that the information provided by the member agency is complete and accurate.

WRCOG calculation and collection of TUMF is permissible under the Mitigation Fee Act. Shifting responsibility to WRCOG is not mandatory at this time; thus, member agencies could also retain TUMF calculation and collection responsibility. WRCOG calculation and collection of TUMF would require approval of an updated TUMF Ordinance and could take effect as soon as September of 2019.

FISCAL IMPACT:

There is no negative fiscal impact associated with the adoption of this ordinance. Adoption of this ordinance will result in a significant reduction in local agency staff time required to calculate and collect the TUMF, elimination of the need for extensive end of the year reviews, and a shift of the responsibility for errors from the member agency to WRCOG.

ALTERNATIVES:

1. Do not approve Ordinance No. 1549 and provide direction to staff.
2. Continue to a subsequent City Council meeting.

ATTACHMENTS:

1. Ordinance No. 1549
2. Notice of Exemption (NOE)

Approved by: 

Douglas Schulze
City Manager

ATTACHMENT 1

(Ordinance No. 1549)

ORDINANCE NO. 1549

AN ORDINANCE OF THE CITY OF BANNING, CALIFORNIA, AMENDING CHAPTER 15.76 OF THE BANNING MUNICIPAL CODE TO UPDATE PARTICIPATION IN THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) PROGRAM TO INCLUDE A PROCESS FOR WRCOG CALCULATION AND COLLECTION OF FEES UNDER THE PROGRAM, AND MAKING A DETERMINATION OF EXEMPTION UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

THE CITY COUNCIL OF THE CITY OF BANNING DOES ORDAIN AS FOLLOWS:

Section 1. Title. This Ordinance shall be known as the "Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2019" ("Ordinance").

Section 2. Findings. The City Council finds and determines as follows:

A. The City of Banning ("City") is a member agency of the Western Riverside Council of Governments ("WRCOG"), a joint powers agency comprised of the County of Riverside and 18 cities located in Western Riverside County. Acting in concert, the WRCOG Member Agencies developed a plan whereby the shortfall in funds needed to enlarge the capacity of the Regional System of Highways and Arterials in Western Riverside County (the "Regional System") could be made up in part by a Transportation Uniform Mitigation Fee ("TUMF") on future residential, commercial and industrial development.

B. WRCOG and the City, upon the recommendation of the WRCOG Executive Committee, now desire to adopt a process in which WRCOG calculates and collects TUMF on behalf of member agencies under the Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2018.

C. The findings set forth in Ordinance No. 1514 remain true and correct, and by this reference are incorporated into this Ordinance No. 1549 as if set forth in full herein. This Ordinance No. 1549 shall amend and supersede the provisions of Ordinance No. 1514, and to the extent any provisions herein conflict with any provisions of Ordinance No. 1514 or any other ordinance of the City, the City Council finds and determines that it is the intent of the City Council that the provisions herein shall control.

Section 3. Chapter 15.76 ("The Western Riverside County Transportation Uniform Mitigation Fee") of Title 15 ("Building and Construction") of the Banning Municipal Code is hereby amended to read as follows:

"Chapter 15.76

THE WESTERN RIVERSIDE COUNTY TRANSPORTATION UNIFORM MITIGATION FEE

Sections:

15.76.010 Title.

15.76.020 Definitions.

15.76.030 Establishment of the transportation uniform mitigation fee.

15.76.040 Reimbursements.

15.76.050 Procedures for the levy, collection, and disposition of fees.

15.76.060 Appointment of the TUMF administrator.

15.76.070 Effect.

15.76.010. Title.

This chapter shall be known as the "Western Riverside County Transportation Uniform Mitigation Fee Program Ordinance of 2019" ("Ordinance").

15.76.020 Definitions.

For the purpose of this chapter, the following words, terms and phrases shall have the following meanings:

A. "Class 'A' Office" means an office building that is typically characterized by high quality design, use of high end building materials, state of the art technology for voice and data, on-site support services/maintenance, and often includes full service ancillary uses such as, but not limited to a bank, restaurant/office coffee shop, health club, printing shop, and reserved parking. The minimum requirements of an office building classified as Class 'A' Office shall be as follows: (i) minimum of three stories (exception will be made for March JPA, where height requirements exist); (ii) minimum of 10,000 square feet per floor; (iii) steel frame construction; (iv) central, interior lobby; and (v) access to suites shall be from inside the building unless the building is located in a central business district with major foot traffic, in which case the first floor may be accessed from the street to provide entrances/ exits for commercial uses within the building.

B. "Class 'B' Office" means an office building that is typically characterized by high quality design, use of high end building materials, state of the art technology for voice and data, on-site support services/maintenance, and often includes full service ancillary uses such as, but not limited to a bank, restaurant/office coffee shop, health club, printing shop, and reserved parking. The minimum requirements of an office building classified as Class 'B' Office shall be as follows: (i) minimum of two stories; (ii) minimum of 15,000 square feet per floor; (iii) steel frame, concrete or masonry shell construction; (iv) central, interior

lobby; and (v) access to suites shall be from inside the building unless the building is located in a central business district with major foot traffic, in which case the first floor may be accessed from the street to provide entrances/exits for commercial uses within the building.

C. "Development Project" or "Project" means any project undertaken for the purposes of development, including the issuance of a permit for construction.

D. "Disabled Veteran" means any veteran who is retired or is in process of medical retirement from military service who is or was severely injured in a theatre of combat operations and has or received a letter of eligibility for the Veterans Administration Specially Adapted Housing (SAH) Grant Program.

E. "Government/public buildings, public schools, and public facilities" mean any owned and operated facilities by a government entity in accordance with subsection (F)(2) of section 15.76.030. A new development that is subject to a long-term lease with a government agency for government/public buildings, public schools, and public facilities shall apply only if all of the following conditions are met:

1. The new development being constructed is subject to a long-term lease with a government agency.

2. The project shall have a deed restriction placed on the property that limits the use to government/public facility for the term of the lease, including all extension options, for a period of not less than twenty years. Any change in the use of the facility from government shall trigger the payment of the TUMF in effect at the time of the change is made.

3. No less than ninety percent of the total square footage of the building is leased to the government agency during the term of deed restriction the long term and any extensions thereof.

4. The new development is constructed at prevailing wage rates.

5. A copy of the lease is provided to the applicable jurisdiction and to WRCOG.

6. Based on the facts and circumstances WRCOG determines that the intent of the lease is to provide for a long-term government use, and not to evade payment of TUMF.

F. "Gross Acreage" means the total property area as shown on a land division of a map of record, or described through a recorded legal description of the property. This area shall be bounded by road rights of way and property lines.

G. "Guest Dwellings" and "Detached Second Units" mean, according to the State of California legal definition as follows: (i) the second unit is not intended for sale and may be rented; (ii) the lot is zoned for single-family dwellings; (iii) the lot contains an existing single-family dwelling; (iv) the second unit is either attached to the existing dwelling and located within the living area of the existing dwelling or detached from the existing dwelling

and located on the same lot as the existing dwelling; and (v) are ministerially amended by each jurisdiction's local codes.

H. "Habitable Structure" means any structure or part thereof where persons reside, congregate or work and which is legally occupied in whole or part in accordance with applicable building codes, and state and local laws.

I. "Industrial Project" means any development project that proposes any industrial or manufacturing use allowed in the following Title 17 zoning classifications: Industrial (I), Airport Industrial (AI), Business Park (BP), or Specific Plan, with one of the aforementioned zoning districts used as the base zone.

J. "Long-Term Lease" as used in the TUMF Program, means a lease with a term of no less than twenty years.

K. "Low Income Residential Housing" means "Residential Affordable Units": (A) for:

1. Rental housing, in which the units shall be made available, rented and restricted to "lower income households" (as defined in Health and Safety Code § 50079.5) at an "affordable rent" (as defined in Health and Safety Code § 50053). Affordable units that are rental housing shall be made available, rented, and restricted to lower income households at an affordable rent for a period of at least fifty-five years after the issuance of a certificate of occupancy for new residential development.

2. For-sale housing, in which the units shall be sold to "persons or families of low or moderate income" (as defined in Health and Safety Code § 50093) at a purchase price that will not cause the purchaser's monthly housing cost to exceed "affordable housing cost (as defined in Health and Safety Code § 50052.5). Affordable units that are for-sale housing units shall be restricted to ownership by persons and families of low or moderate income for at least forty-five years after the issuance of a certificate of occupancy for the new residential development.

L. "Mixed-Use Development" as used in the TUMF Program, means Developments with the following criteria: (i) three or more significant revenue-producing uses, and (ii) significant physical and functional integration of project components.

M. "Multi-Family Residential Unit" means a development project that has a density of greater than eight (8) residential dwelling units per gross acre.

N. "Non-profit Organization" means an organization operated exclusively for exempt purposes set forth in section 501(c)(3) of the Internal Revenue Code, and none of its earnings may inure to any private shareholder or individual. In addition, it may not be an action organization, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. For the purposes of the TUMF Program, the non-profit may be a 501(c)(3) charitable organization as defined by the Internal Revenue Service.

O. "Non-Residential Unit" means retail commercial, service commercial and industrial development which is designed primarily for non-dwelling use, but shall include hotels and motels.

P. "Recognized Financing District" means a Financing District as defined in the TUMF Administrative Plan as may be amended from time to time.

Q. "Residential Dwelling Unit" means a building or portion thereof used by one family and containing but one kitchen, which is designed primarily for residential occupancy including single-family and multi-family dwellings. "Residential Dwelling Unit" shall not include hotels or motels.

R. "Retail Commercial Project" means any development project that proposes any commercial use not defined as a service commercial project allowed in the following Title 17 zoning classifications: Downtown Commercial (DC), General Commercial (GC), Highway Serving Commercial (HSC), or Specific Plan, with one of the aforementioned zones used as the base zone.

S. "Service Commercial Project" means any development project that is predominately dedicated to business activities associated with professional or administrative services, and typically consists of corporate offices, financial institutions, legal, and medical offices eating/dining facilities, and other uses related to personal or professional services.

T. "Single Family Residential Unit" means each residential dwelling unit in a development that has a density of eight units to the gross acre or less.

U. "TUMF Administrative Plan" means that the TUMF Administration Plan adopted by the WRCOG Execution Committee on May 5, 2003, as amended, setting forth detailed administration procedures and requirements for the TUMF program.

V. "TUMF Participating Jurisdiction" means a jurisdiction in Western Riverside County which has adopted and implemented an ordinance authorizing participation in the TUMF Program and complies with all regulations established in the TUMF Administrative Plan, as adopted and amended from time to time by the WRCOG.

15.76.030 Establishment of the transportation uniform mitigation fee.

A. Adoption of TUMF Schedule. The City Council shall adopt an applicable TUMF schedule through a separate resolution, which may be amended from time to time.

B. Fee Calculation. The fees shall be calculated by WRCOG according to the calculation methodology fee set forth in the WRCOG TUMF Fee Calculation Handbook adopted July 14, 2003, as amended from time to time. In addition to data in the Fee Calculation Handbook, WRCOG Staff may consider the following items when establishing the appropriate fee calculation methodology:

1. Underlying zoning of the site,

2. Land-use classifications in the latest Nexus Study,
3. Project specific traffic studies,
4. Latest Standardized reference manuals such as the Institute of Traffic Engineers Trip Generation Manual,
5. Previous TUMF calculations for similar uses, and

WRCOG staff shall approve final draft credit / reimbursement agreement prior to execution. WRCOG shall have final determination regarding the appropriate methodology to calculate the fee based on the information provided by the City. In case of a conflict between the applicant, WRCOG, and/or the City regarding the fee calculation methodology, the dispute resolution process in the TUMF Administrative Plan will apply.

C. Fee Adjustment. The fee schedule may be periodically reviewed and the amounts adjusted by the WRCOG Executive Committee. By amendment to the Resolution reference is subsection A, above, the fees may be increased or decreased to reflect the changes in actual and estimated costs of the Regional System including, but not limited to, debt service, lease payments and construction costs. The adjustment of the fees may also reflect changes in the facilities required to be constructed, in estimated revenues received pursuant to this chapter, as well as the availability or lack thereof of other funds with which to construct the Regional System. WRCOG shall review the TUMF Program no less than every four years after the effective date of this chapter.

D. Purpose. The purpose of the TUMF is to fund those certain improvements to the Regional System as depicted in Exhibit "A" of the ordinance codified in this chapter and identified in the 2016 Nexus Study, Exhibit "B" of the ordinance codified in this chapter.

E. Applicability. The TUMF shall apply to all new development within the City, unless otherwise exempt hereunder.

F. Exemptions. The following types of new development shall be exempt from the provisions of this chapter and the TUMF Administrative Plan:

1. Low income residential housing as described in (k) of section 15.76.020 and in the TUMF Administrative Plan.
2. Government/public buildings, public schools, and public facilities as described in subsection (E) of section 15.76.020 and in the TUMF Administrative Plan. Airports that are public use airports and are appropriately permitted by Caltrans or other state agency.
3. Development Projects that are the subject of a Public Facilities Development Agreement entered into pursuant to Government Code section 65864 *et seq.* prior to the effective date of Ordinance No. 1344, wherein the imposition of new fees is expressly prohibited, provided that if the term of such a Development Agreement is extended by amendment or by any other manner after the effective date of Ordinance No. 1344, the TUMF shall be imposed.

4. The rehabilitation and/or reconstruction of any habitable structure in use on or after January 1, 2000, provided that the same or fewer traffic trips are generated as a result thereof.

5. Guest Dwellings and Detached Second Units as described in subsection (G) of section 15.76.020 and in the Administrative Plan

6. Kennels and Catteries established in connection with an existing single family residential unit.

7. Any sanctuary, or other activity under the same roof of a church or other house of worship that is not revenue generating and is eligible for a property tax exemption (excluding concert venues, coffee/snack shops, book stores, for-profit pre-school day-cares, etc., which would be assessed TUMF).

8. Any nonprofit corporation or nonprofit organization offering and conducting full-time day school at the elementary, middle school or high school level for students between the ages of five and eighteen years.

9. New single-family homes, constructed by non-profit organizations, specially adapted and designed for maximum freedom of movement and independent living for qualified Disabled Veterans."

10. Other uses may be exempt as determined by the WRCOG Executive Committee as further defined in the TUMF Administrative Plan.

G. Credit. Regional System improvements may be credited toward the TUMF in accordance with the TUMF Administrative Plan and the following:

1. Regional Tier.

a. Arterial Credits. If a developer constructs arterial improvements identified on the Regional System, the developer shall receive credit for all costs associated with the arterial component based on approved Nexus Study for the Regional System effective at the time the credit agreement is entered into. WRCOG staff must pre-approve any credit agreements that deviate from the standard WRCOG approved format.

b. Other Credits. In special circumstances, when a developer constructs off-site improvements such as an interchange, bridge, or railroad grade separation, credits shall be determined by WRCOG and the City in consultation with the developer. All such credits must have prior written approval from WRCOG.

c. The amount of the development fee credit shall not exceed the maximum amount determined by the Nexus Study for the Regional System at the time the credit agreement is entered into or actual costs, whichever is less.

2. Local Tier.

a. The local jurisdictions shall compare facilities in local fee programs against the Regional System and eliminate any overlap in its local fee program except where there is a Recognized Financing District has been established.

b. If there is a Recognized Financing District established, the City may credit that portion of the facility identified in both programs against the TUMF in accordance with the TUMF Administrative Plan.

15.76.040 Reimbursements.

Should the developer construct Regional System improvements in excess of the TUMF fee obligation, the developer may be reimbursed based on actual costs or the approved Nexus Study effective at the time the agreement was entered into, whichever is less. Reimbursements shall be enacted through an agreement between the developer and the City, contingent on funds being available and approved by WRCOG. In all cases, however, reimbursements under such special agreements must coincide with construction of the transportation improvements as scheduled in the five-year Zone Transportation Improvement Program's adopted annually by WRCOG.

15.76.050 Procedures for the levy, collection, and disposition of fees.

A. Authority of the Building Department. The Community Development Director, or his/her designee, is hereby authorized to provide WRCOG with development project specifics for the calculation of TUMF in a manner consistent with the TUMF Administrative Plan.

B. Payment. Payment of the fees shall be as follows:

1. All fees collected hereunder shall be collected by WRCOG for deposit, investment, accounting and expenditure in accordance with the provisions of this chapter, TUMF Administrative Plan, and the Mitigation Fee Act.

2. The fees shall be paid at the time a certificate of occupancy is issued for the Development Project or upon final inspection, whichever comes first (the "payment date"). However, this section should not be construed to prevent payment of the fees prior to issuance of an occupancy permit or final inspection. Fees may be paid at the issuance of a building permit, and the fee payment shall be calculated based on the fee in effect at that time, provided the developer tenders the full amount of his/her TUMF obligation. If the developer makes only a partial payment prior to the payment date, the amount of the fee due shall be based on the TUMF fee schedule in place on the payment date. The fees shall be calculated according to fee schedule set forth in the ordinance codified in this chapter and the calculation methodology set forth in the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time.

3. The fees required to be paid shall be the fee amounts in effect at the time of payment is due under this chapter, not the date the ordinance codified in this chapter was initially adopted. The City shall not enter into a development agreement which freezes future adjustments of the TUMF.

4. If all or part of any development project is sold prior to payment of the fee, the property shall continue to be subject to the requirement for payment of the fee. The obligation to pay the fee shall run with the land and be binding on all the successors in interest to the property.

5. Fees shall not be waived.

C. Issuance of Certificate of Occupancy. The City shall not issue a certificate of occupancy for any Development Project until WRCOG has provided written evidence that it has collected the fee.

D. Appeals. Appeals shall be filed with WRCOG in accordance with the provisions of the TUMF Administrative Plan. Appealable issues shall be the application of the fee, application of credits, application of reimbursement, application of the legal action stay and application of exemption.

E. Reports to WRCOG. The City Manager, or his/her designee, shall prepare and deliver to the Executive Director of WRCOG, periodic reports as will be established under section 15.76.060.

15.76.060 Appointment of the TUMF administrator.

WRCOG is hereby appointed as the Administrator of the Transportation Uniform Mitigation Fee Program. WRCOG is hereby authorized to collect all fees generated from the TUMF within the City, and to invest, account for and expend such fees in accordance with the provisions of this chapter and the Mitigation Fee Act. The detailed administrative procedures concerning the implementation of this chapter shall be contained in the TUMF Administrative Plan. Furthermore, the TUMF Administrator shall use the Fee Calculation Handbook adopted July 14, 2003, as amended from time to time, for the purpose of calculating a developer's TUMF obligation. In addition to detailing the methodology for calculating all TUMF obligations of different categories of new development, the purpose of the Fee Calculation Handbook is to clarify for the TUMF Administrator, where necessary, the definition and calculation methodology for uses not clearly defined in the respective TUMF ordinances. WRCOG shall expend only that amount of the funds generated from the TUMF for staff support, audit, administrative expenses, and contract services that are necessary and reasonable to carry out its responsibilities and in no case shall the funds expended for salaries and benefits exceed one percent of the revenue raised by the TUMF Program. The TUMF Administrative Plan further outlines the fiscal responsibilities and limitations of the Administrator.

15.76.070 Effect.

No provisions of this chapter shall entitle any person who has already paid the TUMF to receive a refund, credit or reimbursement of such payment. This chapter does not create any new TUMF."

Section 4. Environmental Exemption. The City Council hereby determines, in accordance with Section 15061(b) of the California Environmental Quality Act Guidelines (the "CEQA Guidelines") (14 Cal. Code Regs. § 15000 *et seq.*) that the Transportation

Uniform Mitigation Fee Program as described in this Ordinance is not a “project” within the meaning of Section 15378 and Section 15061(b)(3) of the CEQA Guidelines and is therefore exempt from the requirements of CEQA. The Ordinance establishes a funding mechanism for potential transportation improvements and does not approve the construction nor cause the construction of any specific transportation improvements within Riverside County. This Ordinance will have no effect on the environment. Pursuant to CEQA Guidelines Sections 15061(d) and 15062, the City Manager is hereby directed to cause a Notice of Exemption to be prepared, executed, and filed for the foregoing determination in the manner required by law, that this is not a project under the California Environmental Quality Act and, therefore, no environmental impact assessment is necessary. In addition, the adoption of this Ordinance approves and sets forth a procedure for determining fees for the purpose of obtaining funds for capital projects necessary to maintain service within existing service areas and is statutorily exempt from CEQA pursuant to CEQA Guidelines Section 15273(a)(4).

Section 5. Severability. If any section, subsection, sentence, clause, phrase or portion of this Ordinance for any reason is held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity or the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each section, subsection, sentence, clause, phrase or portion thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases or portions were to be declared invalid or unconstitutional.

Section 6. No Procedural Defenses. The City acknowledges that WRCOG takes the position that jurisdictions that participate in the TUMF program are prohibited from raising procedural defenses, including, without limitation, a statute of limitations, laches, the California Government Tort Claims Act, and necessary parties, in a dispute with WRCOG regarding the matters set forth in this Ordinance.

Section 7. Certification; Effective Date; Publication. The City Clerk shall certify to the adoption of this Ordinance. This Ordinance shall be effective sixty (60) days following its adoption, and within fifteen (15) days after its adoption, the City Clerk shall cause this Ordinance or a summary hereof to be published and or posted as required by law and by the City’s ordinances and resolutions.

PASSED, APPROVED, AND ADOPTED on the ____ day of _____, 2019.

Art Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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

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

CERTIFICATION

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1549, was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of June, 2019, and was duly adopted at a regular meeting of said City Council on the 9th day of July, 2019, by the following vote to wit:

AYES:

NOES:

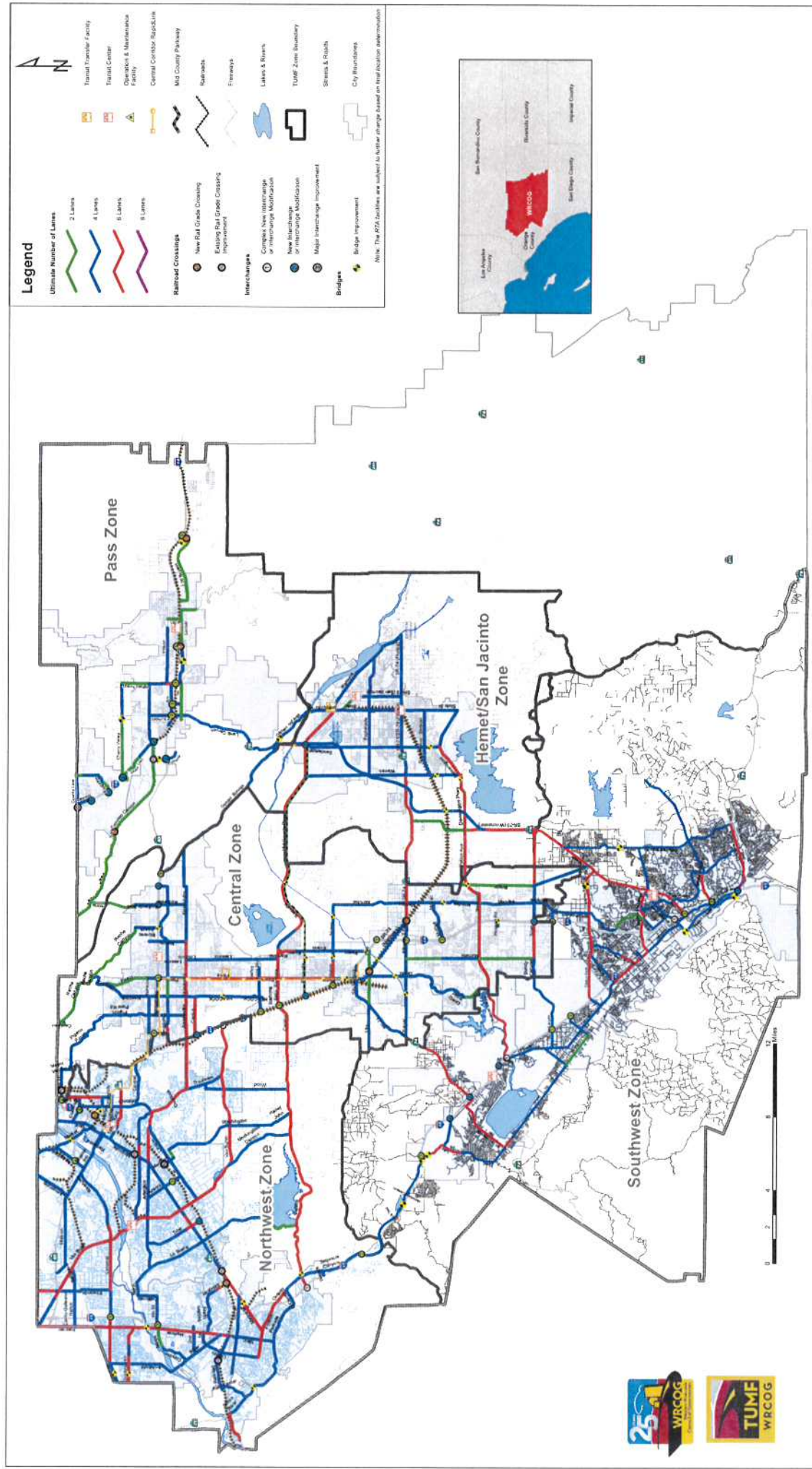
ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

EXHIBIT "A"

MAP OF REGIONAL SYSTEM
(Attached)



Regional System of Highways and Arterials (RSHA)

Transportation Uniform Mitigation Fee Program | Figure 4.4

EXHIBIT "B"

**NEXUS STUDY
(Attached)**

<http://www.wrcog.cog.ca.us/DocumentCenter/View/1020/TUMF-2017-Nexus-Study-current?bidId=>

ATTACHMENT 2

(Notice of Exemption)

EXHIBIT B

Notice of Exemption

Appendix E

To: Office of Planning and Research
P.O. Box 3044, Room 113
Sacramento, CA 95812-3044

County Clerk

County of: Riverside

2724 Gateway Driver

Riverside, CA, 92507

From: (Public Agency): City of Banning

99 East Ramsey Street

Banning, CA, 92220

(Address)

Project Title: An Ordinance amending Chapter 15.76 to Update Participation in the WRCOG TUMF.

Project Applicant: City of Banning Community Development Department

Project Location - Specific:

Citywide; all parcels; all Assessor's Parcel Numbers

Project Location - City: Banning Project Location - County: Riverside

Description of Nature, Purpose and Beneficiaries of Project:

Proposed Ordinance to include a process for WRCOG calculation and collection of fees under the Western Riverside Transportation Uniform Mitigation Fee (TUMF) Program.

Name of Public Agency Approving Project: City of Banning

Name of Person or Agency Carrying Out Project: City of Banning

Exempt Status: **(check one):**

☒ Ministerial (Sec. 21080(b)(1); 15268);

☐ Declared Emergency (Sec. 21080(b)(3); 15269(a));

☐ Emergency Project (Sec. 21080(b)(4); 15269(b)(c));

☐ Categorical Exemption. State type and section number: _____

☐ Statutory Exemptions. State code number: _____

Reasons why project is exempt:

The project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines Section 15060(c)(2); (2) In light of the general rule that CEQA applies only to projects which have the potential for causing a significant effect on the environment and since it can be seen with certainty there is no possibility that the activity in question may have a significant effect on the environment.

Lead Agency

Contact Person: Adam B. Rush, AICP

Area Code/Telephone/Extension: (951) 922-3131

If filed by applicant:

1. Attach certified document of exemption finding.

2. Has a Notice of Exemption been filed by the public agency approving the project? ☒ Yes ☐ No

Signature: _____ Date: 06/27/2019 Title: Community Dev. Dir.

☒ Signed by Lead Agency ☒ Signed by Applicant

Authority cited: Sections 21083 and 21110, Public Resources Code.

Reference: Sections 21108, 21152, and 21152.1, Public Resources Code.

Date Received for filing at OPR: _____

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution No. __ approving a Professional Service Agreement with Webb & Associates for the preparation of CEQA documentation and environmental services for the Sun Lakes Blvd. Circulation Element General Plan Amendment (CGPA)

RECOMMENDED ACTION:

The City Council adopt Resolution:

1. Approving a Professional Service Agreement with Webb & Associates, in an amount of \$71,345 with a contingency of \$7,134.50 (10%), for a total amount not-to-exceed \$78,479.50 for the preparation of CEQA documentation and environmental services for the Sun Lakes Blvd. Circulation Element General Plan Amendment.
2. Authorizing the City Manager to execute the Professional Services Agreement with Webb & Associates for Fiscal Year 2019/2020 for the preparation of CEQA documentation and environmental services for the Sun Lakes Blvd. Circulation Element General Plan Amendment.

PROJECT DESCRIPTION:

The City of Banning General Plan – Circulation Element (Exhibit III-6) identifies the extension of Sun Lakes Blvd., from its current termination point at Highland Home Road to the anticipated connection at West Lincoln Street. This alignment incorporates a large “S-curve” to connect into West Lincoln Street through the current alignment. The alignment of Sun Lakes Blvd. includes property that covers three parcels (APN: 537-110-007; -008; -009) totaling about 170-acres and provides for approximately 5,456 linear feet of roadway.

The City of Banning proposes an update to the City's General Plan Circulation Element to realign the Sun Lakes Blvd. extension to more closely follow the existing Right-of-Way (R/W) of West Westward Avenue. The approximate area of disturbance is the same, about 170-acres; however, the length of the roadway is slightly less due to the removal of the aforementioned "S-curve" shown on the current General Plan Circulation Element. The modified roadway alignment is approximately 5,357 feet.

BACKGROUND:

On May 7, 2019 staff solicited proposals from our on-call list of qualified environmental consultants. A Scope of Work was transmitted to Webb & Associates; Aspen Environmental; and Dudek Environmental Consulting. An addendum was transmitted on May 15, 2019.

The scope of work for these services includes the preparation of a CEQA document, which is anticipated to be the evaluation of the Initial Study Checklist, in accordance with Appendix G from the State CEQA Guidelines which will likely result in the preparation of a Mitigated Negative Declaration (MND); however, the ultimate environmental document will be determined only after the Initial Study has been prepared.

In 2016, the City Council approved an on-call bench of qualified environmental consultants that were selected through a rigorous public procurement and interview process. The following firms were selected as the top three (3) qualified firms:

1. Webb & Associates
2. Aspen Environmental
3. Dudek Environmental Consulting

The environmental Scope of Work, and proposal for environmental documentation, associated with the Sun Lakes Blvd. CGPA, was transmitted to the City's qualified bench of on-call consultants on May 7, 2019, with a due date of May 28th. City staff prepared an addendum; which was issued to the on-call bench of consultants on May 15, 2019 that clarified and updated non-substantive items associated with the Scope of Work. On May 10, 2019, Aspen Environmental contacted the City's Community Development Department and indicated that they would not be submitting a proposal. No response was received from Dudek Environmental Consulting and Webb & Associates submitted a qualified and responsible proposal prior to the due date of May 28, 2019.

Subsequent from the consultant's proposal submission, City staff met with the firm's principals to discuss and refine the Scope of Work; to further align the scope to the available funding and the City's timeframe for the Circulation GPA. As such, Webb & Associates provided some refinements to the proposal, which streamlines the work effort and saves the City time and money.

The proposal, from Webb & Associates, was recognized by staff as the most cost effective and responsive of proposals submitted to the City. As such, Webb &

Associates was selected to implement the City's scope of work for the first phase of the Sun Lakes Blvd. extension, which is vital to the preparation of design and engineering plans to both realign and extend Sun Lakes Blvd. from Highland Home Road to Sunset Avenue, generally along the alignment of West Westward St.

FISCAL IMPACT:

Funding for Environmental Documentation Services, in the amount not-to-exceed \$78,479.50, will be available in the Public Works Department General Plan Traffic Circulation Budget (Account No. 100-4900-431.33-43). The consultant will invoice the City on a monthly basis, with an itemized list of work performed, along with delivery of the specific work products. The source of funds is anticipated to be the City's allocation of Gas Tax funds. The anticipated timeframe for this work effort is approximately four (4) months.

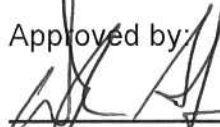
ALTERNATIVES:

1. Adopt the Resolution.
2. Reject the proposal and re-advertise through a full Request for Proposal (RFP) procurement process.

ATTACHMENTS:

1. Resolution 2019-_____
2. Request for Proposal (RFP) Specifications
3. Submitted Proposal
4. Template Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-__

RESOLUTION 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICE AGREEMENT CONTRACT WITH WEBB & ASSOCIATES., IN AN AMOUNT NOT TO EXCEED \$71,345.00 FOR THE PREPARATION OF CEQA DOCUMENTATION AND ENVIRONMENTAL SERVICES FOR THE SUN LAKES BLVD. CIRCULATION GENERAL PLAN AMENDMENT (GGPA) IN THE CITY OF BANNING FOR FISCAL YEAR 2019/2020.

WHEREAS, on May 7, 2019 staff solicited proposals from qualified companies to provide CEQA documentation and environmental services for the Sun Lakes Blvd. Circulation General Plan Amendment (CGPA) in the City of Banning for Fiscal Year 2019/2020.

WHEREAS, staff transmitted the Scope of Work to the City's qualified list of on-call professional environmental consultants, which is comprised of three planning firms and received one (1) proposal; and

WHEREAS, the scope of work for these services includes the preparation of an Initial Study and Mitigated Negative Declaration for the Sun Lakes Blvd. extension and realignment.

WHEREAS, staff recommends the award of a Professional Services Agreement to Webb & Associates., in an amount not-to-exceed \$71,345.00 for Fiscal Year 2019/2020; and

WHEREAS, funding will be available in the City's Public Works Department accounts during Fiscal year 2019/2020 in the amount of not-to-exceed \$71,345.00.

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-__ approving a Professional Service Agreement with Webb & Associates, in an amount not-to-exceed \$71,345.00 for CEQA documentation and Environmental Services in the City of Banning for Fiscal Year 2019/2020.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to this services agreement.

SECTION 3. The City Manager or his designee is authorized to execute the Professional Service Agreement Contract with Webb & Associates for an amount not-to-exceed \$71,345.00.

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, ADOPTED AND APPROVED this 9th day of July, 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 adopted by the City Council of the City of Banning at a regular meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 1

(Resolution 2019-____)

RESOLUTION 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICE AGREEMENT WITH WEBB & ASSOCIATES IN AN AMOUNT NOT TO EXCEED \$78,479.50 FOR THE PREPARATION OF CEQA DOCUMENTATION AND ENVIRONMENTAL SERVICES FOR THE SUN LAKES BLVD. CIRCULATION ELEMENT GENERAL PLAN AMENDMENT (CGPA) IN THE CITY OF BANNING FOR FISCAL YEAR 2019/2020.

WHEREAS, on May 7, 2019 staff solicited proposals from qualified companies to provide CEQA documentation and environmental services for the Sun Lakes Blvd. Circulation General Plan Amendment (CGPA) in the City of Banning for Fiscal Year 2019/2020; and

WHEREAS, staff transmitted the Scope of Work to the City's qualified list of on-call professional environmental consultants, which is comprised of three planning firms and received one (1) proposal; and

WHEREAS, the scope of work for these services includes the preparation of an Initial Study and Mitigated Negative Declaration for the Sun Lakes Blvd. extension and realignment; and

WHEREAS, staff recommends the award of a Professional Services Agreement to Webb & Associates in an amount not-to-exceed \$78,479.50 for Fiscal Year 2019/2020; and

WHEREAS, funding will be available in the City's Public Works Department accounts during Fiscal year 2019/2020 in the amount of not-to-exceed \$78,479.50.

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-__ approving a Professional Service Agreement with Webb & Associates, in an amount not-to-exceed \$78,479.50 for CEQA documentation and Environmental Services for the Sun Lakes Blvd. Circulation Element General Plan Amendment.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to this services agreement.

SECTION 3. The City Manager or his designee is authorized to execute the Professional Service Agreement Contract with Webb & Associates for an amount not-to-exceed \$78,479.50.

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, ADOPTED AND APPROVED this 9th day of July, 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 adopted by the City Council of the City of Banning at a regular meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

Exhibit “A”

Professional Services Agreement
(See Attachment No. 4)

Exhibit “B”
Submitted Proposal
(See Attachment No. 3)

ATTACHMENT 2

Request for Proposal

ADDENDUM NO. 1 (May 15, 2019)

REQUEST FOR PROPOSAL
SUN LAKES BLVD. REALIGNMENT
CIRCULATION ELEMENT UPDATE TO
THE CITY OF BANNING GENERAL PLAN

May 7, 2019

CITY OF BANNING
COMMUNITY DEVELOPMENT DEPARTMENT
ATTN: MR. ADAM B. RUSH, AICP
(951) 922-3131
arush@banningca.gov

PROJECT DESCRIPTION:

The City of Banning (City) General Plan – Circulation Element (Exhibit III-6) identifies the extension of Sun Lakes Blvd., from its current termination point at Highland Home Road to the anticipated connection at West Lincoln Street. This alignment incorporates a large “s-curve” to connect into West Lincoln Street through the current alignment. The alignment of Sun Lakes Blvd. includes property that covers three parcels (APN: 537-110-007; -008; -009; -010) totally approximately 170-acres and provides for approximately 5,456 linear feet of roadway.

The City proposes an update to the City's General Plan Circulation Element to realign the Sun Lakes Blvd. extension to more closely follow the existing Right-of-Way (R/W) of West Westward Avenue. The approximately area of disturbance is the same, about 170-acres; however, the length of the roadway is slightly less due to the removal of the aforementioned “S-curve” shown on the current General Plan Circulation Element. The modified roadway alignment is approximately 5,357 feet.

The City Council initiated this Circulation Element change on April 23, 2019 and staff began conducting the environmental review of the proposed change. The anticipated areas of impact include the following:

1. Cultural Resources
2. Biology/MSHCP Compliance
3. Traffic and Circulation
4. Noise
5. Air Quality/Greenhouse Gas Emissions
6. Geotechnical

The Circulation Element is subject to review by the City's Planning Commission and adoption by the City Council. City staff anticipates the preparation of an Initial Study and the adoption of a Mitigated Negative Declaration are the appropriate CEQA and environmental clearance. Furthermore, the City anticipates that a “desktop” level review is adequate to provide environmental clearances for the Circulation Update. Additional Design, Environmental, and Planning is necessary for the PA&ED phase of the Sun Lakes Blvd. extension. This RFP is simply to provide CEQA compliance for an update to the City's Circulation Element.

The follow exhibits, which are attached herein, provide a more detail perspective of the proposed changes to the Sun Lakes Blvd. extension.

The following scope provides the minimum level of analysis, reports, and studies associated with the General Plan Update:

CEQA REVIEW/PREPARATION OF THE INITIAL STUDY

The Circulation Element General Plan Amendment is considered a "Project" under the California Environmental Quality Act (CEQA). The Project Description is incorporated herein for reference and is the first step, in a multi-step process, to realign Sun Lakes Blvd. from what is represented in the Circulation Element as intersecting with Lincoln Avenue, being modified to West Westward Avenue, adjacent to the San Gorgonio campus of Mt. San Jacinto College (MSJC).

TASK I. CEQA Research and Documentation:

The environmental clearance document will identify the potential environmental impacts and the need for the preparation of the technical studies and analyses, some of which will be prepared by the City. Technical studies and the environmental analyses required by the City will be authorized and administered under a contract executed by the City Council.

The City will prepare the required CEQA notifications and post through the County of Riverside Clerk-Recorder and the State Clearinghouse (aka Governor's Office of Planning and Research) as required for this CEQA documentation process. Lastly, the City understands the need for project coordination during the environmental analysis and public hearing process. In order to streamline this effort, City staff encourages the consultant to utilize online meeting platforms and teleconference to the greatest extent possible.

TASK II. Preparation of the Draft Initial Study/Mitigated Negative Declaration (IS/MND):

Develop the Environmental Setting:

- a. Utilizing the Project materials available and reviewed, the consultant will prepare the existing Environmental Setting for each of the issues being evaluated in the IS/MND, utilizing the technical studies, as necessary, and data gathered independently for the remaining issues.
- b. **Prepare the Environmental Impact Evaluation:** The consultant will utilize the data from the Project description and Project materials to forecast potential environmental impacts resulting from the proposed Project. The impact forecast will be as specific as possible for the proposed Project and affected environment. Mitigation measures will be identified, as appropriate, for each environmental issue as required by CEQA.
- c. **Prepare All Remaining IS Sections:** The CEQA mandated sections (Alternatives, Growth Inducement, Cumulative Effects, lists of contacts and persons consulted, General Plan Consistency, and sources referenced) will be prepared under this subtask. In addition, a Mitigation Monitoring and Reporting Plan (MMRP) will be developed.

The Consultant will prepare the Draft Initial Study, to be reviewed and considered in conjunction with the City's development proposal, and supported by the Desktop Technical Reports completed, as necessary. The Draft IS/MND will serve as the City's screen check document. The following subtasks will be completed:

TASK III. Agency Processing/Public Circulation:

The City will coordinate the Responsible, Trustee Agencies, and Interested Parties that are potentially affected by the Project so as to receive input, suggestions and recommendations regarding the environmental process that should be pursued. The consultant will assist with the Response to Comments on the Screen Check Draft of the IS/MND.

TASK IV. Incorporation of Internal/External Comments & Final IS/MND:

Following the completion of the 30-day Screen Check Draft public review period (as required by CEQA), the City will collect the written comments received and distribute to the consultant to review and respond as necessary and required by the CEQA Statutes and Guidelines and the County's rules and regulatory procedures acting in the capacity of the Lead Agency. The consultant will coordinate directly with City staff to ensure all public comments are recorded, itemized and responded to in a manner that preserves the integrity of the Administrative record. The comments and responses will be incorporated into the Final Initial Study and associated Appendices and Environmental Determination presented to the City Planning Commission and City Council during the applicable public hearings.

TASK V. Deliverables:

The preparation of this Initial Study/Mitigated Negative Declaration (IS/MND) includes the following supportive materials and documents:

1. Draft IS (Three (3) hard copies to the County for review along with a Microsoft Word and PDF version for the County's records and manipulation if necessary).
2. A Final IS
3. A completed IS/MND document
4. Reference Appendix of sources utilized and public comments received.
5. The Draft and Final Mitigation, Monitoring, and Reporting Plan (MMRP)

TASK VI. TECHNICAL STUDIES/REPORTS ANTICIPATED

Based upon the City's review and initial project evaluation the following technical studies are anticipated to be prepared in support of the environmental document.

A. Cultural and Paleontological Records Search:

The consultant shall conduct a 1-mile radius cultural resources records search through the Eastern Information Center (EIC) located at the University of California, Riverside (UCR) to establish the status and extent of previous surveys in the Study Area, to note what types of cultural resources might be expected to occur within the Study Area. In addition, the records search will identify cultural resources listed on or determined eligible for listing on the National Register of Historic Places (NRHP) and/or California Register of Historical Resources (CRHR) located within or near the project area. The consultant will contact the Native American Heritage Commission (NAHC) for a search of the Sacred Lands File and a list of Native American contacts. In addition, the consultant will contact the Vertebrate Paleontology section of the Western Science Center (WSC) to complete a records search and access the online database of the University of California, Museum of Paleontology.

B. Traffic Impact Analysis:

The consultant shall coordinate with the City Public Works Department to develop a project scoping agreement to determine the type of analysis necessary, potentially impacted intersections/interchanges and the methodology in which the analysis will occur.

The scope of services, for the Traffic Impact Analysis, will include the following items:

- Participate in up to two meetings/conference calls with the City's technical staff members in order to establish project analysis parameters and discuss traffic issues.
- Determine trip distribution patterns associated with the proposed project based on a select-zone run of the Riverside County Transportation Analysis Model (RivTAM).
- Based on the project-related trip generation and trip distribution patterns; establish the required study area intersections to be evaluated in the traffic impact analysis based on interaction with County staff members.
- Identify known cumulative development projects and ambient growth patterns.
- Prepare a draft of the traffic study scoping assumptions and submit it to the City for review and approval.

C. MSHCP Compliance Report:

The consultant will conduct background research to help characterize the current conditions within the Project site. The research will entail a search of public databases, such as the California Department of Fish and Wildlife's (CDFW) California Natural Diversity Database (CNDDDB), the California Native Plant Society's (CNPS) online Inventory of Rare and Endangered Plants of California (Inventory), the National Wetland Inventory, the U.S. Fish and Wildlife Service's (USFWS) Critical Habitat Portal, CDFW Biogeographical Information Observation System (BIOS), and the Natural Resources Conservation Service's (NRCS) online Web Soil Survey. If there are previously prepared biological studies in the Project's vicinity, supplied by the client, the consultant will review those documents. These data will be used to develop a list of sensitive species and habitat occurrences recorded in the Project vicinity.

D. Noise Impact Analysis:

The consultant shall prepare a Noise Impact Analysis that reviews the background information and the existing conditions associated, and sensitive receptors, based upon the existing General Plan Noise Element, specifically associated with Sun Lakes Blvd. The consultant shall identify and analyze the changes in operation noise contours associated with the realignment and incorporate these into the report.

E. Air Quality/Greenhouse Gases:

The consultant shall prepare an Air Quality/Greenhouse Gas Emissions analysis for incorporation into the environmental document. The analysis shall evaluate and quantify regional criteria pollutant and GHG emissions associated with the operation of the proposed project utilizing the CalEEMod Model. All feasible mitigation will be identified and quantified through use of the CalEEMod Model, as necessary. **NOTE: A full AQ/GHG Report is not necessary for this analysis.**

F. Preliminary Geotechnical Report:

The applicant shall prepare a Preliminary Geotechnical Report based upon the available background information and data for review. The consultant will review readily available, geologic maps and reports and aerial photographs. Evaluation and analysis of the collected data by a Professional Engineer and Certified Engineering Geologist in accordance with the standard of care provided by our industry for this type of project. Prepare a detailed report presenting the findings and conclusions for site development. Review the field and laboratory data and perform engineering analysis to develop geotechnical recommendations for the proposed improvements. The report shall be signed and stamped by a California licensed Geotechnical Engineer (GE) and Certified

Engineering Geologist (CEG), and will include a site plan depicting locations of all explorations and distribution of earth materials (including any rock classifications), exploration logs, geotechnical laboratory test data in addition to the following:

- **Site Conditions:** Review and summarize the surface and subsurface geologic conditions and materials, and the engineering properties of the soils encountered during the site investigation.
- **Groundwater:** Present recommendations for addressing shallow groundwater conditions during site development if these conditions are encountered during the investigation.
- **Geologic Hazards:** Discuss on a site specific level, the potential geologic hazards at the site, including expansive soils, liquefaction, lateral spreading, ground shaking and ruptures, rock fall hazard, debris flow etc.

G. Preliminary On-Site Hydrology Study

The Consultant will provide a preliminary hydrology study for the drainage areas associated with the project property limits. The hydrology study will include analysis of the on-site 10-year/24-hour flood volumes for the existing and proposed conditions, using the ***Riverside County Rational Method and/or Unit Hydrograph Method***. This hydrology analysis will cover on-site drainage areas associated with the project property limits, and will be used in the preliminary sizing of the on-site detention basin. The Consultant will provide one (1) hydrology map in support of the above hydrology analysis. The hydrology map will depict drainage areas, flow paths, and flow concentration points.

H. Preliminary Grading Layout

The Consultant will prepare a Preliminary Grading Layout in support of the Sun Lakes Blvd. Circulation Element GPA. The Preliminary Grading Layout will show proposed slope and flow direction arrows, FG, FS, TC and FL spot elevations. The Preliminary Grading design will be based on the topographic survey of the site and project base map, both prepared as part of this scope of work. The Preliminary Grading Layout will include preliminary raw earthwork quantities and preliminary grading contours.

I. Preliminary Drainage Report

A Preliminary Drainage Report for the proposed project will be prepared in support of the Project. The report will discuss the results of the On-Site Hydrology Study and the proposed on-site storm drain infrastructure design. Normal Depth hydraulic calculations for proposed on-site drain facilities and preliminary detention basin sizing calculations will be included in the report.

SUBMITTAL PROCEDURES:

The consultant will prepare the following items **(1) Cover letter; (2) Scope of Services and (3) Budget** for the professional services requested herein. The City is conducting the informal RFP process through our pre-qualified list of "on-call" environmental consultants. As such, a statement of qualifications, resumes, company overviews, and/or experience of project key players are not necessary. The consultants **shall include** a copy of the rate sheets that were approved as part of the current "on-call" contract with the City of Banning. The Project's budget shall be based upon the rates approved with the City of Banning.

Proposals are due on **Wednesday, May 28, 2019 at 5:00pm**. Late proposals will not be accepted. Hard copy proposals will not be accepted. Please email all proposals to the following:

Sandra Calderon, Project Coordinator
scalderon@banningca.gov

If you have any additional questions or need further clarification please feel free to call or email the City of Banning Community Development Director, Mr. Adam B. Rush, AICP at (951) 922-3125 or arush@banningca.gov.

ATTACHMENT 3

Proposal



May 28, 2019

Corporate Headquarters

3788 McCray Street
Riverside, CA 92506
951.686.1070

Palm Desert Office

41-990 Cook St., Bldg. I - #801B
Palm Desert, CA 92211
951.686.1070

Murrieta Office

41391 Kalmia Street #320
Murrieta, CA 92562
951.686.1070

Adam Rush, AICP
Community Development Director
City of Banning
Proposal transmitted via email to scalderon@banningca.gov

RE: Proposal for Environmental Services for the Sun Lakes Boulevard Realignment
Circulation Element Update to the City of Banning General Plan

Dear Adam:

Webb Associates (WEBB) is pleased to provide you with this proposal for Environmental Services related to the proposed Sun Lakes Boulevard (Blvd) Realignment Circulation Element Update to the City of Banning General Plan located in the City of Banning, California. Enclosed you will find our Project Understanding (Exhibit "1"), Scope of Services (Exhibit "2"), and Compensation for Services (Exhibit "3") for your review and consideration.

We appreciate this opportunity to be of continued service to the City of Banning and look forward to hearing from you. If you have any questions regarding this proposal, please contact us at 951-686-1070.

Sincerely,

ALBERT A. WEBB ASSOCIATES

A handwritten signature in black ink, appearing to read "Stephanie N. Standerfer".

Stephanie N. Standerfer
Vice President



www.webbassociates.com

EXHIBIT "1" PROJECT UNDERSTANDING

We understand the City of Banning is considering a modification to the proposed alignment of Sun Lakes Blvd as pictured in Figure 1 below. The City's General Plan Circulation Element currently depicts the extension of Sun Lakes Blvd as an "s" curve connecting from Highland Home Road to West Lincoln Street. The City is now contemplating a Circulation Element Update to change the proposed alignment of Sun Lakes from Highland Home Road to West Westward Avenue. The new alignment would be approximately 5,357 linear feet and encompass approximately 170 acres within Assessor Parcel Numbers 537-110-007, -008, -009, and -010.

We understand the City wants to process the Circulation Element Update at this time, without detailed engineering plans. It is assumed that more detailed engineering and environmental analysis will be completed at a later date.

The purpose of this scope of work is to provide the City with the necessary CEQA documentation in order to approve the Circulation Element Update which will trigger the need for a General Plan Amendment with this new alignment shown below in Figure 1. The CEQA documentation provided herein would cover the General Plan Amendment which the City is preparing.



Figure 1 Proposed Alignment of Sun Lakes Boulevard

EXHIBIT “2” SCOPE OF SERVICES

Task 1: CEQA Research and Documentation

WEBB will draft a detailed project description based on the alignment provided by the City and the understanding that the project is only a General Plan Amendment to update the Circulation Element. No detailed plans with engineering is being prepared at this time, and so therefore more detailed CEQA analysis will be prepared at a later date once the engineering is prepared for the roadway.

Some technical analysis will be prepared at a high level and are outlined under Task 6 below. Detailed/focused technical studies and analyses are not included at this time. The Technical Studies outlined below will be utilized in the Initial Study to be prepared under Task 2 below. Additional technical information not outlined below will be supplied by the City. Coordination with City Staff will be ongoing throughout the CEQA process. We understand that the City will conduct all the required noticing with the County Clerk and State Clearinghouse and local newspaper(s) and therefore is not included in this scope and budget.

Task 2: Preparation of Draft Initial Study/Mitigated Negative Declaration

Using the City's preferred Initial Study(IS)/MND format, WEBB will prepare an IS with explanatory text for all topical issue areas, in compliance with the requirements of CEQA, the Updated 2019 *CEQA Guidelines*, and the City's procedures for implementing CEQA. The IS/MND will include an Environmental Setting description for each issue area, but will be brief given the high level of environmental analysis being prepared at this time but will establish the existing conditions affected by the proposed re-alignment of Sun Lakes Blvd.

The technical analyses outlined in Task 6 below will be used to evaluate potential impacts associated with the re-alignment. Because no detailed engineering is being conducted at this time, the IS/MND may identify the need for future studies and analysis via mitigation measures so that future tiering can be conducted once a defined and detailed engineering plans are available.

We have included one round of minor revisions to the IS/MND as a result of one consolidated Word document comments in tracked changes or embedded comment bubbles from City staff only. This task includes preparing the document for public review by doing final formatting and compiling the relevant technical appendices for the City. We have assumed that the City will provide a summary of the Assembly Bill 52 (AB 52) consultation efforts between the City and relevant tribes to WEBB for inclusion in the MND. We have not included circulation and posting of the NOC/NOI in our Scope of Work and costs; per the RFP, we assume the City will conduct all the required noticing and provide the CEQA filing fees.

Task 3: Agency Processing/Public Circulation

The City will prepare the distribution list to be used for the public review of the IS/MND and the City will conduct all the required production, circulation and noticing to any agencies/entities affected by or having jurisdiction over the project.

This task will include time for WEBB to review all the public comments received on the IS/MND during the 30-day public review period. WEBB will prepare draft responses for the City to consider in its Final MND prepared under Task 4. This task includes preparation of response from no more than 5 commenting agencies/individuals and no more than 20 individual comments that require answers other than “comment noted.”

Task 4: Incorporation of Internal/External Comments & Final IS/MND

A mitigation monitoring and reporting program (MMRP) will be required per Section 15097 of the *CEQA Guidelines*. The MMRP will consist of a matrix that identifies, for each impact category the mitigation measures, timing for implementation, the party responsible for implementation, and the method of reporting

or monitoring to be used. WEBB will prepare a Screencheck MMRP for City review and incorporate one round of revisions.

After Task 3, WEBB will finalize the responses to comments received during the 30-day public comment period and prepare the Final IS/MND incorporating response to comments, final MMRP, and technical appendices. All documents will be provided electronically to the City for its use and reproduction for any public hearings.

The City will prepare the Notice of Determination (NOD) as required by Section 15094 of the *CEQA Guidelines* and file the NOD with Riverside County Clerk's office and State Clearinghouse. Applicable CEQA filing fees are the responsibility of the City.

Task 5: Deliverables

As requested by the RFP, the following deliverables are included in our scope of work:

- Screencheck Draft IS/MND – one electronic and three hard copies of IS/MND only
- Final Draft IS/MND – one electronic copy
- Public Review IS/MND – one electronic copy
- References Appendices – one electronic copy
- Draft MMRP and draft Final IS/MND – one electronic copy
- Final MND include MMRP – one electronic copy

Task 6 – Technical Studies

The following Technical Studies are included in our scope of work, as requested by the RFP and Addendum No. 1 dated May 15, 2019. Per our On Call Contract with the City, we will utilize a few subconsultants who specialize in their respective fields to provide services related to cultural, biological and geotechnical analyses. We understand that the Technical Studies will only cover the Circulation Element Update General Plan Amendment, and not be considered to be project-specific analyses that will provide the full CEQA coverage in order to construct the project. Where necessary, we expect to have to include future studies to be conducted once design and final alignments are chosen in the future to accompany future CEQA analysis.

Task 6A – Cultural and Paleontological Records Search

CULTURAL RESOURCE TASKS

WEBB will team with our trusted partner, Applied Earthworks (Æ) to conduct the requested tasks in the RFP for cultural and paleontological resources. Æ will obtain a cultural resource literature and records search at the Eastern Information Center (EIC), housed at the University of California, Riverside. This search will encompass the project area with a one-mile-long radius buffer (Study Area). We assume the EIC records search fee will not exceed \$1,500.00. The current turnaround time for the EIC literature and records search is approximately 4 weeks.

Æ will contact the Native American Heritage Commission (NAHC) for a search of the Sacred Lands Files (SLF). No follow up communications will be made with any tribes or tribal organizations.

Æ will prepare a technical memorandum documenting the potential cultural resource constraints on project development and recommendations for further cultural resource management. The memo will also incorporate results of the SLF search from the NAHC as well as the records search from the EIC. Æ's draft memorandum will be submitted electronically in MS Word format for ease of review (only one round of revisions is included); our final memorandum will be submitted electronically as a PDF file.

Note, the RFP did not request AB52 Consultation support. Since AB52 Consultation will be required it is assumed the City will handle this and provide the necessary information to WEBB for inclusion into the IS/MND. If assistance from AE is needed for the AB 52 Consultation process, these items can be provided for an additional cost.

PALEONTOLOGICAL RESOURCE TASKS

Æ will request a museum records search at the Western Science Center (WSC) for recorded paleontological resource localities within and in the vicinity of the proposed project boundary. We assume the WSC records search fee will not exceed \$300.00. The current turnaround time for the WSC records search is generally 2 weeks.

To supplement museum collections records, Æ's paleontology staff also will complete a review of published and unpublished geologic mapping and literature, including the University of California Museum of Paleontology online database, to characterize the geology and paleontology of the proposed project area. In addition, the project area will be placed on Riverside County's Paleontological Sensitivity Map to determine whether or not it overlies areas of high, low, or undetermined paleontological sensitivity.

Upon completion of the records search and literature review, Æ will draft a technical memorandum to document the desktop findings and to provide Project-specific recommendations. All paleontological work will be conducted in accordance with Society of Vertebrate Paleontology (SVP) guidelines and will meet the requirements of the CEQA. Æ's draft memorandum will be submitted electronically in MS Word format for ease of review; our final memorandum will be submitted electronically as a PDF file.

Task 6B – Traffic Impact Analysis

WEBB's in house Traffic Department will conduct the requested items for the transportation analysis per the RFP. Although the RFP does not request a traffic study or assessment, we have included one as an optional task below since this will make the CEQA analysis more robust.

SCOPING AGREEMENT

- Participate in meetings and/or conference calls with the County of Riverside technical staff members and City Public Works Department to establish project parameters and discuss traffic analysis issues including model scenarios, modeling strategies, and surrounding projects.
- Determine trip patterns using select-link runs RivTAM for the study area. Several model runs will be necessary due to the potential new interchange or overpass at Highland Home Road and the I-10 Bypass project.
- Determine study roadway segments and intersections based on trip distribution patterns and consultation with County of Riverside staff.
- Identify known cumulative development projects in the study area and determine ambient growth.
- Prepare the traffic impact analysis scoping agreement per the City of Banning and County of Riverside requirements.
- Solicit input and approval from the City of Beaumont and Caltrans, and document all above agreed-to assumptions prior to initiation of the study.

Submit the scoping agreement to stakeholder jurisdictions for review, comment, and approval.

MEETINGS AND COORDINATION

Provide coordination, attend meetings and participate in conference calls as required, including but not limited to:

- Project team meetings.
- Meetings with the City of Banning and the County of Riverside.

Traffic Study (Optional)

WEBB will prepare a traffic impact analysis report based on the approved scoping agreement as discussed previously. Traffic Study will analyze the following scenarios:

- *Project Completion (2025) with I-10 Bypass & with I-10 Highland Home Interchange*
- *Project Completion (2025) with I-10 Bypass & with I-10 Highland Home Overpass*
- *Project Completion (2025) with I-10 Bypass & without I-10 Highland Home Interchange or Overpass*
- *General Plan Buildout (2050) with I-10 Bypass & with I-10 Highland Home Interchange*
- *General Plan Buildout (2050) with I-10 Bypass & with I-10 Highland Home Overpass*
- *General Plan Buildout (2050) with I-10 Bypass & without I-10 Highland Home Interchange or Overpass*

Additional scenarios that are determined to be required will require additional budget.

Base Traffic Estimate – Provide existing traffic conditions for the study intersections. Manually count existing peak hour classification counts for the intersections (assumed 15 intersections) in accordance with City and County requirements. The typical analysis period for the development is Weekday AM and PM peak hours. Evaluate all of the information to create the most accurate base traffic estimate. Obtain traffic control, intersection geometrics, and lane configurations.

Analyze Project completion scenario (2025):

- *Traffic conditions prior to the time that the proposed development is completed will be estimated by increasing the existing traffic counts by an appropriate growth rate projected to the year that the Project is estimated to be completed. Traffic pattern changes by the proposed Project and cumulative projects will then be added, and the impacts on the circulation system will be analyzed.*
- *Recommend intersection and roadway improvements to maintain Level of Service below level of significance for all scenarios individually.*
- *Prepare traffic study per County and City requirements.*
- *Perform traffic signal warrant analysis for unsignalized intersections.*
- *Perform roadway segment capacity analysis (assumed 20 roadway segments).*
- *Additional intersection counts or roadway segment counts than assume will require additional budget.*

Vehicle Miles Traveled Analysis (Optional)

Prepare vehicle miles traveled (VMT) analysis and report for CEQA document per latest WRCOG and County-adopted guidelines and methodologies.

Budgets for these traffic optional items can be provided upon request.

Task 6C – MSHCP Compliance Report

WEBB will team with Wood Environmental and Infrastructure (Wood E&I) to prepare the biological report requested in the RFP. Wood will perform a literature review for the project area and immediate vicinity to determine if any sensitive biological resources have been reported in the area. Wood E&I will search public databases that include but are not limited to the California Department of Fish and Wildlife (CDFW), California Natural Diversity Database (CNDDDB), the California Native Plant Society's (CNPS), the U.S. Fish and Wildlife Service's (USFWS) Critical Habitat Portal, National Wetland Inventory (NWI), and the Natural Resources Conservation Service's (NRCS) online Web Soil Survey. Additionally, Wood E&I will review any previously prepared biological studies in the Proposed Project's vicinity (to be provided by the City), to be used as a general indicator of future biological studies needed in the future. Detailed peer reviews of any previous biological studies in the project area is not included in this scope of work. It is assumed that any previous biological studies are well documented and thorough and that no revisions are needed in order to make the sufficient for the CEQA documentation.

This scope is for a 'desktop' review of the biological resources within the proposed project site. Thus, no reconnaissance-level field survey will be necessary at this time. Habitat suitability will be assessed for all special-status elements potentially occurring on the site including, but not limited to burrowing owl, many-stemmed dudleya, Marvin's onion, and Los Angeles pocket mouse. The habitat assessment will be based on aerial photography, recorded occurrence data, and Wood E&I's professional experience in the area. Focused surveys *are not* considered part of this proposal. No Joint Project Review or coordination with the Regional Conservation Authority, US Fish and Wildlife Service and California Department of Fish and Wildlife Service is included.

Wood E&I will prepare a Habitat Assessment Report according to the standards of the Western Riverside MSHCP, which includes a comprehensive list of sensitive species and habitat occurrences recorded in the Project vicinity and maps. Wood E&I will provide an electronic copy of the draft report for review. Following *one round of review*, any necessary changes will be incorporated into a final electronic report.

Task 6D – Noise Impact Analysis

WEBB will team with dBF Associates to prepare a noise impact analysis to support the environmental document for the project. Applicable significance criteria will be identified; thresholds of significance will focus on the Noise Element of the City of Banning General Plan and the Noise Element of the Riverside County General Plan.

A site reconnaissance will be conducted to understand the acoustical characteristics of the project area and identify noise-sensitive receptors near the proposed realignment. The ambient noise environment will be quantified based on short-term (up to one-hour) sound level measurements at up to four (4) locations at or near the closest noise-sensitive land uses. **The measurements will be conducted using a calibrated type 1 or 2 integrating sound level meter that conforms to American National Standards Institute (ANSI) requirements.** Simultaneous traffic counts will be conducted as appropriate.

The future projected traffic noise contours from Sun Lakes Blvd between Highland Home Road and Sunset Avenue will be obtained from the Noise Element of the Banning General Plan. The project-related change in the noise contour locations will be estimated based on the proposed realignment. The change in noise levels at noise-sensitive receptors will be evaluated against applicable noise criteria. Feasible noise abatement measures based on acoustical calculations will be recommended as necessary.

The methodology and results of the noise impact analysis will be presented electronically in a draft technical report; four copies of the final report will be provided upon request.

Comments resulting from up to one screen check review by the Client and the City will be addressed. It is assumed that the comments will be minor in nature and will not require additional acoustical calculations or sound level measurements.

Task 6E – Air Quality/Greenhouse Gas/Energy

WEBB's in house experts will prepare an Air Quality/Greenhouse Gas (AQ/GHG) Analysis in accordance with the South Coast Air Quality Management District (SCAQMD) requirements. Assumptions relevant to the analysis will be provided to the Applicant team for review and approval prior to modeling. The analysis will: (i) Calculate emissions from construction and operational activities using the SCAQMD's recommended CalEEMod (Version 2016.3.2) program; (ii) Prepare a regional significance threshold analysis as well as a localized significance threshold analysis using the LST Look-Up Tables, per SCAQMD requirements; (iii) Compare project emissions to SCAQMD draft GHG thresholds; (iv) Prepare a qualitative CO hot spot analysis using information in the Traffic Impact Analysis; and (v) Analyze model results and incorporate mitigation measures, as appropriate, into the computer model. Modeling output will be provided in PDF format for use in the CEQA document being prepared by others. Energy conservation will also be addressed qualitatively in the CEQA document. No technical memorandum will be prepared. This scope includes revisions from one round of minimal comments by the City.

Task 6F- Preliminary Geotechnical Report

WEBB will team with Geocon to provide the requested geotechnical report.

Geocon's scope of services is expected to consist of:

- Prepare an encroachment permit application for the City of Banning for our geotechnical borings. We have assumed the permit will be provided at no fee for this City project and traffic control plans will not be required for drilling along this dirt access road.
- Mark the boring locations and notify Underground Surface Alert of Southern California to mark any subsurface utility locations near our proposed excavation locations. Additionally, the City should provide plans depicting the locations of all utilities in the project area.
- Excavate, sample, and log geotechnical borings along the proposed alignment. For budgeting purposes, we have planned one day of drilling to drill three 5-foot-deep borings (within generally flat areas of the roadway alignment) and five 25-foot-deep borings (at the two channel areas). Borings will be logged in accordance with USCS criteria and samples will be collected for laboratory testing. Borings will be backfilled with native soils.
- Perform laboratory testing which is anticipated to include R-value, direct shear, grain size, and maximum density/optimum moisture.
- Prepare a preliminary geotechnical investigation report which will include the locations of the borings, boring logs, laboratory test results, geologic hazards with respect to the proposed roadway, groundwater conditions, geotechnical recommendations for roadway design, geotechnical recommendations for box culvert design.

~~Task 6G – Preliminary On-Site Hydrology Study~~

~~The proposed Sun Lakes Blvd is located in the Smith Creek watershed, in the vicinity of Banning Master Drainage Plan (Banning MDP) prepared by Riverside County Flood Control & Water Conservation District. The Banning MDP study boundary terminated at north of Southern Pacific Rail Road, approximately 2,800 LF north of the proposed Sun Lakes Blvd. By reviewing site topography and peak flow data depicted on Banning~~

MDP, WEBB identified that Sun Lakes Blvd will have two major natural water courses across the roadway. The east crossing is a junction Banning MDP Line J and Line I outlets, the 100-year peak flow rate is at a magnitude of 5,000 CFS. The 100-year flow rate at west crossing is at a magnitude of 3,000 CFS.

WEBB will perform a preliminary drainage study, utilizing the Banning MDP data, and extend drainage study boundary to Sun Lakes Blvd. This study will include additional tributary areas between SPRR and Sun Lakes Blvd, and will provide 100-year storm peak flow rate at two crossings. Based on the study results, natural topography, environmental constraints and existing utilities, WEBB will provide at least two drainage design options for the crossings, such as multi-span reinforced concrete box culvert or pre-fab bridge sections.

Task 6H – Preliminary Grading Layout

WEBB will perform the aerial survey necessary to prepare a preliminary alignment and grading layout for Sun Lakes Blvd. The topography will extend the length of the street, a minimum of three hundred (300'), beyond the project limits. WEBB has worked on water and sewer projects along the proposed alignment and has field topography of existing sewer manholes, water valves, petroleum lines, gas lines, power poles, and well sites. WEBB will use existing field topography and utilities information to create a comprehensive base for the preliminary grading layout and potential impacts to utilities.

WEBB will prepare preliminary alignment and profile for Sun Lakes Blvd between Highland Home Road and Sunset Avenue. WEBB will prepare preliminary grading layout showing proposed slopes, drainage flow directions, street centerline finish grades, top of curb and flow line elevations. WEBB will also prepare preliminary grading contours and earthwork quantities.

Task 6I – Preliminary Drainage Report

WEBB will also prepare a preliminary roadway (Sun Lakes Blvd only) hydrology and hydraulics study to identify the roadway capacities, catch basins and storm drain laterals and water quality management measures per the Guidelines for Transportation Project. The preliminary grading per item Task 6H will be utilized for the study.

Optional Task – Identify Existing Utility Impacts

According to our background of the area and preliminary research, following utilities are located within the proposed alignment.

1. 12" and 16" gas lines
2. 20" oil line
3. 24" waterline
4. 12" sanitary sewer
5. 18" waterline
6. Fiber optic line
7. Overhead power lines and power poles

WEBB will identify all utilities that could potentially conflict with the proposed alignment and profile and determine special requirements for facilities including protection, relocation, right of way easements, and construction. This optional task might be worth considering to do now with the preliminary alignment work so that future work does not have to be changed to avoid or accommodate these existing utilities. Costs for this task can be provided upon request.

Assumptions Used in the Preparation of the Scope of Services

- The City of Banning will conduct all AB52 consultation meetings and provide the results of these meetings to be included in the IS/MND.
- The City will be conducting all Noticing (NOC, NOI, NOD) per CEQA.
- A "round" of comments refers to a group of comments from City Staff, including City Attorney in one consolidated track change MS Word document. All comments will be identified by comment bubble or track change (If additional rounds of comments are received, i.e., received at different times, additional comments not included in the initial round, or changes from the initial round of comments, additional budget may be required).
- Documents submitted for review to Project Team will be prepared in Adobe PDF (including figures) and/or MS Word. Only three hard copies of the Draft Initial Study (not including Appendices) is included in our scope and budget. Should hard copies be required, this scope will be billed on a Time and Materials basis.
- There is no federal nexus, funding, or approvals associated with the Project that would require compliance with the National Environmental Policy Act (NEPA) or Section 106 of the National Historic Preservation Act.
- This scope assumes no biological assessments will be prepared; windshield and on-line surveys of the Project's biological conditions will be provided within the body of the MND analysis. If resources are identified after the windshield survey and further studies are deemed necessary, WEBB will work with the City of Banning to determine the best route forward.
- The preparation of Findings, Resolutions, or staff report is not included; it is anticipated that City staff will prepare these items.
- All documents will be delivered in electronic format unless otherwise specified above. Costs for reproduction, publishing, and mailing are assumed to not exceed \$1,300.
- Appropriate CEQA filing fees shall be the responsibility of the City.
- Any other work tasks not specifically indicated in the Scope of Services.

EXHIBIT “3” BUDGET/COMPENSATION FOR SERVICES

Mitigated Negative Declaration (MND) and Accompanying Technical Analysis

WEBB will provide our services outlined in Scope of Services – Exhibit “3” for a Lump Sum Fee of \$120,305. Our services will be billed monthly on a percent complete basis. A breakdown of our fees is listed below and are based on the Rate Scheduled attached, which is the current rate schedule with our On Call Contract with the City:

Task 1: CEQA Research and Documentation	\$5,900
Task 2: Preparation of Draft IS/MND	\$10,700
Task 3: Agency Processing/public circulation	\$3,800
Task 4: Incorporate Comments/Final IS/MND	\$4,000
Task 5: Deliverables	\$2,400
Task 6A: Cultural and Paleontological Records Searches	\$7,800
Task 6B: Traffic Impact Analysis	\$11,145
Task 6C: MSHCP Compliance Report	\$5,800
Task 6D: Noise Impact Analysis	\$5,100
Task 6E: Air Quality/Greenhouse Gas	\$3,200
Task 6F: Preliminary Geotechnical Report	\$11,500
Task 6G: Preliminary Hydrology Study	\$19,120
Task 6H: Preliminary Grading Layout	\$24,520
Task 6I: Preliminary Drainage Report	\$5,320
TOTAL	\$120,305

The Budget is good for 90 days from date of this letter and are based on a timeline of approximately nine months from authorization. If the MND schedule is delayed due to issues beyond the control of the WEBB Team, budget modifications may be required.

Labor

Task budgets are estimates and will be used interchangeably as needed but not to exceed the budget total. Any additional services requested outside this scope will be provided under separate contract addenda for additional fees. Invoices will be submitted monthly based on the percentage of work completed. All invoices shall be due and payable upon receipt. If invoices remain unpaid after 30 days, work on Project will cease and interest of 1.5% per month shall be charged on unpaid balances.

Expenses

Charges for printing, copying, mileage, postage, outside services, and for coordination or other services not specifically listed in the scope of work, will be billed on a time and material basis, in addition to the amount shown above, in accordance with our Schedule of Fees. Charges for subcontracted services, including outside consultants requested by the client will be subject to a 15% surcharge. Checking and/or filing fees are not included in this contract, and shall be paid by the Client directly to the appropriate governmental agency.

Costs for custom invoice, if desired by client, shall be negotiated prior to commencement of our efforts. Invoices will be submitted monthly based on the percentage of work completed. All invoices shall be due and payable upon receipt. If invoices remain unpaid after 30 days, consultant shall cease work on project and interest of 1.5% per month on unpaid balances shall be charged.

ATTACHMENT 4

Template Agreement

PROFESSIONAL SERVICES AGREEMENT

By and Between

THE CITY OF BANNING

and

VENDOR NAME

**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 **one (1) year from the date hereof**, or extended in writing in advance by both parties, except as otherwise provided in the Schedule of Performance (Exhibit "D"). Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Consultant.

The following principals of Consultant (Principals) are hereby designated as being the principals and representatives of Consultant authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

<div style="background-color: yellow; height: 1.2em; width: 100%;"></div>	
(Name)	(Title)

It is expressly understood that the experience, knowledge, capability and reputation of the foregoing principals were a substantial inducement for City to enter into this Agreement. Therefore, the foregoing principals shall be responsible during the term of this Agreement for directing all activities of Consultant and devoting sufficient time to personally supervise the services hereunder. All personnel of Consultant, and any authorized agents, shall at all times be under the exclusive direction and control of the Principals. For purposes of this Agreement, the foregoing Principals may not be replaced nor may their responsibilities be substantially reduced by Consultant without the express written approval of City. Additionally, Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement. Consultant shall notify City of any changes in Consultant's staff and sub-consultants, if any, assigned to perform the services required under this Agreement, prior to and during any such performance. In the event that City, in its sole discretion, at any time during the term of this Agreement, desire to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon reassign notice from City of such desire of City, reassign such person or persons.

4.2 Status of Consultant.

Consultant shall have no authority to bind City in any manner, or to incur any obligation, debt or liability of any kind on behalf of or against City, whether by contract or otherwise, unless such authority is expressly conferred under this Agreement or is otherwise expressly conferred in writing by City. Consultant shall not at any time or in any manner represent that Consultant or any of Consultant's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Consultant, nor any of Consultant's officers, employees or agents, shall obtain any rights to retirement, health care or any other benefits which may otherwise accrue to City's employees. Consultant expressly waives any claim Consultant may have to any such rights.

4.3 Contract Officer.

The Contract Officer shall be such person as may be designated by the City Manager. It shall be the Consultant's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Consultant shall refer any decisions which must be made by City to the Contract Officer. Unless otherwise specified herein, any approval of City required hereunder shall mean the approval of the Contract Officer. The Contract Officer shall have authority, if specified in writing by the City Manager, to sign all documents on behalf of the City required hereunder to carry out the terms of this Agreement.

4.4 Independent Consultant.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth herein. City shall have no voice in the selection, discharge, supervision or control of Consultant's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Consultant shall perform all services required herein as an independent Consultant of City and shall remain at all times as to City a wholly independent Consultant with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City. City shall not in any way or for any purpose become or be deemed to be a partner of Consultant in its business or otherwise or a joint venture or a member of any joint enterprise with Consultant.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Consultant, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Consultant shall not contract with any other entity to perform in whole or in part the services required hereunder without the express written approval of the City. In addition, neither this Agreement nor any interest herein may be transferred, assigned, conveyed, hypothecated or encumbered voluntarily or by operation of law, whether for the benefit of creditors or otherwise, without the prior written approval of City. Transfers restricted hereunder shall include the transfer to any person or group of persons acting in concert of more than twenty-five percent (25%) of the present ownership and/or control of Consultant, taking all transfers into account on a cumulative basis. In the event of any such unapproved transfer, including any bankruptcy proceeding, this Agreement shall be void. No approved transfer shall release the Consultant or any surety of Consultant of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

Throughout the life of this Agreement, Consultant shall pay for and maintain in full force and effect all policies of insurance required hereunder with an insurance company(ies) either (i) admitted by the California Insurance Commissioner to do business in the State of California and rated not less than "A- VII" in Best's Insurance Rating Guide, or (ii) authorized by the City

Manager or his/her designee at any time and in his/her sole discretion. The following policies of insurance are required:

(i) COMMERCIAL GENERAL LIABILITY insurance which shall be at least as broad as the most current version of Insurance Services Office (ISO) Commercial General Liability Coverage Form CG 00 01 and include insurance for "bodily injury," "property damage" and "personal and advertising injury" with coverage for premises and operations (including the use of owned and non-owned equipment), products and completed operations, and contractual liability (including, without limitation, indemnity obligations under the Contract) with limits of liability of not less than the following:

\$1,000,000 per occurrence for bodily injury and property damage

\$1,000,000 per occurrence for personal and advertising injury

\$2,000,000 aggregate for products and completed operations

\$2,000,000 general aggregate

(ii) COMMERCIAL AUTOMOBILE LIABILITY insurance which shall be at least as broad as the most current version of Insurance Service Office (ISO) Business Auto Coverage Form CA 00 01, and include coverage for all owned, hired, and non-owned automobiles or other licensed vehicles (Code 1 Any Auto) with limits of liability of not less than \$1,000,000 per accident for bodily injury and property damage.

(iii) WORKERS' COMPENSATION insurance as required under the California Labor Code.

(iv) EMPLOYERS' LIABILITY insurance with limits of liability of not less than \$1,000,000 each accident, \$1,000,000 disease policy limit and \$1,000,000 disease each employee.

(v) PROFESSIONAL LIABILITY Professional Liability (Errors and Omissions) insurance appropriate to Consultant's profession, with limits of liability of \$1,000,000 per claim/occurrence and \$1,000,000 policy aggregate.

In the event Consultant purchases an Umbrella or Excess insurance policy(ies) to meet the minimum limits of insurance set forth above, this insurance policy(ies) shall "follow form" and afford no less coverage than the primary insurance policy(ies).

If this Agreement continues for more than three (3) years duration, or in the event the City Manager or his/her designee determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Consultant agrees that the minimum limits of the insurance policies may be changed accordingly upon receipt of written notice from the City Manager, or his/her designee.

Consultant shall be responsible for payment of any deductibles contained in any insurance policies required hereunder and Consultant shall also be responsible for payment of any self-insured retentions.

Any deductibles or self-insured retentions must be declared to, and approved by, the City Manager or his/her designee. At the option of the City Manager or his/her designee, either: (i) the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects to City, its Council members, officers, officials, employees and agents; or (ii) Consultant shall provide a financial guarantee, satisfactory to the City Manager or his/her designee, guaranteeing payment of losses and related investigations, claim administration and defense expenses. At no time shall the City be responsible for the payment of any deductibles or self-insured retentions.

5.2 General Requirements.

All policies of insurance required hereunder shall be endorsed to provide that the coverage shall not be cancelled, non-renewed, reduced in coverage or in limits except after 30 calendar day written notice has been given to City. Upon issuance by the insurer, broker, or agent of a notice of cancellation, non-renewal, or reduction in coverage or in limits, Consultant shall furnish City with a new certificate and applicable endorsements for such policy(ies). In the event any policy is due to expire during the work to be performed for City, Consultant shall provide a new certificate, and applicable endorsements, evidencing renewal of such policy not less than 15 calendar days prior to the expiration date of the expiring policy.

The General Liability and Automobile Liability insurance policies shall be written on an occurrence form. The General Liability (including ongoing and completed operations) and Automobile Liability shall name City and its officers, officials, employees, agents and volunteers as an additional insured. Such policy(ies) of insurance shall be endorsed so Consultant's insurance shall be primary and 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.

To the full extent permitted by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Consultant, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Consultant is legally liable, or arising from their reckless or willful misconduct, or negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Consultant will defend any action or actions filed in connection with any of such claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Consultant will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Consultant hereunder; and Consultant agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Consultant for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Consultant hereunder, Consultant agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Consultant shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Consultant shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Consultant in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence. The indemnity obligation shall be binding on successors and assigns of Consultant and shall survive termination of this Agreement.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION**6.1 Records.**

Consultant shall keep, and require sub-consultants to keep, such ledgers books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services. Any and all such documents shall be maintained in accordance with generally accepted accounting principles and shall be complete and detailed. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records. Such records shall be maintained for a period of three (3) years following completion of the services hereunder, and the City shall have access to such records in the event any audit is required. In the event of dissolution of Consultant's business, custody of the books and records may be given to City, and access shall be provided by Consultant's successor in interest.

6.2 Reports.

Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement as the Contract Officer shall require. Consultant hereby acknowledges that the City is greatly concerned about the cost of work and services to be performed pursuant to this Agreement. For this reason, Consultant agrees that if Consultant becomes aware of any facts, circumstances, techniques, or events that may or will materially increase or decrease the cost of the work or services contemplated herein or, if Consultant is providing design services, the cost of the project being designed, Consultant shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Consultant is providing design services, the estimated increased or decreased cost estimate for the project being designed.

6.3 Ownership of Documents.

All drawings, specifications, maps, designs, photographs, studies, surveys, data, notes, computer files, reports, records, documents and other materials (the "documents and materials") prepared by Consultant, its employees, sub-consultants and agents in the performance of this Agreement shall be the property of City and shall be delivered to City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Any use, reuse or assignment of such completed documents for other projects and/or use of uncompleted documents without specific written authorization by the Consultant will be at the City's sole risk and without liability to Consultant, and Consultant's guarantee and warranties shall not extend to such use, revise or assignment. Consultant may retain copies of such documents for its own use. Consultant shall have an unrestricted right to use the concepts embodied therein. All sub-consultants shall provide for assignment to City of any documents or materials prepared by them, and in the event

Consultant fails to secure such assignment, Consultant shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than City without prior written authorization from the Contract Officer.

(b) Consultant, its officers, employees, agents or sub-consultants, shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives City notice of such court order or subpoena.

(c) If Consultant, or any officer, employee, agent or sub-consultant of Consultant, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify City should Consultant, its officers, employees, agents or sub-consultants be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Consultant. However, this right to review any such response does not imply or mean the right by City to control, direct, or rewrite said response.

ARTICLE 7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law.

This Agreement shall be interpreted, construed and governed both as to validity and to performance of the Parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California, or any other appropriate court in such county, and Consultant covenants and agrees to submit to the personal jurisdiction of such court in the event of such action. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in Riverside.

7.2 Disputes; Default.

In the event that City determines Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, though not reduced, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. In the alternative, the City may, in its sole discretion, elect to pay some or all of the outstanding invoices during the period of default. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article. Any failure on the part of the City to give notice of the Consultant's default shall not be deemed to result in a waiver of the City's legal rights or any rights arising out of any provision of this Agreement.

7.3 Retention of Funds.

Consultant hereby authorizes City to deduct from any amount payable to Consultant (whether or not arising out of this Agreement) (i) any payment amount of which may be in dispute hereunder or which are necessary to compensate City for any losses, costs, liabilities, or damages suffered by City, and (ii) all amounts for which City may be liable to third parties, by reason of Consultant's acts or omissions in performing or failing to perform Consultant's obligation under this Agreement. In the event that any claim is made by a third party, the amount or validity of which is disputed by Consultant, or any indebtedness shall exist which shall appear to be the basis for a claim of lien, City may withhold from any payment due, without liability for interest because of such withholding, an amount sufficient to cover such claim. The failure of City to exercise such right to deduct or to withhold shall not, however, affect the obligations of the Consultant to insure, indemnify, and protect City as elsewhere provided herein.

7.4 Waiver.

Waiver by any Party to this Agreement of any term, condition, or covenant of this Agreement shall not constitute a waiver of any other term, condition, or covenant. Waiver by any Party of any breach of the provisions of this Agreement shall not constitute a waiver of any other provision or a waiver of any subsequent breach or violation of any provision of this Agreement. Acceptance by City of any work or services by Consultant shall not constitute a waiver of any of the provisions of this Agreement. No delay or omission in the exercise of any right or remedy by a non-defaulting Party on any default shall impair such right or remedy or be construed as a waiver. Any waiver by either Party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

7.5 Rights and Remedies are Cumulative.

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties are cumulative and the exercise by either Party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or

different times, of any other rights or remedies for the same default or any other default by the other Party.

7.6 Legal Action.

In addition to any other rights or remedies, either Party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Notwithstanding any contrary provision herein, Consultant must file a statutory claim pursuant to Government Code Sections 905 et seq. and 910 et seq., in order to pursue a legal action against City under this Agreement.

7.7 Liquidated Damages.

Since the determination of actual damages for any delay in performance of this Agreement would be extremely difficult or impractical to determine in the event of a breach of this Agreement, the Consultant and its sureties shall be liable for and shall pay to the City the sum of Not Applicable (\$0.00) as liquidated damages for each working day of delay in the performance of any service required hereunder, as specified in the Schedule of Performance (Exhibit "D"). The City may withhold from any monies payable on account of services performed by the Consultant any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Agreement except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Agreement at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Agreement at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer, except as provided in Section 7.3. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder. In the event of termination without cause pursuant to this Section, the terminating Party need not provide the non-terminating Party with the opportunity to cure pursuant to Section 7.2.

7.9 Termination for Default of Consultant.

If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and

prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

7.10 Attorneys' Fees.

If either Party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees. Attorney's fees shall include attorney's fees on any appeal, and in addition the Party entitled to attorney's fees shall be entitled to all other reasonable costs for investigating such action, taking depositions and discovery and all other necessary costs the court allows which are incurred in such litigation. All such fees shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

ARTICLE 8. CITY OFFICERS AND EMPLOYEES: NON-DISCRIMINATION

8.1 Non-liability of City Officers and Employees.

No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Consultant covenants that neither it, nor any officer or principal of its firm, has or shall acquire any interest, directly or indirectly, which would conflict in any manner with the interests of City or which would in any way hinder Consultant's performance of services under this Agreement. Consultant further covenants that in the performance of this Agreement, no person having any such interest shall be employed by it as an officer, employee, agent or sub-consultant without the express written consent of the Contract Officer. Consultant agrees to at all times avoid conflicts of interest or the appearance of any conflicts of interest with the interests of City in the performance of this Agreement.

No officer or employee of the City shall have any financial interest, direct or indirect, in this Agreement within the scope of Government Code section 1090, nor shall any such officer or employee make, participate in making, or use his or her official position to influence, any City decision relating to the Agreement which has a material financial effect on his or her financial interests or the financial interests of any corporation, partnership or association in which he or she is, directly or indirectly, interested, in violation of any State statute or regulation. The Consultant warrants that it has not paid or given and will not pay or give any third party any money or other consideration for obtaining this Agreement.

8.3 Covenant Against Discrimination.

Consultant covenants that, by and for itself, its heirs, executors, assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, religion, sex, gender, sexual orientation, marital status, national origin, or ancestry in the performance of this Agreement. Consultant shall take affirmative action to insure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, religion, sex, marital status, national origin, or ancestry, or other protected class.

8.4 Unauthorized Aliens.

Consultant hereby promises and agrees to comply with all of the provisions of the Federal Immigration and Nationality Act, 8 U.S.C.A. §§ 1101, et seq., as amended, and in connection therewith, shall not employ unauthorized aliens as defined therein. Should Consultant so employ such unauthorized aliens for the performance of work and/or services covered by this Agreement, and should the any liability or sanctions be imposed against City for such use of unauthorized aliens, Consultant hereby agrees to and shall reimburse City for the cost of all such liabilities or sanctions imposed, together with any and all costs, including attorneys' fees, incurred by City.

ARTICLE 9. MISCELLANEOUS PROVISIONS

9.1 Notices.

Any notice, demand, request, document, consent, approval, or communication either Party desires or is required to give to the other Party or any other person shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, CITY OF BANNING, 99 East Ramsey Street, Banning, CA 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement. Either Party may change its address by notifying the other Party of the change of address in writing. Notice shall be deemed communicated at the time personally delivered or in seventy-two (72) hours from the time of mailing if mailed as provided in this Section.

9.2 Interpretation.

The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

9.3 Counterparts.

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

9.4 Integration; Amendment.

This Agreement including the attachments hereto is the entire, complete and exclusive expression of the understanding of the Parties. It is understood that there are no oral agreements between the Parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the Parties, and none shall be used to interpret this Agreement. No amendment to or modification of this Agreement shall be valid unless made in writing and approved by the Consultant and by the City Council. The Parties agree that this requirement for written modifications cannot be waived and that any attempted waiver shall be void.

9.5 Severability.

In the event that any one or more of the phrases, sentences, clauses, paragraphs, or sections contained in this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining phrases, sentences, clauses, paragraphs, or sections of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the Parties hereunder unless the invalid provision is so material that its invalidity deprives either Party of the basic benefit of their bargain or renders this Agreement meaningless.

9.6 Corporate Authority.

The persons executing this Agreement on behalf of the Parties hereto warrant that (i) such Party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said Party, (iii) by so executing this Agreement, such Party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said Party is bound. This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the Parties.

[SIGNATURES ON FOLLOWING PAGE]

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

CITY OF BANNING

CONSULTANT

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.

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, 20__ before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	_____
	TITLE(S)	TITLE OR TYPE OF DOCUMENT
<input type="checkbox"/>	PARTNER(S) <input type="checkbox"/> LIMITED	_____
	<input type="checkbox"/> GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	DATE OF DOCUMENT
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	_____
<input type="checkbox"/>	OTHER _____	SIGNER(S) OTHER THAN NAMED ABOVE
SIGNER IS REPRESENTING:		
(NAME OF PERSON(S) OR ENTITY(IES))		

EXHIBIT "A"
SCOPE OF SERVICES

- I.** Consultant will perform the following services in connection with providing **Insert Type of Work to be Completed prepared in connection therewith:**
- A.
 - B.
 - C.
- II.** As part of the Services, Consultant will prepare and deliver the following tangible work products to the City:
- A.
 - B.
 - C.
- III.** In addition to the requirements of Parts I and II of this Scope of Services, during the performance of the services, Consultant will keep the City appraised through periodic status reports regarding the performance of the services under this Agreement by the following means:
- A.
 - B.
 - C.
- 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.
 - B.
 - C.

EXHIBIT "B"
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

SAMPLE

Exhibit "B"-1

EXHIBIT "C"
SCHEDULE OF COMPENSATION

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

TASK	DESCRIPTION	SUB-BUDGET
1.		\$0.00
2.		\$0.00
3.		\$0.00
4.		\$0.00
5.		\$0.00
	TOTAL	\$0.00

II. A retention of ten percent (10%) shall be held from each payment as a contract retention to be paid as part of the final payment upon satisfactory completion of services.

III. Within the budgeted amounts for each Task, and with the approval of the Contract Officer, funds may be shifted from one Task sub-budget to another so long as the Contract Sum is not exceeded per Section 2.1, unless Additional Services are approved per Section 1.8.

IV. The City will compensate Consultant for the services performed upon submission of a valid invoice. Each invoice is to include:

- A. Line items for all personnel describing the work performed, the number of hours worked, and the hourly rate.
- B. Line items for all materials and equipment properly charged to the services.
- C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
- D. Line items for all approved sub-consultant labor, supplies, equipment, materials, and travel properly charged to the services.

V. The total compensation for services shall not exceed **\$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

SAMPLE

EXHIBIT "D"
SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services timely in accordance with the schedule to be developed by Consultant and subject to the written approval of the Contract Officer. Consultant will provide a written proposal within one week of the City's request for services, unless otherwise agreed to by the Contract Officer.
- II. Consultant shall deliver the following tangible work products to the City by the following dates.
 - A. Proposed Project Schedule – Attached as Exhibit D-1.
- III. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.

EXHIBIT “D-1”
PROPOSED PROJECT SCHEDULE

SAMPLE

Exhibit “D-1”-1

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution No. __ approving a Professional Service Agreement with Dude Solutions for the purchase of Smart Gov. software and licensing for the streamlining of permitting, planning/zoning, and permit inspections services.

RECOMMENDED ACTION:

It is recommended that the City Council adopt Resolution:

1. Approving a Professional Service Agreement with Dude Solutions Inc., in an amount of \$125,967.46 and a contingency of \$12,596.75, for a total amount not-to-exceed \$138,564.21 for Fiscal Year 2019/2020 for the licensing, development, training, and ongoing support of land use/zoning permitting and project management software; and
2. Authorizing the City Manager to execute the Professional Services Agreement with Dude Solutions, Inc. for Fiscal Year 2019/2020 for the licensing, development, training, and ongoing support of land use/zoning permitting and project management software.

PROJECT DESCRIPTION:

The City of Banning is anticipating significant growth in the development of residential subdivisions and subsequent permitting of approximately 400-500 residential building permits each year, for the next 10-15 years. The majority of these permits will be issued amongst two master planned communities; being the Butterfield Specific Plan (Pardee's "Atwell" development) and the Rancho San Gorgonio Specific Plan (Diversified Pacific).

The City's existing development permitting software is antiquated and only capable to accommodate our existing permit activity; which has been stagnant over the past decade. In anticipation of a nearly 300% increase in permit activity, the existing software

systems are not adequate to meet the timelines required by state law and anticipated by our development customers for the issuance of building permits and processing of land use entitlements.

BACKGROUND:

In late April, the City Management Team hosted an informational meeting with Dude Solutions, Inc. owner of Smart Gov. who is a national provider in permitting and land use software solutions. Dude Solutions, the owner of Smart Gov., is an approved vendor under a national procurement process administered by Sourcewell® – formerly known as NJPA; which is a public corporation serving as a municipal contracting agency for government and education agencies. NJPA serves member agencies under legislative authority and is an authorized procurement method under the City's Purchasing Policies.

City staff has coordinated with Dude Solutions to negotiate an appropriate scope for the necessary licensing and software needs of the Community Development Department. This implementation includes the future integration with the City's financial systems to provide for on-line application submittal and payment. Ideally, the City will be able to accept land use and permit applications, from the comfort of a developer or consultant's office, which includes plan submittal and payment applications.

A cloud-based permitting system, such as Smart Gov., will also allow for the implementation of a Deposit Based Fee (DBF) structure that will more efficiently recuperate staffing and administrative costs associated with development and permit applications.

FUNDING:

In June of 2019, City staff finalized the grant application, through the Senate Bill (SB) 2 housing streamlining grant applications. The Council adopted Resolution 2019-047, on April 23, 2019, which authorized staff to prepare and submit a housing grant application for a maximum amount of \$160,000. The complete application, for this non-competitive grant, has been accepted by the California State Department of Housing and Community Development (HCD). The award of funding is anticipated within the next thirty (30) days. City staff anticipates funding most, if not all, of the permitting software through the obligation of SB – 2 grant funds, which is reimbursable through HCD.

FISCAL IMPACT:

Funding for the permitting and zoning software licensing, in the amount not-to-exceed \$138,564.21, will be available in the Community Development Department Budget, through the award of SB – 2 grant funding. The ongoing maintenance and licensing will be funded through the collection of developer fees. The consultant will invoice the City on a monthly basis, with an itemized list of work performed, that includes implementation of initial training, installation, and data migration. The anticipated timeframe until the software is fully functional, and staff is fully trained, is approximately six (6) months.

ALTERNATIVES:

1. Adopt the Resolution.
2. Reject the proposal and re-advertise through a full Request for Proposal (RFP) procurement process.

ATTACHMENTS:

1. Resolution 2019-____
2. Submitted Proposal
3. Template Agreement

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

(Resolution 2019-____)

RESOLUTION 2019-__

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING A PROFESSIONAL SERVICE AGREEMENT CONTRACT WITH DUDE SOLUTIONS, INC., IN AN AMOUNT NOT TO EXCEED \$138,564.21 FOR THE LICENSING, DEVELOPMENT, TRAINING, AND ONGOING SUPPORT OF LAND USE/ZONING PERMITTING AND PROJECT MANAGEMENT SOFTWARE

WHEREAS, on May 31, 2019 staff solicited a proposal from Dude Solutions, Inc. for permitting and land use and zoning project management software; and

WHEREAS, City staff has negotiated the Scope of Work with Dude Solutions, Inc., for the licensing, data migration, set up, training, and implementation of a permitting system for the processing and issuance of building permits and the management of land use/zoning project; and

WHEREAS, the scope of work for these services includes licensing, development, training, and ongoing support of land use/zoning permitting and project management software; and

WHEREAS the purchase of the Smart Gov. Permitting System is made through the Sourcewell Cooperative Contract No. 110515-SDI, and is authorized by Purchasing Policy B-30, Section 3, Subsection 3-105 (6) - When the Purchasing Officer determines the commodity can be procured using a cooperative purchasing agreement; and

WHEREAS, the Purchasing Officer has determined this commodity can be procured using a cooperative purchasing agreement; and

WHEREAS, staff recommends the award of a Professional Services Agreement to Dude Solutions, Inc., in an amount not-to-exceed \$138,564.21 for Fiscal Year 2019/2020; and

WHEREAS, funding will be available in the City's Community Development Department accounts during Fiscal year 2019/2020 in the amount of not-to-exceed \$138,564.21; and

WHEREAS, the primary source of funding will be provided through the City's aware of Senate Bill (SB) 2 grant funding.

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-__ approving a Professional Service Agreement with Dude Solutions, Inc., in an amount total amount not-to-exceed \$138,564.21 for Fiscal Year 2019/2020 for the licensing, development, training, and ongoing support of land use/zoning permitting and project management software.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to this services agreement.

SECTION 3. The City Manager or his designee is authorized to execute the Professional Service Agreement Contract with Dude Solution, Inc. for an amount not-to-exceed \$138,564.21.

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, ADOPTED AND APPROVED this 9th day of July, 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 adopted by the City Council of the City of Banning at a regular meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

Exhibit “A”
Proposal
(See Attachment No. 2)

Exhibit “B”

Professional Services Agreement
(See Attachment No. 4)

ATTACHMENT 2

(Proposal)



Software for Smarter Operations

PREPARED FOR

City Of Banning

Adam Rush

Community Development Department

99 East Ramsey Street

Banning, CA 92220

PREPARED BY

Dude Solutions, Inc.

PUBLISHED ON

May 31, 2019





This SOW has been defined to leverage DSI's experience, while optimizing the use of resources, thereby maximizing cost efficiencies on behalf of Client.

Based on our current understanding of the complexity and scope of this effort and the expected involvement of the DSI team resources, the current estimated Fixed Price for this engagement is shown in the Investment table. This estimated cost breakdown is as follows:

DSI Sourcewell RFP #110515

Subscription

SmartGov User License	\$19,390.80
SmartGov Public Portal	\$6,230.00
SmartGov Connector GIS	\$833.33
SmartGov Connector Financial	\$833.33
SmartGov Connector Parcel	\$833.33
SmartGov Connector Custom	\$1,666.67

Subscription Term: 12 months
2 months included at no additional cost

Subtotal: \$29,787.46

Implementation & Services

Project Management	\$11,900.00
Custom Reports	\$4,800.00
Data Migration	\$16,000.00
Fees Configuration (Pages)	\$2,560.00
Portal Configuration	\$1,500.00
Department Types / General Configuration	\$25,920.00
Map Connector Configuration	\$4,000.00
Financial Connector Configuration	\$5,500.00

Subtotal: \$96,180.00





Software for Smarter Operations

Parcel Connector Configuration	\$4,000.00
Onsite Training 4 day Package	\$10,000.00
Custom Connector Configuration	\$10,000.00
	Subtotal: \$96,180.00
Total Initial Investment	\$125,967.46

* The custom connector is to establish the interface between the SmartGov Citizen Portal and Automated Merchant System, which will enable online credit card payments

The above level of effort and associated pricing is based on the SMARTGOV package selected by City Of Banning and is subject to change based on defined client requirements that may be discovered during project delivery. Any identified project scope or requirements changes will be addressed via DSI Change Control Authorization ("CCA") process.





Introduction

Dude Solutions, Inc. ("DSI") is pleased to submit this Statement of Work ("SOW") to City Of Banning for SmartGov Professional Services. SmartGov streamlines permitting, planning/zoning, inspections, code enforcement, and business licensing, providing efficiency for your jurisdiction and enhanced customer service for your citizens. The package City Of Banning has chosen for implementation of SmartGov will be implemented using proven processes and methodologies managed by an experienced project manager dedicated to delivering a successful project.

DSI looks forward to the opportunity to deliver these services and the ever-lasting development of a strong business partnership.

Definitions

In addition to the terms defined elsewhere in this SOW, the following terms have the following meanings:

"Change Control Authorization" or **"CCA"** means any request by the client to modify the scope of work, schedule, or costs will require preparation of a Change Control Authorization ("CCA" or "change order") form detailing the work to be performed, as well as the associated costs and schedule impact. Additional work will be performed only after both parties have duly executed the CCA. Scope of work changes will impact the project schedule which will be updated to reflect such changes upon CCA approval.

"Closing Phase" means the phase that represents the completion of a project where all metrics are finalized, all deliverables are complete and accepted by client, and all remaining billing/invoicing takes place prior to project closure and acceptance.

"Deliverable Acceptance Form" means the form that is a standard PMO form used for client to agree to accept a deliverable as complete and final.

"Escort" means the client provided resource/person to take Dude Solutions, Inc. ("DSI") resources around client facilities and provide access to restricted areas agreeable between client and DSI as needed.

"Executing Phase" means the phase of the project where deliverables are developed and completed.

"Fixed Price/Fixed Fee/Fixed Price Project" means the project pricing includes all services, tasks, and expenses associated with the client project.

"Monitoring and Controlling Phase" means the phase for measuring project progression and performance and ensuring that everything happening aligns with the project management plan.

"Onsite Services Completion" means onsite services have been completed and when necessary, the Deliverable Acceptance form will be used to document the completion of deliverables provided during the onsite services visit.

"Orientation Call" or "Project Kick-Off Call" means the call/meeting which begins the project and proper expectations are set between DSI and the client.

"Output Documents" standard or custom documents generated from SmartGov "e.g. permits, Certificates of Occupancy, violation letters, business licenses, receipts"





"Orientation Call Completion" means the Orientation Call or Project Kick-Off Call has been completed and the project has begun and proper expectations have been set between DSI and the client.

"Professional Services or Services" means professional, technical, consulting and/or other services.

"Project Completion" means the project completion occurs when all deliverables of the project have been completed and accepted by the client via the Project Completion Acceptance Form.

"Project Completion Acceptance Form" means the form that is a standard PMO form used for client to agree to accept a project as complete and final.

"Project Management Methodology" means the manner and process used to deliver services projects.

"Project Management Office" or "PMO" means the office that provides the oversight and standardized processes to consistently deliver projects in a concise, consistent, and standardized manner. The PMO manages and maintains the processes and standard templates utilized to manage DSI projects.

"SmartGov Modules" means the Permitting Module (permits for all departments), the code Enforcement Module, the Business Licensing Module, and the Recurring Inspection module.

"Software Component Configuration" means the components within the software have been configured per client specifications.

"Statement of Work Acceptance" means the signing and accepting of the terms of the Statement of Work document by client.

"Support Engagement" means the point in the project where implementation services end and product support begins.

"System Configuration Completion" means the configuration items within the software have been configured per client specifications.

"System Level Configuration Items" standard configurable items that are applied across departments and case templates.

"Training Completion" means the onsite or virtual training has been completed and when necessary, the Deliverable Acceptance form will be used to document the completion of deliverables provided for completion of the onsite or virtual training services.

"User Acceptance Testing – UAT" means that after the system is configured the client will have an opportunity to perform user level testing based on client developed test scripts. DSI will correct issues as documented and presented during this process.





Project Scope and Approach

Implementation Process Overview

In order to successfully implement the SmartGov application, DSI will work with City Of Banning to understand requirements necessary to configure and set up the SmartGov application to streamline processes related to permitting, planning/zoning, inspections, code enforcement and business licensing for your jurisdiction and citizens. Once the City Of Banning has reviewed, and approved these requirements and processes, DSI will configure and setup the application to support the City Of Banning's unique business rules.

Following the configuration and modeling work, DSI will train the City Of Banning's team using its jurisdiction-specific configuration. After training, DSI will work with City Of Banning to test the work performed and provide the necessary updates to successfully implement the solution. The system will then be ready to go live in production. If the City Of Banning purchases "Go-Live Support" packages, DSI will provide support for the period of time defined in the statement of work.

Customer Implementation Engagement Sessions ("CIES")

Client project team representatives and DSI project team representatives will dedicate time to meet in person or via teleconference to maintain communication and conduct coordination of project activities and tasks.

Deliverables

Dude Solutions will provide the following task deliverables:

- Project Management Meeting Schedule
- Data Migration and Technical Design Meeting Schedule
- Configuration Meeting Schedule
- Meeting notes or recordings for all scheduled meetings

The client will provide the following resources or task deliverables:

- A complete project team roster, including email addresses, phone numbers, and roles / titles
- Necessary communication / information to allow all project schedules to be finalized
- Timely response to task-related emails or phone calls to enable on-time completion of all assignments
- A minimum of 24-hour notice if all minimum required members for any scheduled meeting cannot attend the meeting. This will allow the meeting coordinator sufficient time to cancel or re-schedule the meeting as necessary

Assumptions and Constraints

- Initial proposed meeting plans from DSI will reflect the minimum recommended frequency, duration, participants (by job title or role), topics, and action items to address the full SOW
- Final meeting plan will be approved by the client key sponsor(s)
- Coordination and integration of the PM meeting, data migration, technical design meeting, and configuration meeting will align with the scope of the project, client organizational structure, and assigned resources
- The Client will provide dedicated knowledgeable technical resource available for questions
- The Client will provide a dedicated knowledgeable resource for mapping analysis





- The Client will provide read only access and screen shots for various permits/case types to provide context to DSI data migration specialists
- The Client will provide resources for validation throughout the process
- Client will provide side-by-side data entry for 2 weeks prior to go-live
- Response time for questions is one business day
- DSI may require up to 3 backups of data for each database throughout the process

Planning, Initial Set Up & System Level Configuration

Configuration begins with planning and analysis necessary to establish the overall configuration approach. After planning, and once the approach is documented and agreed to, DSI will set up the SmartGov environments to support implementation. DSI implementation specialists begin configuration with system level items or items that apply generally across all departments and types of configuration items.

Setup of environments to support SmartGov implementation and configuration of core items in each SmartGov module that are specific to City Of Banning 's requirements. These core items are defined/configured at the client level [i.e. these are configurable items that will be standard or shared across all departments and configuration types].

Deliverables

Dude Solutions will provide the following task deliverables:

- A Configuration Plan document that includes:
 - Identified current and future state business processes to be supported by the final product via the configuration work effort
 - Recommended approach to configuration that supports the identified business processes and activities
 - Configuration details for all permit, inspection, license, and code enforcement types to be configured in SmartGov. All templates required for creating the configuration types will be created in SmartGov based on requirements gathered in meetings with the client
- SmartGov Environments to support the implementation process including:
 - Configuration (Dude Solution access only for configuration)
 - Validation (client has access for testing, can be refreshed with configuration copy upon request)
 - Training
- Weekly configuration status reports (in PDF format) generated from the client specific configuration instance of SmartGov. These reports serve as the primary source to demonstrate core configuration elements, status, and needs
- Jurisdiction configuration, per Configuration Plan, to include as needed:
 - Parcel and/or address information management
 - Contact information management
 - Contractor license information management
 - Receipt/transaction information management
 - Inspection scheduling information management
 - Configurable screen display settings
- User configuration per Configuration Plan, to include as needed:





- Individual User Rights
- Available Departments
- Available Distribution Groups
- Available Inspection Qualifications
- Available Security Groups
- Job configuration per Configuration Plan, to include as needed:
 - Default list of available queued jobs
 - Queued job parameters
- Administrative & shared configuration rules per Configuration Plan, to include as needed:
 - Administrative processing rules where available in the configurable Jurisdiction Values list
 - Standard status options for cases, submittal items, workflow steps, step actions, inspection types, inspection actions, accounts, and intervals
 - Standard expiration rules
 - Standard online processing rules [for the portal]
 - Standard reports available across all case types

Assumptions and Constraints

- The Configuration Plan will be based on information delivered to, or collected by, the DSI Implementation Specialist within a specified time frame established at the project kick-off
 - During the development of the Configuration Plan, the client provides representatives for all work units with work activity to be supported by the final delivered product
- Client will provide access to the appropriate leaders and/or subject matter experts to ensure meaningful engagement at all required meetings and to ensure on-time completion of assigned action items
- Client will provide access/links to any public, or private, web sites or operating systems, if needed, to gather complete business requirements
- The Configuration Plan can meet client requirements and can be fully executed within existing product design in all modules
- The Configuration instance will be solely owned by the DSI Implementation team and serves as the primary source for the final delivered product design
- The Validation instance will be sole source used by the client to complete all assigned configuration UAT tasks
- The Training instance will be used solely by members of the client project team to assist in understanding SmartGov functionality. It will contain default data sets and serves as a temporary "sand box" for assigned users.
- The client will designate one person on their project team to serve as the final decision-maker for all system level configuration elements. These are configured settings that are shared across SmartGov modules, and/or are settings common to all departments / divisions / users
- When configuration tasks, or related work effort, requires information to be submitted to the DSI Implementation team in a specific file format or within specified parameters, the client is able to comply with these stated requirements





- Note: If the client cannot provide information in the DSI standard format, the assigned Project Manager will determine if a formal Change Request or additional contracted SOW is needed to provide assistance in developing or converting the information into the desired format

Module Case / Department Types

SmartGov implementation activities include the set up of case templates in one or more of these modules: Permitting, Licensing, Code Enforcement and Recurring Inspections. These case templates must be used to create records in SmartGov in each module. Your DSI Implementation Specialist will provide specific information about the minimum required elements to be configured for the case templates in each module; these required case template elements do vary by module.

Deliverables

Dude Solutions will provide the following task deliverables:

- Case template baseline elements, per the Configuration Plan, to include as needed:
 - Case record reference information
 - Template specific expiration, renewal or interval rules
 - Template specific default submittal list
 - Template specific details (custom attributes) that are required for any of the following: application intake, workflow step completion, inspection completion, fee calculation, or mandatory regulatory reporting
 - Template specific default workflow steps for Admin, Review, and Final work lists
 - Template specific default inspection list
 - Template specific list screens such as Bonds, Fixtures, Valuations, Violations, Citations, Lien, or Items
- Once baseline case template configuration is completed, any expanded configuration beyond baseline must be discussed during Configuration Meetings with the Implementation Specialist and approved by the assigned PM. Expanded configuration elements, if approved, may include
 - Non-essential custom attributes
 - Work step dependencies and due dates
 - Step actions and Inspection actions
 - Default Parent-Child case linkages
 - Workflow cycling feature
 - Template specific tab appearance
 - Standard note types and note codes
 - Standard condition types and conditions
 - Standard code references
 - Template specific report links

The client will provide the following resources or task deliverables:

- Specific lists of all types of applications, forms, or other documents that describe all services to be supported by SmartGov at the time of project "Go Live"
 - This list should be inclusive of all in-scope departments
 - This list should conform to requested formatting and scope instructions, as communicated by DSI





- A PDF or Word version of all customer-facing documents (forms, letters, cards, etc.) expected to be generated by SmartGov
- A publicly accessible URL, or electronic copies of reference information, that provide all pertinent state, county or local regulatory information that are known to impact business operations to be supported by SmartGov
- A fully approved version of the template validation workbook
- Approval via email or other written correspondence of any other identified forms, as requested by the Implementation Specialist

Assumptions and Constraints

- The scoped number of department templates for this SOW are 54 types. If the number of department types identified during the configuration work effort exceed the number of types scoped for this SOW, the additional types may be introduced into the scope of the project via the DSI CCA process once signed and approved by the DSI Project Manager and the client Project Manager.
- Case template configuration will be completed within existing product design in each module.
- DSI will configure each application or request type in the SmartGov module that best supports the associated workflow. The primary goal of configuration of case templates is to optimize SmartGov capability
 - Note: This assumption means that recommended case template configuration may or may not align with current internal customer naming convention or legacy system design
- The total number of case templates to be configured across all modules will be stated in the Configuration Plan. This total may vary from the initial sales order, where applicable, if approved by the DSI Project Manager
- A complete list of case templates to be configured across all modules will be approved by the client key sponsor, or their delegate, no later than the third Configuration Meeting
- Baseline configuration for case templates identified in the Configuration Plan will be completed before any expanded template configuration work will be done
- Baseline configuration for case templates listed in the Configuration Plan will support the end-to-end work steps that correspond to each default SmartGov Process State in the applicable module.
- If case templates or department types are identified during the configuration work effort, that are not documented in the original Configuration Plan or exceed the number of types scoped for this SOW, the additional templates or types may be introduced into the scope of the project via the DSI CCA process once signed and approved by the DSI Project Manager and the client Project Manager.
- Super Admin training will include how to maintain or update case templates

Financial Setup and Fees Pages

Configuration of GL Accounts and Fee Codes as needed to support financial transactions for any business activity to be supported by SmartGov.

Deliverables

Dude Solutions will provide the following task deliverables:

- A weekly Fee List Report that reflects all configured active fees and their associated GL Accounts
- Configuration of permitting module fee codes necessary to support all configured case templates





- Configuration of Licensing module fee codes necessary to support all configured case templates
- Configuration of Code Enforcement module fee codes necessary to support all configured case templates
- Configuration of Recurring Inspection module fee codes necessary to support all configured case templates
- Configuration of other fee codes required to support routine transaction activity including NSF ("Non-Sufficient Funds") fees, administrative fees, fines, regulated surcharges, convenience fees, and the like
- Configuration of fast track fees, deferred fees, and tax exempt fees within current product design.
- Configuration of the timing during the workflow process that each fee will be assessed and may have payment applied against the fee within current product design
- Configuration elements as needed to support online [SmartGov portal] payments
- Setup and definition of Fees Pages

The client will provide the following resources or task deliverables:

- A copy of all current fee schedules for all in-scope departments and business functions
- A current list of GL Accounts
- The last two monthly or quarterly relative financial reports
- A copy of any other operating document that contains pertinent information regarding any assessed charges, surcharges, potential fines, etc
- Contact information for one or more subject matter experts in the appropriate finance departments. This is to facilitate efficient information gathering from both operating and finance departments / divisions

Assumptions and Constraints

- All fee codes will be configured within existing product design
- A GL Account list approved / authorized by the client's finance department is provided to the DSI Implementation Specialist. This GL Account list will be limited to accounts associated to fee codes to be configured in SmartGov
- GL Accounts and Fee Codes will be configured with product design parameters
- All configured fee codes will be derived from documented fee schedules or comparable client documentation provided to the DSI Implementation Specialist. Updated fee schedules or related documents that are provided after the initial versions may be incorporated into the final configuration if there is no adverse impact on the project schedule
- Fee codes will be configured to optimize SmartGov capability, and therefore may not be identical to legacy system fees
- Determination of the specific fee codes to be defaulted within each module case template will be determined by the designated client project team member
- Validation of case templates will include validation of fee code functionality
- User security rights will address fee code management within current product capability
- Super Admin training will include instructions for maintenance of GL Accounts and configured fee codes

Portal Configuration Setup

Configuration of required elements to enable in-scope functionality associated with the SmartGov online portal, as stated in the Configuration Plan.





Deliverables

Dude Solutions will provide the following task deliverables:

- A Portal Validation site to demonstrate and test Portal configuration
- Information regarding Portal set up options
- A Portal set up workbook template

The client will provide the following resources or task deliverables:

- A fully completed and approved Portal Set up workbook
- Any written content to be visible in portal that is not configurable
- Resources to test Portal configuration

Assumptions and Constraints

- The client will be responsible for taking steps to integrate the SmartGov portal into existing online sites
- Online payments will not be enabled without also purchasing the Merchant Services connector
- The client will be able to determine the level of online integration with their business processes, within existing product design
- Portal configuration will occur along with configuration of module case templates.
- Validation tasks will include distinct tasks to approve Portal set up
- Portal user security will be defined using existing product functionality
- Super Admin training will include information about options for the client to maintain / update portal configuration

Parcel Connector Setup

The parcel connector is an optional feature that is used to keep the parcel repository in SmartGov up to date. Parcel data that is typically maintained in a county assessor's system is used as the primary reference for modules in the SmartGov application. Parcel profile information, such as Parcel Number, Site Addresses, Current Owner, Legal Description, Section, Township, Range, Quarter, Subdivision, Block, Lot, and Neighborhood, is accommodated in standard data fields. Additional attribute data may also be stored in our custom detail area. Additionally, if the associated latitude and longitude data is available, those coordinates can be added to the parcel record to allow users to geographically locate information on the map.

Deliverables

Dude Solutions will provide the following task deliverables:

- A tested, working parcel connector along with a list of unresolvable errors to be addressed

Assumptions and Constraints

- Parcel Connector required fields supplied

Map (GIS) Connector Setup

The Map (GIS) connector allows for the display and viewing of a geographical map based on parcel data provided in SmartGov. The Map (GIS) connector will display layers on the SmartGov map based on the clients current Geo-database.

Deliverables





- Map layers configured and available for display on the SmartGov map
- Parcel layer registered in SmartGov for use with SmartGov popup
- Ability to turn layers on and off
- Training to configure layers going forward

Assumptions and Constraints

- Client will provide GIS Layer information and provide shape files or services to setup and consume GIS layers
- Layers are required to be hosted on an ESRI server
- Layers must be available via HTTPS
- Server must have valid security certificate
- Layer formats supported:
 - Map Services
 - Feature Services
 - Tiled Services
 - Web Map Service (WMS)

Financial Connector Setup

The receipt extract for the Financial Connector is a job process that allows SmartGov to export data in electronic file format that can then be imported into an external financial management system ("FMS"). The purpose of receipt extract is to automate the export process and allows users to update their preferred FMS with the selected receipt data generated in SmartGov. The extract is provided in a comma delimited file format that is run as an on-demand job within the SmartGov application. The file format and export settings are fully customizable depending on the needs of the client FMS. These export settings will be defined early on during the planning phase, so all stakeholders have a clear understanding on the type of data that needs to be included in the extract file.

Deliverables

- Financial Reports with summary and detail information processed in the system:
- Receipt detail
- Reconciliation Reports
- Financial reports for daily extract validation

Assumptions and Constraints

- Client will provide Financial Management System ("FMS") data access for extracts
- Client to provide list of data elements for the connector integration
- FMS data will be extracted into a .txt file for SmartGov consumption
- Extract jobs can be scheduled or run manually

Custom Connector

Connectors allow SMARTGOV to share and or receive data from third party systems. DSI will consider non-standard connectors or custom connectors case-by-case based on feasibility. DSI considers merchant service connectors custom if an interface has not previously been established with a vendor. The City of Banning





utilizes Automated Merchant Systems Inc., which will require a new connector interface. Once established, this connector will enable online processing of credit card payments through the SmartGov Citizen portal utilizing Automated Merchant System Inc.

Deliverables

- Functioning merchant service connector to Automated Merchant System Inc.
- Configure the Merchant Service connector to process payments for client services and transactions processed in SmartGov
- Configure the 3rd party payment gateway to accept credit card transactions

Assumptions and Constraints

- Client will facilitate coordination with Automated Merchant Systems Inc
- Automated Merchant System Inc software has the standard functionality necessary to support the Connector with SmartGov.

Data Migration

Data Migration can be a complex process and demands that solid requirements are well defined in order to prepare for the data migration process. Many clients start out with "we want everything" migrated to SmartGov. However, experience has shown that once the requirements of data to be utilized in SmartGov have been reviewed, this often reduces the need for all information in legacy systems. Dude Solutions will help the client determine the real needs for data to be migrated from the legacy system to SmartGov. Decisions will be made jointly via a thorough analysis of the legacy system data and how or if the legacy data should be targeted to be migrated to SmartGov.

The consulting team will ask a series of questions, such as:

- What is the reason you want to migrate your data?
- What are your public data request requirements?
- What is the required retention period?
- What elements are required to meet the need? Once determined, this can expand or lessen the scope to include or eliminate other data points that need to be tracked moving forward
- Are legacy systems still available to extract data from?
- Do you need to report on this data?
- Do you need to be able to search for this data? What is the Search criteria? These questions will help us determine where to store data within SmartGov

The data migration process will include the following steps:

1. Define requirements
2. Map data elements
3. Extract data





4. Transform data
5. Load data
6. Perform data validation with client
7. Resolve data issues
8. Validate resolution
9. Obtain fresh copy of data
10. Add migrated data to configuration
11. Validate data and system configuration
12. Perform end to end testing
13. Perform final data migration
14. Move to Production/Training environments
15. Migration sign-off

Deliverables

- Dataset assessment and set priorities with client
- Evaluate data quality
- Work with client to cleanse data prior to extract
- Map data elements
- Determine migration pre-requisites and sequencing
- Define migration approach based on requirements definition
- Create and execute validation checklists

Assumptions and Constraints

- Client will provide information related to:
 - Data Source
 - Database/Source Type (SQL Server, Access, Oracle, etc...)
 - Type of Data (tabular, documents, permits, financial, etc...)
 - Active data usage
 - Point of Contact who know the data structure and content usage
 - Provide data validation and testing resources





Standard Reports (70 Reports Included)

DSI will provide the client reports (reports and output documents) that includes 70 standard reports. Normal modifications to these reports to entail updating client specific information and logos not related to data output.

- Custom Reports: SmartGov comes with 70 standard reports and output documents. Using tools in SmartGov, client staff can add the client's logo and modify header and footer information.

Deliverables

- 70 standard reports

Assumption and Constraints

- Modification to standard reports will be related to Client branding and logos

Custom Reports

SmartGov baseline implementation includes a defined set of standard reports that may be branded to be client-specific. This task can be included in the project when it is identified during the sales process that the standard set of reports is likely to be insufficient to meet the client's minimum business needs. DSI will work with the client to design and create a set of custom reports as defined in the requirements sessions. DSI will build custom reports to supplement standard reports. Custom reports are built to the client's specifications.

Deliverables

1. Task – Branding out of the box Reports using the customer's logo and jurisdiction information:
2. Task – Create new reports based on Client requirements as scoped in the statement of work
3. Task – Add/Modify Existing Adhoc Reports

- Move fields around, add additional fields, remove unnecessary fields, and add header or footer information
- Reports named on the SOW (Permit, Certificate of Occupancy, etc.)

Assumptions and Constraints

- Digital forms of all logos and the jurisdiction information are provided by client
- For each report that needs to be modified, client will provide an image of the report and the changes that need to be made with references to the field that needs to be added or removed
- For each report that needs to be added, client provides an image of how they want the report laid out with field references from Dude Community Development
- Not all reports can be modified in Dude Community Development Adhoc Tool. This is set to be fulfilled in future application development
- Supporting these custom reports will add additional time requirements to supporting the customer

Training

Onsite Training





Onsite training will be performed at the client facility of their choice with the appropriate personnel present. The scope of onsite training is detailed below.

Specific Objectives – Training is divided into modules based on department and/or role. Dude Solutions recommends this structure so that similar operational schemas are represented in each block of instruction. For example, the Licensing Administrator training would occur at a different time than general back-office user training. Experience shows this model offers a more collaborative learning experience and results in maximum value from the training investment.

- User instruction focuses on the performance of day-to-day front desk functions conducted using SmartGov. User topics include permit and license processing, payment/fee collection, and case management
- Super User (Administrator) instruction focuses on the setup and maintenance of background information specific to the Client. Administrator topics include creating users/security groups and determining workflow steps. Additionally, administrators gain requisite knowledge to effect customization changes as well as addressing simple problems that users may encounter

Dude Solutions provides all training materials/user manuals as leave-behind tools which also serve as technical references for basic use, simple troubleshooting, and aid with knowledge retention.

Administrator Training

SmartGov technical training will focus on the Client's staff who will administer the program.

System Administrator training covers all aspects of maintaining the SmartGov system at the client level. System administrators will learn how to create project templates, template values, map out the approval process, create a conditions library, and other tasks to help users manage projects in an efficient and consistent manner. The training also outlines how to add new users and assign appropriate roles and security levels.

Training Objectives:

- Create lookup lists
- Create and maintain templates
- Create workflow processes
- Set up and update fees and fee schedules
- Maintain active users and user roles
- Assign inspections to inspectors
- Manage reports and reporting groups
- Set up print configurations
- Manage project approval process
- Manage parcel information
- Manage complaint information

End-User Training

DSI designed the SmartGov training program to ensure satisfaction and success when using the system.

Training Objectives:





- Improvement in user awareness and ability to use the system
- Sufficient technical knowledge transfer for successful systems support
- Ease of training program maintenance after end-of-project contract

The instructor-led training courses take student trainers and super-users through the complete operation of the various functional areas of the system, highlighting how operations and activities in specific areas affect others within the overall business context. At the end of this training cycle, the participants will understand how to perform specific operations and how the system works overall. Participants will also receive special tips on how to effectively coach and train others to use the application successfully.

Training covers functions related to permits, licensing, planning actions, inspection, and code enforcement activities from application intake and receipt through inspections and occupancy. Users learn how to create applications, manage the approval process, assign conditions, collect fees, and create certificates of occupancy, handling the project from submittal to final status.

Training Objectives:

- Create and process applications
- Manage workflow processes
- Manage the permit and plan review life cycle
- Look up, search, and query projects
- Create invoices and collect fees
- Create system reports
- Manage contact information
- Manage contractor information
- Manage code enforcement information
- Manage inspector and inspection information
- Manage parcel information

Inspector Training

Inspector training is specifically tailored for site inspectors and focuses on the system functionality they will use in their day-to-day activities and the inspection module. Participants learn how to enter and search for permits, document inspection results, schedule inspections, note issues and irregularities, and generate reports.

Training Objectives:

- Manage inspections
- Create a new inspection
- Change assigned inspector
- Print reports and inspection schedules
- Create and run form letters for notification and information requests
- View and filter user-to-do list from the mobile app
- Conduct and record inspections in the field with the mobile app
- Take pictures and attach to the case from the mobile app
- Query system data from the mobile app
- Access and view permit data from the mobile app
- Generate documents and letters in the field from the mobile app





Code Enforcement Training

Training is specifically tailored for code enforcement officers or users who track citizen requests and code violations. This class focuses on the system functionality they will use in their day-to-day activities and the code enforcement module. Participants learn how to enter and search for cases, note issues and violations, and generate reports.

The mobile app training educates participants on how to input data while working in the field.

Training Objectives:

- Understand the code enforcement and Inspection Assistant modules
- Create new cases
- Create new case actions
- Manage case and action assignments
- Create and manage a code violation library
- Create and run reports
- Create and run form letters for notification and information requests
- View and filter user-to-do list from the mobile app
- Conduct and record case investigations in the field with the mobile app
- Take pictures and attach to the case from the mobile app
- Query system data from the mobile app
- Access and view permit data from the mobile app
- Generate documents and letters in the field from the mobile app

Post Go-Live Support

DSI will provide the client with "Post Go-Live Support" which includes additional training, configuration support, reporting assistance, transaction based support, and work with the client on basic production related issues or questions for utilizing the system.

Deliverables

Provide production related post go-live support for 30 days after go-live date.

Assumptions and Constraints

- System configuration and all implementation tasks have been completed and client is using the SmartGov system in production

User Acceptance Testing "UAT"

DSI will work with the client to conduct User Acceptance Testing ("UAT") upon the completion of configuration and development tasks to confirm SmartGov functionality using the client's UAT Test scripts, developed by the client. The client will execute their test scripts and communicate the results of the test scenario as either pass or fail. DSI will review the UAT test log for issues and will assign these issues to the appropriate resource for resolution. DSI will have up to ten (10) days to correct any functional item that fails a test, or provide a mutually acceptable written explanation of when the failed item will be corrected. In the event a bug is identified, the bug





issue will be assigned to the DSI Engineering Team for assessment. DSI Engineering will then provide an estimated time frame for resolution. The client has the right to conduct additional UAT Testing for items within project scope.

Deliverables

DSI will provide the following task deliverables

- SmartGov Validation environment ready for system User Acceptance Testing
- Review any discrepancies found by the client during UAT Testing
- Correct any functional item that fails a test within 10 days, or provide a mutually acceptable written explanation of when DSI will correct the failed item
- Identified software bugs will be addressed by DSI Engineering for assessment. DSI Engineering will then provide an estimated time frame for resolution
- Provide tools for documenting UAT test scripts in the UAT testing Plan and issue tracking log as needed, client may use their own UAT Testing Plan document if available

The client will provide the following resources or task deliverables

- Create a User Acceptance Test Plan with scenario based test scripts to include end-to-end system and client business process functionality, system workflow, system configuration, data migration, interfaces, reports, etc
- Execute UAT Testing Plan
- Track and document test results
- Written acceptance of System User Acceptance Testing complete via the DSI Deliverable Acceptance Form

Assumptions and Constraints

- The client will develop a UAT Test Plan
- The client will provide resources for User Acceptance Testing throughout the process
- The client will track and document test results in a mutually agreed format
- DSI will provide resources to address discrepancies

Upon successful completion of UAT Testing, Client will sign a DSI Deliverable Acceptance form, provided by the DSI Project Manager, to document their acceptance of UAT Testing and acknowledgement that UAT Testing has been completed successfully

Project Management / Engagement Management

The Project Manager's primary goal is to deliver the project within defined constraints through planning, scheduling, and controlling those activities required to achieve the project's objectives and meet customer expectations. The Project Manager strives to deliver on schedule, within budget, within scope, and at the desired performance level.

DSI assigns a professional Project Manager and/or a professional Engagement Manager for every consulting engagement. DSI's Project Management Office ("PMO") and Project Management Methodology provides Project Managers with a formal framework that is used in initiating, planning, managing (executing, monitoring, and controlling), and closing DSI's customer projects. DSI's Project Manager will have the primary responsibility for





coordinating all activities for this SOW including scheduling resources, confirming project activities and that all project deliverable and defined activities are executed within the scope of this SOW. DSI's Project Manager will serve as the single point of contact for the project related to this SOW.

DSI's Project Management Methodology provides a defined set of phases and deliverables per Project Management Institute Best Practices which include a series of planning phase activities, including initial alignment meetings to prepare for the kickoff meeting to enable all project participants to understand the project scope, project plan, and objectives. The project kickoff meeting will allow all participants to be introduced, review and understand the delivery methodology, define team roles and responsibilities, review the communications and risk management plans, review documentation templates, review the SOW and project schedule. The Executing phase allows DSI Project Managers to direct and manage project progress through task execution, distribute project related information per the Communications plan, Quality Assurance per the SOW guidelines, project team development and coaching, and checkpoint meetings to review project progress during each work week, and weekly status meetings. The Monitoring and Controlling phase provides the DSI PM with the toolset to manage the triple constraint triangle of scope, cost, and schedule through integrated change control, quality assurance, deliverable validation, risk monitoring and control, performance monitoring to plan and schedule, and initiating corrective action measures. In the Closing phase, the Project Manager will verify product and deliverable acceptance, perform final financial audits, lessons learned, project archive delivery and updates, and formal project completion acceptance from the customer.

Project Management activities include:

- Project planning and kickoff meetings
- Project schedule developed per SOW tasks, deliverables, and resource assignments
- Status reporting and status meeting
- Continuously communicating, planning, and scheduling updates
- Schedule and budget monitoring, and scope management
- Risk Management planning to continuously identify, analyze, and mitigate risks
- Action Item and decision tracking, as well as resolving and escalating issues
- Quality Control
- Change control management
- DSI project resource management
- Work product completion and deliverable acceptance management
- Project Completion Acceptance execution

Project Timeline

DSI anticipates commencing this project on a mutually agreeable start date upon receipt of an executed SOW acceptance page ("Acceptance") found at the conclusion of this document. Within two weeks of the Orientation Call, the DSI Project Manager will schedule a mutually agreeable date and time for the project kick-off meeting. As a deliverable of the kick-off meeting, the DSI Project Manager will develop a project schedule to be shared with the clients' project manager for review and agreement. As a deliverable of the kick-off meeting, the DSI Project Manager will develop a project schedule to be shared with the clients' project manager for review and agreement.

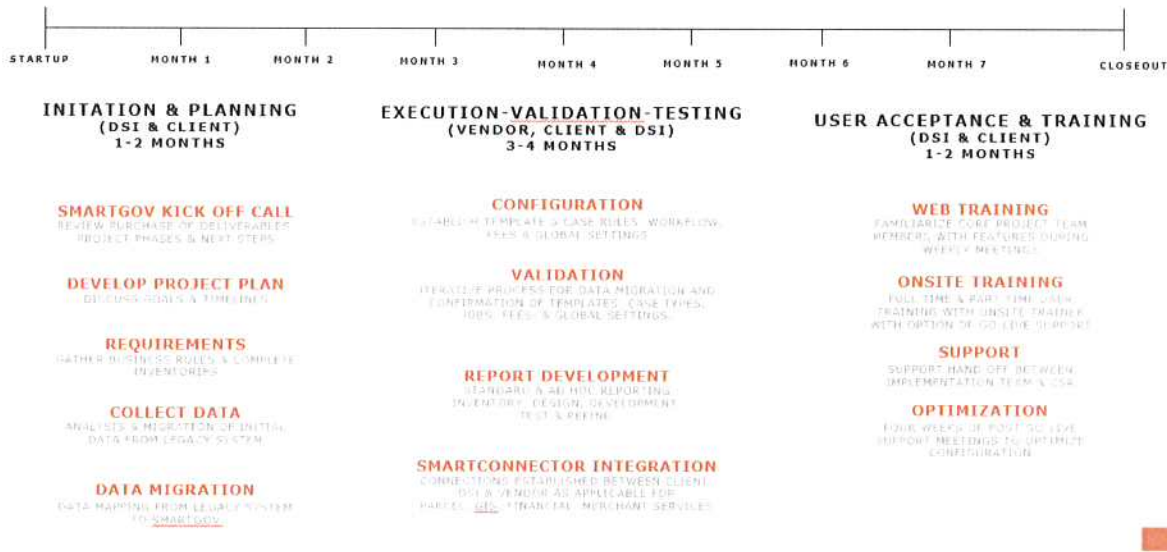
The following generic process will be followed for the implementation of this project. Below is a depiction of the generic process the DSI Project Manager/Engagement Manager will follow for the implementation, DSI reserves the right to modify this process to reflect the scope of this project.





Software for Smarter Operations

SMARTGOV High Level Process



Professional Services Invoicing / Billing

Invoicing Terms

DSI will generate project invoices when the above product codes are completed for the value of the product code as shown in the Investment table.

Travel Expenses

Travel expenses are inclusive in Dude Solutions pricing for your project.

DSI understands there are extenuating circumstances that require a change in scheduling. DSI will make every attempt to accommodate cancellation/rescheduling requests on an as-needed basis. Rescheduling requests will be subject to resource availability and every attempt will be made to meet requested timeframes and timelines, however, no guarantee can be made for requested dates or times. Client accepts that DSI will reschedule based upon our resources' next availability that meets the project duration requirement to complete the scope of work.

Cancellation Policy

Cancellation and Rescheduling requests will be managed per the below policy:





Cancellation/Rescheduling Fees: In the event that the Client requests to reschedule their onsite work date(s), Client must reschedule 14 days in advance of the scheduled onsite work. Any requests for rescheduling onsite work within the 14-day window prior to the scheduled onsite date, will require the Client to reimburse DSI the full cost of any **Cancellation Fees** and **Re-booking Fees** incurred.

Definitions:

- **Cancellation Fees:** Any actual fees incurred by DSI from its travel providers which are the result of the Client canceling work for scheduled date(s) which are not immediately rescheduled, including, but not limited to fees charged for airfare, train, rental car, and hotel.
- **Re-booking Fees:** Any change fees associated with changing travel arrangements to accommodate a rescheduled date requested by Client including, but not limited to, any difference in reasonable travel costs (airfare increase, hotel increase, rental car increase) incurred when re-booking for requested dates.
- **Force Majeure:** Client will not be held liable for Cancellation or Re-booking Fees incurred by DSI as a result of an act of God, such as an earthquake, hurricane, tornado, flooding, winter super storm, winter weather that shuts down a facility, or other natural disaster, or in the case of war, action of foreign enemies, terrorist activities, labor dispute or strike, government sanction, blockage, embargo, or failure of electrical service within a facility's power grid.

DSI Project Team Roles and Responsibilities

The roles listed below comprise the DSI team supporting this project. The team brings a wealth of experience and knowledge that will provide you with the highest caliber of expertise, thought leadership, and project management. *Due to the size and scope of the project, one person may play multiple roles, to be determined by DSI as appropriate.*

- **Senior Technical Consultant:** The Senior Technical Consultant ("STC") will develop and deploy the solution and ensure that it meets the business requirements for the project. The STC's goal is to deliver a responsive system that complies with the functional specification. The STC defines, designs, and implements the features or products that meet the client's functional expectations.
- **Implementation Specialist:** The Implementation Consultants ("IS") primary role is to provide project implementation support by setting up a client's account, performing system configuration as defined in the scope of the project, creating/modifying templates as defined in the scope of the project, and creating or modifying standard or custom reports as defined in the scope of the project or requirements discovered during requirements gathering sessions.
- **Project Manager / Engagement Manager:** The Project Manager's ("Project Manager" or "PM") / Engagement Manager's ("Engagement Manager" or "EM") primary role is to deliver the project within the project's defined constraints through planning, scheduling, monitoring progress, controlling scope, and managing client expectations. The PM/EM manages the process to release the correct product on schedule and within budget.





Project Assumptions and Constraints

DSI has made the following general assumptions in this SOW to derive the estimated cost for this project. It is the responsibility of City Of Banning to validate these assumptions and responsibilities before signing the Acceptance. Deviations from these assumptions may impact DSI's ability to successfully complete the project and will be addressed via a CCA process, as appropriate. Any changes in scope, schedule, or costs will be documented via the CCA process, whether there is a cost impact or not. Zero dollar CCA's will be used as mutual agreement documentation for scope and schedule changes.

Project Assumptions

- Client business stakeholders must be available for onsite visits and working phone conversations.
- DSI resources will be onsite as planned and scheduled.
- Prerequisite data gathering, related to an orientation call or requirements gathering session onsite, must be completed prior to scheduled onsite or orientation call date in order to maximize onsite consulting time and resource productivity.
- DSI is not responsible for delays caused by missing data or other configuration information that is required to be available prior to the onsite visit. Having the requested data and configuration information available prior to the onsite visit may minimize delays so progress can be made quickly.
- Regarding requested enhancements or new feature development, the request will be fully documented and delivered to the DSI software engineering team for review for product inclusion, definition, development, prioritization, and sprint release development and confirmation.

General, Administrative, and Cost

- DSI must be in receipt of this SOW, signed by an authorized Client representative, prior to initiation of services including orientation calls or onsite visits.
- As applicable, designated deliverables must be approved in writing using the *DSI Deliverable Acceptance form*.
- Upon satisfactory completion of project, Client must provide project sign-off using the *DSI Project Completion Acceptance form*.
- DSI is not responsible for delays caused by Client, its contractors, or any third party vendors or third party service providers.
- All project documentation will be prepared in DSI standard format in Microsoft Word, Excel, PowerPoint, Project, Visio, and/or PDF.
- This document could include technical inaccuracies and/or typographical errors.





- **Any request** by City Of Banning to modify the scope of work, schedule, or costs will require preparation of a CCA form detailing the work to be performed, as well as the associated costs. Additional work will be performed only after both parties have duly executed the CCA. Scope of work changes will impact the project schedule which will be updated to reflect such changes upon CCA approval.
- All on-site work will be conducted at Client's physical location. As required, appropriate Client personnel will be made available either at that location or via alternate means (e.g., conference call) for in-person meetings, tours, and ad-hoc meetings with appropriate personnel for additional fact finding, data gathering, and reiteration demos.

Client's Support

- Client will provide the needed input, resources, and documentation to support the tasks contained herein.
- Client will assign a project manager/leader to coordinate activities, reviews, and the collection of information in support of this project and to act as a point of contact.
- Client team members will be identified and be part of the decision-making process as it relates to changes in process, applications, technology, etc.
- Client will provide assistance in the development of functional requirements and will confirm those requirements meet the project's overall business objective.
- Client business and technical staff must be available for team workshops, requirements gathering, data gathering, and/or consulting sessions.
- Client will be responsible for scheduling and coordinating all meetings and interviews involving other teams, departments, jurisdictions, management teams, or other necessary resources required for the success of this project.
- Client will provide access to resources in a manner consistent with the proposed schedule and provide suitable designees in the absence of required resources.
- Client will provide adequate working facilities (i.e., desk, computer, telephone, contractor identification, access badge, parking pass, etc.) for DSI to perform any portion of this project that must be conducted at Client's facility and access to all applicable software, databases, tools, and systems at their facilities.
- Client will ensure that the consultant(s) are granted access to the facilities and/or systems required to conduct the necessary work defined in this SOW.
- Client will provide a knowledgeable Escort for data gathering, requirements gathering, tours, and access to restricted personnel as necessary.
- A minimum of 24-hour notice if all minimum required members for any scheduled meeting cannot attend the meeting. This will allow the meeting coordinator sufficient time to cancel or re-schedule the meeting.





- Advance notice if there is to be any additional incurred travel expenses above and beyond the contract. DSI will confirm approval of all travel dates and expenses in email from the appropriate project sponsors prior to being on site.

Client Engagement Responsibilities

The below table demonstrates the anticipated client engagement responsibilities and level of effort involvement to ensure the success of the project.

Role	Time (% FTE)	Responsibilities
Implementation Project Lead	30-40%	<ul style="list-style-type: none"> • Serve as primary Person of Contact • Work with Dude PM to plan and schedule client resources • Manage the scope of the paid services in SOW • Coordinate Client staff assignments • Manage Client activities to meet schedule commitments • Mitigate all implementation risks • Define requirement/layouts of reports purchased • Identify requirements for any connectors purchased • Sign-off on completion of all implementation services delivered
Subject Matter Experts (Multiple)	40-60%	<ul style="list-style-type: none"> • Attend Implementation/configuration meetings • Define and provide input into configuration • Attend User Acceptance and validation Training • Validate data and configuration • Develop UAT Test Scripts
IT Lead	5-10%	<ul style="list-style-type: none"> • Manage infrastructure changes to support SmartGov • Provide the data to be migrated from systems • Mitigate any technical issues • Coordinate technical assignments required to implement • SMARTConnectors, including GIS and parcel data





Data Validator / UAT Testing	20-30%	<ul style="list-style-type: none"> • Validate all data migrated • Comprehend the data in the prior system and how it translates to Community Development • Verify the data that was validated • Participate in UAT Testing, execute test scripts and provide feedback
System Administrator	10-15%	<ul style="list-style-type: none"> • Manage SmartGov Configuration • Create user accounts • Handle user access/privileges • Reset passwords • Supervise organization information changes • Regulate system values • Customize attributes • Generate ad hoc reports • Support internal usage of SmartGov
Training Coordinator	10%	<ul style="list-style-type: none"> • Manage data within SmartGov, specifically: • Accreditations • Task lists • Training Tracks • Assessments • Training Items • Training Location (conference room, off-site, etc.)
User	Case-by-Case	<ul style="list-style-type: none"> • Participate in SmartGov training • Participate in UAT Testing, execute Test Scripts

Change Control Authorization Process

In order to maintain a positive relationship with our clients and to complete all services and deliverables of a project on a timely basis, all facets of the project must be agreed upon, and any changes to the project must be requested and evaluated for impacts. Change control is an essential mechanism to monitor and document all project changes and deviations from the original scope and objectives of the project. All project changes must be requested via the project CCA process. The basic steps for a change are:

- The client team or DSI team discovers a need to change the project.
- The authorized client project manager or DSI Project Manager is notified and a CCA is initiated.





- The written project change request is reviewed by all necessary parties and either accepted or rejected.
- If rejected, the change request is maintained in the project file for reference purposes.
- If the written change request is accepted, then:
 - All necessary signatures are recorded on the change request
 - All affected documentation is revised to reflect the change(s)
 - Any adjustments to schedule, scope, and/or cost are made to the overall project plan
 - Signatures are required for all change requests
- Copies of the official approved and signed CCA are forwarded to the customer project manager and DSI Project Manager for the documentation archive. DSI will forward a copy to the Project Accounting Team in the office to update the project information and budget (if necessary).

Change Control Authorizations Process Steps

Step	Type	Description
1	Request	A request is made for a change to the agreed upon scope baseline. The request may be internally or externally generated, must be formally written and communicated to the project manager, and may have been prompted by any number of reasons or events.
2	Evaluate	The project manager facilitates an evaluation to confirm that the requested change is in fact a change to the agreed upon scope baseline. If so, the project manager implements the request as described below.
3	Assess	If the request is in fact a change to the scope baseline, the project manager assesses the impact on project schedule, budget and work products, using a similar approach as the original project planning process, utilizing team member expertise as needed.
4	Document	The project manager documents the project impact and other critical information in a CCA form. A summary of the change is recorded in a change order log. This log is required, and is a very useful tracking tool, and is included in the project status report.
5	Decide	The change order is presented to the project's governing authority, typically a steering committee, stakeholder's, or equivalent. In some cases, the project may have a separate change management board to process change requests. The governing authority decides whether or not to implement the change, and obtains approval for any needed additional resources (if it does not itself have the authority to authorize resource changes).





- | | | |
|---|-------------|--|
| 6 | Incorporate | The project manager incorporates changes into the project's scope baseline in the form of such artifacts as contracts, statements of work, project plans, requirements and design documents per the approved CCA document. |
| 7 | Implement | The project team implements the changes. |

Project Terms and Conditions

Statement of Work ("SOW") is entered into by and between Dude Solutions, Inc. ("DSI") and City Of Banning pursuant to and subject to the project terms and conditions ("Project Terms and Conditions") specified below.

- A SOW must be signed by an authorized representative of and who has full authority to bind Client before the scheduling and delivery of any software, software support, and the commencement of Professional Services. In addition, the terms of the DSI [Online Subscription Agreement \(http://dudesolutions.com/terms\)](http://dudesolutions.com/terms) shall apply with the terms of the SOW taking precedence in the event of a conflict. Acceptance by electronic signature is considered a valid and legally binding form of receipt.
- Invoicing terms are Net 30. Invoices unpaid by Client after 30 days of the invoice date will bear interest at the lower of either (a) the rate of 1.5% per month calculated monthly or (b) the highest rate permitted by applicable law.
- All applicable taxes and freight are the responsibility of Client and will appear on invoices as actual cost.
- All orders are subject to credit approval.
- DSI reserves the right to require that overdue Client accounts be paid to current for all prior DSI completed projects before a new SOW can be executed.
- SOW must be accepted and signed by Client within 60 days after which DSI reserves the right to adjust or requote the engagement.
- Employment and Subcontractors. DSI and Client agree that the employees of each may possess technical abilities that are in great demand and further agree that each party has incurred substantial expense in recruiting and training such employees and would incur even greater expense if required to replace any such employee. Therefore, DSI and Client each agree not to recruit or employ, either directly or indirectly, a present employee of the other during the term of this SOW between them, and for two (2) years following termination of this SOW. Client further agrees that during the term of this SOW and for six (6) months following the termination of this SOW, it will not, without DSI's prior written consent, engage any subcontractor which DSI utilizes to provide the services contemplated under the SOW should that be the case.
- Warranties on Services and Work Product:
 - DSI warrants that the Services shall be performed in a professional manner and to standards not less than those generally accepted in the industry. The foregoing Warranty shall not apply to any portion of a deliverable hereunder (a "Work Product") that has been modified by a party other than DSI without DSI's prior written approval.
 - Client's exclusive remedy and DSI's entire liability shall be the re-performance of the Professional Services.
 - **Disclaimer.** Except as expressly provided in this SOW, with respect to the services and the work product, DSI makes and Client receives no other warranties, expressed or implied, and expressly includes all warranties of merchantability and fitness for a particular purpose.





- Term and Termination:
 - The term of this SOW shall be effective and binding, and commence on the date signed by Client and shall terminate as provided herein or upon written acceptance of the work performed with final payment received.
 - **Termination Without Cause.** Either party may terminate this SOW for any reason or no reason by providing the other party with thirty (30) days prior written notice.
 - **Termination for Breach.** Except for a party's breach of its confidentiality obligations under this SOW, or any other agreement, current, and existing between both parties (which breach shall give the non-breaching party the right to automatically and immediately terminate this SOW), if either party is in material breach of this SOW, the non-breaching party may provide a written notice to the breaching party specifying the nature of the breach. The breaching party shall have thirty (30) days from receipt of such notice to correct the breach. If the breach is not cured within such period, the non-breaching party may terminate this SOW by providing the breaching party with written notice of termination. Consent to extend the thirty (30) day cure period shall not be withheld unreasonably if the breaching party has commenced cure efforts during such period and pursues cure of the breach in good faith. Notwithstanding the foregoing, if Client is in breach of the payment terms of this SOW and does not correct such breach within ten (10) business days of notice from DSI, DSI may terminate this SOW, and may suspend performance under any other SOW in progress, pending receipt of payment in full.
 - **Other Termination.** Either party may terminate this SOW immediately upon the occurrence of any of the following events with respect to the other party: (a) a receiver is appointed for either party or its material assets; (b) either party becomes insolvent, generally unable to pay its debts as they become due, or makes an assignment for the benefit of its creditors or seeks relief under any bankruptcy, insolvency or debtor's relief law; (c) if proceedings are commenced against either party, under any bankruptcy, insolvency or debtor's relief law, and such proceedings have not been vacated or set aside within sixty (60) days from the date of commencement thereof; or (d) if either party is liquidated, dissolved or ceases operations.
 - **Payment upon Termination.** Following a termination for cause by DSI under the above, Client shall, within ten (10) business days of such termination, pay DSI for all Services properly performed in accordance with this SOW, through and including the date of termination according to the fees and rates set forth in the applicable SOW.





Software for Smarter Operations

Signature

Presented to:

Q-147831

May 31, 2019, 8:29:51 PM

Accepted by:

Printed Name

Signed Name

Title

Date



ATTACHMENT 3

(Template Agreement)

**PROFESSIONAL SERVICES AGREEMENT (C00###)
FOR [INSERT DESCRIPTION OF SERVICES HERE]**

By and Between

THE CITY OF BANNING

and

[INSERT COMPANY NAME HERE,

a California corporation]

AGREEMENT FOR PROFESSIONAL SERVICES (C00###) FOR [INSERT DESCRIPTION OF SERVICES HERE] BY AND BETWEEN CITY OF BANNING AND [INSERT COMPANY NAME HERE]

THIS AGREEMENT FOR PROFESSIONAL SERVICES (herein "Agreement") is made and entered into this ____ day of _____, 2019 by and between the **CITY OF BANNING, a municipal corporation ("City")** and **VENDOR NAME, a California corporation ("Consultant")**. City and Consultant are sometimes hereinafter individually referred to as "Party" and hereinafter collectively referred to as the "Parties."

RECITALS

A. City has sought, by issuance of a Request for Proposals or Invitation for Bids (RFP/IFB No. ##-###), the performance of the services for the **Insert Type of Work to be Completed** prepared in connection therewith, and as further defined and described particularly in Article 1 of this Agreement.

B. Consultant, following submission of a proposal or bid for the performance of the services defined and described particularly in Article 1 of this Agreement, was selected by the City to perform those services.

C. Pursuant to the City of Banning's Municipal Code, City has authority to enter into this Agreement.

D. The Parties desire to formalize the selection of Consultant for performance of those services defined and described particularly in Article 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**. 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, in addition to the Scope of Services provided in Exhibit “A”, include the Request for Proposal or Invitation for Bids (“Contract Documents”), which are incorporated herein by this reference as though fully set forth herein. This Agreement shall also include the Consultant’s accepted bid proposal (“Accepted Bid”), which is attached hereto as Exhibit “A-1” and 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 this Agreement, the terms of the Contract Documents shall govern over the Accepted Bid, and the terms of this Agreement shall govern over both the Contract Documents and the Accepted Bid.

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 all 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 Consultant shall indemnify, defend and hold harmless City, its officers, employees or agents of City, against all 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 to perform the services 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 to 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 (as defined in Section 4.3, *infra*) to the Consultant, which written order incorporates therein an adjustment in (i) the Contract Sum (as defined in Section 2.1, *infra*), and/or (ii) the Schedule of Performance, (as defined in Section 3.2, *infra*), and which written order is approved in writing by 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 Schedule of Performance 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 1.8 shall not apply to services which are specifically set forth in the Scope of Services or which are 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 City deems, in its sole discretion, to 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 Exhibit A-1. 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.

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, unless Additional Services are approved per 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 Exhibit A-1, 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 Exhibit A-1.

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 Exhibit A-1. 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. Each such invoice shall contain all of the information set forth in Exhibit A-1. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. 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. 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. 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. 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.

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.

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 Exhibit A-1 and incorporated herein by this reference. When requested by the Consultant, extensions of the time period(s) specified in Exhibit A-1 ("Schedule of Performance") may be approved in writing by the Contract Officer but not exceeding one hundred eighty (180) days cumulatively, as set forth in Section 1.8, above.

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, subject to the provisions of Section 1.8, above. 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. Maximum term and any subsequent amendment or modification shall not exceed five (5) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Principals of Consultant.

The following representatives and personnel of Consultant (Principals) are hereby designated as being the Principals 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, desires to reassign any staff or sub-consultant of Consultant, Consultant shall, immediately upon receipt of a written reassign notice from City which requests such a reassignment, 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 Schedule of Performance for 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.

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, 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.

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 in writing 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, (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, and (iii) all payments due or that become due to Consultant during the period that Consultant or any of its subcontractors fail to maintain any required insurance in full force and effect, 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, as provided in Section 5.2, above. 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. 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 7.9 for termination for default of Consultant. 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 Exhibit A-1 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 provided in Section 7.3.

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.

<p>CAPACITY CLAIMED BY SIGNER</p> <p><input type="checkbox"/> INDIVIDUAL</p> <p><input type="checkbox"/> CORPORATE OFFICER</p> <p>_____</p> <p style="text-align: center;">TITLE(S)</p> <p><input type="checkbox"/> PARTNER(S) <input type="checkbox"/> LIMITED</p> <p> <input type="checkbox"/> GENERAL</p> <p><input type="checkbox"/> ATTORNEY-IN-FACT</p> <p><input type="checkbox"/> TRUSTEE(S)</p> <p><input type="checkbox"/> GUARDIAN/CONSERVATOR</p> <p><input type="checkbox"/> OTHER _____</p> <p>_____</p> <p>SIGNER IS REPRESENTING: (NAME OF PERSON(S) OR ENTITY(IES))</p> <p>_____</p> <p>_____</p>	<p>DESCRIPTION OF ATTACHED DOCUMENT</p> <p>_____</p> <p style="text-align: center;">TITLE OR TYPE OF DOCUMENT</p> <p>_____</p> <p style="text-align: center;">NUMBER OF PAGES</p> <p>_____</p> <p style="text-align: center;">DATE OF DOCUMENT</p> <p>_____</p> <p>SIGNER(S) OTHER THAN NAMED ABOVE</p>
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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:

EXHIBIT “A-1”
CONSULTANT’S PROPOSAL
(pages ##-##)

EXHIBIT “B”
SPECIAL REQUIREMENTS
(Superseding Contract Boilerplate)

None

Exhibit “D-1”-1

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**CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Suzanne Cook, Deputy Finance Director
Doug Anderson, Urban Futures, Inc.

MEETING DATE: July 9, 2019

SUBJECT: Refunding of 2005 Wastewater Revenue Bonds,
for Debt Service Savings

RECOMMENDATION:

Staff recommends that the City Council adopt Resolution of the Banning Utility Authority, Authorizing Staff and Consultants to Prepare Necessary Documentation for the Issuance of Bonds to Refund Certain Outstanding 2005 Wastewater Enterprise Revenue Bonds, Series 2005 and Approving Financing Team Members in Connection Therewith

BACKGROUND:

The Banning Utility Authority issued its \$7,100,000 Wastewater Enterprise Revenue Bonds in December of 2005 (the "2005 Bonds"), of which \$4,585,000 is currently outstanding. Market interest rates are currently near all-time lows, which provides an opportunity to refund (refinance) the outstanding 2005 Bonds to generate a debt service savings over the remaining term of the bonds.

The interest rate for the 2005 Bonds with the longest maturity (2035) is 4.625%. The corresponding current market interest rate is approximately 3.31%. Based on current interest rates, the City can generate an estimated total debt service savings of approximately \$632,655 by issuing refunding bonds, without extending the current final maturity date of the bonds (November 1, 2035).

The proposed 2019 Bonds would be secured by the same revenues currently pledged to the 2005 Bonds, which is Net Revenues of the Wastewater system. The 2019 Bonds would not be a debt of the City's general fund.

The proposed Finance Team members are Norton Rose Fulbright US LLP as Bond and Disclosure Council, Urban Futures, Inc. as Municipal Advisor, and Stifel, Nicolaus & Company, Inc. as Underwriter. This is the same team that successfully completed the sale of the 2015 Water Enterprise Revenue Bonds issued by the City's Utility Authority.

After the legal and financing documents for the issuance of the proposed 2019 Bonds have been prepared by the Finance Team and are in substantially final form, such documents would be presented to the City Council / Utility Authority for final approval.

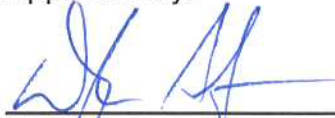
FISCAL IMPACT:

By issuing the proposed 2019 Bonds to refund the outstanding 2005 Bonds, the City can save an estimated \$632,655 in debt service payments over the remaining term of the bonds, without extending the current final maturity date of November 1, 2035. All costs of issuance will be paid from bond proceeds, and the estimated savings is net of such costs. The 2019 Bonds would be secured by the same revenues (Net Revenues of the Wastewater system) that are currently pledged to the 2005 Bonds, and the 2019 Bonds would not be a debt of the City's general fund.

ATTACHMENTS:

1. Resolution No. 2019-____ and Resolution No. 2019-____ UA
2. (Est.) Savings Analysis
3. Proposals/Agreements from Finance Team: Urban Futures, Inc., Norton Rose Fulbright US LLP, Stifel

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution No. 2019-_____
Resolution No. 2019-____ UA

RESOLUTION NO. 2019-____

RESOLUTION NO. 2019-____ UA

RESOLUTION OF THE BANNING CITY COUNCIL AND THE BANNING UTILITY AUTHORITY OF THE CITY OF BANNING, CALIFORNIA AUTHORIZING STAFF AND CONSULTANTS TO PREPARE NECESSARY DOCUMENTATION FOR THE ISSUANCE OF BONDS TO REFUND CERTAIN OUTSTANDING WASTEWATER ENTERPRISE REVENUE BONDS, 2005 SERIES AND APPROVING FINANCING TEAM MEMBERS IN CONNECTION THEREWITH

WHEREAS, in 2005, the City of Banning (the "City") executed and delivered Banning Utility Authority Wastewater Enterprise Revenue Bonds to finance wastewater improvements (the "Prior Obligations"); and

WHEREAS, the City desires to refund the Prior Obligations; and

WHEREAS, the City desires to approve the members of the financing team in connection with the proposed issuance of refunding bonds to be issued on a tax-exempt basis (the "Bonds");

NOW, THEREFORE, BE IT RESOLVED by the Banning Utility Authority and City Council of the City (the "City Council") as follows:

SECTION 1. Approval of Recitals. The City Council hereby finds and determines that the foregoing recitals are true and correct.

SECTION 2. Authorization to Prepare Documents. The City Council hereby authorizes staff, the Municipal Advisor, Bond Counsel and Disclosure Counsel to prepare necessary documentation for review and approval by the City Council for the refunding of the Prior Obligations.

SECTION 3. Approval of Certain Financing Team Members. The City Council hereby approves the appointment of (a) Norton Rose Fulbright US LLP, to provide Bond Counsel and Disclosure Counsel Services in connection with the Bonds, (b) Stifel, Nicolaus & Company, Inc., as Underwriter in connection with the Bonds, and (c) Urban Futures, Inc., as Municipal Advisor in connection with the Bonds. The City Manager is hereby authorized and directed to execute services agreements with these financing team members.

SECTION 4. Effective Date. This Resolution shall become effective immediately upon adoption.

SECTION 5. Certification. The Deputy City Clerk and Deputy Secretary of the Banning Utility Authority shall certify to the adoption of this Resolution and shall cause a certified resolution to be filed in the book of original resolutions.

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

Arthur L. Welch Mayor and Chairman
City of Banning and Banning Utility Authority

ATTEST:

Daryl Betancur, Deputy City Clerk &
Deputy Secretary Banning Utility
Authority
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning and Deputy Secretary of the Banning Utility Authority, do hereby certify that the foregoing Resolution 2019-____, and Resolution 2019-____ UA, was duly adopted by the City Council and the Banning Utility Authority of the City of Banning, California, at a regular meeting thereof held on the 9th day of July, 2019 by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk & Deputy
Secretary of the Banning Utility Authority
City of Banning, California

ATTACHMENT 2

(Est) Savings Analysis

SOURCES AND USES OF FUNDS

Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale

Dated Date 09/19/2019
Delivery Date 09/19/2019

Sources:

Bond Proceeds:	
Par Amount	4,035,000.00
Premium	756,829.90
	4,791,829.90
Other Sources of Funds:	
2005 Wastewater Fund Project Fund	3,271,698.81
	8,063,528.71

Uses:

Refunding Escrow Deposits:	
Cash Deposit	4,585,000.00
Delivery Date Expenses:	
Cost of Issuance	160,000.00
Underwriter's Discount	45,000.00
	205,000.00
Other Uses of Funds:	
2005 Wastewater Fund Project Fund	3,271,698.81
Contingency	1,829.90
	3,273,528.71
	8,063,528.71

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

BOND PRICING

Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale

Bond Component	Maturity Date	Amount	Rate	Yield	Price	Yield to Maturity	Call Date	Call Price	Premium (-Discount)
Serial Bonds:									
	11/01/2019	180,000	4.000%	1.450%	100.294				529.20
	11/01/2020	165,000	5.000%	1.520%	103.837				6,331.05
	11/01/2021	170,000	5.000%	1.540%	107.176				12,199.20
	11/01/2022	180,000	5.000%	1.550%	110.455				18,819.00
	11/01/2023	190,000	5.000%	1.560%	113.662				25,957.80
	11/01/2024	200,000	5.000%	1.580%	116.745				33,490.00
	11/01/2025	210,000	5.000%	1.680%	119.220				40,362.00
	11/01/2026	215,000	5.000%	1.760%	121.581				46,399.15
	11/01/2027	230,000	5.000%	1.870%	123.467				53,974.10
	11/01/2028	240,000	5.000%	1.930%	125.549				61,317.60
	11/01/2029	255,000	5.000%	2.050%	126.826				68,406.30
	11/01/2030	265,000	5.000%	2.170%	125.579 C	2.369%	11/01/2029	100.000	67,784.35
		<u>2,500,000</u>							<u>435,569.75</u>
Term Bond 2035:									
	11/01/2031	280,000	5.000%	2.630%	120.929 C	3.313%	11/01/2029	100.000	58,601.20
	11/01/2032	295,000	5.000%	2.630%	120.929 C	3.313%	11/01/2029	100.000	61,740.55
	11/01/2033	305,000	5.000%	2.630%	120.929 C	3.313%	11/01/2029	100.000	63,833.45
	11/01/2034	320,000	5.000%	2.630%	120.929 C	3.313%	11/01/2029	100.000	66,972.80
	11/01/2035	335,000	5.000%	2.630%	120.929 C	3.313%	11/01/2029	100.000	70,112.15
		<u>1,535,000</u>							<u>321,260.15</u>
		<u>4,035,000</u>							<u>756,829.90</u>

Dated Date	09/19/2019	
Delivery Date	09/19/2019	
First Coupon	11/01/2019	
Par Amount	4,035,000.00	
Premium	756,829.90	
Production	4,791,829.90	118.756627%
Underwriter's Discount	-45,000.00	-1.115242%
Purchase Price	4,746,829.90	117.641385%
Accrued Interest		
Net Proceeds	4,746,829.90	

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

BOND DEBT SERVICE

**Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale**

Dated Date 09/19/2019
Delivery Date 09/19/2019

Period Ending	Principal	Interest	Debt Service
11/01/2019	180,000	23,327.50	203,327.50
11/01/2020	165,000	192,750.00	357,750.00
11/01/2021	170,000	184,500.00	354,500.00
11/01/2022	180,000	176,000.00	356,000.00
11/01/2023	190,000	167,000.00	357,000.00
11/01/2024	200,000	157,500.00	357,500.00
11/01/2025	210,000	147,500.00	357,500.00
11/01/2026	215,000	137,000.00	352,000.00
11/01/2027	230,000	126,250.00	356,250.00
11/01/2028	240,000	114,750.00	354,750.00
11/01/2029	255,000	102,750.00	357,750.00
11/01/2030	265,000	90,000.00	355,000.00
11/01/2031	280,000	76,750.00	356,750.00
11/01/2032	295,000	62,750.00	357,750.00
11/01/2033	305,000	48,000.00	353,000.00
11/01/2034	320,000	32,750.00	352,750.00
11/01/2035	335,000	16,750.00	351,750.00
	4,035,000	1,856,327.50	5,891,327.50

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

SUMMARY OF REFUNDING RESULTS

Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale

Dated Date	09/19/2019
Delivery Date	09/19/2019
Arbitrage yield	2.253263%
Escrow yield	0.000000%
Value of Negative Arbitrage	
Bond Par Amount	4,035,000.00
True Interest Cost	2.746877%
Net Interest Cost	3.082344%
All-In TIC	3.207754%
Average Coupon	4.999434%
Average Life	9.202
Par amount of refunded bonds	4,585,000.00
Average coupon of refunded bonds	4.608406%
Average life of refunded bonds	9.177
PV of prior debt to 09/19/2019 @ 2.253263%	5,451,934.36
Net PV Savings	526,350.54
Percentage savings of refunded bonds	11.479837%

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

SAVINGS

**Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale**

Date	Prior Debt Service	Refunding Debt Service	Savings	Present Value to 09/19/2019 @ 2.2532627%
11/01/2019	209,357.82	203,327.50	6,030.32	5,805.64
11/01/2020	396,150.00	357,750.00	38,400.00	37,497.27
11/01/2021	393,106.26	354,500.00	38,606.26	36,864.24
11/01/2022	394,106.26	356,000.00	38,106.26	35,578.52
11/01/2023	394,656.26	357,000.00	37,656.26	34,377.53
11/01/2024	394,756.26	357,500.00	37,256.26	33,257.13
11/01/2025	394,406.26	357,500.00	36,906.26	32,213.34
11/01/2026	393,606.26	352,000.00	41,606.26	35,505.37
11/01/2027	397,043.76	356,250.00	40,793.76	34,037.46
11/01/2028	394,787.50	354,750.00	40,037.50	32,663.27
11/01/2029	397,068.76	357,750.00	39,318.76	31,363.34
11/01/2030	393,656.26	355,000.00	38,656.26	30,149.07
11/01/2031	394,781.26	356,750.00	38,031.26	29,001.96
11/01/2032	395,212.50	357,750.00	37,462.50	27,933.04
11/01/2033	394,950.00	353,000.00	41,950.00	30,582.66
11/01/2034	393,993.76	352,750.00	41,243.76	29,398.86
11/01/2035	392,343.76	351,750.00	40,593.76	28,291.92
	6,523,982.94	5,891,327.50	632,655.44	524,520.64

Savings Summary

Dated Date	09/19/2019
Delivery Date	09/19/2019
PV of savings from cash flow	524,520.64
Less: Prior funds on hand	-3,271,698.81
Plus: Refunding funds on hand	3,273,528.71
Net PV Savings	526,350.54

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

IRMA EXEMPTION DISCLOSURE

**Banning Utility Authority
Wastewater Enterprise Refunding Revenue Bonds, Series 2019
Public Sale**

As outlined in the SEC's Municipal Advisor Rule and based on representations you have made to Stifel, Nicolaus & Company, Incorporated ('Stifel'), we understand that you are represented by, and will rely on the advice of, an independent registered municipal advisor (within the meaning of the SEC's Municipal Advisor Rule) with respect to all aspects of the issuance of municipal securities and municipal financial products including all topics covered by the attached information. Stifel is providing the attached materials, including all information and advice contained therein, in reliance on these representations and will not be designated as your municipal advisor for the referenced issuance of municipal securities. Stifel is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended.

Stifel is providing information and is declaring to the proposed municipal issuer and any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as an underwriter (by definition also including the role of placement agent) and not as a financial advisor, as defined therein, with respect to the referenced proposed issuance of municipal securities. The primary role of Stifel, as an underwriter, is to purchase securities for resale to investors in an arm's-length commercial transaction. Serving in the role of underwriter, Stifel has financial and other interests that differ from those of the issuer. The issuer should consult with its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in the future. Where indicated, this presentation may contain information derived from sources other than Stifel. While we believe such information to be accurate and complete, Stifel does not guarantee the accuracy of this information. This material is based on information currently available to Stifel or its sources and is subject to change without notice. Stifel does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and /or counsel as you deem appropriate.

Notes:

1. Preliminary and subject to change.
2. The use of the 'AA-' rating is consistent with the rating of the outstanding prior bonds.
3. Interest rate assumptions are based on current market conditions and comparable transactions.
4. Banning's actual results may differ, and Stifel makes no commitment to underwrite at these levels.
5. Cost of issuance and underwriter's discount are estimates; subject to change.
6. Analysis was performed with no changes to the term or the structure of the debt service from the currently outstanding issue.

ATTACHMENT 3

**Proposals/Agreements from Finance Team:
Urban Futures, Inc., Norton Rose Fulbright US LLP, Stifel**

June 28, 2019

FROM: Urban Futures, Inc.
Douglas P. Anderson

TO: Suzanne Cook, Acting Administrative Services Director/Deputy Finance Director
City of Banning
99 E. Ramsey St.
Banning, CA 92220

RE: Engagement Letter for 2019 Wastewater Revenue Refunding Bonds (to refund 2005 Bonds)

Dear Ms. Cook,

This letter specifies the terms of the engagement between Urban Futures, Inc., located at 17821 E. 17th Street, Suite 245, Tustin CA 92780 and the City of Banning, located at 99 E. Ramsey St., Banning, CA 92220.

This engagement between the City of Banning (the "City") and Urban Futures, Inc. shall become effective as of the date of its acceptance as provided below.

Scope of Municipal Advisory Activities to be Performed

Assembling a team that works for the municipality is a key part of the debt issuance process. Among the first to join the team is the municipal advisor. As municipal advisor, Urban Futures, Inc. will successfully perform the following duties.

- Assist in developing the plan of finance and related transaction timetable;
- Identify and analyze financing solutions and alternatives for funding the capital improvement plan;
- Advise on the method of sale, taking into account market conditions and near-term activity in the municipal market;
- Assist in the preparation of any rating agency strategies and presentations;
- Coordinate internal/external accountants, feasibility consultants and escrow agents, as appropriate;
- Assist with the selection of the financing team, at the direction of the City;
- Assist with underwriter compensation issues, syndicate structure and bond allocations;

- Assist with negotiated sales (as applicable), including advice regarding retail order periods and institutional marketing, analysis of comparable bonds and secondary market data, and verify cash flow calculations;
- Assist with competitive bond sales (as applicable), including posting of the notice of sale and preliminary official statement, and preparation of the bid verification, true interest cost (TIC) calculations and reconciliations/verifications of bidding platform calculations, preparation of notice of sale, obtaining CUSIP numbers;
- Prepare and/or review preliminary cash flows/ preliminary refunding analysis;
- Analyze whether to use SLGS, open markets and/or agency securities for purposes of investment of bond proceeds;
- Manage the escrow bids or review SLGs applications for structuring advance refunding escrow;
- Assist in procuring printers, verification agents, etc.;
- Plan and coordinate bond closings;
- Prepare any required post-sale reports of bond sales; and
- Evaluate market conditions and pricing performance of senior manager and co-managers' distribution of bonds.

Independent Registered Municipal Advisor ("IRMA")

If acting in the capacity of an Independent Registered Municipal Advisor ("IRMA") with regard to the IRMA exemption of the SEC Rule, Urban Futures, Inc. will review all third party recommendations submitted to Urban Futures, Inc. in writing by the City.

Term of Engagement Agreement

The commencement date of the agreement is July 9, 2019 and the end date is one year after the effective date or at the successful close of the transaction, whichever occurs first. Any extensions must be mutually agreed upon by all parties in writing.

Termination of Engagement Agreement

The City may terminate the whole or any part of this Agreement at any time and without cause by giving sixty (60) days written notice to Urban Futures, Inc. of such termination, and specifying the effective date thereof. Urban Futures, Inc. shall discontinue all Services affected by such termination within thirty (30) days of receipt of such notice, unless otherwise instructed by the City in writing. Urban Futures, Inc. may terminate this agreement by giving the City sixty (60) days written notice.

In the event Services are terminated by the City and bonds are successfully issued, Urban Futures Inc. will be compensated pro-rata for services provided up to the termination date.

Urban Futures, Inc.

Compensation and Out-of-Pocket Expenses

Compensation for the municipal advisory activities to be performed for this engagement is not contingent upon the successful sale of the bonds.

For the subject transaction, the fee for financial advisory services is \$41,500. In addition to the fee amount, UFI shall be reimbursed for expenses in an amount not to exceed \$2,500. Expense reimbursements will cover the following:

- Mandatory SEC/MSRB Compliance Requirements & Reporting
- Data Services (Bloomberg, Thompson Reuters, DBC)
- Travel (mileage, hotels, etc.)

Fiduciary Duty

Urban Futures, Inc. is registered as a Municipal Advisor with the Securities and Exchange Commission ("SEC") and Municipal Securities Rulemaking Board ("MSRB"). As such, Urban Futures, Inc. has a Fiduciary Duty to the City and must provide both a Duty of Care and a Duty of Loyalty that entails the following.

Duty of Care:

- a) exercise due care in performing its municipal advisory activities;
- b) possess the degree of knowledge and expertise needed to provide the City with informed advice;
- c) make a reasonable inquiry as to the facts that are relevant to the City's determination as to whether to proceed with a course of action or that form the basis for any advice provided to the City; and
- d) undertake a reasonable investigation to determine that Urban Futures, Inc. is not forming any recommendation on materially inaccurate or incomplete information; Urban Futures, Inc. must have a reasonable basis for:
 - i. any advice provided to or on behalf of the City;
 - ii. any representations made in a certificate that it signs that will be reasonably foreseeably relied upon by the City, any other party involved in the municipal securities transaction or municipal financial product, or investors in the City securities; and
 - iii. any information provided to the City or other parties involved in the municipal securities transaction in connection with the preparation of an official statement.

Duty of Loyalty:

Urban Futures, Inc. must deal honestly and with the utmost good faith with the City and act in the City's best interests without regard to the financial or other interests of Urban Futures, Inc. Urban Futures, Inc. will eliminate or provide full and fair disclosure (included herein) to the City about each material conflict of interest (as applicable). Urban Futures, Inc. will not engage in municipal advisory activities with the City as a municipal entity, if it cannot manage or mitigate its conflicts in a manner that will permit it to act in the City's best interests.

Conflicts of Interest and Other Matters Requiring Disclosures

- As of the date of the Agreement, there are no material conflicts of interest that Urban Futures, Inc. is aware of that might impair its ability to render unbiased and competent advice or to fulfill its fiduciary duty. If Urban Futures, Inc. becomes aware of any potential conflict of interest that arises after this disclosure, Urban Futures, Inc. will disclose the detailed information in writing to the City in a timely manner.
- The fee paid to Urban Futures, Inc. increases the cost of investment to the City. The increased cost occurs from compensating Urban Futures, Inc. for municipal advisory services provided.
- Urban Futures, Inc. does not act as principal in any of the transaction(s) related to this Agreement.
- During the term of the municipal advisory relationship, this agreement will be promptly amended or supplemented to reflect any material changes in or additions to the terms or information within this agreement and the revised writing will be promptly delivered to the City.
- Urban Futures, Inc. does not have any affiliate that provides any advice, service, or product to or on behalf of the client that is directly or indirectly related to the municipal advisory activities to be performed by Urban Futures, Inc.;
- Urban Futures, Inc. has not made any payments directly or indirectly to obtain or retain the City's municipal advisory business;
- Urban Futures, Inc. has not received any payments from third parties to enlist Urban Futures, Inc. recommendation to the City of its services, any municipal securities transaction or any municipal finance product;
- Urban Futures, Inc. has not engaged in any fee-splitting arrangements involving Urban Futures, Inc. and any provider of investments or services to the City;
- Urban Futures, Inc. does not have any other engagements or relationships that might impair Urban Futures, Inc.'s ability either to render unbiased and competent advice to or on behalf of the City or to fulfill its fiduciary duty to the City, as applicable; and

- Urban Futures, Inc. does not have any legal or disciplinary event that is material to the City's evaluation of the municipal advisory or the integrity of its management or advisory personnel.

Legal Events and Disciplinary History

Urban Futures, Inc. does not have any legal events and disciplinary history on its Form MA and Form MA-I, which includes information about any criminal actions, regulatory actions, investigations, terminations, judgments, liens, civil judicial actions, customer complaints, arbitrations and civil litigation. The City may electronically access Urban Futures, Inc.'s most recent Form MA and each most recent Form MA-I filed with the SEC at the following website: www.sec.gov/edgar/searchedgar/companysearch.html. There have been no material changes to a legal or disciplinary event disclosure on any Form MA or Form MA-I filed with the SEC.

Within the Municipal Securities Rulemaking Board ("MSRB") website at www.msrb.org, the Agency may obtain the Municipal Advisory client brochure that is posted on the MSRB website. The brochure describes the protections that may be provided by the MSRB Rules along with how to file a complaint with financial regulatory authorities.

Recommendations

If Urban Futures, Inc. makes a recommendation of a municipal securities transaction or municipal financial product or if the review of a recommendation of another party is requested in writing by the City and is within the scope of the engagement, Urban Futures, Inc. will determine, based on the information obtained through reasonable diligence of Urban Futures, Inc. whether a municipal securities transaction or municipal financial product is suitable for the City. In addition, Urban Futures, Inc. will inform the City of:

- the evaluation of the material risks, potential benefits, structure, and other characteristics of the recommendation;
- the basis upon which Urban Futures, Inc. reasonably believes that the recommended municipal securities transaction or municipal financial product is, or is not, suitable for the City; and
- whether Urban Futures, Inc. has investigated or considered other reasonably feasible alternatives to the recommendation that might also or alternatively serve the City's objectives.

If the City elects a course of action that is independent of or contrary to the advice provided by Urban Futures, Inc., Urban Futures, Inc. is not required on that basis to disengage from the City.

Record Retention

Effective July 1, 2014, pursuant to the Securities and Exchange Commission (SEC) record retention regulations, Urban Futures, Inc. is required to maintain in writing, all communication and created documents between Urban Futures, Inc. and the City for 5 years.

If there are any questions regarding the above, please do not hesitate to contact Urban Futures, Inc. If the foregoing terms meet with your approval, please indicate your acceptance by executing both copies of this letter and returning one copy.

Sincerely,



Douglas P. Anderson
Director – Public Finance Group
Urban Futures, Inc.

City of Banning

By: _____

Title: _____



June 21, 2019

Norton Rose Fulbright US LLP
555 South Flower Street
Forty-First Floor
Los Angeles, California 90071
United States

Don Hunt
Partner
Direct line +1 213 892 9316
don.hunt@nortonrosefulbright.com

Tel +1 213 892 9200
Fax +1 213 892 9494
nortonrosefulbright.com

Ms. Suzanne Cook
Acting Administrative Services Director/
Deputy Finance Director
City of Banning
99 E. Ramsey Street
Banning, California 92220

Re: City of Banning Wastewater System Financing

Dear Ms. Cook:

We are pleased to provide a proposal to serve as Bond Counsel and Disclosure Counsel to the City of Banning (the "City") in connection with the issuance by the City or related entity of tax-exempt refunding bonds for the City wastewater system.

Norton Rose Fulbright US LLP, which is one of the largest law firms in the United States, has consistently been among the leading law firms in terms of number of public finance transactions for which it has acted as Bond Counsel.

As Bond Counsel, Fulbright will assist in developing the structure of the financing and provide customary Bond Counsel services necessary to enable the City to authorize, issue, sell and deliver bonds or other obligations under existing laws, as more fully set forth below. In addition, we would make our offices available to the City for the purpose of conducting meetings with regard to the documents relating to an offering of bonds or other obligations, and for pre-closings and closings of any transactions.

To the extent necessary, we will undertake statutory, decisional and constitutional law research inquiries as to the validity and legal authority of any method of financing chosen by the City. We will prepare, where necessary, the various resolutions, ordinances, trust indentures, notices inviting bids and security agreements required for each transaction. Where necessary, the Firm will review agreements for any credit support facility, bond insurance policy, escrow deposit, trustee, paying agent or registrar agreement, and we would discuss and comment upon such agreements with City staff and Urban Futures, Inc., as the Municipal Advisor engaged by the City in connection therewith. The Firm will also be available to discuss and comment upon any aspect of the transaction related to its role as Bond Counsel and Disclosure Counsel, including any issues concerning the rating agencies or any other participant to the transaction. We will prepare or review all documents of the City necessary for the closing and delivery of the Bonds to the purchasers. The Firm will also prepare or review the various closing certificates and opinions required of trustees, accountants, consulting engineers, and other interested parties. At the closing, the Firm would deliver a final approving opinion in respect of the bonds or other

Ms. Suzanne Cook
June 21, 2019
Page 2

 NORTON ROSE FULBRIGHT

obligations, stating, among other things, that such obligations are valid and binding obligations of the City and, if applicable, that interest on such obligations is exempt from personal income taxes under the laws of the United States and the State of California.

The proposed financing will be reviewed by the Firm's Tax Department to assure that all aspects of the financing are in compliance with the requirements of the Internal Revenue Code, relevant Internal Revenue Service rulings and Treasury Department regulations so that the federal tax exemption of interest paid on the obligations is applicable to the extent possible. More specifically, such a review would entail an analysis of the financing structure to determine if such obligations are "arbitrage bonds" within the meaning of the Internal Revenue Code. In connection with such review, our Tax Department would prepare a certificate as to arbitrage which would be delivered at the closing. In addition, the Firm would review the applicable requirements under California tax laws, regulations and procedures to insure the availability of State tax exempt status.

Subject to completion of all legal proceedings and issuance of the bonds to our satisfaction, Norton Rose Fulbright US LLP will issue its approving legal opinions with respect to the authorization, sale and delivery of the bonds and, if applicable, the exclusion of the interest on the bonds from gross income for Federal and State income tax purposes. We will issue appropriate supplemental opinions and certificates as may be necessary or appropriate.

Assuming a principal amount of \$4,100,000, our fees for services as Bond Counsel and Disclosure Counsel for the wastewater financing for the City would be \$60,000, plus \$2,000 for disbursements and preparation of transcripts.

Such fees are entirely contingent on the successful delivery of the bonds. In the event the bonds are not sold and delivered, the City shall not be liable for any legal services provided or costs incurred by the Firm.

The provisions herein for payment of fees on a fixed fee basis pertain to the ordinary and customary services rendered in connection with transactions of the type described herein. Services performed which are occasioned by unforeseen delays, litigation, validation actions, the need to obtain federal tax rulings, the use of derivative products, investment agreements, guaranteed investment contracts, or other similar matters are to be initiated only upon written direction of the City and will be billed at our then applicable discounted Public Finance rates. No such services are expected to be performed as of this time, and will be performed only upon written direction of the City.

Ms. Suzanne Cook
June 21, 2019
Page 3

 NORTON ROSE FULBRIGHT

You are advised that the firm maintains Professional Errors and Omissions insurance coverage applicable to the services which we would be rendering.

If this arrangement is satisfactory to you, please return to us a copy of this letter executed by an authorized officer of the City.

Respectfully submitted,

Norton Rose Fulbright US LLP

By: 
Donald L. Hunt, Partner

Terms of Bond Counsel Employment

Approved This ____ Day

of _____, 2019

CITY OF BANNING

Name: _____

Title: _____



515 South Figueroa Street, Suite 1800 Los Angeles, California 90071 (213) 443-5000

June 21, 2019

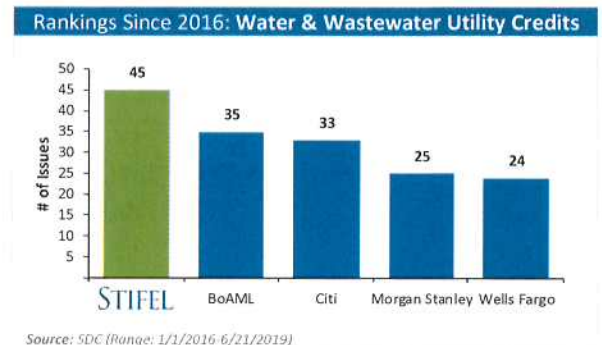
Suzanne Cook
Acting Administrative Services Director/Deputy Finance Director
City of Banning, California

Re: Qualifications and Fee Proposal for Potential Refunding of the 2005 Wastewater Enterprise Revenue Bonds

Dear Suzanne,

On behalf of Stifel, Nicolaus & Company ("Stifel"), thank you for the opportunity to submit our qualifications and proposed fees to serve as underwriter or placement agent on the proposed refunding of the outstanding Banning Utility Authority (the "Authority" or the "City") 2005 Wastewater Enterprise Revenue Bonds. We believe that our qualifications (of both the firm and of our proposed team) and competitive fees make us uniquely qualified to assist the City.

Qualifications. Most recently in 2018, Stifel senior managed more negotiated financings in California than any other firm, as measured by the number of issues. This leadership continues into 2019; through June 21, we have underwritten 72 California long-term bond issues totaling \$1.34 billion. More germane to the credit of the proposed refunding bonds, Stifel is the top underwriter of California water and wastewater transactions. As illustrated in the accompanying chart, since January 2016, we have sole or senior managed 45 transactions totaling nearly \$1 billion in par amount.



Fees. For reasons detailed in our presentation sent May 28, the City has the option to pursue a public sale (offer of securities to the general public) or a private placement (direct placement of securities to one or a limited number of investors) of the proposed refunding bonds. If selected as underwriter or placement agent, we will work with staff and the Municipal Advisor to determine the option that results in the highest possible savings to the City and Authority. Given the different options available to the City, we provide our not-to-exceed fees for both underwriter and placement agent services. To serve as **underwriter**, we propose a flat fee of **\$42,500**. Should the City pursue a **private placement** of the refunding bonds, we propose a flat fee of **\$30,000** to serve as placement agent.

Proposed Team. Tom Jacob, *Director*, will serve as lead contact for the engagement and Jordan Keny-Guyer, *Associate*, will assist Tom throughout and provide financing execution. Should the City elect a public sale of the proposed refunding bonds, Ben Stern, *Managing Director* in our Los Angeles office, will serve as lead underwriter. In this role, he will be responsible for leading the pre-marketing efforts, determining interest rates, and allocating bonds to investors. Abbreviated resumes for each one of our proposed staff members are presented below and on the following page.

Proposed Banking Team (Contacts for Both Private Placement and Public Sale)

Tom Jacob <i>Director</i> (213) 443-5010 tjacob@stifel.com	Tom has over 12 years of public finance experience and has assisted local agencies with the sale of over \$4.0 billion in par value throughout his career, including water and wastewater utility financings for the cities of Banning (2015), Glendora, Lompoc, La Puente, and Santa Ana. Furthermore, Tom has significant experience in and around the City, having recently worked with the cities of Beaumont, Moreno Valley, Riverside, San Bernardino, Lake Elsinore, Desert Hot Springs, and several others. Tom has a BA from UC Santa Cruz, an MBA from USC.
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Jordan Keny-Guyer <i>Associate</i> (213) 443-5233 guyerj@stifel.com	Jordan joined the Stifel public finance department in 2016 and has performed financial and credit analysis in the support of over 50 senior-managed new issues for over \$1 billion in par. Jordan has supported both Tom in nearly all of his engagements over the past few years. Additionally, Jordan has supported the firm's efforts on recent water and wastewater issues for the County of Santa Barbara and the City of Marin, among others. Jordan has a BA from Colorado College.
Proposed Underwriter (Additional Contact for <u>Only</u> a Public Sale)	
Benjamin Stern <i>Managing Director</i> Senior Underwriter	Ben Stern has over 26 years of experience and orchestrates the pricing and marketing of tax-exempt and taxable municipal issues underwritten by Stifel. Since 1990, he has participated as an underwriter on more than \$250 billion of municipal financings. Ben earned a BA and an MBA at UCLA.

Again, we look forward to the opportunity to work with the City. If you have any questions, please do not hesitate to contact me directly. Thank you.

Sincerely,



Tom Jacob, *Director*
tjacob@stifel.com | (213) 443-5010

Disclosure

As outlined in the SEC's Municipal Advisor Rule and based on representations you have made to Stifel, Nicolaus & Company, Incorporated ("Stifel"), we understand that you are represented by, and will rely on the advice of, an independent registered municipal advisor (within the meaning of the SEC's Municipal Advisor Rule) with respect to all aspects of the issuance of municipal securities and municipal financial products including all topics covered by the attached information. Stifel is providing the attached materials, including all information and advice contained therein, in reliance on these representations and will not be designated as your municipal advisor for the referenced issuance of municipal securities. Stifel is not a municipal advisor and is not subject to the fiduciary duty established in Section 15B(c)(1) of the Securities Exchange Act of 1934, as amended.

Stifel is providing information and is declaring to the proposed municipal issuer and any obligated person that it has done so within the regulatory framework of MSRB Rule G-23 as an underwriter (by definition also including the role of placement agent) and not as a financial advisor, as defined therein, with respect to the referenced proposed issuance of municipal securities. The primary role of Stifel, as an underwriter, is to purchase securities for resale to investors in an arm's-length commercial transaction. Serving in the role of underwriter, Stifel has financial and other interests that differ from those of the issuer. The issuer should consult with its own financial and/or municipal, legal, accounting, tax and other advisors, as applicable, to the extent it deems appropriate.

These materials have been prepared by Stifel for the client or potential client to whom such materials are directly addressed and delivered for discussion purposes only. All terms and conditions are subject to further discussion and negotiation. Stifel does not express any view as to whether financing options presented in these materials are achievable or will be available at the time of any contemplated transaction. These materials do not constitute an offer or solicitation to sell or purchase any securities and are not a commitment by Stifel to provide or arrange any financing for any transaction or to purchase any security in connection therewith and may not be relied upon as an indication that such an offer will be provided in the future. Where indicated, this presentation may contain information derived from sources other than Stifel. While we believe such information to be accurate and complete, Stifel does not guarantee the accuracy of this information. This material is based on information currently available to Stifel or its sources and is subject to change without notice. Stifel does not provide accounting, tax or legal advice; however, you should be aware that any proposed indicative transaction could have accounting, tax, legal or other implications that should be discussed with your advisors and /or counsel as you deem appropriate.

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: July 9, 2019

SUBJECT: Adopt Resolution, Approving the Renewal of the Landscape Maintenance Contract for City Parks with Z&T Ventures, Inc. dba Service Scape of Alta Loma, California for Fiscal Year 2019/2020 in the amount of \$72,376.20

RECOMMENDED ACTION:

Staff recommends that the City Council adopt Resolution 2019-xx:

1. Approving renewal of an Agreement with Z&T Ventures, Inc., dba Service Scape of Alta Loma, California in the amount "not to exceed" \$72,376.20 for Fiscal Year 2019/2020.
2. Authorizing the Interim Administrative Services Director to make necessary budget adjustments, appropriations and transfers related to the Agreement.
3. Authorizing the City Manager to execute the Amendment No. 2 to the Agreement with Z & T Ventures, Inc. dba Service Scape of Alta Loma, California for the remainder of Fiscal Year 2019/2020.

BACKGROUND:

In 2017, the City transitioned the Parks Maintenance Division ("Parks") from the Public Works Department to the Community Services Department. Part of the transition process included a reorganization of the Streets Maintenance Division ("Streets") and Parks, which included the transferring of City staff from Parks to Streets. In order to continue maintaining the City's parks in a cost effective and efficient manner, staff determined that the City would benefit from hiring a landscape maintenance contractor to complete routine landscape maintenance tasks such as mowing, trimming and edging. Subsequently, on October 13, 2017 staff solicited proposals through Planet Bids from qualified companies to provide landscape maintenance services for City owned parks. The Invitation to Bid (IFB) went to 250 external vendors and 10 City of Banning vendors.

The scope of work included lawn mowing, seeding, aeration, edging, fertilization, weed and pest control, maintenance of planter beds, trimming and tree care for all locations identified listed below:

- Lions Park
- Sylvan Park
- Repplier Park
- Dysart Park
- Roosevelt Williams Park

As a result, the Council approved the award of the contract for landscape maintenance services of City Park to Z&T Ventures, Inc., dba Service Scape for “not to exceed” the amount of \$39,270 for the remainder of Fiscal Year 2017/2018 (5 month period) with the option to renew for an additional three single years upon satisfactory annual review of provided services and subject to the consideration of a consumer price index increase. The “not to exceed” contract amount includes an allowance of \$10,000 for expenses related to miscellaneous irrigation repairs and/or plant replacement as needed.

On June 26, 2018, the City Council adopted Resolution No. 2018-62, authorizing renewal of the contract for the first one-year additional period. Amendment No. 1 to the Agreement was executed and dated July 1, 2018, to effectuate that extension for the period of July 1, 2018 through June 3, 2019.

The City Council is asked to authorize the second one-year renewal for FY 2019/2020 and to approve Amendment No. 2 to the Agreement.

JUSTIFICATION:

The award of an agreement to Z&T Ventures Inc., dba Service Scape will ensure that the City Parks included in the agreement will be maintained at an appropriate level, that necessary irrigation repairs and/or plant replacements will occur as needed. The one-year renewal includes a 3.1% increase based on CPI, which results in an increase of \$181.35 per month or \$2,176.20 for the contract period.

FISCAL IMPACT:

The needed funding for the landscape maintenance agreement is included in the 2019/2020 budget in the General Fund to Account No. 001-3600-461.23-29 (Landscape Maintenance) in the amount of \$81,000.

OPTIONS:

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

ATTACHMENTS:

1. Resolution 2019-_____
2. Original Contract Services Agreement

3. Resolution 2018-12 (Original Agreement)
4. Resolution 2018-62 (1st Renewal)

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-_____

RESOLUTION 2019-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE EXTENSION AND AMENDMENT OF THE LANDSCAPE MAINTENANCE CONTRACT FOR CITY PARKS WITH Z&T VENTURES, INC., DBA SERVICE SCAPE FOR FISCAL YEAR 2019/2020 IN THE AMOUNT OF \$72,376.20

WHEREAS, at the regularly scheduled meeting on January 09, 2018, the City Council adopted Resolution No. 2018-12, awarding the initial contract for maintenance of City Parks to Z&T Ventures Inc., DBA Service Scape and the Agreement for that work was dated March 20, 2018; and

WHEREAS, the annual amount of that Agreement for maintenance of the City Parks was \$70,248 and was for a term of one (1) year with three (3), one (1) year renewal options upon a satisfactory review of the previously provided services; and

WHEREAS, the original contract term was from March 20, 2018 through June 30, 2018 in a prorated amount of \$30,270; and

WHEREAS, on June 26, 2018, the City Council adopted Resolution No. 2018-62, approving Amendment No. 1 to the Agreement which extended and amended the Agreement to provide for an additional one-year term from July 1, 2018 to June 30, 2019 in the amount of \$80,248; and

WHEREAS, Z&T Ventures, Inc., dba Service Scape has provided satisfactory service to the City over the term of the initial contract and one-year renewal; and

WHEREAS, the Contract Agreement with Z&T Ventures provides an option to renew at the annual rate or up to three (3) additional years upon a satisfactory review of the previously provided services; and

WHEREAS, staff recommends the continuation Z&T Ventures, Inc., dba Service Scape's services for Fiscal Year 2019/2020; and

WHEREAS, Account No. 001-3600-461-23.29 (Landscape Maintenance) in the amount of \$84,000 will fund the monthly operation.

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

SECTION 1. Amendment No. 2 to the Agreement between the City of Banning and Z&T Ventures, Inc., dba Service Scape, is approved for an additional one (1) year term from July 1, 2019 to June 30, 2020 in the amount of \$72,376.20.

SECTION 2. That the Interim Administrative Services Director is authorized to make all necessary budget adjustments, appropriations and transfers.

SECTION 3. That the City Manager is authorized to execute Amendment No. 2 with Z&T Ventures, Inc., dba Service Scape.

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 July 2019.

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

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

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

CERTIFICATION:

I, Daryl Betancur, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-___ was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of July 2019, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Original Contract Services Agreement

CONTRACT SERVICES AGREEMENT

By and Between

**THE CITY OF BANNING,
A MUNICIPAL CORPORATION**

and

**Z&T VENTURES, INC.,
dba SERVICE SCAPE**

**AGREEMENT FOR CONTRACT SERVICES
BETWEEN
THE CITY OF BANNING, CALIFORNIA
AND
Z&T VENTURES, INC., dba SERVICE SCAPE**

THIS AGREEMENT FOR CONTRACT SERVICES (herein "Agreement") is made and entered into this 20th day of March, 2018 by and between the **CITY OF BANNING**, a municipal corporation ("City") and Z&T Ventures, Inc., dba **SERVICE SCAPE**, a California corporation ("Contractor"). City and Contractor 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 defined and described particularly in Article 1 of this Agreement.

B. Contractor, 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 Contractor 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 CONTRACTOR

1.1 Scope of Services.

In compliance with all terms and conditions of this Agreement, the Contractor 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. As a material inducement to the City entering into this Agreement, Contractor 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. Contractor shall at all times faithfully, competently and to the best of its ability, experience and talent, perform all services described herein. Contractor 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 Contractor's Proposal.

The Scope of Service shall include the Contractor's scope of work or bid which shall be incorporated herein by this reference as though fully set forth herein. In the event of any inconsistency between the terms of such proposal and this Agreement, the terms of this Agreement shall govern.

1.3 Compliance with Law.

Contractor 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.

Contractor 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. Contractor 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 Contractor'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, Contractor warrants that Contractor (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, Contractor warrants that Contractor 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 Contractor discover any latent or unknown conditions, which will materially affect the performance of the services hereunder, Contractor 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 Contractor 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 Warranty.

Contractor warrants all Work under the Agreement (which for purposes of this Section shall be deemed to include unauthorized work which has not been removed and any non-conforming materials incorporated into the Work) to be of good quality and free from any defective or faulty material and workmanship. Contractor agrees to warranty labor for 90 days, and parts, materials, and workmanship for a period of one year (or the period of time specified elsewhere in the Agreement or in any guarantee or warranty provided by any manufacturer or supplier of equipment or materials incorporated into the Work, whichever is later) after the date of final acceptance, Contractor shall within ten (10) days after being notified in writing by the City of any defect in the Work or non-conformance of the Work to the Agreement, commence and prosecute with due diligence all Work necessary to fulfill the terms of the warranty at his sole cost and expense. Contractor shall act sooner as requested by the City in response to an emergency. In addition, Contractor shall, at its sole cost and expense, repair and replace any portions of the Work (or work of other contractors) damaged by its defective Work or which becomes damaged in the course of repairing or replacing defective Work. Contractor shall perform such tests as the City may require to verify that any corrective actions, including, without limitation, redesign, repairs, and replacements comply with the requirements of the Agreement. All costs associated with such corrective actions and testing, including the removal, replacement, and reinstitution of equipment and materials necessary to gain access, shall be the sole responsibility of the Contractor. All warranties and guarantees of subcontractors, suppliers and manufacturers with respect to any portion of the Work, whether express or implied, are deemed to be obtained by Contractor for the benefit of the City, regardless of whether or not such warranties and guarantees have been transferred or assigned to the City by separate agreement and Contractor agrees to enforce such warranties and guarantees, if necessary, on behalf of the City. In the event that Contractor fails to perform its obligations under this Section, or under any other warranty or guaranty under this Agreement, to the reasonable satisfaction of the City, the City shall have the right to correct and replace any defective or non-conforming Work and any work damaged by such work or the replacement or correction thereof at Contractor's sole expense. Contractor shall be obligated to fully reimburse the City for any expenses incurred hereunder upon demand. This provision may be waived in Exhibit "B" if the services hereunder do not include construction of any improvements or the supplying of equipment or materials.

1.8 Prevailing Wages.

Contractor is aware of the requirements of California Labor Code Section 1720, et seq., and 1770, et seq., as well as California Code of Regulations, Title 8, Section 1600, et seq., ("Prevailing Wage Laws"), which require the payment of prevailing wage rates and the performance of other requirements on "Public Works" and "Maintenance" projects. If the Services are being performed as part of an applicable "Public Works" or "Maintenance" project, as defined by the Prevailing Wage Laws, and if the total compensation is \$1,000 or more, Contractor agrees to fully comply with such Prevailing Wage Laws. City shall provide Contractor with a copy of the prevailing rates of per diem wages in effect at the commencement of this Agreement. Contractor shall make copies of the prevailing rates of per diem wages for each craft, classification or type of worker needed to execute the Services available to interested parties upon request, and shall post copies at the Contractor's principal place of business and at the project site. Contractor shall defend, indemnify and hold the City, its elected officials, officers, employees and agents free and harmless from any claim or liability arising out of any failure or alleged failure to comply with the Prevailing Wage Laws.

1.9 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 reasonably necessary to carry out the purposes of this Agreement. Unless hereafter specified, neither party shall be responsible for the service of the other.

1.10 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 Contractor, 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 Contractor. 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 Contractor that the provisions of this Section shall not apply to services specifically set forth in the Scope of Services or reasonably contemplated therein. Contractor 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 Contractor anticipates and that Contractor shall not be entitled to additional compensation therefor.

1.11 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 Contractor the amounts specified in the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference. The total compensation, including reimbursement for actual expenses, shall not exceed Thirty Thousand Two Hundred Seventy Dollars, (\$30,270.00) (the "Contract Sum"), unless additional compensation is approved pursuant to Section 1.10.

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 Contractor'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 subcontractor expenses if an approved subcontractor pursuant to Section 4.5, and only if specified in the Schedule of Compensation. The Contract Sum shall include the attendance of Contractor 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 Contractor is required to attend additional meetings to facilitate such coordination, Contractor shall not be entitled to any additional compensation for attending said meetings.

2.4 Invoices.

Each month Contractor 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. 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-contractor contracts. Sub-contractor charges shall also be detailed by such categories.

City shall independently review each invoice submitted by the Contractor 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 Contractor which are disputed by City, or as provided in Section 7.3., City will use its best efforts to cause Contractor to be paid within forty-five (45) days of receipt of Contractor'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 Contractor for correction and resubmission.

2.5 Waiver.

Payment to Contractor for work performed pursuant to this Agreement shall not be deemed to waive any defects in work performed by Contractor.

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.

Contractor 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.

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 Contractor, 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 Contractor 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 Contractor be entitled to recover damages against the City for any delay in the performance of this Agreement, however caused, Contractor's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Inspection and Final Acceptance.

City may inspect and accept or reject any of Contractor's work under this Agreement, either during performance or when completed. City shall reject or finally accept Contractor's work within forth five (45) days after submitted to City. City shall accept work by a timely written acceptance, otherwise work shall be deemed to have been rejected. City's acceptance shall be conclusive as to such work except with respect to latent defects, fraud and such gross mistakes as amount to fraud. Acceptance of any work by City shall not constitute a waiver of any of the provisions of this Agreement including, but not limited to, Article 1 and 5, pertaining to warranty, and indemnification and insurance, respectively.

3.5 Term.

Unless earlier terminated in accordance with Article 7 of this Agreement, the term of this Agreement shall commence upon execution by both parties and shall expire on June 30, 2018, or extended in writing in advance by both parties. Maximum term and any subsequent amendment or modification shall not exceed three (3) years.

ARTICLE 4. COORDINATION OF WORK

4.1 Representatives and Personnel of Contractor.

The following principals of Contractor (Principals) are hereby designated as being the principals and representatives of Contractor authorized to act in its behalf with respect to the work specified herein and make all decisions in connection therewith:

Randy Zbinden, President

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 Contractor and devoting sufficient time to personally supervise the services hereunder. All personnel of Contractor, 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 Contractor without the express written approval of City. Additionally, Contractor shall make every reasonable effort to maintain the stability and continuity of Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement. Contractor shall notify City of any changes in Contractor's staff and subcontractors, if any, assigned to perform the services required under this Agreement, prior to and during any such performance.

4.2 Status of Contractor.

Contractor 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. Contractor shall not at any time or in any manner represent that Contractor or any of Contractor's officers, employees, or agents are in any manner officials, officers, employees or agents of City. Neither Contractor, nor any of Contractor'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. Contractor expressly waives any claim Contractor 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 Contractor's responsibility to assure that the Contract Officer is kept informed of the progress of the performance of the services and the Contractor 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 Contractor.

Neither the City nor any of its employees shall have any control over the manner, mode or means by which Contractor, 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 Contractor's employees, servants, representatives or agents, or in fixing their number, compensation or hours of service. Contractor shall perform all services required herein as an independent contractor of City and shall remain at all times as to City a wholly independent contractor with only such obligations as are consistent with that role. Contractor 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 Contractor in its business or otherwise or a joint venturer or a member of any joint enterprise with Contractor.

4.5 Prohibition Against Subcontracting or Assignment.

The experience, knowledge, capability and reputation of Contractor, its principals and employees were a substantial inducement for the City to enter into this Agreement. Therefore, Contractor 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 Contractor, 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 Contractor or any surety of Contractor of any liability hereunder without the express consent of City.

ARTICLE 5. INSURANCE, INDEMNIFICATION AND BONDS

5.1 Insurance Coverages.

The Contractor shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Comprehensive General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, then the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for both the Contractor and the City against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Contractor in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Contractor's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Contractor's services or the termination of this Agreement. During this additional 5-year period, Contractor shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements.

5.2 General Insurance Requirements.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Contractor's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. Moreover, the insurance policies must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said

policies of insurance are cancelled, the Contractor shall, prior to the cancellation date, submit new evidence of insurance in conformance with Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Contractor has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

All certificates shall name the City as additional insured (providing the appropriate endorsement) and shall conform to the following "cancellation" notice:

CANCELLATION:

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATED THEREOF, THE ISSUING COMPANY SHALL MAIL THIRTY (30)-DAY ADVANCE WRITTEN NOTICE TO CERTIFICATE HOLDER NAMED HEREIN.

[to be initialed]

N/A
Agent Initials

City, its respective elected and appointed officers, directors, officials, employees, agents and volunteers are to be covered as additional insureds as respects: liability arising out of activities Contractor performs; products and completed operations of Contractor; premises owned, occupied or used by Contractor; or automobiles owned, leased, hired or borrowed by Contractor. The coverage shall contain no special limitations on the scope of protection afforded to City, and their respective elected and appointed officers, officials, employees or volunteers. Contractor's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City or its respective elected or appointed officers, officials, employees and volunteers or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration, defense expenses and claims. The Contractor agrees that the requirement to provide insurance shall not be construed as limiting in any way the extent to which the Contractor may be held responsible for the payment of damages to any persons or property resulting from the Contractor's activities or the activities of any person or persons for which the Contractor is otherwise responsible nor shall it limit the Contractor's indemnification liabilities as provided in Section 5.3.

In the event the Contractor subcontracts any portion of the work in compliance with Section 4.5 of this Agreement, the contract between the Contractor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Contractor is required to maintain pursuant to Section 5.1, and such certificates and endorsements shall be provided to City.

5.3 Indemnification.

To the full extent permitted by law, Contractor agrees to indemnify, defend and hold harmless the City, its officers, employees and agents ("Indemnified Parties") against, and will hold and save them and each of them harmless from, any and all actions, either judicial, administrative, arbitration or regulatory claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities whether actual or threatened (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work, operations or activities provided herein of Contractor, its officers, employees, agents, subcontractors, or invitees, or any individual or entity for which Contractor is legally liable ("indemnors"), or arising from Contractor's reckless or willful misconduct, or arising from Contractor's indemnors' negligent performance of or failure to perform any term, provision, covenant or condition of this Agreement, and in connection therewith:

(a) Contractor will defend any action or actions filed in connection with any of said claims or liabilities and will pay all costs and expenses, including legal costs and attorneys' fees incurred in connection therewith;

(b) Contractor will promptly pay any judgment rendered against the City, its officers, agents or employees for any such claims or liabilities arising out of or in connection with the negligent performance of or failure to perform such work, operations or activities of Contractor hereunder; and Contractor agrees to save and hold the City, its officers, agents, and employees harmless therefrom;

(c) In the event the City, its officers, agents or employees is made a party to any action or proceeding filed or prosecuted against Contractor for such damages or other claims arising out of or in connection with the negligent performance of or failure to perform the work, operation or activities of Contractor hereunder, Contractor agrees to pay to the City, its officers, agents or employees, any and all costs and expenses incurred by the City, its officers, agents or employees in such action or proceeding, including but not limited to, legal costs and attorneys' fees.

Contractor shall incorporate similar, indemnity agreements with its subcontractors and if it fails to do so Contractor shall be fully responsible to indemnify City hereunder therefore, and failure of City to monitor compliance with these provisions shall not be a waiver hereof. This indemnification includes claims or liabilities arising from any negligent or wrongful act, error or omission, or reckless or willful misconduct of Contractor in the performance of professional services hereunder. The provisions of this Section do not apply to claims or liabilities occurring as a result of City's sole negligence or willful acts or omissions, but, to the fullest extent permitted by law, shall apply to claims and liabilities resulting in part from City's negligence, except that design professionals' indemnity hereunder shall be limited to claims and liabilities arising out of the negligence, recklessness or willful misconduct of the design professional. The indemnity obligation shall be binding on successors and assigns of Contractor and shall survive termination of this Agreement.

5.4 Performance Bond.

Concurrently with execution of this Agreement, and if required in Exhibit "B", Contractor shall deliver to City performance bond in the sum of the amount of this Agreement, in the form provided by the City Clerk, which secures the faithful performance of this Agreement.

The bond shall contain the original notarized signature of an authorized officer of the surety and affixed thereto shall be a certified and current copy of his power of attorney. The bond shall be unconditional and remain in force during the entire term of the Agreement and shall be null and void only if the Contractor promptly and faithfully performs all terms and conditions of this Agreement.

5.5 Sufficiency of Insurer or Surety.

Insurance or bonds required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the Risk Manager of the City ("Risk Manager") due to unique circumstances. If this Agreement continues for more than 3 years duration, or in the event the Risk Manager determines that the work or services to be performed under this Agreement creates an increased or decreased risk of loss to the City, the Contractor agrees that the minimum limits of the insurance policies and the performance bond required by Section 5.4 may be changed accordingly upon receipt of written notice from the Risk Manager; provided that the Contractor shall have the right to appeal a determination of increased coverage by the Risk Manager to the City Council of City within 10 days of receipt of notice from the Risk Manager.

ARTICLE 6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records.

Contractor shall keep, and require subcontractors 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 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 Contractor's business, custody of the books and records may be given to City, and access shall be provided by Contractor's successor in interest.

6.2 Reports.

Contractor 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. Contractor 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, Contractor agrees that if Contractor 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 Contractor is providing design services, the cost of the project being designed, Contractor shall promptly notify the Contract Officer of said fact, circumstance, technique or event and the estimated increased or decreased cost related thereto and, if Contractor 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 Contractor, its employees, subcontractors 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 Contractor 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 Contractor will be at the City's sole risk and without liability to Contractor, and Contractor's guarantee and warranties shall not extend to such use, revise or assignment. Contractor may retain copies of such documents for its own use. Contractor shall have an unrestricted right to use the concepts embodied therein. All subcontractors shall provide for assignment to City of any documents or materials prepared by them, and in the event Contractor fails to secure such assignment, Contractor shall indemnify City for all damages resulting therefrom.

6.4 Confidentiality and Release of Information.

(a) All information gained or work product produced by Contractor in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Contractor. Contractor 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) Contractor, its officers, employees, agents or subcontractors, 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 Contractor gives City notice of such court order or subpoena.

(c) If Contractor, or any officer, employee, agent or subcontractor of Contractor, provides any information or work product in violation of this Agreement, then City shall have the right to reimbursement and indemnity from Contractor for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Contractor's conduct.

(d) Contractor shall promptly notify City should Contractor, its officers, employees, agents or subcontractors be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. City retains the right, but has no obligation, to represent Contractor or be present at any deposition, hearing or similar proceeding. Contractor agrees to cooperate fully with City and to provide City with the opportunity to review any response to discovery requests provided by Contractor. 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 Contractor 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 Contractor is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Contractor for any work performed after the date of default. Instead, the City may give notice to Contractor of the default and the reasons for the default. The notice shall include the timeframe in which Contractor 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 Contractor 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 Contractor 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 Contractor'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.

Contractor hereby authorizes City to deduct from any amount payable to Contractor (whether or not arising out of this Agreement) (i) any amounts the payment 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 Contractor's acts or omissions in performing or failing to perform Contractor'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 Contractor, 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 Contractor 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 Contractor 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.

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 Contractor 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 Contractor any accrued liquidated damages.

7.8 Termination Prior to Expiration of Term.

This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Contractor, except that where termination is due to the fault of the Contractor, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Contractor reserves the right to terminate this Contract 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 Contractor may determine. Upon receipt of any notice of termination, Contractor shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Contractor has initiated termination, the Contractor 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 Contractor has initiated termination, the Contractor 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 Contractor.

If termination is due to the failure of the Contractor 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 Contractor 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 Contractor 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 a 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 Contractor, 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 Contractor or to its successor, or for breach of any obligation of the terms of this Agreement.

8.2 Conflict of Interest.

Contractor 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 Contractor's performance of services under this Agreement. Contractor 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 subcontractor without the express written consent of the Contract Officer. Contractor 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 nor shall any such officer or employee participate in any decision relating to the Agreement which effects his financial interest or the financial interest of any corporation, partnership or association in which he is, directly or indirectly, interested, in violation of any State statute or regulation. The Contractor 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.

Contractor 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, marital status, national origin, or ancestry in the performance of this Agreement. Contractor 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.

8.4 Unauthorized Aliens.

Contractor 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 Contractor 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, Contractor 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 Contractor, 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

SERVICE SCAPE, CITY PARKS, CSA-18

modification of this Agreement shall be valid unless made in writing and approved by the Contractor 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

CIVIL CODE § 1189

State of California

County of San BernardinoOn 3/28/18 before me, Erika Glaudin Notary

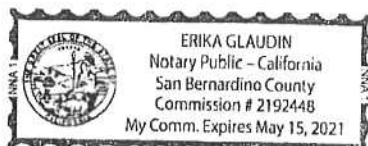
Date

Here Insert Name and Title of the Officer

personally appeared Randel Zbinden

Name(s) of Signer(s)

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



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

WITNESS my hand and official seal.

Signature: Erika Glaudin

Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: Contract agreementDocument Date: 3/28/18Number of Pages: 41

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Individual☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____☐ Individual☐ Partner — ☐ Limited ☐ General☐ Attorney in Fact☐ Trustee☐ Guardian or Conservator☐ Other: _____

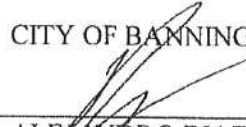
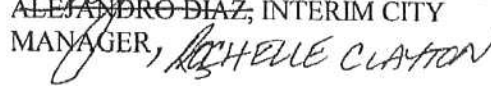
Signer Is Representing: _____

RIGHT THUMBPRINT
OF SIGNER

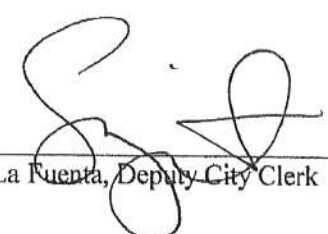
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IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF BANNING


ALEJANDRO DIAZ, INTERIM CITY
MANAGER, 

ATTEST:

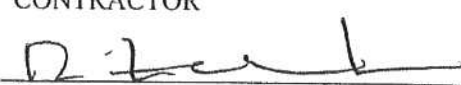

Sonja De La Fuente, Deputy City Clerk

APPROVED AS TO FORM:
RICHARDS, WATSON & GERSHON

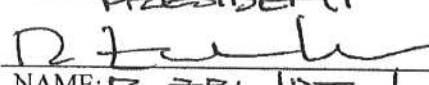
Kevin G. Ennis, City Attorney

CONTRACTOR

By:


NAME: R. ZBINDEN
TITLE: PRESIDENT

By:


NAME: R. ZBINDEN
TITLE: SECRETARY

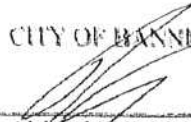
26-3172084
Tax ID No.

Two signatures are required if a corporation

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

IN WITNESS WHEREOF the parties hereto have executed this contract the day and year first hereinabove written.

CITY OF HANNING


ALEJANDRO DIAZ, INTERIM CITY
MANAGER

ROCHELLE CLAYTON

By:

CONTRACTOR

NAME:

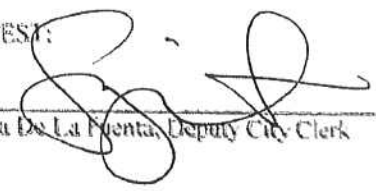
TITLE: PRESIDENT

By:

NAME:

TITLE: SECRETARY

ATTEST:


Sonja De La Puente, Deputy City Clerk

26-3172034

Tax ID No.

APPROVED AS TO FORM:
RICHARDS, WATSON & GERSHON


Kevin G. Ennis, City Attorney

Two signatures are required if a corporation

NOTE: CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO DEVELOPER'S BUSINESS ENTITY.

EXHIBIT "A"
SCOPE OF SERVICES

I. Contractor will perform the following Services:

As specified in the Invitation for Bid #17-096 Scope of Work and Service Scape's proposal dated October 31, 2017 Exhibit "A-1"

EXHIBIT "A-1"
INVITATION FOR BID #17-096 AND SERVICE SCAPE'S PROPOSAL

City of Banning

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Landscape Maintenance Services for City Parks (17-096), bidding on November 1, 2017 10:00 AM (Pacific)

Printed 11/02/2017

Bid Results**Bidder Details**

Vendor Name Service Scape
Address 9716 Cottonwood Way
 Alta Loma, CA 91737
 United States

Respondee Randy Zbinden
Respondee Title President
Phone 909-702-1045 Ext.
Email service_scape@verizon.net
Vendor Type

Bid Detail

Bid Format Electronic
Submitted October 31, 2017 9:41:12 AM (Pacific)
Delivery Method
Bid Responsive Yes
Bid Status Submitted
Confirmation # 122315
Ranking 0

Respondee Comment**Buyer Comment****Attachments**

File Title	File Name	File Type
Bid	Bid for Banning.pdf	Response File

Line Items

Type	Item Code	UOM	Qty	Unit Price	Line Total	Discount	Comment
	Discount Terms no discount						
	Service Location						
1	Lions Park						
	Task #1	Monthly	12	\$1,404.0000	\$16,848.0000	\$16,848.0000	
2	Sylvan Park						
	Task #2	Monthly	12	\$1,200.0000	\$14,400.0000	\$14,400.0000	
3	Repplier Park						
	Task #3	Monthly	12	\$1,400.0000	\$16,800.0000	\$16,800.0000	
4	Roosevelt Williams Park						
	Task #4	Monthly	12	\$1,200.0000	\$14,400.0000	\$14,400.0000	
5	Dysart Park						
	Task #5	Monthly	12	\$650.0000	\$7,800.0000	\$7,800.0000	
				Subtotal	\$70,248.0000	\$70,248.0000	
	Other Optional Recommended Tasks						

City of Banning

Page 17

Landscape Maintenance Services for City Parks (17-096), bidding on November 1, 2017 10:00 AM (Pacific)

Printed 11/02/2017

Bid Results

Type	Item Code	UOM	Qty	Unit Price	Line Total	Discount	Comment
6	Other Optional Recommended Tasks						
	Optional	Total	1	0	0	0	
				Subtotal	0	0	
				Total	\$70,248.0000	\$70,248.0000	

ATTACHMENT 3

Resolution 2018-12

RESOLUTION 2018-12

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING AN AGREEMENT FOR THE LANDSCAPE MAINTENANCE OF CITY PARKS TO SERVICE SCAPE OF ALTA LOMA, CALIFORNIA IN THE AMOUNT NOT TO EXCEED \$30,270

WHEREAS, the City is in the process of transitioning the Parks Maintenance Division ("Parks") from the Public Works Department to the Community Services Department and in the process has identified the need to hire a landscape maintenance contractor to complete routine landscape maintenance tasks such as mowing, trimming and edging; and

WHEREAS, on October 13, 2017 staff solicited proposals through Planet Bids from qualified companies to provide landscape maintenance services for City owned parks including Lions Park, Sylvan Park, Repplier Park, Dysart Park and Roosevelt Williams Park; and

WHEREAS, the City received five (5) proposals and determined that Service Scape of Alta Loma, California is the lowest responsive and responsible bidder; and

WHEREAS, staff recommends the award of the agreement to Service Scape in the amount "not to exceed" \$30,270, which includes an allowance of \$10,000 for expenses related to miscellaneous irrigation repairs and/or plant replacement as needed; and

WHEREAS, an appropriation in the amount of \$30,270 to Account No. 001-3600-461.30-01 (Repair/Maintenance-Grounds/Fields) from the General Fund is required to fund the Agreement.

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

SECTION 1. The City Council adopts Resolution 2018-12 approving an Agreement with Service Scape of Alta Loma, California in an amount "not to exceed" \$30,270 for the remainder of Fiscal Year 2017/2018 with the option for annual renewals for up to three (3) additional single year periods at \$80,248 each single year period.

SECTION 2. The Interim City Manager or his designee are authorized to make necessary budget adjustments, appropriations and transfers related to the Agreement.


SECTION 3. The Interim City Manager or his designee are authorized to execute the Agreement with Service Scape of Alta Loma, California for the remainder of Fiscal Year 2017/2018 with the option for annual renewals for up to three (3) additional single year periods.

PASSED, APPROVED AND ADOPTED this 9th day of January, 2018.




George Moyer, Mayor
City of Banning

ATTEST:



Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:



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

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-12, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 9th day of January, 2018, by the following vote, to wit:

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

NOES: None

ABSTAIN: None

ABSENT: Council Member Welch



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

ATTACHMENT 4

Resolution 2018-62

RESOLUTION 2018-62

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE RENEWAL OF THE LANDSCAPE MAINTENANCE CONTRACT FOR CITY PARKS WITH Z&T VENTURES, INC., DBA SERVICE SCAPE FOR FISCAL YEAR 2018/2019 IN THE AMOUNT OF \$80,248

WHEREAS, at the regularly scheduled meeting on January 09, 2018, the City Council adopted Resolution No. 2018-12, awarding the initial contract for maintenance of City Parks to Z&T Ventures Inc., DBA Service Scape;

WHEREAS, the annual contract amount for maintenance of the City Parks was \$70,248 with three (3), one (1) year renewal options upon a satisfactory review of the previously provided services; and

WHEREAS, the original contract terms were from March 20, 2018 through June 30, 2018 in a prorated amount of \$30,270; and

WHEREAS, Z&T Ventures, Inc., dba Service Scape has provided satisfactory service to the City over the term of the initial contract; and

WHEREAS, the Contract Agreement with Artistic Maintenance, Inc. provides an option to renew at the annual rate or up to three (3) single additional years upon a satisfactory review of the previously provided services; and

WHEREAS, staff recommends the renewal of the Contract Agreement with Z&T Ventures, Inc., dba Service Scape for Fiscal Year 2018/2019;

WHEREAS, Account No. 001-3600-461-23.29 (Landscape Maintenance) in the amount of \$84,000 will fund the monthly operation.

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

SECTION 1. That the landscape maintenance services contract renewal for City Parks is hereby renewed with Z&T Ventures, Inc., dba Service Scape, in the amount of \$80,248.

SECTION 2. That the Administrative Services Director is authorized to make all necessary budget adjustments, appropriations and transfers.

SECTION 3. That the Interim City Manager is authorized to execute the Contract Agreement renewal for a one- year term with Z&T Ventures, Inc., dba Service Scape


PASSED, APPROVED AND ADOPTED this 26th day of June, 2018.


George Moyer, Mayor
City of Banning

ATTEST:


Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM
AND LEGAL CONTENT:


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

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2018-62 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 26th day of June, 2018, by the following vote, to wit:

AYES: Council Members Andrade, Franklin, Peterson, Welch, and Mayor Moyer
NOES: None
ABSTAIN: None
ABSENT: None



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

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: July 9, 2019

SUBJECT: Discuss Community Development Department Staffing Needs

RECOMMENDED ACTION:

Authorize the City Manager to initiate process of transitioning from contract services to in-house building safety and planning staff.

BACKGROUND:

Growth and development that will occur in Banning during the next 5 to 10 years will place unprecedented demands on the City and change the community, including service level expectations and public facility needs. Specifically, the permit activity will increase from 0 to 300+ new home permit applications annually and is projected to remain at that level for the next 15 – 20 years. The new homes will increase the population of Banning by approximately 1,000 people annually, which will increase demands on all municipal services. The purpose of this memorandum is to initiate a process and discussion to strategically plan for organizational changes to meet the needs and expectations of the community.

The organizational structure is unique to each City based on services provided and level of service expectations or standards. The City of Banning is unique because, in addition to traditional municipal services, the City also operates a public airport and an electric utility. Unlike our neighboring City of Beaumont, the City of Banning also provides parks and recreation services, as well as municipal water and wastewater services.

The Community Development Department is faced with some of the most significant impacts that will result from the Pardee "Atwell" Development, Diversified Pacific Rancho San Geronio Development, and numerous other smaller scaled projects. Currently, the vast majority of services provided by the Department are provided through contracted consultants. The City employees assigned to this Department

include; Community Development Director, Development Project Coordinator, Senior Planner and an Office Specialist. All other positions are provided through two Professional Services Agreements. The entire Building Safety Division is supported through an Agreement with Charles Abbott & Associates, which includes a Building Official, two Building Inspectors, Plan Checkers, and Permit Technicians. The fee for this support is 91% of permit fees collected.

The remaining 9% of building permit fees supports administrative and overhead costs, including office space, insurance, information technology, and supplies. City staff salary and benefits, administrative and overhead costs exceed 9% of permit fees, which means it is highly unlikely that the amount of fee revenue generated will ever cover the actual cost of services provided. This Professional Services Agreement was structured to provide the minimal support needed during the past several years when permit activity remained sparse. As permit activity will inevitably increase, it is not cost effective for the City to provide solely through contract staff.

The Planning Division of the Community Development Department is substantially under-staffed, which results in land use permit application review delays at current workload levels. Increased activity related to new projects will not be manageable with current staffing levels. The increased workload for the Planning Division is also projected to last for the next 10 – 15 years. As a result, additional staff will be needed to meet service level expectations and legally mandated review timeframes. The pending Fee Schedule is based on salary and benefit costs of City staff, which is projected to be less than the currently hourly rates charged for consultant provided support.

The proposed changes to the Community Development Department include a transition from contracted staff to City staff as applications and permits increase. The primary focus should be on the Building Safety Division where the workload is rapidly increasing and consultant services will not be cost effective. An immediate proposed change is to hire a Building Official and a Building Inspector, which will take 3 – 4 months to fill after the positions are authorized. The Planning Division is also in immediate need of an additional planner position, which will be responsible for assisting with the increasing current planning work (land use permits).

In 2020, an additional Plan Checker and Permit Technician should be considered if workload projections remain at the current level or increase. In the long term, a Planning Manager position will be a likely staffing need to accommodate a robust stream of land use applications. The cost of adding these positions is projected to be significantly lower than the fees established under the current building services contract (91% of building permit and plan check fees). However, the Pardee “Atwell” and Rancho San Geronio Projects must both be generating 300+ permit applications annually to cover the cost of these two additional positions.

Eight different residential projects have been approved or are in the final stages of approval. These eight projects include approximately 10,000 new dwelling units, which are projected to be built during the next 15 years for an average of 660 new dwelling permits each year. An average single family dwelling permit generates \$880 in building permit and plan check fees. Based on this data, annual residential building permit and plan check fee revenue will be \$580,000 for the next 10 – 15 years, if no other projects are approved. Commercial structure building permit and plan check fees includes approximately 1.4M square feet of approved projects in the next three years, which will generate an estimated \$300,000 in building permit and plan check fees annually. Several other projects are in the planning or conceptual phases and are expected to submit applications during the coming months. Furthermore, the industrial sector continues to be a major growth factor for the City of Banning, according to 2018 regional data.

JUSTIFICATION:

Permit activity has increased and will continue to increase, making contract services inefficient and more costly than in-house staff positions.

FISCAL IMPACT:

Annual building permit and plan check fee revenue is estimated to be approximately \$900,000 for the next 5 years, based on currently approved projects. Under the current professional services agreement, fees paid to Charles Abbott & Associates will be \$810,000 annually. The projected cost of adding the four proposed positions is \$650,000 in 2020, \$682,500 in 2021, and \$716,625 in 2023.

OPTIONS:

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

ATTACHMENTS:

Approved by:



Douglas Schulze
City Manager

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Doug Schulze, City Manager

PREPARED BY: Tom Miller, Banning Electric Utility Director
Kevin G. Ennis, City Attorney

MEETING DATE: July 9, 2019

SUBJECT: Ordinance No. 1550 and Resolution Providing for Public Works Contracting Pursuant to the Uniform Public Construction Cost Accounting Act, Establishing Dollar Thresholds for Required Approvals of those Contracts, and Making a Determination of Exemption under CEQA

RECOMMENDED ACTION:

It is recommended the City Council take the following two actions:

- (1) Introduce for first reading Ordinance No. 1550, An Ordinance of the City of Banning Providing for Public Works Contracting Pursuant to the Uniform Public Construction Cost Accounting Act, Amending Title 3 of the Banning Municipal Code, and Making a Determination of Exemption under CEQA; and
- (2) Adopt Resolution of the City Council of the City of Banning Electing to become Subject to the Uniform Public Construction Cost Accounting Act.

BACKGROUND:

The City of Banning's Purchasing System Ordinance currently provides that all public project contracts exceeding \$5,000 must be contracted for and let pursuant to certain standard provisions of the California Public Contract Code that apply to public works contracts awarded by cities. Those provisions require traditional open, noticed, competitively bid public project contracts to be awarded to the lowest responsible and responsive bidder. (Banning Municipal Code Section 3.24.100, California Public Contract Code Section 20160, et seq.) The term "public projects" generally means the construction, alteration, renovation or repair of City owned structures and facilities. It includes painting and repainting work, but excludes work constituting "maintenance", as specifically defined, of existing facilities.

The goal and purpose of the public project contracting requirement is to provide for an open and competitive system of contracting for public projects so as to ensure that public funds are spent economically. This is achieved through this process because contracts must be awarded to the lowest responsive and responsible bidder rather than to the City's preferred or favored bidder. This process also ensures that all qualified contractors operating in the marketplace have an equal ability to seek and obtain contract work from the City. City staff and officials are precluded from steering public works construction contracts to contractors favored by staff, the Council or the community. This is intended to result in a fair and open contracting marketplace for public works in the City and in California generally, all for the benefit of the public.

This means that if the City seeks to undertake any new improvement or repair projects involving the City's buildings, parks, roads and other publicly owned infrastructure (public works) that are likely to cost over \$5,000, a formal public bidding process must be undertaken before a contractor can be selected and the public work undertaken.

However, this low dollar threshold of \$5,000, which is set by State law, has been in place in the City of Banning since at least 1965 and has not been adjusted by the State since that time. This low threshold can cause a degree of bureaucratic expense and delay, while not achieving the same degree of cost-efficiencies, openness, and fairness that was originally intended. In addition, the City's Electric Utility Department is interested in streamlining the public contracting process for certain types of public works projects.

On February 26, 2019, the City Council approved a request from the Director of the Banning Electric Utility to exempt purchases of routinely purchased supplies, equipment and materials (as distinguished from public facility construction work) from the City's formal competitive purchasing requirements and to allow those purchases to occur through informal bidding or by negotiated contract. This request was approved through the adoption of Resolution No. 2018-156 and which amended Note 7 of Section 3-105 of Article 2 of the City's Purchasing Policy No. B-30. On May 28, 2019, and pursuant to the revised provisions of the Purchasing Policy, the City Council approved the use of that exemption by the Banning Electric Utility on a blanket basis for the rest of Fiscal Year 2019/20 and for Fiscal Year 2020/21. These actions permit the Banning Electric Utility to purchase routine supplies, equipment and materials, some of which are only available from particular manufacturers and suppliers, directly from known and reliable suppliers without having to publicly bid for those items over the approved period of time.

However, those earlier actions only pertained to purchases of supplies, equipment and materials and did not apply to awarding public project contracts. Therefore, City Staff and the City Attorney's Office have explored additional ways in which the process of contracting for public projects can be streamlined, not only for the Banning Electric Utility, but also for the Public Works Department that oversees the operation of the City's water and wastewater utilities and the Parks Department that oversees public parks in the City.

A. Summary of the Uniform Public Construction Cost Accounting Act Procedures

In 1983, the State adopted what is known as the Uniform Public Construction Cost Accounting Act (UPCCAA). The UPCCAA authorizes public entities in California to follow a public contracting approval process that is an alternative to the traditional public contracting system that cities followed. The UPCCAA was enacted to promote uniformity of the cost accounting standards and bidding procedures on construction work performed or contracted by public agencies in the State. The UPCCAA sets forth a voluntary program available to most public agencies, including cities, and it applies only to public agencies that have opted to be governed by its provisions. The City has not previously elected to be subject to the UPCCAA. If the City elects to become subject to the UPCCAA, the City will no longer be required to adhere to the \$5,000 threshold for public project bidding and the City can avail itself to a sliding scale of public bidding procedures, depending on the anticipated cost of the project. The City can also take advantage of certain other differences in the process of awarding contracts for public projects.

In summary, the UPCCAA provides greater flexibility to cities by establishing a sliding scale of formality in the bidding process depending on the dollar amount of the project. It also provides for periodic inflationary adjustment to the dollar thresholds of each of three levels of contracting procedures. Also, and importantly, it contains certain exemptions from public contracting requirements for certain types of City owned utility system work.

The three levels of procedures allowed for under the UPCCAA are summarized as follows:

- The first level is for “public projects” costing \$60,000 or less. This first level is referred to “open market” purchases or contracts. Work of that value or less that qualifies as a public project can be undertaken by the City without having to formally advertise or seek quotes or bids from various contractors. The UPCCAA allows cities to undertake these projects by the use of City employees, by force account (already budgeted funds used to pay city employee salaries who do the work), negotiated contract or purchase order. Public project contracts at this level can be awarded to any qualified contractor selected by the City and without the need to publicly advertise or seek bids prior to the award of that contract.
- The second level is known as informal bidding. These procedures would apply to work on public projects that would be valued between \$60,001 and \$200,000. Note, however, that the UPCCAA provides that if all bids received are in excess of \$200,000, the City may, by adoption of a resolution by a four-fifths vote, award the contract, up to \$212,000, to the lowest responsible bidder, if it determines the cost estimate of the City was reasonable. Pursuant to Public Contract Code Section 22034, the informal bidding procedures include mailing of a notice inviting informal bids to a list of pre-qualified contractors and/or construction trade journals, not less than ten (10) calendar days before bids are due. The notice describes the project in general terms, ways to obtain more detailed information about the project, and the time and place for submission of bids. The list of pre-qualified contractors would need to be developed in accordance with procedures and standards developed by

the California Uniform Construction Cost Accounting Commission (“Commission”). Alternatively, the City could send the notice out to a range of trade journals, or could send to the pre-qualified list and provide notice in trade journals. Fortunately, the Commission has published and recently updated its “Cost Accounting Policies and Procedures Manual”. This Manual provides substantial information and guidance on implementing the specific requirements applicable to informal bidding, and is available on the Commission’s website at: https://www.sco.ca.gov/Files-ARD-Local/CUCCAC_Manual.pdf

Whenever possible, contracts awarded using the informal bidding procedures would be based on at least three bids by qualified bidders. Factors considered for the establishment of a list of qualified contractors may include: successful and timely completion by the contractor of projects of similar scope, size and quality; relevant licenses or certifications; available resources, finances and personnel to complete the work; history of claims and actions related to other public projects; and performance history with the City. As presently drafted, and for these levels of public project contracts, the City Manager would be permitted to award the contract to the lowest, responsive and responsible bidder.

- The third level is for formally bid contracts, which applies to contracts for public project work of more than \$200,000. The formal bid procedures include the issuance of a notice inviting formal bids that states the time and place for the receiving and opening of sealed bids and distinctly describes the project. The notice must be published in a newspaper of general circulation at least fourteen (14) calendar days before bids are opened. Contracts for formal bids are awarded by the City Council to the lowest responsive and responsible bidder.

The UPCCAA contracting process would apply to the award of contracts for “public projects.” A public project is defined as construction, reconstruction, erection, alteration, renovation, improvement, demolition and repair work involving any publicly owned, leased or operated facility. It also includes painting or repainting of any publicly owned, leased or operated facility.

Please note, however, that while the UPCCAA significantly streamlines *public bidding procedures*, other requirements in State law applicable to public works contracts remain in effect. These include, but are not limited to, provisions of the California Labor Code applicable to public works (and maintenance contracts) for contracts exceeding \$1,000, such as prevailing wages and contractor registration with the Department of Industrial Relations; payment bonds for contracts over \$25,000; and mandatory dispute resolution procedures.

By adopting the City’s draft UPCCAA Ordinance, the Departments of the City that undertake and oversee most of the public project contracts would be able to utilize more streamlined public project contracting for “public projects” of \$200,000 or less, and could, depending on how the awarding levels are set, avoid having to have the City Council approve certain levels of those specific public works contracts.

Each of the dollar thresholds between the three levels is subject to change and increase over time as the Legislature increases those limits periodically.

It is entirely discretionary should the City Council wish to set the dollar thresholds for open market purchases or informal bidding to lower levels (less than \$60,000 and less than \$200,000) or to require public project contracts of a lower dollar amount to be awarded only by the City Manager and not Department heads, or awarded by the City Council and not by the City Manager. The draft ordinance allows public projects of \$60,000 or less to be awarded by the Director of the Banning Electric Utility or the Director of Public Works, for public project contracts within his or her department, respectively. The draft Ordinance also allows the City Manager to award public project contracts up to \$200,000. Only public project contracts greater than \$200,000, would require City Council approval under the current draft of the Ordinance.

Another aspect of the adoption of the UPCCAA Ordinance is its exemptions. By becoming subject to the UPCCAA, the City will be able to avail itself of certain exemptions from public bidding that apply only to City owned utility systems. Pursuant to provisions of the UPCCAA, the term “public project” to which the three levels of bidding requirements apply, would only apply in the context of a public project for a City owned utility system if that public project involved “the construction, erection, improvement, or repair of dams, reservoirs, power plants and electrical transmission lines of 230,000 volts or higher.” It is anticipated that many routine projects for street light replacement, power pole replacement, electrical line undergrounding, and line replacement would fall into this exemption and, therefore, not be subject to competitive bidding, even if those projects fall within or above one of the bidding levels under the UPCCAA. If the City wants to retain some public bidding requirements on these exempt projects, the City may do so in follow-up revisions or clarifications to the City’s Purchasing Policy, in follow-up revisions to the City’s Purchasing Systems Ordinance, or in revisions to both documents.

B. Summary of Policy Decisions in the Adoption of a UPCCAA Ordinance

As noted above, the City, in adopting its UPCCAA Ordinance, has discretion to set the dollar amount of the three levels of bidding procedures to levels lower than the maximum amounts set forth in the statute. Therefore, the City Council can elect to set the threshold for informal bidding at less than \$60,001 and the threshold for formal bidding at less than \$200,001. Similarly, the City Council has discretion to delegate or not delegate awarding authority for contracts under the two lower thresholds to only the City Manager or his or her designee, and to require informal bids and not just formal bids, to be approved by the City Council rather than the City Manager. These are policy decisions to balance the Council’s desire to streamline the process while ensuring accountability. Any of these changes would require amendment of the draft Ordinance at the time of its introduction, or prior to consideration of this matter by the Council at a later meeting.

C. Implementation

If the City Council chooses to adopt the draft UPCCAA Ordinance and Resolution, City staff will undertake a review of existing Purchasing Policy provisions that apply to public

facility contracting work so as to ensure consistency between the procedures in the UPCCAA Ordinance and the City's Purchasing Policy. As part of that process, City staff will also consider, and if necessary, propose revisions to the City's Purchasing Policy that provide for appropriate oversight of the contracting process for public facility contracts that are exempt from the UPCCAA process.

D. Alternatives

In addition to the policy decisions noted above, the City Council has the following alternatives:

1. Introduce Ordinance No. 1550, the City's draft UPCCAA Ordinance as presently drafted and adopt and file with the Commission the City's UPCCAA Resolution, electing to have the City become subject to the UPCCAA;
2. Introduce Ordinance No. 1550 with amendments and adopt the City's UPCCAA Resolution;
3. Direct staff to consider further revisions to the draft Ordinance and Resolution and have the draft documents with those revisions brought back for further consideration and potential action at a subsequent meeting; or
4. Leave the City's current public project contracting process in place with no amendments and not adopt the draft UPCCAA Ordinance and Resolution.

CEQA DETERMINATION

City Staff has determined that the adoption of the draft UPCCAA Ordinance and Resolution are actions exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the City's Purchasing Systems Ordinance and adoption of the proposed Ordinance and Resolution, by which the City elects to become subject to the UPCCAA, do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that the City's adoption of the UPCCAA Ordinance or Resolution will have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

FISCAL IMPACTS

Adoption of the draft UPCCAA Ordinance and Resolution will permit the City to save City staff time in undertaking the process of formally bidding public project contracts between \$5,000 and \$200,000. It can result in time saved between the point that a public project is budgeted and approved, and the point that a contract for the construction of that project

can be undertaken and completed. This may result in the public projects being completed more quickly. For projects between \$5,000 and \$60,000, there may be greater uncertainty as to whether the work is let for the lowest cost, as contracts within that lowest of the three levels under the UPCCAA process can be awarded without bids from multiple contractors. For contracts between \$60,000 and \$200,000 that are awarded under the informal bidding procedures, the quality of prospective contractors may be improved because only pre-qualified contractors will be bidding on those projects. Thus, time and expense in addressing issues the City may encounter with less qualified contractors is likely to be saved. Contracts of more than \$200,000 will be awarded in the same manner as currently applies to those contracts.

Adoption of the UPCCAA Ordinance will provide exemptions to public bidding for certain routine work in connection with the City's publicly owned utility systems. This will provide operational efficiencies in the Banning Electric Utility and in the City's water and wastewater, utility systems by allowing the Departments that oversee those utilities to avail themselves of exceptions to the public bidding requirements for many types of routine public project work undertaken by those utilities. Additionally, cost control and savings through bidding and oversight will depend on future revisions and clarifications made to the City's Purchasing Policy and Purchasing Systems Ordinance.

ATTACHMENTS

1. Ordinance No. 1550 (Adopting a UPCCAA Ordinance)
2. Resolution No. 2019-____ (Electing to be subject to the UPCCAA)

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Ordinance No. 1550

(Ordinance to adopt
UPCCAA public contracting procedures)

ORDINANCE NO. 1550

**AN ORDINANCE OF CITY OF BANNING PROVIDING FOR
PUBLIC WORKS CONTRACTING PURSUANT TO THE
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING
ACT, AMENDING TITLE 3 OF THE BANNING MUNICIPAL
CODE AND MAKING A FINDING OF EXEMPTION UNDER
CEQA IN CONNECTION THEREWITH**

The City Council of the City of Banning does hereby ordain as follows:

Section 1. The City Council makes the following findings in connection with the adoption of this Ordinance:

A. Prior to the enactment of the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000, *et seq.* ("the Act"), local agencies in California, including the City of Banning, were required to competitively bid all public projects, as defined, in excess of \$5,000 in accordance with the requirements of California Public Contract Code Section 20160, *et seq.* Further, prior to the Act, a uniform cost accounting standard was unavailable for construction work performed or contracted by or for local public agencies.

B. Pursuant to the Act, the Uniform Construction Cost Accounting Commission, in conjunction with the State Controller, has established uniform public construction cost accounting procedures for implementation by local public agencies electing to be governed by the provisions of the Act in performing or contracting for construction of public projects.

C. The City Council finds and determines that it is in the best interests of the City of Banning to be subject to the provisions of the Act. The benefits to the City include, but are not limited to, availability of alternate bidding procedures allowing the City to perform work costing up to and including \$60,000, as may be revised, by force account, and to let contracts by informal procedures for public projects costing up to and including \$200,000, as may be revised, or more under specified circumstances.

D. California Public Contract Code Section 22034 requires each public agency that elects to become subject to the uniform construction cost accounting procedures to enact an informal bidding ordinance that complies with the requirements set forth in Section 22034.

E. The City Council intends this ordinance to comply with Public Contract Code Section 22034.

Section 2. The City Council finds and determines that the adoption of this Ordinance is exempt from the requirements of the California Environmental Quality Act ("CEQA") and the City's CEQA Guidelines pursuant to CEQA Guidelines Section 15061(b)(3) which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. Where, it can be seen with certainty that

there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA. The amendments to the City's Purchasing Systems Ordinance by the adoption of this Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that the City's adoption of this Ordinance will have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 3. Section 3.24.020 (Definitions) of Chapter 3.24 (Purchasing System) of Title 3 (Revenue and Finance) of the Banning Municipal Code is hereby amended to add the following definitions in alphabetical order:

"Public project" shall have the meaning ascribed in Section 22002 of the Public Contract Code, as it now exists or may subsequently be amended. The term "public project" is currently defined in Section 22002 of the Public Contract Code to mean any of the following: (1) Construction, reconstruction, erection, alteration, renovation, improvement, demolition, and repair work involving any City owned, leased, or operated facility; (2) Painting or repainting of any City owned, leased, or operated facility; (3) In the case of a City owned utility system, 'public project' shall include only the construction, erection, improvement, or repair of dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher. 'Public project' includes 'public works project.' For purposes of the definition of 'public project,' the term 'facility' means any plant, building, structure, and ground facility, but does not include the City's public utility systems except for dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher. 'Public project' does not include maintenance work. For purposes of the exclusion from 'public project,' the term 'maintenance work' is defined to include all of the following: (1) Routine, recurring, and usual work for the preservation or protection of any City owned or operated facility for its intended purposes; (2) Minor repainting; (3) Resurfacing of streets and highways at less than one inch; (4) Landscape maintenance, including mowing, watering, trimming, pruning, planting, replacement of plants, and servicing of irrigation and sprinkler systems; (5) Work performed to keep, operate, and maintain City owned water, power, or waste disposal systems, including, but not limited to, dams, reservoirs, power plants, and electrical transmission lines of 230,000 volts and higher."

"Purchasing Policy" means the policy and procedures adopted and amended from time to time by resolution of the City Council, as referenced in and required by Section 3.24.060 B of this Chapter, for purposes of providing specific purchasing and procurement procedures, consistent with State law."

Section 4. Section 3.24.100 (Public Project Bid Procedure) of Chapter 3.24 (Purchasing System) of Title 3 (Revenue and Finance) of the Banning Municipal Code is hereby amended to read as follows:

“3.24.100 - Public project bid procedure.

Contracts for public projects shall be awarded consistent with, and pursuant to, the procedures set forth in the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000, et seq. ('UPCCAA'), and as set forth below:

A. *Open market purchases and contracts.* The City Manager, his or her designee, or other persons specified in subsection (D) of this Section, may award written contracts for public works projects with a value of \$60,000 or less, which amount is the open market purchase limit set forth in Public Contract Code Section 22032(a) as the same may be legislatively adjusted from time to time. Such work may be performed by City employees, or by force account, negotiated contract, or purchase order. All requirements of State law otherwise applicable to public works projects governed by this subsection shall apply to such projects.

B. *Informal solicitation contracts.* The City Manager or his or her designee, may use the procedure set forth in this subsection for public works project contract awards with a value of \$200,000 or less, which amount is the informal solicitation limit set forth in Public Contract Code Section 22032(b) as the same may be legislatively adjusted from time to time.

1. The City may maintain a list of all qualified contractors, identified according to categories of work. The criteria for development and maintenance of the contractors list shall be as determined by the California Uniform Construction Cost Accounting Commission.

2. Not less than ten (10) calendar days before bids will be due, the City Manager, his or her designee, or other persons specified in subsection (D) of this Section, shall issue an bid invitation notice by mail, fax, or email to all qualified contractors on the list for the category of work being solicited or to all trade journals specified pursuant to Public Contract Code Section 22036, or both, unless the product or service is proprietary. The notice shall describe the project in general terms and how to obtain more detailed information about the project, and shall state the time and place for submission of bids.

3. All received bids that are timely shall be evaluated by the Public Works Department or the Banning Electrical Utility, depending on whether the project is for the City or for the Banning Electric Utility.

4. The City Manager shall award the contract to the lowest responsive and responsible bidder or shall reject all bids. If all bids are rejected, then the City Council may cancel the procurement, or the City Manager may re-bid the project with or without revisions.

5. If all offers received are in excess of the public works project informal solicitation limit specified in Public Contract Code Section 22032 as the same may be amended, then, by adoption of a resolution by four-fifths vote, and upon determining that the City's cost estimate was reasonable, the City Council may award the contract to the lowest responsive and responsible bidder in an amount up to \$212,500, the limit specified in Public Contract Code Section 22034 as the same may be legislatively adjusted from time to time.

C. *Formally bid contracts.* The City Manager, his or her designee, or other persons specified in subsection (D) of this Section, shall use the formal solicitation procedure set forth in the UPCCAA for award of public works project contracts that exceed \$200,000, which amount is the formal solicitation threshold amount specified in Public Contract Code Section 22032(c) as the same may be legislatively adjusted from time to time. See Sections 22037, 22038, and 22039.

D. *Award and Execution.* The City Manager or his or her designee is authorized to award and enter into contracts pursuant to subsection A and B of this Section provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged. In addition, the Director of Public Works is authorized to award and enter into contracts pursuant to subsection A of this Section that involve facilities and operations under the direction and control of the Director of Public Works, provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged. In addition, the Director of the Banning Electric Utility is authorized to award and enter into contracts pursuant to subsection A of this Section that involve facilities and operations of the Banning Electric Utility, provided there exists an unencumbered appropriation in the fund account against which the expense is to be charged. Except as set forth in subsection A of this Section, all public project contracts shall be memorialized by both a written contract and a purchase order. Any such purchase order may be executed by the Purchasing Agent or the Administrative Services Director as applicable. All other public project contracts shall be awarded by the City Council, and may be executed by the Mayor or City Manager.

E. *Administration.* Public project contract administration is the responsibility of the Public Works Department for projects of the City except for the Banning Electric Utility and the Department of Parks and Recreation. Public works project contract administration is the responsibility of the Banning Electric Utility Director for projects of the Banning Electric Utility.

Public works project contract administration is the responsibility of the Director of Parks and Recreation for projects of the Parks and Recreation Department.

F. *Delegation of Design Approval Authority.* The City Manager, his or her designee, the Director of Public Works, the Director of Parks and Recreation, and the Director of the Banning Electric Utility, as the case may be, are authorized to approve plans or designs for purposes of design immunity pursuant to Government Code Section 830.6, for all public projects approved by the Public Works Director, the Director of Parks and Recreation, or the Banning Electric Utility Director, respectively, pursuant to subsection D. Nothing in this section is intended to, nor will it, preclude the City Council from separately or additionally approving plans or designs for purposes of design immunity pursuant to Government Code Section 830.6.

G. *Emergency procurements.* In cases of emergency when repair or replacements are necessary, the City may proceed in compliance with Public Contract Code Section 22035, or any successor statute.

H. *Design-Build procurements.* To the extent permitted by the Public Contract Code, the City may utilize Design-Build as an alternate method of procurement for public projects."

Section 5. Publication, Effective Date. The City Clerk shall certify to the passage and adoption of this Ordinance, and shall make a minute order of the passage and adoption thereof in the records and the proceeding of the City Council at which time the same is passed and adopted. This Ordinance shall be in full force and effect thirty (30) days after its final passage and adoption, and within fifteen (15) calendar days after its final passage, the City Clerk shall publish, or cause a summary of this Ordinance to be published in a newspaper of general circulation and shall post the same at City Hall, 99 E. Ramsey Street, Banning, California. The City Clerk shall cause the Ordinance to be printed, published, and circulated.

PASSED, APPROVED AND ADOPTED this ____ day of _____, 2019

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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 Ordinance No.1550 was duly adopted at a regular meeting of the City Council of the City of Banning held on the _____ day of _____, 2019, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

Resolution No. 2019-_____

(Resolution Electing to be subject to the UPCCAA)

RESOLUTION NO. 2019-____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BANNING ELECTING TO BECOME SUBJECT TO THE
UNIFORM PUBLIC CONSTRUCTION COST ACCOUNTING
ACT**

WHEREAS, prior to the enactment of the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000, *et seq.* ("the Act"), local agencies were required to competitively bid all public projects, as defined, in excess of \$5,000 in accordance with the requirements of California Public Contract Code Section 20160, *et seq.* Further, prior to the Act, a uniform cost accounting standard was unavailable for construction work performed or contracted by or for local public agencies; and

WHEREAS, pursuant to the Act, the Uniform Construction Cost Accounting Commission, in conjunction with the State Controller, has established uniform public construction cost accounting procedures for implementation by local public agencies electing to be governed by the provisions of the Act in performing or contracting for construction of public projects; and

WHEREAS, the City Council has determined that it is in the best interests of the City of Banning to be subject to the provisions of the Act. The benefits to the City include, but are not limited to, availability of alternate bidding procedures allowing the City to perform work costing up to and including \$60,000, as may be revised, by force account, and to let contracts by informal procedures for public projects costing up to and including \$200,000, as may be revised, or more under specified circumstances; and

WHEREAS, California Public Contract Code Section 22030 provides that any city that wishes to utilize the alternative procedures for bidding and contracting for public projects must elect, by resolution, to become subject to the uniform construction cost accounting procedures set forth in the Public Contract Code and must notify the State Controller of its election; and

WHEREAS, California Public Contract Code Section 22034 requires each public agency that elects to become subject to the uniform construction cost accounting procedures to enact an informal bidding ordinance that complies with the requirements set forth in Section 22034; and

WHEREAS, all legal prerequisites to the adoption of this Resolution have occurred.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF BANNING HEREBY FINDS AND RESOLVES AS FOLLOWS:

SECTION 1. The City Council finds that all of the facts set forth in the foregoing Recitals are true and correct.

SECTION 2. Pursuant to the authority set forth in the Uniform Public Construction Cost Accounting Act, California Public Contract Code Section 22000, *et seq.*, the City of Banning hereby elects to be subject to the uniform public construction cost accounting procedures set forth in the Uniform Public Construction Cost Accounting Act and to the policies and procedures manual and cost accounting review procedures established thereunder, as each may be amended from time to time.

SECTION 3. The City Clerk shall notify the State Controller of the City's election pursuant to Section 2, above. The Mayor shall sign and the City Clerk shall certify to the adoption of this Resolution, with said City Clerk causing to file an original resolution in the book of original resolutions. This Resolution shall take effect and be in full force immediately.

PASSED, APPROVED AND ADOPTED this 9th day of July, 2019

Arthur L. Welch, Mayor
City of Banning

ATTEST:

Daryl Betancur, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

Kevin Ennis, City Attorney
Richards, Watson & Gershon

CERTIFICATION:

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

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Tom Miller, Electric Utility Director

MEETING DATE: July 9th, 2019

SUBJECT: Purchase of Electric Facilities from Mountain Air Mobile Home Estates

RECOMMENDED ACTION:

Staff recommends discussion and possible action regarding the purchase of secondary electrical energy distribution facilities within Mountain Air Mobile Home Estates (Estates').

Adopt Resolution authorizing the City Manager and Electric Utility Director to purchase certain secondary electrical energy facilities owned and operated by Mountain Air Mobile Home Estates at an approximate cost of \$30,000. The resolution directs the management team to prepare all documentation necessary to complete the transaction in good form and make required budget adjustments to complete the purchase transaction within the mutually agreed upon terms.

GOAL STATEMENT:

As opportunities present themselves, collaborate with local area businesses for the common good of our customers.

BACKGROUND:

To recap staff activities to date, during October 2018, City Council approved a retail residential rate restructuring to benefit the customers of Banning Electric. The Utility Billing staff notified the customers of the implementation of this new rate as of March 1, 2019. With this notification Mountain Air Mobile Home Estates' owners contested the new rate structure and requested an audience with Councilman Don Peterson and Electric Utility Director Tom Miller. We met to discuss the impact to Estates' owners and their customers. During this discussion, it was mutually agreed to that Banning Electric

might consider the purchase of Estates' secondary electrical energy distribution system. This opportunity was discussed with City Council and staff was directed to have the system inspected and evaluated for purchase consideration. The initial Phase 1, circa 1970's, of the mobile home park is under consideration as Banning Electric Utility already serves other phases of the Mountain Air Mobile Home Estates.

JUSTIFICATION:

City Council received a report from RHA, Inc., summarizing their inspection of facilities and their appraisal of assets in place to serve 86 units with electrical energy in the mobile home park. At City Council's closed session on June 11th, staff was authorized to continue discussions and enter into negotiations for the transfer of assets between Mountain Air Mobile Home Estates and Banning Electric. Banning Electric offered for the Estates' consideration the purchase price of \$30,000 for the existing facilities and perpetual easements. Some of the details for the transition were further discussed on July 2nd, when staff met with the Estates' owners.

FISCAL IMPACT:

The source of cash will come from the Electric Capital Improvement Fund (673) for the purchase of assets and any system improvements such as new meters for the mobile home park.

ALTERNATIVES:

Staff, city council, and the Estates' owners have had several detail discussions throughout the process and mutual agreement has been achieved therefore, alternative considerations have been ruled out.

ATTACHMENTS:

1. Resolution No. 2019-_____
2. July 2, 2019 Letter to Dora and Art Nordquist
3. June 21, 2019 Letter to Dora and Art Nordquist
4. Mountain Air Mobile Home Estates' partial map

Approved by:



Douglas Schulze, City Manager
City Manager

**ATTACHMENT 1
(Resolution No. 2019-_____)**

RESOLUTION 2019-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING THE PURCHASE OF SECONDARY ELECTRICAL ENERGY DISTRIBUTION FACILITIES FROM THE OWNERS OF MOUNTAIN AIR MOBILE HOME ESTATES.

WHEREAS, Banning Electric Utility is a not-for-profit publicly-owned retail electrical energy distribution provider and load serving entity; and,

WHEREAS, the City Council of the City of Banning has the sole rights and authorities to resolve, declare, direct, approve, adopt, borrow, purchase, establish rates and utility charges for Banning Electric Utility; and,

WHEREAS, Dora and Art Nordquist as the owner-operators of Mountain Air Mobile Home Estates, Banning, California, have the sole rights and authorities to transact such business, wish to sell to Banning Electric Utility certain secondary electrical energy distribution facilities, and

WHEREAS, both parties agree the transaction is in the best interest to our mutual customers to complete the transfer of facilities between the entities.

NOW, THEREFORE, BE IT RESOLVED, the City Council of the City of Banning declares, determines, and orders as follows:

SECTION 1. Authorizes the purchase as detailed:

- **Purchase Price:** \$30,000 USD; switchgear, 5 dry type transformers and attached service panels, wires and conduits, pull boxes, 86 pedestals and meters, and other related appurtenances specific to the secondary distribution facilities
- **Meters:** At Banning Electric's expense, the Utility will replace all existing meters with electronic digital meters as soon as practicable
- **Decorative Lanterns:** Lot lanterns (approximately 75 – 120V fixtures) will remain unmetered and be maintained by the Utility; the lantern network may be updated to regular street lights at mutually agreeable time at Banning Electric's expense; current lantern poles support United States Post Office mailboxes
- **Utility Easements:** Perpetual easements based upon current location of secondary electric distribution facilities already in place; mutually agreed upon utility easements in case of relocation of existing facilities
- **Purchase Price:** Spare 480V/240V dry type transformer to be determined

- **Club House and Garage:** revenue meter to be installed at mutually agreeable time at Banning Electric's expense
- **Irrigation sprinkler timers:** to remain unmetered
- **Cathode Rectifier:** Mountain Air will extend electric service from the garage to the rectifier at a mutually agreeable time
- **Transfer Date:** On or about August 19th, 2019; (tentatively, need discussions with Utility Billing)
- **Communications:** Mountain Air Mobile Home Estates to notify customers of impending transfer to City of Banning Electric Utility

SECTION 2. Directs the city manager and electric utility director to complete all necessary documentation to complete the purchase transaction.

SECTION 3. Directs the finance director and approves the necessary budget adjustments and transfers to consummate the purchase.

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 or original resolutions.

PASSED, APPROVED, AND ADOPTED this 9th day of July, 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 adopted at the regular meeting of the City Council of the City of Banning, held on the 9th day of July 2019, by the following vote to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2
(July 2, 2019 Letter to Dora & Art
Nordquist)



City of Banning Electric Utility

July 2, 2019

Mrs. Dora J. Nordquist
Mr. Art Nordquist
Mountain Air Mobile Home Estates
4133 West Wilson Street
Banning CA 92220

Subject: Transfer in ownership of secondary electrical energy distribution system at Mountain Air Mobile Home Estates

Dear Dora and Art,

I appreciated your time today and discussion about transferring the ownership of facilities from Mountain Air Mobile Home Estates to the City of Banning Electric Utility. I am grateful for the teamwork manner you both brought to today's meeting. As you say, the goal is to do the best we can for the customers. Having said that, listed below are the key aspects of the transaction:

- **Purchase Price:** \$30,000 USD; switchgear, 5 dry type transformers and attached service panels, wires and conduits, pull boxes, 86 pedestals and meters, and other related appurtenances specific to the secondary distribution facilities
- **Meters:** At Banning Electric's expense, the Utility will replace all existing meters with electronic digital meters as soon as practicable
- **Decorative Lanterns:** Lot lanterns (approximately 75 – 120V fixtures) will remain unmetered and be maintained by the Utility; the lantern network may be updated to regular street lights at mutually agreeable time at Banning Electric's expense; current lantern poles support United States Post Office mailboxes
- **Utility Easements:** Perpetual easements based upon current location of secondary electric distribution facilities already in place; mutually agreed upon utility easements in case of relocation of existing facilities
- **Purchase Price:** Spare 480V/240V dry type transformer to be determined
- **Club House and Garage:** revenue meter to be installed at mutually agreeable time at Banning Electric's expense
- **Irrigation sprinkler timers:** to remain unmetered
- **Cathode Rectifier:** Mountain Air will extend electric service from the garage to the rectifier at a mutually agreeable time

- **Transfer Date:** On or about August 19th, 2019; (tentatively, need discussions with Utility Billing)
- **Communications:** Mountain Air Mobile Home Estates to notify customers of impending transfer to City of Banning Electric Utility

I hope that I covered everything we talked about this morning. Please let me know if this letter accurately reflects our discussion and key points of the transaction. Again, I appreciate doing business with Mountain Home Mobile Home Estates.

Sincerely,



Tom Miller
Electric Utility Director

cc: Mr. Doug Schulze, City Manager
Ms. Gina Boehm, Utility Billing Manager

ATTACHMENT 3
(June 21, 2019, Letter to Dora & Art Nordquist)



City of Banning Electric Utility

June 21, 2019

Mrs. Dora J. Nordquist
Mr. Art Nordquist
Mountain Air Mobile Home Estates
4133 West Wilson Street
Banning CA 92220

Subject: Negotiations to transfer ownership of secondary electrical energy distribution system at Mountain Air Mobile Home Estates

Dear Dora and Art,

To recap our activities to date, during October 2018, City Council approved a retail residential rate restructuring to benefit the customers of Banning Electric. The Utility Billing staff notified the customers of the implementation of this new rate as of March 1, 2019. With this notification Mountain Air Mobile Home Estates contested the new rate structure and requested an audience with Councilman Don Peterson and me. We met to discuss the impact to Mountain Air and your customers. During this discussion, it was mutually agreed to that Banning Electric might consider the purchase of Mountain Air's secondary electrical energy distribution system. This opportunity was discussed with City Council and I was directed to have the system inspected and evaluated for purchase consideration.

At City Council's closed session on June 11th, I was authorized to continue discussions and enter into negotiations for the transfer of assets between Mountain Air Mobile Home Estates and Banning Electric. As you are aware, City Council received a report from RHA, Inc., summarizing their inspection of facilities and their appraisal of assets in place to serve 86 units with electrical energy. This evaluation and the annual net revenue of Banning Electric's service to Mountain Air Mobile Home Estates established the financial parameters which I am allowed to negotiate.

Per your email request, Banning Electric offers for your consideration the purchase price of \$30,000 for the existing facilities and perpetual easements. Some of the details for the transition will need to be discussed which may include additional financial consideration. Please consider our offer and I look forward to further discussions in the near future. Please feel free to contact me at your convenience.

Respectfully,

A handwritten signature in blue ink that reads "Tom Miller".

Tom Miller
Electric Utility Director

cc: Mr. Doug Schulze, City Manager

ATTACHMENT 4
(Mountain Air Mobile Home
Estates' Partial Map)

4133 West Wilson St. • Banning, California 92220
(951) 849-7953

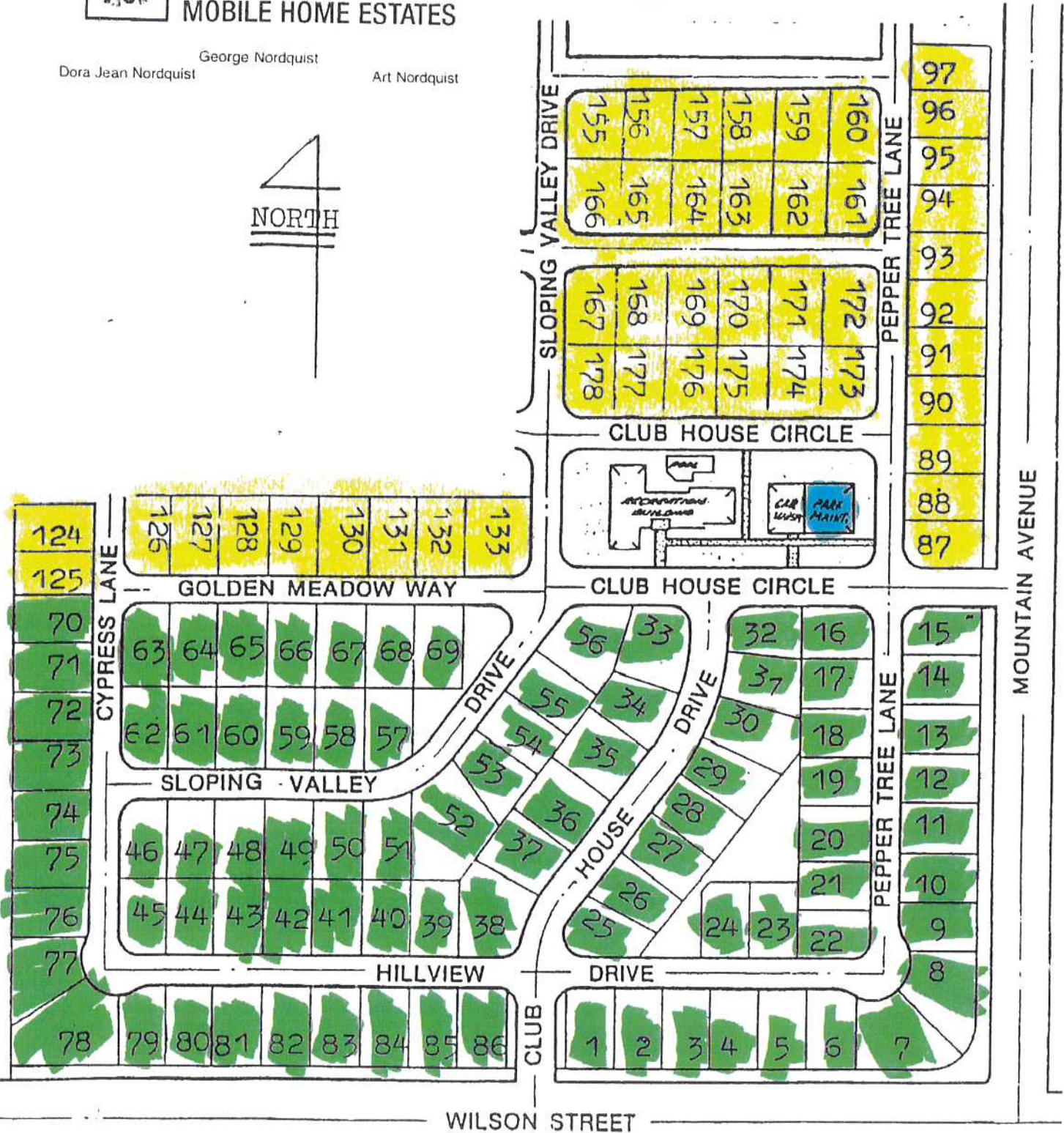


Mountain Air

MOBILE HOME ESTATES

George Nordquist
Dora Jean Nordquist

Art Nordquist



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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

MEETING DATE: July 9, 2019

SUBJECT: Resolution 2018-xx, Approving Purchase of Arena Fencing for Dysart Park in an Amount Not to Exceed \$35,000.

RECOMMENDED ACTION:

Staff recommends the City Council adopt Resolution 2019-xx, authorizing purchase of arena fencing for Dysart Park in an amount not to exceed \$35,000.

BACKGROUND:

On July 2, 2019, a Stagecoach Days representative expressed concern about athlete and spectator safety associated with the Stagecoach Days Rodeo. Arena fencing for livestock is not adequate and presents a potential safety issue. Two quotes for the arena fencing system have been received (attached) and a third quote has been difficult to obtain. This item is time sensitive since there is a four-week manufacturing period after an order has been placed and approximately two weeks for shipping. As a result, if the fencing system is ordered the week of July 8th, it is possible have the system installed prior to Stagecoach Days this year.

The cost of the arena fencing system with delivery is quoted at \$28,837.40, but this quote does not include sales tax, which will add approximately \$2,300 to the cost. The Capital Improvement Fund has approximately \$650,000 available from bond proceeds.

JUSTIFICATION:

Stagecoach Days is a signature community event and the facilities must be safe for all participants, spectators and volunteers. The Stagecoach Days Rodeo could be in jeopardy if fencing is not replaced.

FISCAL IMPACT:

This agreement will be funded from the Capital Improvement Fund 470-4000-413.90-15. There is a fund balance of \$653,988, of which the \$35,000 will need to be appropriated to the Recreation Building Improvement Account.

OPTIONS:

1. Approve as recommended
2. Do not approve

ATTACHMENTS:

1. Resolution 2019-xx
2. W-W Livestock Systems Quote
3. Priefert Rodeo & Ranch Equipment Quote

Approved by:



Douglas Schulze
City Manager

ATTACHMENT 1

Resolution 2019-xx

RESOLUTION 2019-xx

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING PURCHASE OF AN ARENA FENCING SYSTEM IN AN AMOUNT NOT TO EXCEED \$35,000 TO BE INSTALLED AT DYSART PARK.

WHEREAS, the City of Banning owns and operates a Dysart Park, an equestrian park; and

WHEREAS, the Stagecoach Days is an annual signature community event, which includes family activities and a professional rodeo; and

WHEREAS, existing arena fencing does not meet appropriate safety standards for livestock, rodeo participants and spectators; and

WHEREAS, Stagecoach Days organizers have obtained quotes for the arena fencing system; and

WHEREAS, two quotes were received; and

WHEREAS, W-W Livestock Systems of Thomas, OK submitted the lowest responsive quote in the amount of \$23,786.10.

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

SECTION 1. The City Council of the City of Banning adopts Resolution 2019-xx Authorizing purchase of arena fencing system in an amount not to exceed \$35,000.

SECTION 2. The City Manager or his designee is authorized to make necessary budget adjustments, appropriations and transfers related to the purchase of the arena fencing system.

SECTION 3. The City Manager or his designee is authorized to execute the Agreement with W-W Livestock Systems for the arena fencing system.

SECTION 4. The Deputy 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, ADOPTED AND APPROVED this 9th day of July, 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-xx was duly adopted by the City Council of the City of Banning, California, at a Regular Meeting thereof held on the 9th day of July, 2019, by the following vote, to wit:

AYES:

NOES: None

ABSTAIN: None

ABSENT: None

Daryl Betancur, Deputy City Clerk
City of Banning, California

ATTACHMENT 2

W-W Livestock Systems

Quote



W-W Livestock Systems

8832 Hwy 54 North
Thomas, OK 73669
1-800-999-1214 (580) 661-3722 Fax



Quote For:

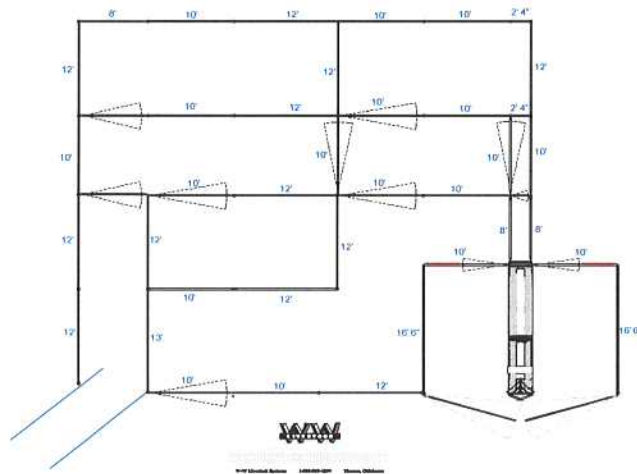
Banning Stagecoach Days

Contact:

Jerry Honeycutt

Qty	Part #	Description	Unit Price	Total
1	5310-000-000-SPE	NEW ROPE CHUTE HEAVY DUTY (Jerry Honeycutt Special)	\$ 2,748.00	\$ 2,748.00
1	5310-100-000	NEW ROPE CHUTE EXTENSION HEAVY DUTY	\$ 1,854.00	\$ 1,854.00
2	5344-510-000	ROPE CHUTE BOX 510 G5 9' TALL	\$ 891.00	\$ 1,782.00
2	5344-516-600	ROPE CHUTE BOX 16'6" ROPE CHUTE PANEL	\$ 605.00	\$ 1,210.00
2	SPE-RODEO	CG CHAP 6 X 12 500S Tight Rolls Hinge End (no collars) 133" OSM CL other end	\$ 281.00	\$ 562.00
6	3332-310-300	TRIPLE SOCKET (PIN-TO-PIN ADAPTOR)	\$ 14.00	\$ 84.00
4	8329-100-000	V/STALL PIN TO PIN ADAPTOR	\$ 18.00	\$ 72.00
2	3341-602-400	PANEL CHAP 6 X 24"	\$ 134.00	\$ 268.00
3	3341-608-000	PANEL CHAP 6 X 8	\$ 261.00	\$ 783.00
10	3341-610-000	PANEL CHAP 6 X 10	\$ 268.00	\$ 2,680.00
12	3341-612-000	PANEL CHAP 6 X 12	\$ 295.00	\$ 3,540.00
1	3341-613-SPE	PANEL CHAP 6 X 13	\$ 328.00	\$ 328.00
1	3343-028-000	ACF CHAP 28" ALLEY CONTROL FRAME	\$ 226.00	\$ 226.00
1	3343-128-000	ACG CHAP 28" ALLEY CONTROL GATE	\$ 333.00	\$ 333.00
2	3344-608-078	HPG CHAP 6 X 8 7'8"	\$ 585.00	\$ 1,170.00
6	3344-610-078	HPG CHAP 6 X 10 7'8"	\$ 618.00	\$ 3,708.00
		Extra panels for arena fence		\$ -
21	3311-610-SPE	PANEL CLASSIC 610 - 500S CLIPS From Top Down - Inlay Sheet Metal in Bottom Space	\$ 550.00	\$ 11,550.00
4	3311-512-000	PANEL CLASSIC 512	\$ 366.00	\$ 1,464.00
26	3318-200-000	CONNECTING POST 6' 2-WAY 180 DEG. PINS	\$ 76.00	\$ 1,976.00
2	3346-508-000	CORRAL GATE CHAP 6 X 8	\$ 228.00	\$ 456.00
			\$ -	\$ -
		Total Retail Price	\$	36,594.00
		Discount	\$	12,807.90
		Sale Price	\$	23,786.10

Banning Stagecoach Days



ATTACHMENT 3

Priefert Rodeo & Ranch Equipment Quote



2630 South Jefferson Ave • Mount Pleasant, TX 75455
Phone - 903-572-1741 • Fax - 903-572-2798

Quotation

A-0071820
Sold To: City of Banning
99 E Ramsey St
Banning, CA 92220
US

Ship To: City of Banning
99 E Ramsey St
Banning, CA 92220
US

A-0071820
Bill to: City of Banning
99 E Ramsey St
Banning, CA 92220
US

Phone: 951-922-3105

Number: QT-132509-4

Date: 4/3/2019
Page: 1 of 2
Sales order:
PO Number.....:
Your ref.....:
Our ref.: 02268
Quotation deadline: 5/10/2019
Payment: Cash in Advance
FOB: FOB Origin
Ship Via: TL
Total Weight: 10,687.96

Item Number	Description	Quantity	Unit	Price	Unit	Weight	Amount
PRCAG13.5GY	13'5" PRCA ROPING BOX FRONT GATE	2.00	Pc	346.77	Pc	263.38	693.54
PRCAP17LGY	17' PRCA SIDE PANELS FOR ROPING BOXES LEFT	1.00	Pc	540.49	Pc	277.00	540.49
PRCAP17RGY	17' PRCA SIDE PANELS FOR ROPING BOXES RIGHT	1.00	Pc	540.49	Pc	277.00	540.49
PRCAWT12LGY	12' PRCA ROPING BOX W/6'X9' RIDE THRU LEFT	1.00	Pc	885.52	Pc	349.06	885.52
RC98CBE	ROPING CHUTE MODEL 98 COMP.	1.00	Pc	1,976.28	Pc	493.00	1,976.28
RCS98CPINBE	ROPING CHUTE MODEL 98 COMP.SEC	1.00	Pc	997.12	Pc	325.00	997.12
RSABG109GY	BOW GATE ARENA 10'X9' RS	5.00	Pc	654.07	Pc	1,125.00	3,270.35
RSAGSGY	ALLEY GATE, RS SWING CMPL.	2.00	Pc	324.07	Pc	294.00	648.14
RSAP08GY	PANEL 8' ROUGH STOCK ARENA	3.00	Pc	173.48	Pc	231.00	520.44
RSAP10GY	PANEL 10' ROUGH STOCK ARENA	19.00	Pc	193.07	Pc	1,710.00	3,668.33
RSAP12GY	PANEL 12' ROUGH STOCK ARENA	34.00	Pc	209.25	Pc	3,672.00	7,114.50
RSAWT10GY	WALK THRU 10' RS ARENA	1.00	Pc	415.71	Pc	199.00	415.71
RSBG109GY	BOW GATE 10'X9' RS	1.00	Pc	713.56	Pc	303.00	713.56
RSCP8MFGY	RS CONN. POST MALE/FMALE 8'	19.00	Pc	64.36	Pc	513.00	1,222.84
RSG08GY	ROUGH STOCK GATE 8'	1.00	Pc	201.47	Pc	94.00	201.47
RSG12GY	ROUGH STOCK GATE 12'	2.00	Pc	240.96	Pc	252.00	481.92
RSG16GY	ROUGH STOCK GATE 16'	1.00	Pc	321.56	Pc	164.00	321.56
RSGPGY	ROUGH STOCK GATE POSTThe Rough Stock Gate Post works with Rough Stock, Rough Stock Arena and Premier Tall Panels in conjunction with Rough Stock Gates.	4.00	Pc	157.39	Pc	0.00	629.56
RSP12GY	PANEL 12' ROUGH STOCK	1.00	Pc	211.42	Pc	122.00	211.42



2630 South Jefferson Ave • Mount Pleasant, TX 75455
Phone - 903-572-1741 • Fax - 903-572-2798

Quotation

A-0071820
Sold To: City of Banning
99 E Ramsey St
Banning, CA 92220
US

Ship To: City of Banning
99 E Ramsey St
Banning, CA 92220
US

Number: QT-132509-4

Date: 4/3/2019
Page: 2 of 2
Sales order:
PO Number.....:
Your ref.....:
Our ref.: 02268
Quotation deadline: 5/10/2019
Payment: Cash in Advance
FOB: FOB Origin
Ship Via: TL
Total Weight: 10,687.96

A-0071820
Bill to: City of Banning
99 E Ramsey St
Banning, CA 92220
US

Phone: 951-922-3105

Item Number	Description	Quantity	Unit	Price	Unit	Weight	Amount
RSGA4GY	RS GENDER ADAPTOR 4-WAY	12.00	Pc	7.78	Pc	12.00	93.36
RSSPMBFGY	MOUNT BRCKT SHEET PNL FEMALE	1.00	Pc	40.80	Pc	12.52	40.80

All prices shown in USD.

Sub total:	25,187.40
Freight:	3,650.00
Tax:	0.00
Total:	28,837.40