



AGENDA

REGULAR MEETING OF THE BANNING CITY COUNCIL CITY OF BANNING, CALIFORNIA

February 25, 2020
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 Banning City Council, a joint meeting of the City Council and the Banning Utility Authority, and the Banning City Council sitting in its capacity of the Successor Agency Board.

Per City Council Resolution 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

1. Invocation – Mountain Avenue Baptist Church
2. Pledge of Allegiance
3. Roll Call – Councilmembers Happe, Wallace, Welch, and Mayor Andrade

II. AGENDA APPROVAL

III. PRESENTATION(S)

1. Mayor's Special Recognition
(Mayor and City Council)
2. Census 2020
(Jerome Braun, US Census Bureau)

IV. REPORT ON CLOSED SESSION

City Attorney

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

PUBLIC COMMENTS – On Items Not on the Agenda

A five (5) 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 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

None

VI. CONSENT ITEMS

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

Mayor to Open Consent Items for Public Comments

Motion: Approve Consent items 1 - 14: Items _____ to be pulled for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council/Banning Utility Authority)

1.	Minutes – February 11, 2020, Special Meeting (Closed Session)	1
2.	Minutes – February 11, 2020, Regular Meeting.....	5
3.	Approval and Ratification of Accounts Payable and Payroll Warrants ...	141
4.	Investment Report for January 2020.....	143
5.	Capital Improvement Project Update	145
6.	Police Statistics – January 2020	147
7.	Fire Statistics – January 2020.....	149
8.	Ordinance 1558, an Ordinance of the City of Banning, California, Approving Development Agreement No. 11 Between the City of Banning and AMG Outdoor Advertising, Inc., for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005) (2nd Reading)	151

9.	Resolution 2020-1 UA, Approving the Professional Services Agreement in the Amount of \$103,924 with US Geological Survey for the Continued Implementation of a Stream Flow Monitoring Program Related to the San Gorgonio Flume	157
10.	Resolution 2020-17, Approving the First Amendment to Contract Services Agreement C00229 with Electric Power Systems International, Inc.	161
11.	Resolution 2020-3 UA, Approving an Amendment to the Professional Services Agreement with Falen Law Offices, LLC for Legal Services Related to the Transfer of the San Gorgonio Flume System in the Amount of \$250,000	165
12.	Increase Purchase Order with Altec Industries, Inc., by \$20,000 for Onsite Inspections and Repair of Bucket Trucks	169
13.	Appropriate \$25,000 and Increase Purchase Order with Sonsray Machinery, LLC, by Same Amount for As Needed Repairs to the City's Heavy-Duty Equipment	171
14.	Resolution 2020-18, Awarding a Construction Agreement for IFB No. 19-037 Electric Utility Underground Construction Labor and Equipment Work to Gross Development Marketing, Inc./9500, Inc. and Establishing a Total Contract Budget of \$1,500,000 and Rejecting all Other Bids	173

VII. PUBLIC HEARING(S):

None

VIII. ANNOUNCEMENTS AND REPORTS:

CITY COUNCIL COMMITTEE REPORTS

REPORT BY CITY ATTORNEY

REPORT BY CITY MANAGER

REPORTS OF OFFICERS

1. Resolution 2020-26, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2020/2021 **177**
(Staff Report: Art Vela, Public Works Director)

Recommendation: Adopt Resolution 2020-26, initiating proceedings to update Landscape Maintenance District No. 1 for Fiscal Year 2020/2021 in order to prepare for the assessments of the area.

IX. DISCUSSION ITEM

None

X. ITEMS FOR FUTURE AGENDAS

New Items:

Pending Items:

1. Fee Suspension Update
2. Website Redesign
3. CNG Facility Update
4. New Energy Workshop

XI. ADJOURNMENT

Next Meeting – Tuesday, March 10, 2020 at 5:00 P.M.

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

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

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

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



In accordance with City Council Resolution 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

02/11/2020
SPECIAL MEETING - CLOSED SESSION

COUNCIL MEMBERS PRESENT:

Mayor Andrade
Mayor Pro Tem Wallace
Councilmember Happe
Councilmember Welch

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT:

Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Sonja De La Fuente, Deputy City Clerk
Art Vela, Public Works Director
Kerry Trost, PERMA

I. CALL TO ORDER

A special meeting of the Banning City Council was called to order by Mayor Andrade on February 11, 2020, at 4:00 P.M. at the Banning City Council Chamber, 99 E. Ramsey Street, Banning, California.

II. CLOSED SESSION

The Mayor opened the closed session items for public comments. There were none.

The City Attorney listed the items on the closed session Agenda as follows:

- 1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (One Case).
- 2. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION**
Potential initiation of litigation pursuant to Paragraph (4) of subdivision (d) of Government Code Section 54956.9 (One Case)

3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8
Properties: 150 E. Ramsey Street
City Negotiator: Douglas Schulze, City Manager
Negotiating Parties: Brandon Sudweeks, Sudweeks Development and Investment Company
Under Negotiation: Price and terms for potential sale of City property to Sudweeks Development Company

4. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6
City designated representatives: Mayor Andrade and City Attorney Ennis
Unrepresented employee: City Manager

5. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9
Name of Case: City of Banning and People of the State of California v. Go Green Calming Solution, et al., Case No. RIC 1806731
for acquisition of street right of way and temporary construction easements

The meeting convened to closed session at 4:02 p.m., recessed at 5:08 p.m., reconvened to closed session at 6:52 p.m. and reconvened to open session at 7:20 p.m.

City Attorney Ennis reported the following:

1. CONFERENCE WITH LEGAL COUNSEL - ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (One Case). **Direction was provided to legal counsel. No final and reportable action.**

2. CONFERENCE WITH LEGAL COUNCIL - ANTICIPATED LITIGATION
Potential initiation of litigation pursuant to Paragraph (4) of subdivision (d) of Government Code Section 54956.9 (One Case). **Direction was provided to staff. No final and reportable action.**

3. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8
Properties: 150 E. Ramsey Street
City Negotiator: Douglas Schulze, City Manager
Negotiating Parties: Brandon Sudweeks, Sudweeks Development and Investment Company
Under Negotiation: Price and terms for potential sale of City property to Sudweeks Development Company. **Continued to March 11, 2020.**

4. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

City designated representatives: Mayor Andrade and City Attorney Ennis

Unrepresented employee: City Manager. **Completed.**

5. CONFERENCE WITH LEGAL COUNSEL - EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Government Code Section 54956.9

Name of Case: City of Banning and People of the State of California v. Go Green Calming Solution, et al., Case No. RIC 1806731

for acquisition of street right of way and temporary construction easements.

Settlement Agreement has been satisfied.

II. ADJOURNMENT

By consensus, the meeting adjourned at 7:22 p.m.

Minutes Prepared by:

Sonja De La Fuente, Deputy City Clerk

*The entire discussion of this meeting may be viewed by visiting
<https://banninglive.viebit.com/player.php?hash=UHOOhfdqVTT8h> and
<https://banninglive.viebit.com/player.php?hash=zPuUeoCOEHgz>. Related
documents may be found by visiting
<https://banninglive.viebit.com/player.php?hash=UHOOhfdqVTT8h> or by
purchasing a CD or DVD at Banning City Hall in the amount of \$7.00, located at 99
E. Ramsey Street.*

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In accordance with City Council Resolution 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

The following information comprises the minutes for the regular meeting of the City Council, a joint meeting of the Banning City Council and Banning Utility Authority and a joint meeting of the Banning City Council and the Banning City Council sitting in its capacity as the Successor Agency Board.

MINUTES CITY COUNCIL

02/11/2020
REGULAR MEETING

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT	Douglas Schulze, City Manager Kevin G. Ennis, City Attorney Sonja De La Fuente, Deputy City Clerk Matthew Hamner, Police Chief Art Vela, Public Works Director/City Engineer Adam Rush, Community Development Director Jennifer Christensen, Administrative Services Director Ralph Wright, Community Services Director Tom Miller, Electric Utility Director Suzanne Cook, Deputy Finance Director Jason Smith, Electric Operations Manager Carla Young, Business Support Manager Laurie Sampson, Executive Assistant Leila Lopez, Office Specialist
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I. CALL TO ORDER

A regular meeting of the Banning City Council was called to order by Mayor Andrade on February 11, 2020, at 5:11 p.m. at the Banning City Council Chamber, 99 E. Ramsey Street, Banning, California.

Pastor Richard Szydlouski from Mountain Avenue Baptist Church offered the invocation.

Council Member Welch led the audience in the Pledge of Allegiance.

II. AGENDA APPROVAL

A motion was made by Council Member Welch, seconded by Mayor Pro Tem Wallace, to approve the agenda. Roll Call vote was taken as follows:

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

Inge Schuler suggested modifications to the minutes from the last meeting. City Attorney Ennis indicated it would be appropriate to pull Consent Item 2 for discussion.

III. PRESENTATION(S)

1. Banning High School

Parks & Recreation Director Ralph Wright introduced Alejandro Velasco from Banning High School who provided a report on their November Food Drive. Director Wright provided a PowerPoint presentation (Attachment 1) highlighting the Banning High School Food Drive and the Mayor and City Council presented them with a Certificate of Recognition for their efforts benefiting local non-profits as well as the City's Senior Center.

2. Mayor's Special Recognition

The Mayor and City Council presented Certificates of Recognition to Anthropol Women's Club and their President, Suzette Wallace; and John Garside with the City of Banning, thanking them for making Banning a better place to work, live, and play.

IV. REPORT ON CLOSED SESSION

City Attorney Ennis advised that the Closed Session meeting was recessed and will reconvene immediately following the regular meeting, as the items were not completed. He will provide a report at the end of that meeting.

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

PUBLIC COMMENT(S)

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

Inge Schuler spoke regarding the City Seal and asked if the community will have any input. She provided some background regarding the City's logo and recommended the people are involved in deciding.

Ellen Carr with Tender Loving Critters reported that Animal Action League was here last week and spayed/neutered 40 cats on February 5th and spayed/neutered approximately 40 cats and dogs on February 6th. They will be back March 2nd and 3rd. To get on the waiting list people may call (760) 366-1100. She also raised concerns regarding the County's impound fees.

Karen Amirson spoke regarding concerns about financial issues of some elected officials and city employees, the Atwell residents shopping in Beaumont, and the structural deficit in the City of Banning.

Paul Perkins read a prepared statement (Attachment 2).

Frank Connelly with the Vista Serena Homeowners Association spoke regarding the SCE utility easement and thanked the City Manager for working with them. He requested a response regarding the City's position regarding the Waste Management bins being placed in front of their property as the contractor.

Frank Burgess spoke regarding Resolution 2019-163 that passed at the January 28th City Council Meeting. He explained that he received two letters from the City of Banning.

John Hagan asked about the police not responding to a burglary at Don Peterson's address.

Seeing no further comments, the Mayor closed Public Comments.

Police Chief Matthew Hamner advised that an email from Mr. Peterson was forwarded to him regarding a burglary at his address. He indicated that it was not responded to and he is looking into that now to determine what occurred and ensure it doesn't happen again.

CORRESPONDENCE

None.

APPOINTMENT(S)

None.

VI. CONSENT ITEMS

Mayor Andrade asked if the Council wished to pull an item for discussion. Mayor Andrade pulled item 2 for discussion.

1. Minutes – January 28, 2020, Special Meeting (Closed Session)
3. Resolution 2020-2, Approving the Agreement for Purchase and Sale and Escrow Instructions Between the City of Banning and Teh Shan Liang in Connection with the Ramsey-Hathaway Street Improvement Project, Located at 1933 E. Ramsey Street, Portions of APN 532-120-012
4. Resolution 2020-15, Approving the First Amendment to Professional Services Agreement C00622 with Webb & Associates
5. Resolution 2020-19, Amending the Transportation Uniform Mitigation Fee (TUMF) Applicable to All Developments in the City of Banning
6. Resolution 2020-20, Authorizing the Purchase of One Heavy Duty Three-Reel Trailer with Tensioners and Rewinds
7. Resolution 2020-21, Accepting Lots A, D, E, F, and G, as Offered on Parcel Map 25541 for Street, Public Utilities and Landscape Purposes
8. Resolution 2020-22, Approving a Memorandum of Agreement to Form the Coordinated San Timoteo Groundwater Sustainability Agency
9. Resolution 2020-23, Approving the Acceptance of the 2020 Supplemental Law Enforcement Services Allocation (SLESA) in the Amount of \$100,000

A revised staff report was provided for Consent Item 5 (Attachment 3).

Public Comments

Paul Perkins advised that it is very difficult to hear anyone and asked that the speakers in the Chamber be turned up.

Seeing no further comments, the Mayor closed public comment.

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace, to approve consent calendar items 1 and 3-9. Electronic vote was taken as follows:

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

Action: Approved Consent Items 1 and 3-9.

2. Minutes – January 28, 2020, Regular Meeting

Public Comment

John Hagan spoke regarding Attachment 4 to the Minutes related to Landscape Maintenance District 1. He brought up some questions and suggestions. He cautioned those affected by this to pay close attention to the costs.

Linda Pippinger spoke regarding Attachment 4 to the Minutes and advised that many people that live in Landscape Maintenance District 1 are not aware of the coming changes.

Seeing no further comments, the Mayor closed Public Comment.

Deputy City Clerk Sonja De La Fuente advised that revised minutes were provided (Attachment 4). However, on page 11 in the last paragraph, the correct attachment number is 4 and on page 12 paragraph 6, the motion was seconded by Councilmember Welch and will be corrected in the final version of the minutes.

City Attorney Ennis clarified that revised minutes were made available at the meeting. The two corrections Ms. Schuler pointed out after agenda approval were not in the revised minutes, but will be corrected as per the Deputy City Clerk.

A motion was made by Councilmember Happe, seconded by Councilmember Welch, to approve Consent Item 1 as amended and reflected by the Deputy City Clerk's comments. Electronic vote was taken as follows:

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

Action: Approved Consent Item 1 as amended.

VII. PUBLIC HEARING(S)

1. Second Reading of Ordinance 1556, Approving Zoning Text Amendment (ZTA) No. 19-97505 Adopting by Reference the California State Model Water Efficient Landscape Ordinance, Codified at Chapter 2.7 of Title 23 of the California Code of Regulations, and Making Certain Clarifying Revisions to the Landscape Provisions within Title 17 of the Banning Municipal Code and Finding the Project Exempt from CEQA Guidelines Section 15378 and Adopting a Categorical Exemption.

Adam Rush, Community Development Director provided a presentation (Attachment 5).

The Mayor opened the Public Hearing. Seeing nobody come forward, the Mayor closed the Public Hearing.

A motion was made by Councilmember Welch, seconded by Councilmember Happe, that Ordinance 1556 pass its second reading. Electronic vote was taken as follows:

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

Action: Adopted Ordinance 1556.

2. Resolution 2020-24, Approving the Development Agreement and Conditional Use Permit 19-8009, Authorizing the Construction and Operation of an Electronic Message Center at 583 W. Livingston Street in the Downtown Commercial Zoning District and the introduction of Ordinance 1558.

Adam Rush, Community Development Director provided a presentation (Attachment 6) and revised staff report (Attachment 7).

The Mayor opened the Public Hearing.

Paul Perkins asked which City logo would be on the message board and whether the City would be controlling the messaging.

Alex Garcia, the applicant, advised they are not in the business of placing risqué advertising.

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

Community Development Director Rush advised that the City's messaging is detailed in the Development Agreement (Attachment 8) Section 4.4, which allows public service messages free of charge.

City Attorney Ennis pointed out that the Development Agreement also clarifies that the advertising shall not display adult entertainment, alcohol (except beer and wine), tobacco products, or any other content considered sexually explicit, pornographic, or objectionable to the City.

There was some discussion held among Council and staff.

The Mayor asked the City Clerk to read the title of Ordinance 1558

"Ordinance 1558, an Ordinance of the City Of Banning, California, Approving Development Agreement No. 11 Between the City of Banning and AMG Outdoor Advertising, Inc. for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005)."

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace to waive further reading of Ordinance 1558. Electronic vote was taken as follows:

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

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace that Ordinance 1558 pass its first reading. Electronic vote was taken as follows:

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

Action: Ordinance 1558 passed its first reading.

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Happe had nothing to report.

Councilmember Welch reported on the following:

- Attended a Press Conference at the CHP Headquarters regarding the I-10 Project. He advised the project will span from west Beaumont to Highway 111 and is a three-year project. Two lanes in both directions will always be open. It is a \$200 million project and it will affect the City of Banning periodically. It will include the Pennsylvania, Highland Springs and Hargrave interchanges, Highway 60 at I-10 and Highway 79/Beaumont Avenue at I-10. He advised the CHP will be heavily patrolling the traffic during this project.

Mayor Pro Tem Wallace reported on the following:

- Riverside Community Action Partnership will be providing free tax filing services.
- Attended the Banning Chamber of Commerce Annual Installation of Officers on Saturday.

Mayor Andrade reported on the following

- Attended the Regional Conservation Authority (RCA) Meeting. The Interim Executive Director advised that the Natural Resource Committee passed the Riverside County Wildlife Refuge Bill unanimously and will be heading to the House floor for consideration. The featured species of the month for February is a plant called the Little Mouse Tail.
- Attended the WRCOG Executive Committee Meeting. The Western Municipal Water District provided a presentation regarding the new California water efficiency laws. They also debunked some misinformation being spread on social medial (i.e. there is no law against showering and doing laundry on the same day). There was also an update on the Fellowship program that the City utilizes.
- Attended the I-10 Project Press Conference. Construction begins in April and preparations are already underway.
- Attended the Banning Chamber of Commerce Installation Dinner. It was a huge success with over 150 in attendance. She thanked Charles Varga for his work on the event.
- There will be a ribbon cutting event at Noon on Saturday welcoming a new business at 977 W. Ramsey Street, Tattoo Emporium.
- San Gorgonio Pass Historical Society has several events planned. Preserve Your Heirloom Workshop is coming up on Thursday at the Beaumont Women's Club at 7:00 p.m. and is free.
- Corresponded with the Riverside County Animal Shelter and will set up an appointment with Ellen from Tender Loving Critters.

REPORT BY CITY ATTORNEY

None

REPORT BY CITY MANAGER

City Manager Doug Schulze reported on the following:

- Regarding the left turn lane into the Sun Lakes Village Shopping Center; it is being designed by the City of Beaumont and the City plans to move forward once design is completed.
- Regarding the Waste Management trash containers in front of Vista Serena. Staff went out after the last Council Meeting and there were no containers. They went out again last week and took pictures of the containers and sent them to Waste Management and Waste Management will be contacting the customers. There is no City Code prohibiting the placement of trash

containers where the customers are placing them so the City will be working with Waste Management, not Code Enforcement on the issue.

REPORTS OF OFFICERS

1. Resolution 2020-16, Approving Amendment No. 1 to the City Manager Employment Agreement with Douglas Schulze.

City Attorney Ennis provided the staff report regarding this item.

Public Comment

None.

The Mayor stated that staff is recommending the City Council approve Amendment No. 1 to the City Manager Employment Agreement between the City and Douglas Schulze for the position of City Manager. By approval of Amendment No. 1, the City Manager will receive:

- an annual salary of \$215,930.22 during his term as City Manager; and
- either a \$250 per month car allowance in the pursuit of City business or the use of a City-owned or City-leased vehicle in the pursuant of City business.

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Welch, to adopt Resolution 2020-16, Approving Amendment No. 1 to the Employment Agreement with Douglas Schulze. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2020-16.

2. Resolution 2020-10, Approving the Electric Utility Director Employment Agreement.

City Manager Schulze provided a presentation regarding this item.

Public Comment

None

The Mayor stated that staff is recommending the City Council approve an Employment Agreement between the City and Thomas Miller for the position of Electric Utility Director. In addition to the benefits described in the City's adopted Management Benefits Resolution, following is a summary of the Salary, Benefits, and Severance provisions of the Employment Agreement that are unique to this Agreement:

- Employee will receive an annual salary of \$173,242.35 at the effective date of the Employment Agreement.
- If the City terminates the agreement without cause, Mr. Miller is entitled to three months' salary plus insurance coverage for himself and his dependents, subject to limitation by Government Code section 53260.

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Welch, to adopt Resolution 2020-10, Approving an Employment Agreement with the Tom Miller, Electric Utility Director. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2020-10.

IX. DISCUSSION ITEM

None

CITY COUNCIL – Next Meeting, February 25, 2020, 5:00 p.m.

X. ITEMS FOR FUTURE AGENDAS

XI. ADJOURNMENT

By consensus, the meeting was adjourned at 6:52 p.m.

Minutes Prepared by:

Sonja De La Fuente, Deputy City Clerk

The entire discussion of this meeting may be viewed here:
<https://banninglive.viebit.com/player.php?hash=AdixoUBQLxuS> and related documents maybe viewed here:
<https://banningca.gov/ArchiveCenter/ViewFile/Item/2236> or by purchasing a CD or DVD in the amount of \$7.00 at Banning City Hall located at 99 E. Ramsey Street.

ATTACH MENT 1



1



2

1



3



4

2



5

3

ATTACHMENT 2

Rec'd 2/11/2020

02-11-2020 Banning City Council discuss

1. The Approved Banning City Logo - appropriate for the city when first chartered, but does not reflect the Current City. The "StageCoach" logo does support many of the areas of the City and needs to be used. Possibly the City Council should make it mandatory to use and stop wasting money to change city areas to the old logo. This trend is not free.
2. New Homes to be built are requiring to have Solar Panels installed per State of California Requirements. The electric rates within the city will need to be changed prior to this to accept this new trend.
3. City of Beaumont has not accomplished many things to support the city network shared with Banning and expects Banning to provide the funds to make adjustments. This has been shown in the following:
 - a) The turn off into the Sun Lakes Shopping center has been blocked for safety reasons and now forces a longer line, that is not safe to make the left hand turn
 - b) Pennsylvania Ave I10 has not been finalized for extra ramps and should have been completed years ago
 - c) Why would we want to open Highland Springs overpass's when Beaumont did not contribute monies. There turn
 - d) Beaumont transport bus system was to have more buses than was allocated and taking fares away from Banning
 - e) Highland Springs Ave is to be widened using Banning TUMPF funds. Where is Beaumont on accomplishing this same thing. They contributed more vehicles then Banning
 - f) Beaumont most likely has falsified Environmental Studies concerning traffic patterns, this is called "Quality of Life"

Paul Perkins
Banning California

ATTACHMENT 3

RESOLUTION 2020-19**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING AMENDING THE APPLICABLE TRANSPORTATION UNIFORM MITIGATION FEE (TUMF) APPLICABLE TO ALL DEVELOPMENTS IN THE CITY OF BANNING**

WHEREAS, 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 eighteen cities located in Western Riverside County; and

WHEREAS, the member agencies of WRCOG recognized that there was insufficient funding to address the impacts of new development on the regional system of highways and arterials in Western Riverside County (the "Regional System"); and

WHEREAS, in order to address this shortfall, the member agencies formulated a plan whereby a transportation mitigation fee would be assessed on new development and would be used to fund the necessary improvements for the Regional System; and

WHEREAS, WRCOG, with the assistance of TUMF Program participating jurisdictions, has prepared an updated Nexus Study entitled "Transportation Uniform Mitigation Fee Nexus Study: 2016 Update" ("2016 Nexus Study") pursuant to California Government Code sections 66000 et seq. (the Mitigation Fee Act), for the purpose of updating the fees. On July 10, 2017, the WRCOG Executive Committee reviewed the 2016 Nexus Study and TUMF Program and recommended TUMF participating jurisdictions amend their applicable TUMF ordinances to reflect changes in the TUMF network and the cost of construction in order to update the TUMF Program; and

WHEREAS, consistent with its previous findings made in the adoption of Ordinance No. 1549, the City Council has been informed and advised, and hereby finds, that if the capacity of the Regional System is not enlarged and unless development contributes to the cost of improving the Regional System, the result will be substantial traffic congestion in all parts of Western Riverside County, with unacceptable Levels of Service. Furthermore, the failure to mitigate growing traffic impacts on the Regional System will substantially impair the ability of public safety services (police and fire) to respond and, thus, adversely affect the public health, safety and welfare. Therefore, continuation of a TUMF Program is essential; and

WHEREAS, the City Council finds and determines that there is a reasonable and rational relationship between the use of the TUMF and the type of development projects on which the fees are imposed because the fees will be used to construct the transportation improvements that are necessary for the safety, health, and welfare of the residential and non-residential users of the development in which the TUMF will be levied; and

WHEREAS, the City Council finds and determines that there is a reasonable and rational relationship between the need for the improvements to the Regional System and the type of development projects on which the TUMF is imposed because it will be necessary for the residential and non-residential users of such projects to have access to the Regional system. Such development will benefit from the Regional System improvements and the burden of such developments will be mitigated in part by payment of the TUMF; and

WHEREAS, the City Council finds and determines that the cost estimates set forth in the new 2016 Nexus Study are reasonable cost estimates for constructing the Regional System improvements and the facilities that compromise the Regional System, and that the amount of the TUMF expected to be generated by new development will not exceed the total fair share cost to such development; and

WHEREAS, the fees collected pursuant to the TUMF Ordinance shall be used to help pay for the design, planning, construction of and real property acquisition for the Regional System improvements and its facilities as identified in the 2016 Nexus Study. The need for the improvements and facilities is related to new development because such development results in additional traffic and creates the demand for the improvements;

WHEREAS, by notice duly given and published, the City Council set the time and place for a public hearing on the 2016 Nexus Study and the fees proposed thereunder and at least ten (10) days prior to this hearing, the City Council made the 2016 Nexus Study available to the public; and

WHEREAS, at the time and place set for the hearing, the City Council duly considered data and information provided by the public relative to the cost of the improvements and facilities for which the fees are proposed and all other comments, whether written or oral, submitted prior to the conclusion of the hearing; and

WHEREAS, Section 15.76.030(C) of the Banning Municipal Code authorizes periodic review and adjustment to the applicable TUMF in accordance with any adjustments made by the WRCOG Executive Committee; and

WHEREAS, the fees collected pursuant to this Resolution shall be used to finance the public facilities described or identified in the Nexus Study; and

WHEREAS, the levying of TUMF has been reviewed by the City Council and staff in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines and it has been determined that the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

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

SECTION 1. Findings. The recitals set forth above are hereby adopted as findings in support of this Resolution. In addition, the City Council re-adopts the findings contained in Ordinance 1549 in support of the adjusted TUMF contained herein.

SECTION 2. TUMF Schedule. In accordance with Section 15.76.030(C) of the Banning Municipal Code, there is hereby adopted the following fee schedule for the TUMF which replaces the fee schedule set forth in Sections 2 and 3 of Resolution 2017-79 in its entirety as of February 11, 2020 provided that the fee for retail commercial projects shall go into effect upon the Effective Date set forth in Section 4, below:

A. There is hereby adopted the following TUMF schedule:

- (1) \$9,146.00 per single-family residential unit
- (2) \$6,134.00 per multi-family residential unit
- (3) \$1.77 per square foot of an industrial project
- (4) \$7.50 per square foot of a retail commercial project
- (5) \$4.56 per square foot of a service commercial project
- (6) \$2.19 per square foot of a service Class A and B Office

B. For single-family residential, multi-family residential, and retail non-residential projects, the fees set forth in Section 2.A. shall be phased in as follows:

From July 1, 2020, to December 30, 2020, the fee schedule shall be as follows:

- (1) \$9,478.00 per single family residential unit
- (2) \$6,389.00 per multi-family residential unit
- (3) \$1.81 per square foot of an industrial project
- (4) \$7.50 per square foot of a retail commercial project
- (5) \$4.75 per square foot of a service commercial project
- (6) \$2.38 per square foot of a service Class A and B Office

From January 1, 2021, to June 30, 2021, the fee schedule shall be as follows:

- (1) \$9,810.00 per single family residential unit
- (2) \$6,389.00 per multi-family residential unit
- (3) \$1.781 per square foot of an industrial project
- (4) \$7.50 per square foot of a retail commercial project
- (5) \$4.75 per square foot of a service commercial project
- (6) \$2.38 per square foot of a service Class A and B Office

SECTION 3. CEQA Findings. The City Council hereby finds that in accordance with the California Environmental Quality Act ("CEQA") and the CEQA Guidelines the adoption of this Resolution is exempt from CEQA pursuant to Section 15061(b)(3).

SECTION 4. Effective Date. This The City Clerk is directed to certify to the enactment of this Resolution and to cause this Resolution to be published and/or posted as required by law.

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, this 11th day of February 2020.

Daniela Andrade, 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 2020-19, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 11th day of February, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonja De La Fuente, Deputy City Clerk
City of Banning

ATTACHMENT 4



REVISED

11:52 am, Feb 11, 2020

In accordance with City Council Resolution 1995-21, the minutes of meetings of the City Council and the Boards, Commissions, and Committees of the City shall be prepared as Action Minutes.

The following information comprises the minutes for the regular meeting of the City Council, a joint meeting of the Banning City Council and Banning Utility Authority and a joint meeting of the Banning City Council and the Banning City Council sitting in its capacity as the Successor Agency Board.

MINUTES
CITY COUNCIL

01/28/2020
REGULAR MEETING

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

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT Douglas Schulze, City Manager
Kevin G. Ennis, City Attorney
Sonja De La Fuente, Deputy City Clerk
Matthew Hamner, Police Chief
Art Vela, Public Works Director/City Engineer
Adam Rush, Community Development Director
Jennifer Christensen, Administrative Services Director
Ralph Wright, Community Services Director
Tom Miller, Electric Utility Director
Suzanne Cook, Deputy Finance Director
Laurie Sampson, Executive Assistant
Leila Lopez, Office Specialist
Paula Baeza, City Attorney's Office

I. **CALL TO ORDER**

A regular meeting of the Banning City Council was called to order by Mayor Andrade on January 28, 2020, at 5:05 p.m. at the Banning City Council Chamber, 99 E. Ramsey Street, Banning, California.

Elder Neil Nottingham from the Church of Jesus Christ of Latter-Day Saints offered the invocation.

Mayor Pro Tem Wallace led the audience in the Pledge of Allegiance.

II. AGENDA APPROVAL

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Happe, to approve the agenda. Roll Call vote was taken as follows:

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

III. PRESENTATION(S)

1. Mayor's Special Recognition

The Mayor and City Council presented Certificates of Recognition to Ernest & June Siva with the Dorothy Ramon Learning Center and Sonja De La Fuente with the City of Banning, thanking them for making Banning a better place to work, live, and play.

2. Safety Presentation

Mike Alvarez, Captain with the California Highway Patrol provided the City Council and public with a presentation regarding driver safety and shared two public service announcement (PSA) videos regarding distracted driving and driving under the influence. These videos were created by students of Mt. San Jacinto College. He thanked Councilmember Welch and John Garside for their recommendations and assistance with the project.

IV. REPORT ON CLOSED SESSION

City Attorney Ennis provided a report on Closed Session as follows:

1. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

City designated representatives: Mayor Andrade and City Attorney Ennis

Unrepresented employee: City Manager

Direction was given to the City's negotiators.

2. CONFERENCE WITH LABOR NEGOTIATORS

Pursuant to Government Code Section 54957.6

City designated representative: Douglas Schulze, City Manager

Unrepresented employee: Tom Miller, Electric Utility Director

Direction was given to the City's negotiator.

3. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: City of Banning, et al. v. Cali Emerald Care, Inc., et al.
Case No. RIC 1904157

A status report was provided, with no reportable action.

4. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: James Arthur Algea II and Cali Emerald Care, Inc. v. City of Banning, Case No. RIC 1903009

A status report was provided, with no reportable action.

5. 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
Golden State Environmental Justice Alliance v. City of Banning;
Case No. RIC 1900654 (Banning Distribution Center Project)

A status report was provided, with no reportable action.

6. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION

Pursuant to Paragraph (1) of subdivision (d) of Section 54956.9
Name of Case: Supporters Alliance for Environmental Responsibility (SAFER) v. City of Banning, et al. (Lawrence Equipment Project), Case No. RIC 1903059

A status report was provided, with no reportable action.

7. CONFERENCE WITH REAL PROPERTY NEGOTIATORS pursuant to Government Code Section 54956.8

Properties and Owners/Negotiating Parties: Real Property located in the vicinity of Ramsey and Hathaway – 1909 E. Ramsey Street, 2933 E. Ramsey Street, 1909 E. Ramsey Street, APN 532-120-011 – Ramirez Family Living Trust; 1933 E. Ramsey Street, APN: 532-120-012 – Liang; 1679 E. Ramsey Street, APN 532-120-019 – Terra Firma Enterprise, LLC; Northeast corner of Ramsey Street and North Hathaway Street, APN 532- 120-020 – Frank J. Burgess and Lorna D. Burgess, Trustees; Southeast corner of Ramsey Street and Hathaway Street, APN 532-140-005– Frank Burgess; 1483 E. Ramsey St, APN 541- 170-019 – Raymond Ngoc Huynh and Lucy Nguyen Huynh, as Trustees of the Raymond and Lucy Huynh Revocable Trust; 1573 E. Ramsey St, APN 541-170-021 – Jen H. Huang

City Negotiators: Douglas Schulze, City Manager and Art Vela, Public Works Director

Under Negotiation: Price and terms for acquisition of street right of way and temporary construction easements

A status report was provided, with no reportable action.

V. PUBLIC COMMENTS, CORRESPONDENCE, AND APPOINTMENTS

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

PUBLIC COMMENT(S)

Ellen Carr with Tender Loving Critters informed all that Animal Action League will be in the City of Banning February 5-6, 2020. The shot clinic is from 10:00 a.m. until 2:00 p.m. She explained a story regarding one of their cats that was adopted being impounded and the County wanting to charge \$184 to get the cat back. She expressed concern regarding this high cost for owners to get their pets back.

Inge Schuler supported Ms. Carr's concern regarding animal control and expressed that it is an issue everywhere. She thanked the City for improving upon the content provided in the minutes. She also asked why the City is now using the City seal, as she sees this as a frivolous expense. She pointed out the importance of economic and fiscal health. Finally, she expressed concern about PERS liability being unfunded.

Representatives from the new Nutrition Club invited all to their new location at 157 N. San Gorgonio Avenue in Banning and provided the City Council with a flyer. (Attachment 1)

Linnea Hagen asked about the Banning Business Center and when it would be demolished.

Val Westholder read Don Peterson's resignation letter. She recommended a book titled Politics for Dummies for anyone interested in serving on the City Council.

Paul Perkins informed the Council and public that there was a flight scheduled to land in Ontario coming from China and recommended it go to a military base instead.

Bill Hobbs, 16-year resident of Banning, advised that he mentioned the pothole issues to the California Highway Patrol. He indicated he has attended City Council Meetings for the last couple of years and they have been very informative. He congratulated Positively Banning and the positivity they have brought to the City.

Jerry Westholder, 20-year resident of Banning, shared six things he believes the Lord hates. He informed the Council that it is their job to get things done. He asked about the Highland Springs/Ramsey intersection improvements and Sun Lakes Boulevard extension. He advised that 25% of the taxes from the Pardee development go to Banning, but the school district for this development is Beaumont Unified.

Frank Burgess asked about items one and seven on the Closed Session agenda. He also asked about a policy to read letters at City Council meetings.

Diego Rose thanked the City employees, as he has noticed a lot of work around town. In regard to public safety and healthy cities, he suggested the installation of a crosswalk between City Hall and the Gas Company/Chamber of Commerce and lowering the speed limit on Ramsey Street near Ramsey Street/Omar. He encouraged forethought rather than hindsight.

Seeing no further comments, the Mayor closed Public Comments.

The City Attorney responded to Mr. Burgess in regard to the closed session items he asked about.

The City Manager responded to Mr. Burgess regarding reading letters at City Council Meetings.

CORRESPONDENCE

None.

APPOINTMENT(S)

None.

VI. CONSENT ITEMS

Mayor Andrade asked if the Council wished to pull an item for discussion. Councilmember Happe pulled items 4 and 5 for discussion.

1. Minutes – January 14, 2020, Special Meeting (Closed Session)
2. Minutes – January 14, 2020, Regular Meeting
3. City Manager Approved Contracts – November & December 2019
6. Approval & Ratification of Accounts Payable & Payroll Warrants - November 2019
7. Approval & Ratification of Accounts Payable & Payroll Warrants - December 2019
8. Capital Improvement Projects Update
9. Police Statistics – November & December 2019
10. Fire Statistics – November & December 2019
11. Ordinance 1554, an Ordinance of the City of Banning, California, Adding a New Chapter 5.88 to, and Deleting Sections 17.108.020(K) and 17.108.070 of Chapter 17.108 of Title 17 from the Banning Municipal Code to Create a Sidewalk Vending Program (**2nd Reading**)
12. Resolution 2020-12, Authorizing the Purchase of a 2020 Kia Sorento in the amount of \$29,333.04

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13. Ordinance 1552, an Ordinance of the City of Banning, California, Approving Zoning Text Amendment 19-97503, Amending Section 17.04.070 ("Definitions") of Chapter 17.04 ("Basic Provisions"), Amending Table 17.08.020 of Section 17.08.020 ("Permitted, Conditional and Prohibited Uses") of Chapter 17.08 ("Residential Districts"), Amending Table 17.12.020 ("Permitted, Conditional and Prohibited Commercial and Industrial Uses") of Section 17.12.020 ("Permitted, Conditional and Prohibited Uses") of Chapter 17.12 ("Commercial and Industrial Districts"), Adding a New Section 17.24.180 ("Commercial Cargo/Storage Containers") to Chapter 17.24 ("General Standards"), and Amending Section 17.108.020 ("Permitted Uses") of Chapter 17.108 ("Temporary Use Permits") of Title 17 ("Zoning") of the Banning Municipal Code to Establish Zoning and Design Standards for Commercial Cargo/Storage Containers, and Making a Determination of Exemption Under CEQA Guidelines Section 15060(C)(3) **(2nd Reading)**
14. Resolution 2020-14, Authorizing the City Manager to Accept and Receive SB2 Grant Funding in the Amount of \$160,000
15. Administrative Policy No. B-34, Discontinuation of Residential Water Service for Urban and Community Water Systems (Senate Bill 998)

Public Comments

None

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace, to approve consent calendar items 1-3 and 6-15. Electronic vote was taken as follows:

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

Action: Approved Consent Items 1-3 and 6-15.

4. Investment Report – November 2019
5. Investment Report – December 2019

Councilmember Happe asked for a report on consent items 4 and 5.

Deputy Finance Director Suzanne Cook and Administrative Services Director Jennifer Christensen provided the staff report for this item. City Manager Doug Schulze provided further explanation and clarification.

Public Comment

Diego Rose asked about \$30 million in Electric and whether it was included in the numbers on these reports. He also suggested language that is easily understood.

Jerry Westholder asked about \$26 million in Electric and whether it was included in the numbers on these reports.

Seeing no further comments, the Mayor closed Public Comment.

Deputy Finance Director Suzanne Cook and Administrative Services Director confirmed Electric funds were included in the reports.

A motion was made by Councilmember Happe, seconded by Councilmember Welch, to approve consent calendar items 4 and 5. Electronic vote was taken as follows:

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

Action: Approved Consent Items 4 and 5.

VII. PUBLIC HEARING(S)

None

VIII. ANNOUNCEMENTS AND REPORTS

CITY COUNCIL COMMITTEE REPORTS

Councilmember Welch reported on the following:

- RTA will have their summer bus fare program for students beginning as soon as school is out through September. Students who show ID can ride the bus for \$0.25 during the summer months.

Mayor Pro Tem Wallace reported on the following:

- Attended the BLU for Black Public Officials at the City of Rialto where they talked about what is happening in the Inland Empire. She announced that she ran to try and help and that if anyone needs anything to please let her know.
- Community Action wants to do more for Banning. The City needs growth to receive more services.

- February 19th is the Sunrise Banning Breakfast.
- February 17th is the President's Day Parade for the Riverside County Date Festival.

Mayor Andrade reported on the following

- The Downtown Ad Hoc Committee met and discussed the Adopt A Roadway Program. She thanked the Diaz Family for the work they have done.
- Attended the first Policy Committee Meeting for the League of California Cities.
- The School District is conducting a search for a new Superintendent. There is a survey for the community, and they are working to get it on the City's website.
- Attended the Pass Area Veteran's Expo with Councilmember Welch and Mayor Pro Tem Wallace. She thanked Dr. Raul Ruiz for his support of veteran's programs.

Councilmember Happe had nothing to report.

The Mayor recessed the regular meeting at 6:49 p.m. and reconvened at 6:58 p.m.

REPORT BY CITY ATTORNEY

None

REPORT BY CITY MANAGER

City Manager Doug Schulze reported on the following:

- The City is adhering to Banning Municipal Code in utilizing the official seal of the City of Banning, but not incurring additional costs by utilizing existing stationery/paper and updating the logo digitally. The seal will be updated on other items during normal replacement. He reminded all that the logo was never adopted by the City Council by formal vote.
- The Banning Business Center is scheduled for demolition and the Receiver has notified the City they will be in on Wednesday, January 29th to pay for the permit.
- Interstate 10 improvement project will begin soon. They will be improving I-10 from Pennsylvania Avenue in Beaumont, east to Highway 111. A press conference is scheduled for February 4, 2020.
- Ramsey and Highland Springs intersection improvements, Sun Lakes Boulevard extension, Wilson Street widening, Ramsey Street widening projects are in the works. Wilson will be taken care of by Pardee as part of their development.
- Pardee Homes will be paying millions of dollars in Development Impact Fees, which will bring significant revenue to the City.

- Currently Atwell residents fall within the Beaumont Unified School District. However, a committee has been formed by the Board of Education and arguments will be heard.
- City Manager is not present during labor negotiations regarding his contract during Closed Session. The City Council and City Attorney are.
- Mr. Rose's comments will be addressed internally.

REPORTS OF OFFICERS

1. Resolutions of Necessity for the Acquisition by Eminent Domain of Certain Real Property Interests Necessary for Public Purposes in Connection with the City's Ramsey/Hathaway Street Improvement Project.

Paula Baeza with the City Attorney's Office provided a presentation regarding this item. (Attachment 2) She also provided the Council and Public with an updated version of Resolution 2020-161. (Attachment 3)

Public Comment

Frank Burgess spoke regarding which of the two Burgess-owned parcels located on the north and south side of Ramsey are affected by the Project. Mr. Burgess stated that a meeting with City Staff held on September 13, 2019, both parcels were discussed. Mr. Burgess stated that the notice he received regarding the hearing did not include the parcel located on the south side of Ramsey. Mr. Burgess also stated that he has invested millions of dollars in the City of Banning and put people to work and he has supported the redevelopment of downtown since back in the 1970's. He stated that back in 2005 he asked for \$60,000 in redevelopment fees for property he donated for electrical conduits for property at Hargrave and Ramsey. He expressed concern that he never received the redevelopment funds. Mr. Burgess also stated that a 2016 resolution placed certain obligations on the City regarding redevelopment funding.

Public Works Director Art Vela advised and showed on the map which parcels would be affected and confirmed that the Project impacts the Burgess parcel located on the north side of Ramsey Street.

City Attorney Ennis advised letters have been sent to Mr. Burgess over the last year and a half and discussions held regarding both parcels located on the north and south side. Based on the discussions and negotiations with Mr. Burgess regarding the property on the south side of Ramsey, the City decided to redesign the project to avoid any impacts to the property on the south side of Ramsey. Mr. Ennis also advised that negotiations may continue even after the resolutions are adopted.

Councilmember Happe stated that he would like to understand Mr. Burgess' objection to the resolution regarding the parcel on the north side of Ramsey.

Mr. Burgess stated that he did not receive a copy of the City's appraisal but was offered up to \$5,000 from the City to obtain his own appraisal for each of his parcels. Mr. Burgess stated that it made no sense for the City to offer him \$10,000 for the appraisals of the properties and to put another \$50,000 to court for eminent domain and not come to an agreement with him. He stated that in his mind, the decision is not a business decision. It is about personalities. Mr. Burgess stated that he can show the City letters regarding the \$60,000 in redevelopment funds.

Councilmember Happe stated that there appears to be confusion regarding the former redevelopment funds used for redevelopment of buildings on the east end of town with this Project. He also asked for clarification regarding the appraisal.

City Attorney Ennis advised that the issue of the source of funding for the Project is not a decision before the City Council at this hearing.

Ms. Baeza clarified that the Government Code does not require that the City provide a copy of the appraisals to property owners and that the offer letters contain detailed information regarding the valuation, including the larger parcel, highest and best use, methodology, and comparable sales data. She also confirmed that the owners are offered up to \$5,000 to obtain their own appraisal as required by the Code of Civil Procedure. The City Manager also explained the reasons for not disclosing appraisals at this stage pursuant to the Public Records Act.

A motion was made by Councilmember Happe, seconded by Councilmember Welch, to adopt Resolution 2019-160, for the Acquisition by Eminent Domain of Certain Real Property Interests Necessary for Public Purposes in Connection with the City's Ramsey/Hathaway Street Improvement Project. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2019-160.

A motion was made by Mayor Pro Tem Wallace, seconded by Councilmember Happe, to adopt Resolution 2019-161, for the Acquisition by Eminent Domain of Certain Real Property Interests Necessary for Public Purposes in Connection with the City's Ramsey/Hathaway Street Improvement Project. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2019-161.

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace, to adopt Resolution 2019-162, for the Acquisition by Eminent Domain of Certain Real Property Interests Necessary for Public Purposes in Connection with the City's Ramsey/Hathaway Street Improvement Project. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2019-162.

A motion was made by Councilmember Welch, seconded by Councilmember Happe, to adopt Resolution 2019-163, for the Acquisition by Eminent Domain of Certain Real Property Interests Necessary for Public Purposes in Connection with the City's Ramsey/Hathaway Street Improvement Project. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2019-163.

2. Resolution 2020-11, Approving the Financial Analysis, Redevelopment and Proposition 218 of Landscape Maintenance District No. 1 ("LMD No. 1") Report.

Public Works Director Art Vela provided a presentation regarding this item. (Attachment 3)⁴

Public Comment

John Hagan indicated that he hopes the Prop. 218 Notice will be clear. He mentioned that Zone 8 only has 35 homes. Also, he is concerned with the work being done and encouraged people to look at the work.

Ellen Carr indicated she noticed one of the increases were \$13.80 per month and that her Social Security increase was only \$14 per month. She asked if people were complaining.

Seeing no further comments, the Mayor closed public comment.

Councilmember Happe asked if the costs include administration. Public Works Director Vela indicated that they do.

Mayor Pro Tem Wallace asked that the notice include language the citizens can understand.

A motion was made by Councilmember Happe, seconded by Councilmember Welch Happe, to adopt Resolution 2020-11, approving the Financial Analysis, Redevelopment and Proposition 218 of LMD No. 1 Report prepared by Webb Municipal Finance, LLC. Electronic vote was taken as follows:

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

Action: Adopted Resolution 2020-11.

3. Resolution 2020-13, Approving the Banning Municipal Airport's Airport Capital Improvement Plan (ACIP) for 2020-2024.

Public Works Director Art Vela provided the staff report for this item as contained in the agenda packet.

The Mayor asked why the City is continuing to improve the airport if it plans on closing. Public Works Director Vela explained that the City must continue to maintain for safety reasons and to remain in good graces of the FAA.

Public Comment

None

A motion was made by Councilmember Welch, seconded by Mayor Pro Tem Wallace, adopt Resolution 2020-13, approving the five-year (2020-2024) Airport Capital Improvement Plan (ACIP) and direct staff to submit the ACIP to the Federal Aviation Administration (FAA). Electronic vote was taken as follows:

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

Action: **Adopted Resolution 2020-13.**

IX. DISCUSSION ITEM

None

CITY COUNCIL – Next Meeting, February 11, 2020, 5:00 p.m.

X. ITEMS FOR FUTURE AGENDAS

XI. ADJOURNMENT

By consensus, the meeting was adjourned at 8:19 p.m.

Minutes Prepared by:

Sonja De La Fuente, Deputy City Clerk

The entire discussion of this meeting may be viewed here:

<https://banninglive.viebit.com/player.php?hash=OFlqAaipHXcq>, and
<https://banninglive.viebit.com/player.php?hash=fqqUVRw0Rr78> and related
documents maybe viewed here:

<https://banningca.gov/ArchiveCenter/ViewFile/Item/2236> or by purchasing a CD or
DVD in the amount of \$7.00 at Banning City Hall located at 99 E. Ramsey Street.

ATTACHMENT 1

Regular City Council Meeting 12/10/2019 5:00 p.m.

NUTRITION CLUB

WE INVITE YOU TO OUR NUTRITION CLUB

137 N. SAN GORGONIO • BANNING, CA

IMPROVE YOUR NUTRITION

INCREASE YOUR ENERGY

CONTROL YOUR WEIGHT

Carlos Lozano
(951) 457-9840



Hours:	Morning	Afternoon
Monday	7:00-12:00	5:00-7:30
Tuesday	7:00-12:00	5:00-7:30
Wednesday	7:00-12:00	Closed
Thursday	7:00-12:00	5:00-7:30
Friday	7:00-12:00	5:00-7:30
Saturday	8:00-10:00	Closed
Sunday	8:00-10:00	Closed



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Regular City Council Meeting 01/28/2020 5:00 p.m.

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Regular City Council Meeting 02/11/2020 5:00 p.m.



ATTACHMENT 2

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Regular City Council Meeting 01/28/2020 5:00 p.m.

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Regular City Council Meeting 02/11/2020 5:00 p.m.



CITY OF BANNING RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT

Consideration of adoption of Resolutions of Necessity authorizing the acquisition of certain property interests by eminent domain in connection with the Ramsey-Hathaway Street Improvement Project (Project)

- Resolution 2019-160
- Resolution 2019-161
- Resolution 2019-162
- Resolution 2019-163

1



DESCRIPTION OF PROJECT

The City seeks to construct the Project to widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project would widen Hathaway Street from Ramsey Street approximately 1,400 feet north, and construct a new 12-inch ductile iron water line along Ramsey Street.

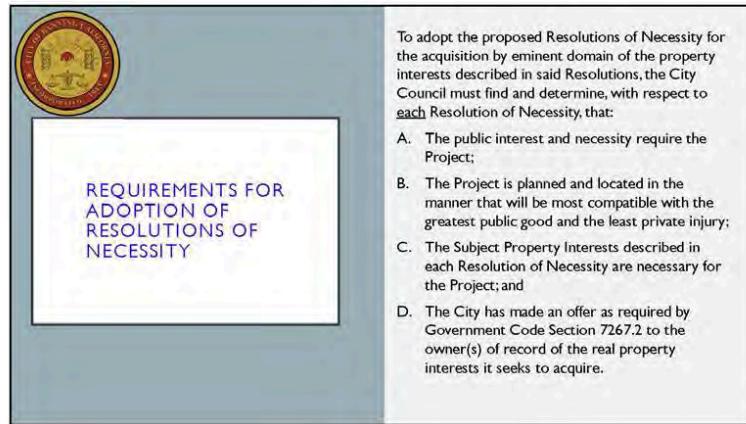
➤ The construction of Project requires the acquisition of portions of ten larger parcels in fee for right of way and the use of temporary construction easements to facilitate the construction of the Project.

➤ The City has acquired the necessary property interests from five of these parcels and will consider a Purchase and Sale Agreement for a sixth parcel at a later date.

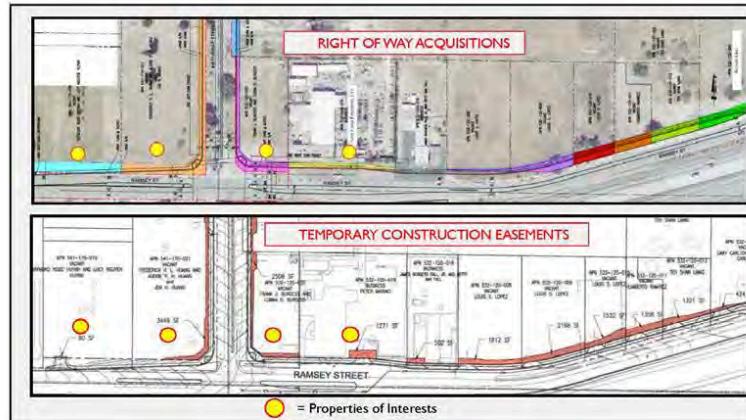
➤ This hearing relates to the City Council's consideration of four Resolutions of Necessity to authorize the acquisition by eminent of the necessary property interests from the remaining four parcels.

2

1



3



4

2



PUBLIC INTEREST AND NECESSITY REQUIRE PROJECT

- The City seeks to construct the Project to improve capacity, circulation, and enhance safety for its residents and businesses in this area of the City. The widening of Ramsey Street and resulting improvements to traffic circulation and efficiency in this area during peak hour traffic may also consequently have a beneficial effect on the access and response times of emergency vehicles vital to the public health and safety. Accordingly, the Project will benefit the residents and businesses of the City and the community as a whole.
- The Project is consistent with the Circulation Element of the General Plan. The Circulation Element of the General Plan designates Ramsey Street between Hathaway Street to Morongo Road as a Major Highway. The widening of Ramsey Street, as proposed by the Project, will help the City to meet the goals of widening Ramsey Street consistent with the requirements for Major Roadways.

5



PUBLIC INTEREST AND NECESSITY REQUIRE PROJECT

- The Project will also help to improve the flow of traffic in this area of the City. The improvements to the intersection of Ramsey and Hathaway will help ensure a smooth flow of traffic and help meet the capacity and level of service requirements for this intersection in accordance with the goals of the General Plan. Without the additional lanes along Ramsey Street, the intersection along Ramsey Street will operate at below the Level of Service D identified for General Plan buildout.
- The Project is an essential part of the overall capital improvements planned for the area and will help meet the goals of a safe and efficient transportation system. It will also meet the goal of Program 2.B, which is to improve the aesthetic and safety of potential street improvements.

6

3



PROJECT IS PLANNED AND LOCATED IN THE MANNER THAT WILL BE MOST COMPATIBLE WITH THE GREATEST PUBLIC GOOD AND THE LEAST PRIVATE INJURY

- The above facts also support the finding that the Project is planned and located in the manner that will most compatible with the greatest public good and the least private injury.
- The Project, as planned and designed, seeks to minimize the impact on the adjacent properties. The City has acquired the necessary property interests from five parcels and will consider an Agreement for the negotiated purchase of the property interests needed from a sixth parcel at a later date.
- The construction of the Project will not result in the displacement of any persons from their residences or businesses.

7



SUBJECT PROPERTY INTERESTS DESCRIBED IN EACH RESOLUTION OF NECESSITY ARE NECESSARY FOR THE PROJECT

Resolution No. 2019-160

- The City needs to acquire an approximate 5,285 square foot portion in fee for public street purposes, drainage, public utilities, and all uses necessary or convenient thereto from the real property located at 1483 E. Ramsey Street, Banning, and identified as Riverside County Tax Assessor's Parcel Number 541-170-019, which is owned by Raymond Ngoc Huynh and Lucy Nguyen Huynh, as Trustees of the Raymond and Lucy Huynh Revocable Trust dated August 8, 2007.
- The City also needs to acquire an approximate 90 square foot temporary construction easement with a term of nine months on the Huynh Trustees Parcel to help facilitate the construction of the Project.

8

4



**SUBJECT PROPERTY
INTERESTS DESCRIBED
IN EACH RESOLUTION
OF NECESSITY ARE
NECESSARY FOR THE
PROJECT**

Resolution No. 2019-161

- The City needs to acquire an approximate 12,146 square foot portion in fee for public street purposes, drainage, public utilities, and all uses necessary or convenient thereto on the vacant real property located at the northwest corner of E. Ramsey Street and N. Hathaway Street, and identified as Riversides County Tax Assessor's Parcel Number 541-170-021, which is owned by Jen H. Huang.
- The City also needs to acquire an approximate 3,448 square foot temporary construction easement on the Huang Parcel with a term of nine months to help facilitate the construction of the Project.

9



**SUBJECT PROPERTY
INTERESTS DESCRIBED
IN EACH RESOLUTION
OF NECESSITY ARE
NECESSARY FOR THE
PROJECT**

Resolution No. 2019-162

The City needs to acquire an approximate 16,182 square foot portion in fee for public street purposes, drainage, public utilities, and all uses necessary or convenient thereto from the real property located at 1679 E. Ramsey Street, Banning, and identified as Riversides County Tax Assessor's Parcel Number 532-120-019 which is owned by Terra Firma Enterprises, LLC, a Wyoming Limited Liability Company. The 16,182 square foot fee area from the Terra Firma Parcel includes the underlying fee interest in an approximate 12,700 square foot area previously dedicated as an easement for state highway purposes prior to 1937, and recorded in the County in 1937 in Book 11, Page 24 of Official Records. It also includes an approximate 3,482 square foot fee area that is not burdened by an existing easement and is needed for the construction of the Project.

The City also needs to acquire an approximate 4,752 square foot temporary construction easement with a term of nine months on the Terra Firma Parcel to help facilitate the construction of the Project.

10

5



**SUBJECT PROPERTY
INTERESTS DESCRIBED IN
EACH RESOLUTION OF
NECESSITY ARE
NECESSARY FOR THE
PROJECT**

Resolution No. 2019-163

- The City needs to acquire an approximate 5,692 square foot portion in fee for public street purposes, drainage, public utilities, and all uses necessary or convenient thereto from the real property located at the northeast corner of E. Ramsey Street and N. Hathaway Street, and identified as Riverside County Tax Assessor's Parcel Number 532-120-020, which is owned by Frank J. Burgess and Lorna D. Burgess, Trustees of the Burgess Family Trust DOT December 5, 1989.
- The City also needs to acquire an approximate 2,575 square foot temporary construction easement with a term of nine months on the Burgess Trustees Parcel to help facilitate the construction of the Project.

11



**CITY EXTENDED OFFER TO RECORD OWNERS OF
SUBJECT PROPERTY INTERESTS IN ACCORDANCE WITH
GOVERNMENT CODE SECTION 7627.2**

- The City obtained independent appraisals, set just compensation, and extended written offers in November 2018 to the owners of record of the Subject Property Interests.

12

6

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RECOMMENDED ACTION:

That the City Council:

1. Separately consider the above four Resolutions, which are Resolutions of Necessity declaring certain real property interests necessary for public purposes and authorizing the acquisition thereof in connection with the City's Ramsey-Hathaway Street Improvement Project.
2. Open and conduct a hearing on the adoption of the proposed Resolutions of Necessity, receive from City Staff the evidence stated and referred to in the Agenda Report, take testimony from any person wishing to be heard on the above, and consider all evidence to determine whether to adopt each proposed Resolution of Necessity, each of which requires the City Council's separate consideration and determination.
3. If the City Council finds, based on the evidence contained and referred to in the Agenda Report, the testimony and written comments submitted to the City Council, that the evidence warrants the necessary findings with respect to each of the proposed Resolutions of Necessity, then City Staff recommends that the City Council, in the exercise of its discretion, adopt proposed Resolution of Necessity 2019-160, Resolution of Necessity 2019-161, Resolution of Necessity 2019-162, and Resolution of Necessity 2019-163 (each of which requires a 4/5ths vote of the entire City Council).

13



RECOMMENDED ACTION (CONT.):

That the City Council:

4. If the City Council adopts the proposed Resolutions of Necessity, authorize the City Attorney's Office to file and prosecute eminent domain proceedings for the acquisition of the Subject Property Interests by eminent domain.
5. Authorize the City Manager to execute all necessary documents.
6. Authorize the City Clerk to certify the adoption of each Resolution of Necessity and to have said Resolutions filed in the book of original resolutions.

14

7

ATTACHMENT 3

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RESOLUTION 2019-161

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA,
DECLARING CERTAIN REAL PROPERTY INTERESTS NECESSARY FOR PUBLIC
PURPOSES AND AUTHORIZING THE ACQUISITION THEREOF IN CONNECTION
WITH THE RAMSEY-HATHAWAY STREET IMPROVEMENT PROJECT (PORTIONS
OF APN 541-170-021)**

WHEREAS, the City of Banning ("City") is a municipal corporation in the County of Riverside, State of California; and

WHEREAS, the City seeks to construct the Ramsey-Hathaway Street Improvement Project ("Project") to improve circulation in this area of the City. The Project, as planned and designed, will widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project will also widen Hathaway Street from Ramsey Street approximately 1,400 feet north. Further, the Project will construct a new 12-inch ductile iron water line along Ramsey Street; 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. The City Council concurred 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 directed City staff to file a Notice of Exemption in connection with this Project in accordance with CEQA. In February 2019, the City duly filed the Notice of Exemption with the State of California Clearing House in accordance with CEQA. Said Notice of Exemption was filed with the County of Riverside on or about April 8, 2019 in accordance with CEQA.

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

SECTION 1. The Banning City Council adopts Resolution 2019-161, A Resolution of the City Council of the City of Banning, California, Declaring Certain Real Property Interests Necessary for Public Purposes and Authorizing the Acquisition Thereof in Connection with the Ramsey-Hathaway Street Improvement Project (Portions of APN 541-170-021).

SECTION 2. The City seeks to acquire by eminent domain the real property interests described below in Section 3 of this Resolution for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto in connection with the Ramsey-Hathaway Street Improvement Project pursuant to the authority conferred on the City of Banning to acquire real property by eminent domain by Section 19 of Article 1 of the California Constitution, Government Code Sections 37350, 37350.5, 37351, 40401, and 40404, California Code of Civil Procedure Section 1230.010

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et seq. (Eminent Domain Law), including but not limited to Sections 1240.010, 1240.020, 1240.110, 1240.120, 1240.510, 1240.610, 1240.650, and by other provisions of law.

SECTION 3. The City seeks to acquire in fee an approximate 12,146 square foot portion ("Subject Fee Property") of the real property located at the northwest corner of E. Ramsey Street and North Hathaway Street, Banning, California, and identified as Riverside County Tax Assessor's Parcel Number 541-170-021 ("Huang Parcel"), in connection with the Project. The Subject Fee Property is described more particularly in Exhibit "A-1" and depicted on Exhibit "B-1", which are attached hereto and incorporated herein by this reference. The City also seeks to acquire an approximate 3,448 square foot temporary construction easement ("TCE") on the Huang Parcel for a period of nine months to facilitate the construction of the Project. The TCE is described more particularly in Exhibit "A-2" and depicted on Exhibit "B-2", which are attached hereto and incorporated herein by this reference.

SECTION 4. The environmental effects of the acquisition of the Subject Fee Property and TCE were studied as an integral part of the environmental review for the Project. In connection with the proposed Resolutions of Necessity, on December 10, 2019, City staff reviewed the environmental documentation prepared in connection with the Project. Pursuant to the criteria of Section 15162 of the CEQA Guidelines and Section 21166 of the Public Resources Code, City staff concluded that no substantial changes have occurred in the Project, no substantial changes have occurred in the circumstances under which the Project is undertaken, and that the City has obtained no new information of substantial importance that would require further environmental analysis. These environmental findings are the appropriate findings with respect to the proposed acquisition of the Subject Fee Property and TCE.

SECTION 5. The Project, as planned and designed, is in the public interest and necessity and is needed to improve traffic circulation and efficiency in this area of the City. The City seeks to construct the Project to widen Ramsey Street approximately 500 feet west and 1,500 feet east of Hathaway Street. The Project would also widen Hathaway Street from Ramsey Street approximately 1,400 feet north, and construct a new 12-inch ductile iron water line along Ramsey Street.

The City seeks to construct the Project to improve capacity, circulation, and enhance safety for its residents and businesses in this area of the City. The widening of Ramsey Street and resulting improvements to traffic circulation and efficiency in this area during peak hour traffic may also consequently have a beneficial effect on the access and response times of emergency vehicles vital to the public health and safety. Accordingly, the Project will benefit the residents and businesses of the City and the community as a whole.

The Project, as planned and designed, is consistent with the Circulation Element of the General Plan. The Circulation Element of the General Plan designates Ramsey Street between Ramsey Street to Morongo Road as a Major Highway. The widening of Ramsey Street, as proposed by the Project, will help the City to meet the goals of widening Ramsey Street consistent with the requirements for Major Roadways. The Project will

also help to improve the flow of traffic in this area of the City. The improvements to the intersection of Ramsey and Hathaway will help ensure a smooth flow of traffic and help meet the capacity and level of service requirements for this intersection in accordance with the goals of the General Plan. Without the additional lanes along Ramsey Street, intersection along Ramsey Street will operate at below the Level of Service D identified for General Plan buildout. The improvements proposed by the Project will help to meet Policy 6 set forth in the Circulation Element of the General Plan, which seeks to "maintain peak hour Level of Service C or better on all local intersections, except those on Ramsey Street and at I-10 Interchanges where Level of Service D or better shall be maintained." The Project is an essential part of the overall capital improvements planned for the area and will help meet the goals of a safe and efficient transportation system. It will also meet the goal of Program 2.B, which is to improve the aesthetic and safety of potential street improvements.

The Project was planned and located to minimize the impact on the adjacent properties. The Project requires the acquisition of a portion of ten larger parcels owned by private property owners. The construction of the Project will not result in the displacement of any persons from their residences or businesses.

SECTION 6. Pursuant to Government Code Section 7260 *et seq.*, the City of Banning obtained a fair market value appraisal of the Huang Parcel, the approximate 12,146 square foot Subject Fee Property the City seeks to acquire in fee for public use, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto, and of the approximate 3,448 square foot TCE with a term of nine months to help facilitate the construction of the Project. The City set just compensation in accordance with the appraised fair market value, and extended a written offer on November 8, 2018 to Jen H. Huang, the owner of record. The fair market value appraisal used a date of value of May 28, 2018.

The City's written offer included an informational pamphlet describing the eminent domain process and the record owner's rights under the Eminent Domain Law. In accordance with Government Code Section 7267.2, the City's written offer contained a written statement of, and summary of the basis for, the amount it established as just compensation. The offer set forth the date of value utilized by the appraiser and explained the appraiser's opinion of the highest and best use of the larger parcel. It explained the applicable zoning and General Plan designation of the larger parcel. The City's offer also summarized the principal transactions relied on by the appraiser to arrive at the appraiser's opinion of value. In addition, the written offer explained the appraiser's valuation analysis, including severance damages. It included the City's comparable market data relied on by the appraiser. Further, the City offered, pursuant to Code of Civil Procedure Section 1263.025, to pay the record owner the reasonable costs, up to \$5,000.00, for an independent appraisal of the approximate 12,146 square foot Subject Fee Property and the approximate 3,448 square foot TCE.

SECTION 7. The City provided written notice to the owner of record pursuant to Code of Civil Procedure section 1245.235 of the City Council's intent to consider the adoption of

a Resolution of Necessity for the acquisition of the Subject Fee Property and TCE by eminent domain.

SECTION 8. The public use for which the City seeks to acquire the Subject Fee Property and TCE, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto, will not unreasonably interfere with or impair the continuance of the public use to which any easement holders may have appropriated the area (Code of Civil Procedure Section 1240.510). Further, the Project may require the relocation of several utilities to the proposed new right-of-way area. The public use for which the City seeks to acquire the Subject Fee Property and TCE, namely public street purposes, drainage, public utilities, and all uses necessary or convenient thereto, is a more necessary public use within the meaning of Code of Civil Procedure Section 1240.650 than the uses to which public utility easement holders have appropriated any utility easements located in the area of the Subject Fee Property and TCE that are affected by the Project. Accordingly, the City is authorized to acquire the Subject Fee Property and TCE pursuant to Code of Civil Procedure Sections 1240.510, 1240.610, and 1240.650.

SECTION 9. Based on the evidence presented at the hearing regarding the Project, including the Agenda Report and documents referenced therein and any oral and written testimony at the hearing, the City Council hereby finds and determines that:

1. The public interest and necessity require the Project;
2. The Project is planned and located in the manner that will be most compatible with the greatest public good and the least private injury;
3. The Subject Fee Property described more particularly in Exhibit "A-1" and depicted on Exhibit "B-1" hereto, and the TCE described more particularly in Exhibit "A-2" and Exhibit "B-2" hereto are necessary for the Project; and
4. The City has made the offer required by Government Code Section 7267.2 to the record owner of the Subject Fee Property and TCE the City seeks to acquire.

SECTION 10. The findings and declarations contained in this Resolution are based upon the record before the City Council, including the Agenda Report and all documents referenced therein, all of which are incorporated herein by this reference, and any testimony and/or comments submitted to the City by the record owner and/or the owner's representative(s). These documents include, but are not limited to the City of Banning General Plan, the offer letter sent to the owner pursuant to Government Code Section 7267.2, the notice to the record owner pursuant to Code of Civil Procedure Section 1245.235 of the City's intent to consider the adoption of the Resolution of Necessity, Street Improvement Plans for the Project, and the Notice of Exemption for the Project.

SECTION 11. The City Council of the City of Banning hereby authorizes and directs the City Attorney's Office to take all steps necessary to commence and prosecute legal proceedings in a court of competent jurisdiction to acquire in fee by eminent domain the approximate 12,146 square foot Subject Fee Property for the Project and the approximate

3,448 square foot TCE for a period of nine months to facilitate the construction of the Project. The Subject Fee Property is described more particularly on Exhibit "A-1" and depicted on Exhibit "B-1" hereto, and the TCE is described more particularly on Exhibit "A-2" and depicted on Exhibit "B-2" hereto.

SECTION 12. The City Council of the City of Banning hereby authorizes the City Manager to execute all necessary documents in connection with the eminent domain proceeding.

SECTION 13. The City Clerk shall certify to the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 28th day of January 2020.

Daniela Andrade, Mayor
City of Banning

ATTEST:

Sonia De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM:

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

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CERTIFICATION:

I, Sonia De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution 2019-161, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of January, 2020, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sonia De La Fuente, Deputy City Clerk
City of Banning, California

**Exhibit "A-1"¶
Legal Description Subject Fee Property¶**

**EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 541-170-021**

THAT PORTION OF BLOCK 172 OF BANNING COLONY LANDS, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 5, PAGE 186 OF MAPS, LYING WITHIN THE LAND DESCRIBED IN A GRANT DEED TO FREDERICK H. L. HUANG AND AUDRIE P. H. HUANG, HUSBAND AND WIFE, AND JEN H. HUANG, A SINGLE MAN, RECORDED FEBRUARY 5, 1988 AS INSTRUMENT NO. 32916 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

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

THENCE, ALONG SAID CENTERLINE OF RAMSEY STREET, NORTH 89°04'51" WEST, 230.03 FEET TO THE SOUTHWESTERLY CORNER OF SAID LAND DESCRIBED IN A GRANT DEED RECORDED FEBRUARY 5, 1988 AS INSTRUMENT NO. 32916 OF OFFICIAL RECORDS;

THENCE, ALONG THE WESTERLY LINE OF SAID LAND DESCRIBED IN A GRANT DEED RECORDED FEBRUARY 5, 1988 AS INSTRUMENT NO. 32916 OF OFFICIAL RECORDS, NORTH 00°03'38" EAST, 55.01 FEET TO A LINE PARALLEL WITH AND 55.00 FEET NORTHERLY OF SAID CENTERLINE OF RAMSEY STREET;

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

ALONG SAID PARALLEL LINE, SOUTH 89°04'51" EAST, 155.67 FEET;

NORTH 46°41'26" EAST, 33.49 FEET TO A LINE PARALLEL WITH AND 50.00 FEET WESTERLY OF SAID CENTERLINE OF HATHAWAY STREET;

ALONG SAID PARALLEL LINE, NORTH 00°03'38" EAST, 319.65 FEET TO THE SOUTHERLY LINE OF THE NORTHERLY 230.00 FEET OF SAID BLOCK 172;

ALONG SAID SOUTHERLY LINE OF THE NORTHERLY 230.00 FEET OF BLOCK 172, SOUTH 89°26'22" EAST, 50.00 FEET TO SAID CENTERLINE OF HATHAWAY STREET;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, SOUTH 00°03'38" WEST, 398.33 FEET TO THE **POINT OF BEGINNING**.

EXCEPTING THEREFROM THOSE PORTIONS INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF HATHAWAY STREET AND THE EXISTING RIGHT-OF-WAY OF RAMSEY STREET.

CONTAINING 12,146 SQUARE FEET, MORE OR LESS.

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Exhibit "A-1"

EXHIBIT "A"
RIGHT-OF-WAY DEDICATION - A.P.N. 541-170-021

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

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



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

James O. Stynes
JAMES O. STYNES, P.L.S. 6986
APRIL 1, 2012
J.W. 2042 473201

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Exhibit "B-1" ¶
Depiction-Subject-Fee-Property ¶

EXHIBIT "B"

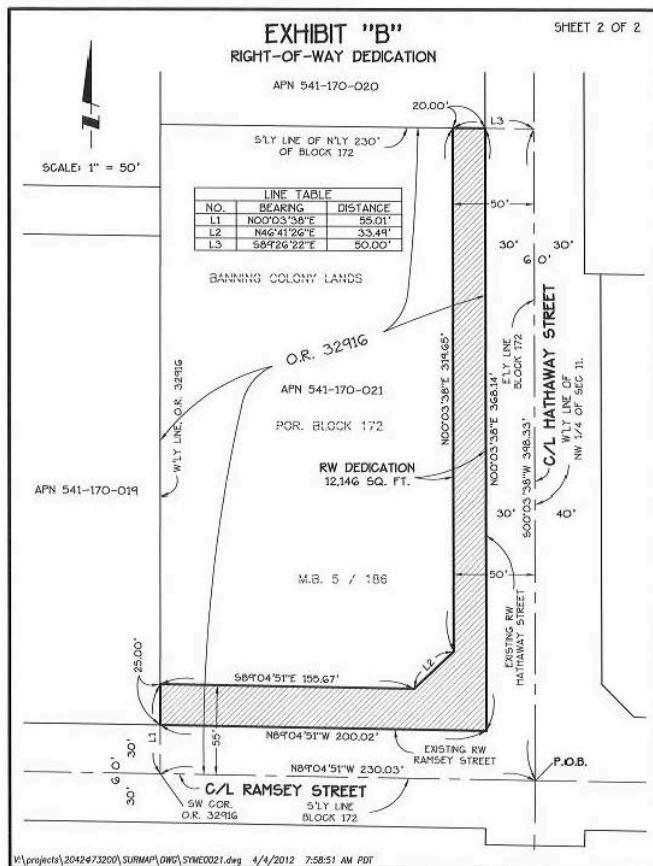
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Exhibit "B-1"¶



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Exhibit "A-2"¶
Legal-Description-Temporary-Construction-Easement¶

THAT PORTION OF BLOCK 172 OF BANNING COLONY LANDS, IN THE CITY OF BANNING, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA, PER MAP FILED IN BOOK 5, PAGE 186 OF MAPS, LYING WITHIN THE LAND DESCRIBED IN A GRANT DEED TO FREDERICK H. L. HUANG AND AUDRIE P. H. HUANG, HUSBAND AND WIFE, AND JEN H. HUANG, A SINGLE MAN, RECORDED FEBRUARY 5, 1998 AS INSTRUMENT NO. 32916 OF OFFICIAL RECORDS, ALL IN THE OFFICE OF THE COUNTY RECORDER OF SAID COUNTY, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTERLINE INTERSECTION OF RAMSEY STREET AND HATHAWAY STREET AS SHOWN ON CASTILLA SUBDIVISION, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 14, PAGE 98 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

THENCE, ALONG SAID CENTERLINE OF HATHAWAY STREET, NORTH 00°03'38" EAST, 658.34 FEET TO THE INTERSECTION WITH THE CENTERLINE OF WILLIAMS STREET AS SHOWN ON MEX-AMERI MAP, IN SAID CITY OF BANNING, PER MAP FILED IN BOOK 20, PAGE 69 OF MAPS, IN SAID OFFICE OF THE COUNTY RECORDER;

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

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

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

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

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

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

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

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

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

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

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Exhibit A-21

ALONG SAID PARALLEL LINE, SOUTH 00°03'38" WEST, 65.60 FEET;
SOUTH 46°41'26" WEST, 29.06 FEET;
SOUTH 86°36'56" WEST, 73.29 FEET;
SOUTH 00°55'09" WEST, 59.50 FEET TO SAID CENTERLINE OF RAMSEY
STREET;
ALONG SAID CENTERLINE OF RAMSEY STREET, SOUTH 89°04'51" EAST,
155.19 FEET TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THOSE PORTIONS INCLUDED WITHIN THE EXISTING RIGHT-OF-WAY OF HATHAWAY STREET AND THE EXISTING RIGHT-OF-WAY OF RAMSEY STREET.

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

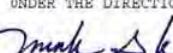
CONTAINING 3,448 SQUARE FEET, MORE OR LESS.

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, P.L.S. 8543
MARCH 7, 2018
J.N. 2073013430

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Exhibit "B-2"||
Depiction of Temporary Construction Easement||

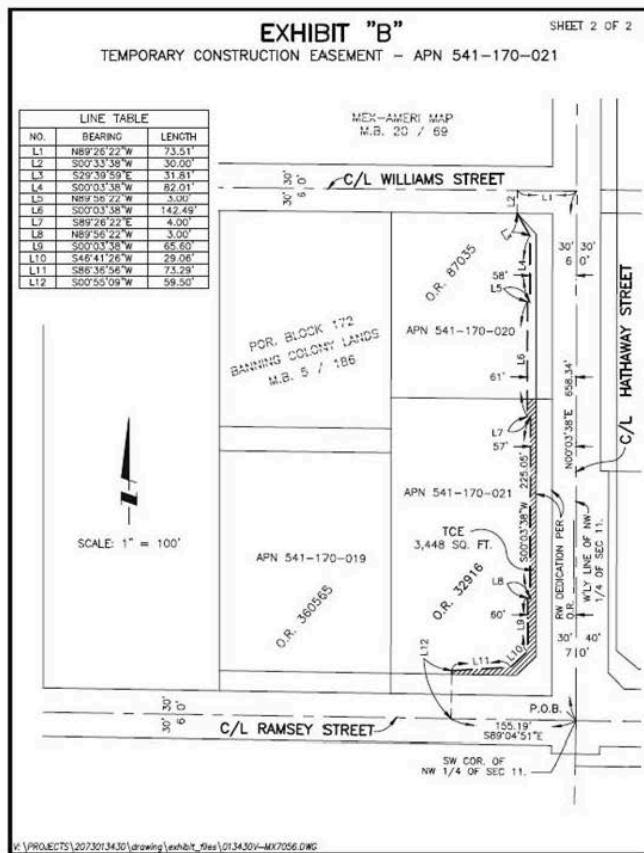


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Exhibit "B-2"



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ATTACHMENT 4

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1

Overview

Landscape Maintenance District No. 1 (LMD No. 1)

- Provides Funding for Admin., Landscaping, Utilities & Maintenance
Established in 1990
- Comprised of 4 Zones
Original Zones Established without an Annual Escalator
- Annexed 8 Additional Tracts (1 Zone) that Escalate
Annually by Consumer Price Index (CPI)

2

1

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Regular City Council Meeting 02/11/2020 5:00 p.m.

Financial Analysis, Redevelopment and Prop 219 Report

- ✓ To make sure that the LMD zones comply with Prop 218 guidelines
- ✓ To develop appropriate assessments sufficient to cover current and increasing costs to administer and maintain the LMD.
- ✓ To look at the impacts to future assessments to cover ongoing maintenance and large capital improvement projects.

3

ZONES

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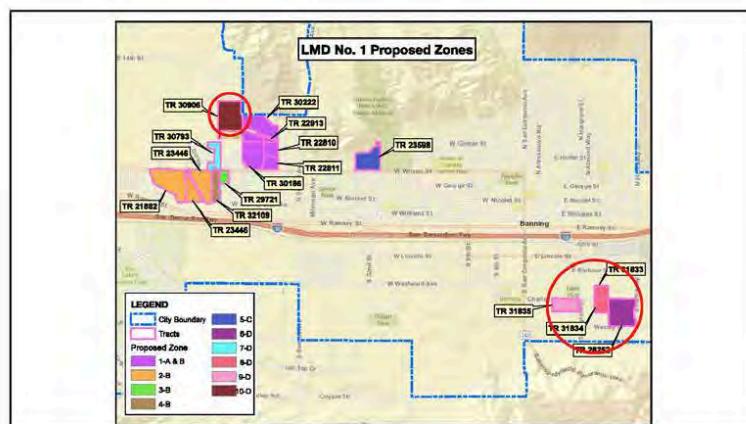
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Current Zone Configuration vs. Special Benefit



- Tracts within Zones are Not Contiguous
- Tracts may be Paying for Benefit Not Received
 - Tracts (within same Zone) paying **higher rates** than their actual costs
 - Tracts (within same Zone) paying **lower rates** than their actual costs

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New Zone Recommendations		
Proposed Zone	Tract No(s.)	# of Assessment Units
1	TR22810, TR22811, TR22913, TR30186, TR30222	319
2	TR21882 & TR23446	272
3	TR29721	21
4	TR32109	38
5	TR23698	97
6	TR28252	70
7	TR30793	43
8	TR31833 & TR31834	35
9	TR31835	33
10	TR30906	87

8

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FUNDING OPTIONS

9

Options

1. Budget & Rates with Maintenance Program Only (\$0.29/SQFT)
2. Budget and Rates with Maintenance Program escalated by 50% (\$0.44/SQFT)
3. Budget & Rates with Maintenance Program & CIP program over 30 Years

10

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Summary of Options								
Proposed Zone	Original Zone	Tract No.	# of Assessment Units	FY 2019-20 Assessment Rate	Prop 21B Option 1 Maintenance Program FY 2020-21 Assessment Rate per Unit	Prop 21B Option 2 Elevated Maintenance Program FY 2020-21 Assessment Rate per Unit	Prop 21B Option 3 Redesign CIF Program FY 2020-21 Assessment Rate per Unit	
1. A	22810	43	\$106.90	\$207.39	\$210.07	\$210.07	\$210.33	
1. A	22811	38	\$106.90	\$207.39	\$210.07	\$210.07	\$210.33	
1. A	22911	9	\$106.90	\$207.39	\$210.07	\$210.07	\$210.33	
1. B	30186	107	\$113.31	\$207.39	\$210.07	\$210.07	\$210.33	
1. B	30223	121	\$114.81	\$207.39	\$210.07	\$210.07	\$210.33	
2. B	21882	194	\$113.31	\$97.85	\$107.89	\$107.89	\$104.80	
2. B	25448	138	\$113.31	\$97.85	\$107.89	\$107.89	\$104.80	
3. B	29721	38	\$113.31	\$174.71	\$185.60	\$187.58	\$186.61	
4. B	32109	21	\$113.31	\$108.89	\$113.77	\$113.77	\$113.61	
5. C	23598	97	\$96.91	\$159.01	\$168.80	\$177.80	\$171.62	
6. D	28252	70	\$210.38	\$171.98	\$180.00	\$187.77	\$180.40	
7. D	30791	43	\$210.38	\$156.09	\$167.77	\$170.12	\$167.00	
8. D	31833	17	\$210.38	\$375.93	\$392.07	\$392.07	\$367.00	
8. D	31824	18	\$210.38	\$375.93	\$392.07	\$392.07	\$367.00	
8. D	31835	35	\$210.38	\$314.54	\$359.77	\$359.77	\$360.40	
10. D	30906	87	\$210.38	\$221.55	\$235.63	\$235.63	\$241.81	
		Total	1035					

11

Property Owner Outreach								
<ul style="list-style-type: none"> ✓ Letters to property owners ✓ 4 property owner meetings held at the Senior Center ✓ Social media ✓ City Website 								

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Next Steps

- ✓ Continue with outreach
- ✓ Report outreach and survey results to City Council
- ✓ Staff will recommend options to include on the Prop 218 ballot (March, 2020)
 - ✓ One option per zone will be voted on by property owners in that zone.
- ✓ Prop 218 ballots mailed out (May, 2020)
- ✓ Public Hearing (June, 2020)
 - ✓ Count ballots
 - ✓ Approve Engineer's Report



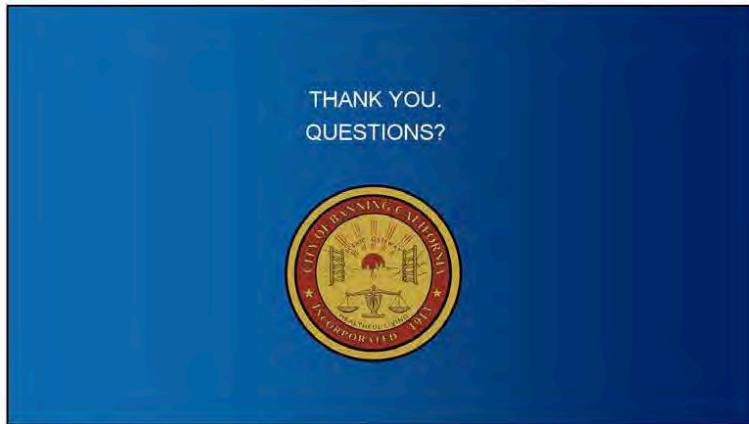
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Resolution 2020-11

- Staff recommends adoption
 - Approval of the *Financial Analysis, Redevelopment and Proposition 218 Report*
 - With the approval, the rezoning will occur whether any of the funding options are approved by the property owners or not.*

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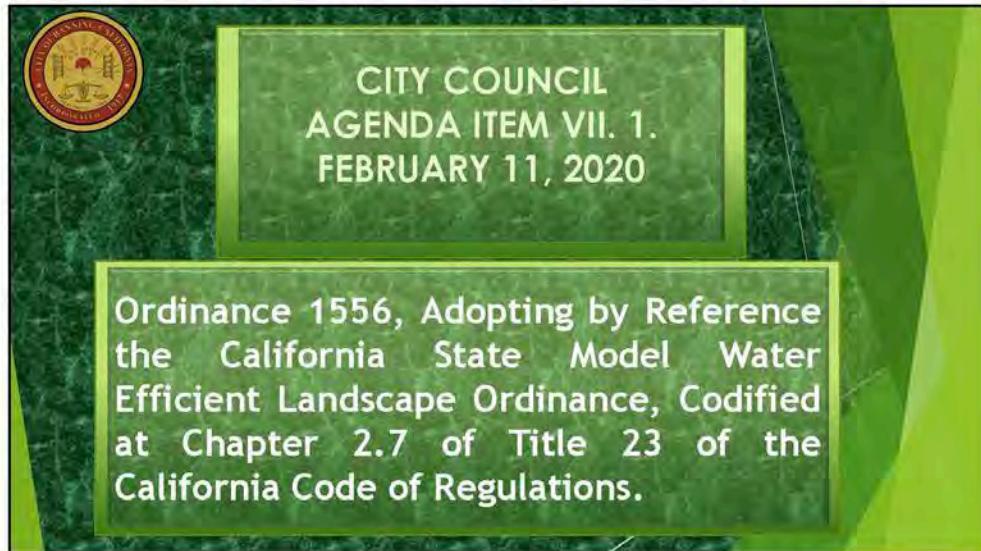
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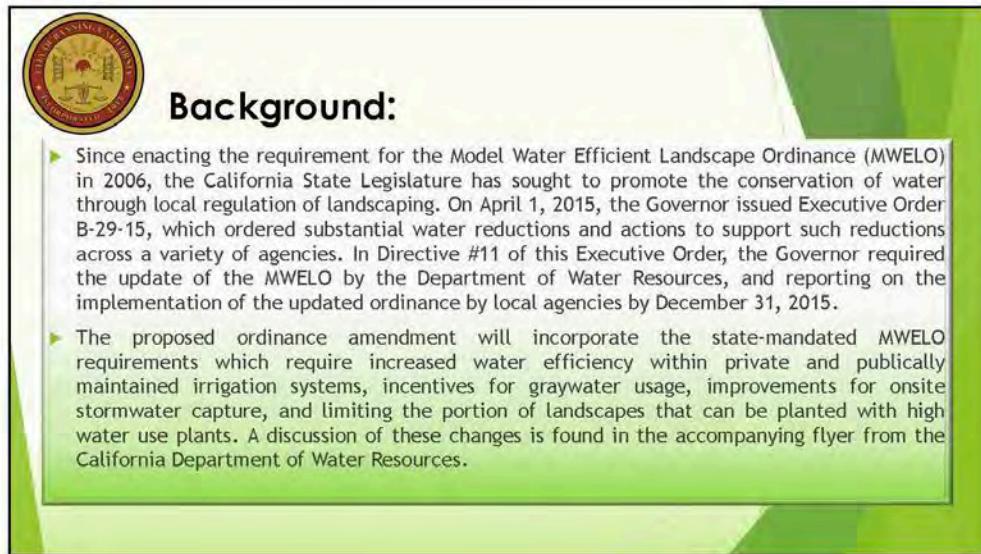
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ATTACHMENT 5



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Proposed Amendment

The proposed ordinance amendment will incorporate the state-mandated MWELO requirements which require increased water efficiency within private and publically maintained irrigation systems, incentives for graywater usage, improvements for onsite stormwater capture, and limiting the portion of landscapes that can be planted with high water use plants. A discussion of these changes is found in the accompanying flyer from the California Department of Water Resources.

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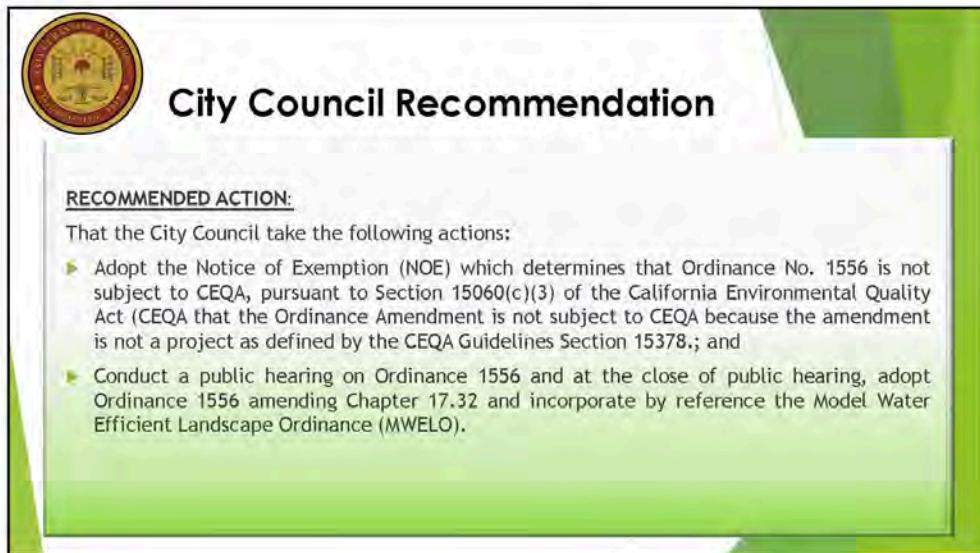


Environmental Determination

City staff has determined that the proposed Zoning Text Amendment exempt from the California Environmental Quality Act ("CEQA") pursuant to the State CEQA Guidelines Section 15307 and 15308, as an action taken to assure the maintenance, restoration, or enhancement of a natural resource or the environment where the regulatory process involves procedures for protection of the environment.

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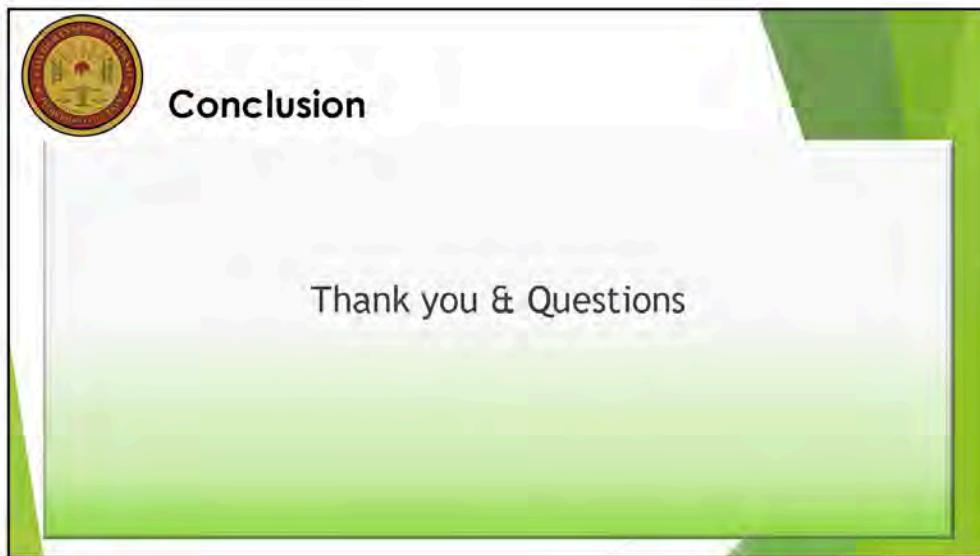
City Council Recommendation

RECOMMENDED ACTION:

That the City Council take the following actions:

- ▶ Adopt the Notice of Exemption (NOE) which determines that Ordinance No. 1556 is not subject to CEQA, pursuant to Section 15060(c)(3) of the California Environmental Quality Act (CEQA) that the Ordinance Amendment is not subject to CEQA because the amendment is not a project as defined by the CEQA Guidelines Section 15378.; and
- ▶ Conduct a public hearing on Ordinance 1556 and at the close of public hearing, adopt Ordinance 1556 amending Chapter 17.32 and incorporate by reference the Model Water Efficient Landscape Ordinance (MWELO).

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Conclusion

Thank you & Questions

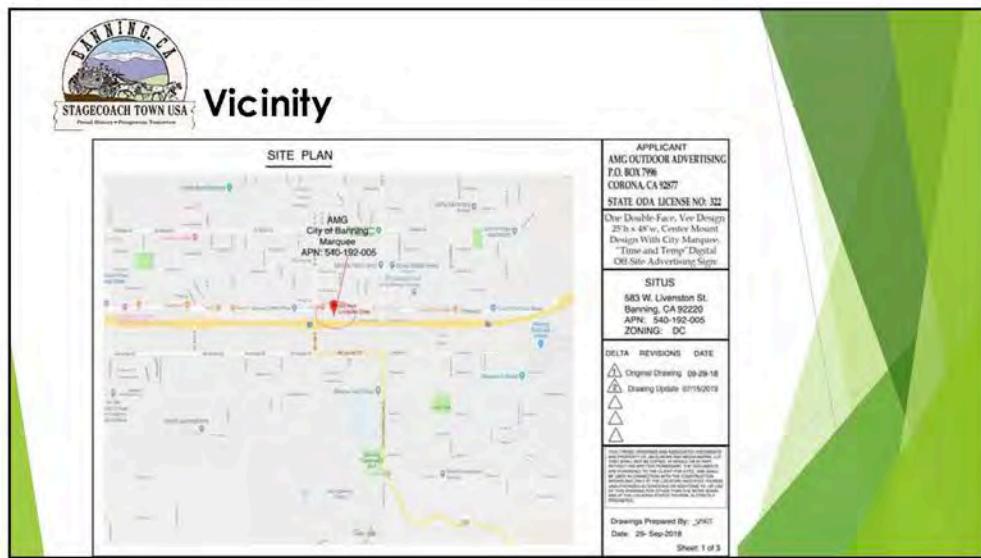
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ATTACHMENT 6



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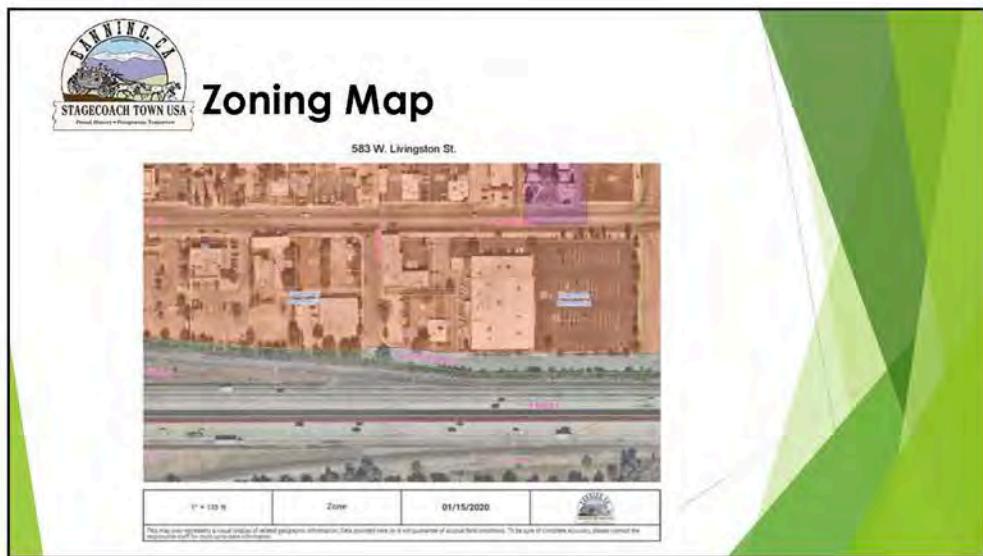


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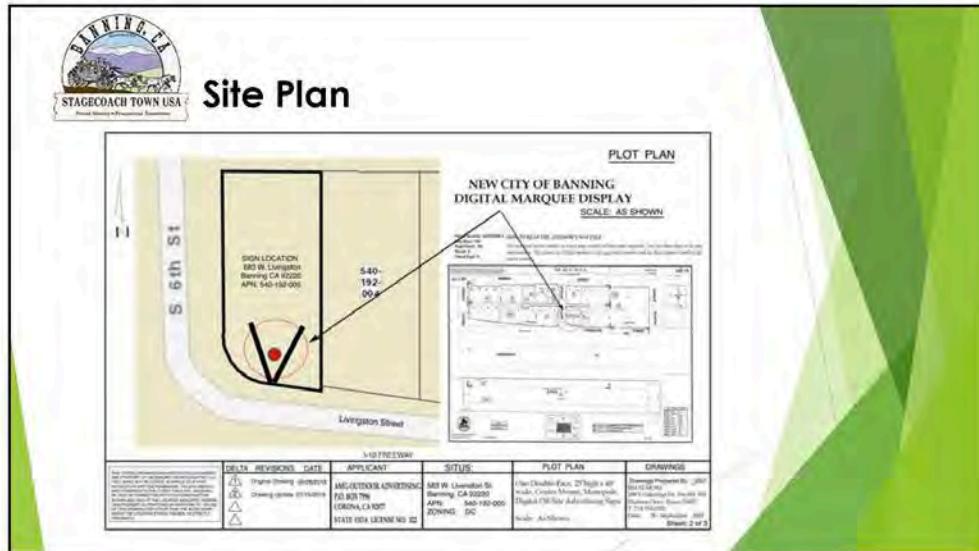


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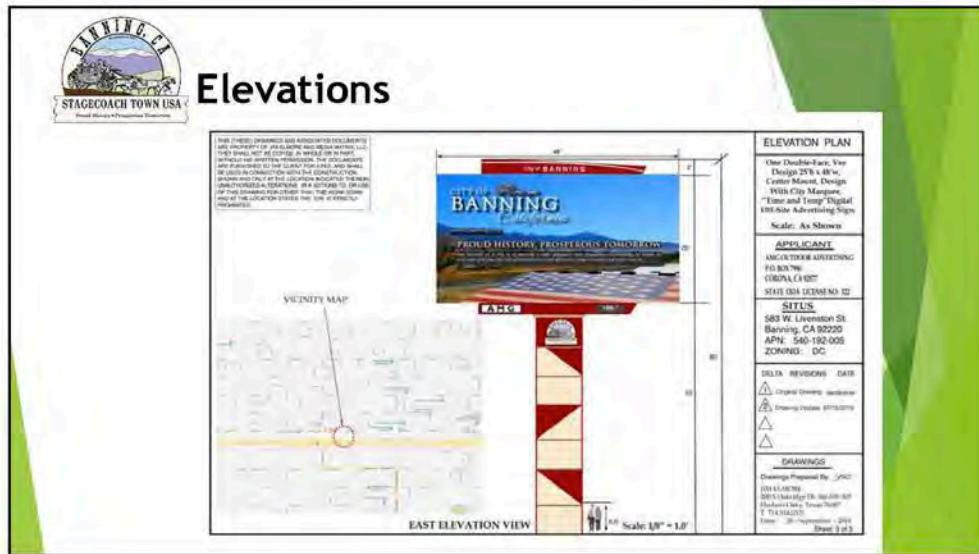


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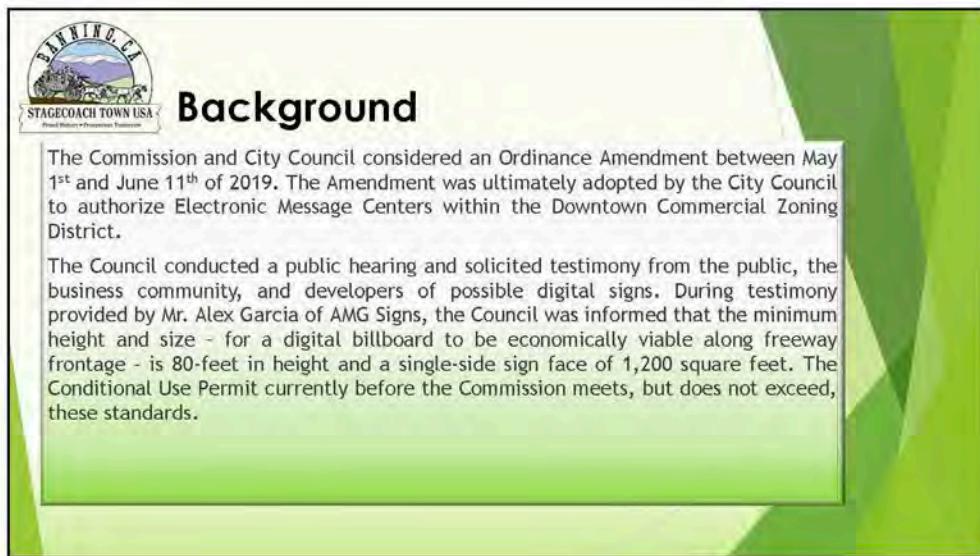
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Background

Subsequent from the effective date of the ordinance amendment, AMG Signs submitted a Conditional Use Permit (CUP) application on October 24, 2019. Upon receiving staff concurrence on the plans, the CUP was scheduled for a Planning Commission public hearing on January 15, 2020 where the Commission solicited public testimony, conducted a public hearing, and ultimate approved Planning Commission Resolution 2020-02 which made the findings for an exemption from CEQA, approved the CUP, and recommended approval of the Development Agreement to the City Council.

9



Request

The applicant, AMG Signs, is requesting approval of a Development Agreement Conditional Use Permit to construct and operate of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

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Description

The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property; which is adjacent to Livingston Street. The property is surrounded the I-10 freeway to the south and commercial properties on the north, east, and west property lines; which rarely in excess of two stories.

	Existing Land Use	Zoning Destination	General Plan Designation
Subject Site	Vacant Lot	Downtown Commercial (DC)	Downtown Commercial (DC)
North	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)
South	Caltrans R/W	N/A	N/A
East	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)
West	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)

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Development Agreement

Modified Language and Agreement Provisions:

- ▶ **REMOVAL OF ELECTRONIC MESSAGE CENTER.**
- ▶ **5.1 Removal by OWNER.** OWNER has the *right to negotiate an extension of the Term as an amendment to this Agreement*. If the extension for the Term is not granted by the CITY, the Electronic Message Center will be removed within 180 days of the CITY's notice to OWNER of its decision not to extend the Agreement. In such instance, OWNER shall remove the above-ground portions of the structure of the Electronic Message Center within 180 days following the expiration of the Term of this Agreement, or upon earlier termination of the Agreement as set forth in this Agreement. A temporary suspension of the digital faces of the Electronic Message Center shall have no effect on this Agreement, which shall remain in full force and effect for the full term unless otherwise terminated in accordance this Agreement.
- ▶ **5.2 CITY's Right to Removal.** Provided OWNER is not in material Breach of the terms of this Agreement past any applicable written notice and cure period, CITY will not have the right to require removal of the Electronic Message Center. Should such a Breach occur, CITY may require OWNER to remove the Electronic Message Center within 180 days of the CITY's notice to OWNER of such Breach.
- ▶ **5.3 Property to Be Returned to Original or Better Condition.** After removal of the Electronic Message Center, either by CITY or by OWNER, OWNER shall return the site to its original condition or better. At a minimum, OWNER shall obtain a demolition permit for the Electronic Message Center and shall remove all parts of the Electronic Message Center, including the above-ground portions of the structure.

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Environmental Determination

- ▶ The project is Categorically Exempt from the California Environmental Quality Act (CEQA) pursuant to Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Development Projects).
- ▶ A Notice of Exemption has been prepared for adoption with the project.

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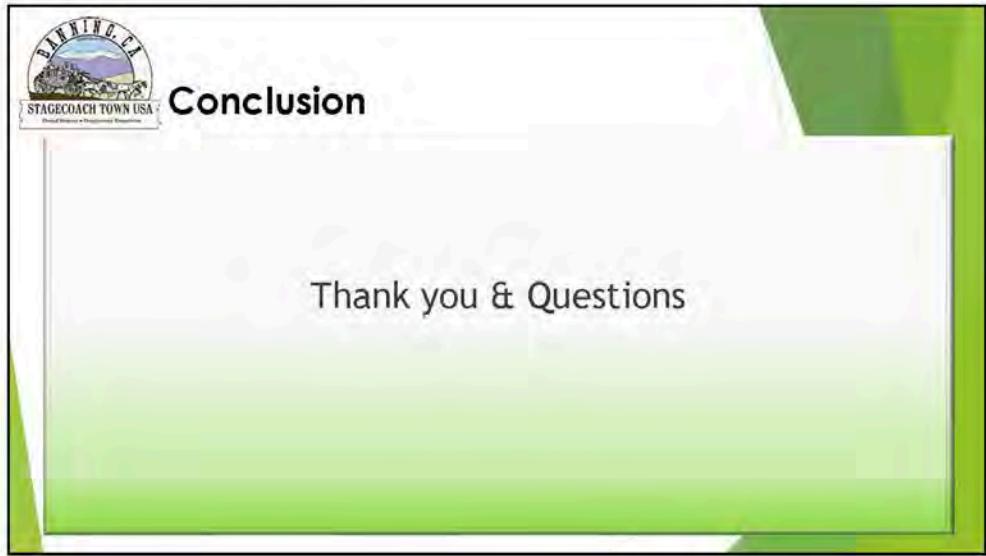
Planning Commission Recommendation

That the City Council:

That the City Council waive further reading, and introduce, as read by title only, Ordinance No. 1558, An Ordinance of the City of Banning, California, Approving a Development Agreement No. 11 between the City of Banning and AMG Outdoor Advertising, Inc., for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005).

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ATTACHMENT 7



CITY OF BANNING
CITY COUNCIL REPORT

REVISED

12:57 pm, Feb 11, 2020

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Adam B. Rush, Community Development Director

MEETING DATE: February 11, 2020

SUBJECT: Resolution 2020-24, recommending approval of the Development Agreement and Conditional Use Permit 19-8009. The Project will authorize the construction and operation of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

RECOMMENDED ACTION:

That the City Council:

That the City Council waive further reading, and introduce, as read by title only, Ordinance No. 1558, An Ordinance of the City of Banning, California, Approving a Development Agreement No. 11 between the City of Banning and AMG Outdoor Advertising, Inc., for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005).

APPLICANT INFORMATION:

Project Location: 583 W. Livingston Street

APN Information: 540-192-005

Project Applicant: AMG Signs Company, Inc.
359 North Sheridan Street
Corona, CA, 92880

Property Owner: Rami Khouri
18957 Van Buren Blvd. Suite C
Riverside, CA, 92508

BACKGROUND:

At the Planning Commission meeting of May 1, 2019, the Planning Commission considered a proposed Zoning Text Amendment ("Amendment") that authorized Electronic Message Centers ("digital sign") within the Downtown Commercial Zoning District. At that meeting, the Planning Commission reviewed, and ultimately recommended approval to the City Council to adopt the Amendment. The zoning

modification would authorize a digital sign subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City-owned property within the Downtown Commercial Zoning District. The Planning Commission version of the Amendment set forth a height limitation of 30-feet and a maximum sign face of 200 square-feet.

At the City Council meeting of June 11, 2019 the Council conducted a public hearing and solicited testimony from the public, the business community, and developers of possible digital signs. During testimony provided by Mr. Alex Garcia of AMG Signs, the Council was informed that the minimum height and size – for a digital billboard to be economically viable along freeway frontage – is 80-feet in height and a single-side sign face of 1,200 square feet. The Conditional Use Permit currently before the Commission meets, but does not exceed, these standards.

Subsequent from the effective date of the ordinance amendment, AMG Signs submitted a Conditional Use Permit (CUP) application on October 24, 2019. Upon receiving staff concurrence on the plans, the CUP was scheduled for a Planning Commission public hearing on January 15, 2020 where the Commission solicited public testimony, conducted a public hearing, and ultimately approved Planning Commission Resolution 2020-02 which made the findings for an exemption from CEQA, approved the CUP, and recommended approval of the Development Agreement to the City Council.

REQUEST:

The applicant, AMG Signs, is requesting approval of a Development Agreement Conditional Use Permit to construct and operate of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

DESCRIPTION:

The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property; which is adjacent to Livingston Street. The property is surrounded by the I-10 freeway to the south and commercial properties on the north, east, and west property lines; which rarely exceed two stories.

Land Use Summary Table

	Existing Land Use	Zoning Designation	General Plan Designation
Subject Site	Vacant Lot	Downtown Commercial (DC)	Downtown Commercial (DC)
North	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)

	Existing Land Use	Zoning Designation	General Plan Designation
South	Caltrans R/W	N/A	N/A
East	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)
West	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)

ANALYSIS:

Zoning

The site is located within the Downtown Commercial (DC) Zoning District; wherein Electronic Message Centers are authorized, subject to the approval of a Conditional Use Permit (CUP) and Development Agreement (DA) by both the Planning Commission and City Council.

These zoning modifications were presented to the City Council, during a regularly scheduled public meeting on June 11, 2019 and were subsequently adopted on June 25, 2019, making them effective on July 24, 2019.

The CUP enclosed herein is the first application to be submitted under the proposed zoning requirements.

Development Agreement

The purpose of a Development Agreement according to Banning Municipal Code Section 17.60.010 is: *These provisions establish procedures and requirements for the consideration of Development Agreements between property owners and the City. It is intended that the provisions of this chapter shall be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.*

Additionally, the Commission may recommend that the City Council approve or Conditionally Approve a Development Agreement application in whole or in part only if all of the following findings are made:

- A. *The proposed use is consistent with the General Plan;*
- B. *The proposed use is consistent with the any applicable Specific Plans;*
- C. *The proposed use is consistent with the Zoning Ordinance*
- D. *The proposed use will promote the welfare and public interest of the City*

Findings for the project are made and can be found in the attached Resolution.

Conditional Use Permit

The purpose of a Conditional Use Permit according to Banning Municipal Code Section 17.52.010 is: *Conditional uses are unique and their effect on the surrounding environment cannot be determined in advance of the use being proposed for a particular location. At the time of application, a review of the location, design, configuration, and potential impact of the proposed use shall be conducted by comparing the use to established development standards and design guidelines.*

This review shall determine whether the proposed use should be permitted by weighing the public need for the benefit to be derived from the use, against any negative or undesirable impacts which it may cause. Limits which the Planning Commission might want to impose, could include restrictions on the hours of business operation; restrictions on the number of clients or patients which the business may service at any one time; increased visual and sound barriers; improved technologies or equipment which lessen any noise, light or odor emitted by the business or other use; as well as any other conditions which could help make the use more compatible with the neighborhood in which it is proposed to be located.

Additionally, the Commission may approve and/or modify a Conditional Use Permit application in whole or in part, with or without conditions, only if all of the following findings are made:

- A. *The proposed use is consistent with the General Plan;*
- B. *The proposed use is conditionally permitted within the subject land use district and complies with all of the applicable provisions of this Ordinance;*
- C. *The proposed use would not impair the integrity and character of the land use district in which it is to be located;*
- D. *The subject site is physically suitable for the type and intensity of land use being proposed;*
- E. *There are adequate provisions for water, sanitation, and public utilities and services to ensure that the proposed use would not be detrimental to public health and safety;*
- F. *There will not be significant harmful effects upon environmental quality; natural resources; or neighborhood characteristics;*
- G. *The proposed location, size, design, and operating characteristics of the proposed use will not be detrimental to the public interests, health, safety, convenience, or welfare of the City.*

Findings for the project are made and can be found in the attached Resolution.

Parking Requirements

Although there is no parking requirement for Electronic Message Centers, a paved access and at least one paved parking space and turn around shall be required for maintenance vehicles.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

In accordance with §15303 (New Construction of Small Facilities) a Class 3 Categorical Exemption and §15332 (Infill Developments) a Class 32 Categorical Exemption of the California Environmental Quality Act (CEQA), the project is being exempt from further environmental review. A Class 3 Categorical Exemption consists of construction and location of limited numbers of new, small facilities or structures and a Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting conditions described below:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

Findings for the project are made and can be found in the attached Resolution.

MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

PUBLIC COMMUNICATION:

Proposed Conditional Use Permit 19-8009 and was advertised in the Record Gazette newspaper on January 31, 2020. Notice was also mailed to all property owners within 300-feet of the project site and posted in two public places. As of the date of this report, staff has not received any written comments for or against the project.

ATTACHMENTS:

1. Site Plans
<https://banningca.gov/DocumentCenter/View/6960/Attachment-1---CUP-19-8009-site-plan>
2. Ordinance 1558
<https://banningca.gov/DocumentCenter/View/6962/Attachment-3-Ordinance-1558>
3. Development Agreement
<https://banningca.gov/DocumentCenter/View/6963/Attachment-4-AMG-Development-Agreement>
4. Conditions of Approval
<https://banningca.gov/DocumentCenter/View/6964/Attachment-5-Draft-Conditions-of-Approval>
5. Notice of Exemption
<https://banningca.gov/DocumentCenter/View/6965/Attachment-6---Notice-of-Exemption>
6. Proof of Publication
<https://banningca.gov/DocumentCenter/View/6966/Attachment-7---Proof-of-Publication>

Approved by:



Douglas Schulze, City Manager

ATTACHMENT 8

REVISED

3:21 pm, Feb 11, 2020

Recorded at request of
CITY OF BANNING

When recorded return to:

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

DEVELOPMENT AGREEMENT NO. 20-1501

A DEVELOPMENT AGREEMENT BETWEEN

CITY OF BANNING

AND

AMG OUTDOOR ADVERTISING, INC.

Conditional Use Permit (CUP) No. 19-8009.
11303-0026\2385931v3.doc

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1.1.4 “Development Approvals”
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DEVELOPMENT AGREEMENT NO. 20-1501

This Development Agreement (hereinafter "Agreement") is entered into on the _____ day of _____ 2020, by and among the CITY OF BANNING (hereinafter "CITY"), a California municipal corporation, and the persons and entities listed below (hereinafter "OWNER"):

AMG OUTDOOR ADVERTISING, INC., a California corporation.

CITY and OWNER may each be referred to herein as "Party" or collectively as "Parties."

RECITALS

WHEREAS, CITY is authorized to enter into binding development agreements with persons having legal or equitable interests in real property for the development of such property, pursuant to Article 11, Section 7 of the California Constitution and Section 65864, et seq. of the California Government Code; and,

WHEREAS, CITY has adopted Procedures and Requirements of the CITY OF BANNING for the Consideration of Development Agreements (hereinafter "Procedures and Requirements"), pursuant to Section 65865 of the Government Code, which procedures are found in Chapter 17.60 of the Banning Municipal Code; and,

WHEREAS, OWNER has requested CITY to enter into a development agreement and proceedings have been taken in accordance with the Procedures and Requirements of CITY; and,

WHEREAS, by entering into this Agreement, CITY shall bind future City Councils of CITY by the obligations specified herein and limit the future exercise of certain governmental and proprietary powers of CITY with respect to the Project and the Property that is the subject of this Agreement; and,

WHEREAS, the terms and conditions of this Agreement have undergone extensive review by CITY and the City Council and have been found to be fair, just and reasonable; and,

WHEREAS, the best interests of the citizens of the CITY and the public health, safety and welfare will be served by entering into this Agreement; and,

WHEREAS, this Agreement and the Project are consistent with the CITY's General Plan and any specific plan applicable thereto: (i) whereas the General Plan Land Use Element Policy requires the provision of sufficient lands to provide a large range of products and services to the City and region while carefully considering compatibility with adjacent lands and the land use designation of the Downtown Commercial allows for electronic message centers subject to the approval of a development agreement and a Conditional Use Permit and the proposed project is adjacent to commercial uses, and (ii) whereas the General Plan Economic Development Policy states that the City shall take an active role in the retention of existing businesses and the recruitment of new businesses and the proposed electronic message center will promote business attraction and retention through commercial advertising along a highly traveled interstate freeway;

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and,

WHEREAS, the Planning Commission has the authority pursuant to the Banning Municipal Code, including but not limited to Chapters 17.52, 17.04, and 17.60, to review and recommend approval of on this Agreement~~and~~; and

WHEREAS, on January 3, 2020, the CITY gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the project, of the holding of a public hearing at which this Development Agreement and Conditional Use Permit 19-8009 would be considered; and

WHEREAS, on January 15, 2020, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Development Agreement and Conditional Use Permit 19-8009 and the Planning Commission considered the environmental determination and the Project; and

WHEREAS, in accordance with the requirements of the California Environmental Quality Act (CEQA), staff analyzed Development Agreement and Conditional Use Permit 19-8009 and determined that, pursuant to CEQA Section 15303 (New Construction of Small Structures) and Section 15332 (Infill Developments) the Project is categorically exempt from review under CEQA and the CITY Planning Commission concurred with this determination; and

WHEREAS, the City Council has the authority pursuant to Chapters 17.60 and 17.04 of the Banning Municipal Code to review and approve this Development Agreement concerning the development of an Electronic Message Center located in the Downtown Commercial (DC) General Plan Designation and Zoning District; and

WHEREAS, on January 31, 2020, the CITY gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300-feet of the project, of the holding of a public hearing before the CITY Council at which this Development Agreement would be considered; and

WHEREAS, on February 11, 2020, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to Development Agreement and the City Council considered the environmental determination; and

WHEREAS, at that hearing the City Council concurred with staff's environmental determination and with the Planning Commissions' recommendation; and

WHEREAS, this Agreement will confer substantial private benefits on OWNER by granting vested rights to develop the Property in accordance with the provisions of this Agreement; and

WHEREAS, development of the Property in accordance with this Agreement will provide substantial benefits to CITY, including promoting economic progress and increased business retention and attraction through enhanced advertising opportunities, providing income

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for the CITY through the generation of a minimal annual fee of \$50,000.00 and providing the CITY with public service messaging capability, and will further important policies and goals of CITY; and,

WHEREAS, this Agreement will eliminate uncertainty in planning and provide for the orderly development of the Property, ensure progressive installation of necessary improvements, provide for public services appropriate to the development of the Project, and generally serve the purposes for which development agreements under Sections 65864, et seq. of the Government Code are intended; and,

WHEREAS, OWNER has incurred and will in the future incur substantial costs in order to assure development of the Property in accordance with this Agreement; and,

WHEREAS, OWNER has incurred and will in the future incur substantial costs in excess of the generally applicable requirements in order to assure vesting of legal rights to develop the Property in accordance with this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and of the mutual covenants hereinafter contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. DEFINITIONS AND EXHIBITS.

1.1 Definitions. The following terms when used in this Agreement shall be defined as follows:

1.1.1 "Agreement" means this Development Agreement.

1.1.2 "CITY" means the CITY OF BANNING, a California municipal corporation and general law city of the State of California.

1.1.3 "Development" means the improvement of the Property for the purposes of constructing an Electronic Message Center, including but not limited to, completing the structures, improvements and facilities comprising the Project and the installation of landscaping. When authorized by a Subsequent Development Approval as provided by this Agreement, "development" includes the maintenance, repair, reconstruction or redevelopment of the Electronic Message Center.

1.1.4 "Development Approvals" means any and all permits, licenses, consents, rights and privileges and other entitlements for use subject to approval or issuance by CITY in connection with development of the Property including, but not limited to:

- (a) Conditional Use Permit No. 19-8009;
- (b) Grading and building permits;
- (c) Electrical and Misc. Permits;
- (d) Other actions approved or issued by CITY previously in connection

with the Property on or before the Effective Date.

1.1.5 "Development Exaction" means any requirement of CITY in connection with or pursuant to any Land Use Regulation or Development Approval for the dedication of land, the construction of improvements or public facilities, or the payment of fees in order to lessen, offset, mitigate or compensate for the impacts of development on the environment or other public interests.

1.1.6 "Development Plan" means the Existing Development Approvals and the Existing Land Use Regulations applicable to development of the Property.

1.1.7 "Effective Date" means the date this Agreement is recorded with the CITY Recorder.

1.1.8 "Electronic Message Center Site Plan" means the Project together with the related real property and facilities described and shown on Exhibit "E".

1.1.9 "Existing Development Approvals" means all Development Approvals approved or issued prior to the Effective Date. Existing Development Approvals includes the Development Approvals incorporated herein as Exhibit "C" and all other Development Approvals which are a matter of public record on the Effective Date.

1.1.10 "Existing Land Use Regulations" means all Land Use Regulations in effect on the Effective Date. Existing Land Use Regulations includes the Land Use Regulations incorporated herein as Exhibit "D" and all other Land Use Regulations which are a matter of public record on the Effective Date.

1.1.11 "Fiscal Year" means the period beginning on July 1 of each year and ending on the next succeeding June 30.

1.1.12 "Land Use Regulations" means all ordinances, resolutions, codes, rules, regulations and official policies of CITY governing the development and use of land, including, without limitation, the permitted use of land, the density or intensity of use, subdivision requirements, the maximum height and size of proposed buildings and structures, the provisions for reservation or dedication of land for public purposes, and the design, improvement and construction standards and specifications applicable to the development of the property. -"Land Use Regulations" does not include any CITY ordinance, resolution, code, rule, regulation or official policy, governing:

- (a) The conduct of businesses, professions, and occupations;
- (b) Taxes and assessments;
- (c) The control and abatement of nuisances;
- (d) The granting of encroachment permits and the conveyance of rights and interests which provide for the use of or the entry upon public property;
- (e) The exercise of the power of eminent domain.

1.1.13 "Local Sales and Use Taxes" means the one percent sales and use taxes

imposed pursuant to and governed by the Bradley-Burns Uniform Local Sales and Use Tax Law, Revenue and Taxation Code Section 7200 et seq.

1.1.14 "Mortgagee" means a mortgagee of a mortgage, a beneficiary under a deed of trust or any other security-device lender, and their successors and assigns.

1.1.15 "OWNER" means the persons and entities listed as OWNER on the first page of this Agreement and their successors in interest to all or any part of the Property.

1.1.16 "Project" means the development of the Property contemplated by the Development Plan of an Electronic Message Center described and defined in Conditional Use Permit 19-8009 as such Plan may be further defined, enhanced or modified pursuant to the provisions of this Agreement.

1.1.17 "Property" means the real property described on Exhibit "A" and shown on Exhibit "B" to this Agreement.

1.1.18 "Reservations of Authority" means the rights and authority excepted from the assurances and rights provided to OWNER under this Agreement and reserved to CITY under Section 3.6.5 of this Agreement.

1.1.19 "Subsequent Development Approvals" means all Development Approvals approved subsequent to the Effective Date in connection with development of the Property.

1.1.20 "Subsequent Land Use Regulations" means any Land Use Regulations adopted and effective after the Effective Date of this Agreement.

1.1.21 "~~Transfer~~" means sale, assignment, lease, sublease or any other transfer of a legal or equitable interest in the Property.

1.1.22 "~~Transferee~~" means a Person that acquires an interest in the Property pursuant to a Transfer and agrees to assume OWNER's obligations under this Agreement with respect to the interest.

1.2 Exhibits. The following documents are attached to, and by this reference made a part of, this Agreement:

Exhibit "A" -- Legal Description of the Property.

Exhibit "B" -- Map Showing Property and Its Location.

Exhibit "C" -- Existing Development Approvals.

Exhibit "D" -- Existing Land Use Regulations.

Exhibit ~~"E"~~ -- Electronic Message Center Site Plan.

2. GENERAL PROVISIONS.

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2.1 Binding Effect of Agreement. From and following the Effective Date, the Property is hereby made subject to this Agreement. Development of the Property is hereby authorized to be undertaken in accordance with the Development Approvals and shall be carried out only in accordance with the terms of this Agreement. The provisions of this Agreement, to the extent permitted by law, constitute covenants that shall run with the Property for the benefit thereof, and the benefits and burdens of this Agreement shall bind and inure to the benefit of the Parties and all successors in interest to the Parties.

2.2 Effective Date. This Agreement shall be effective, and the obligations of the Parties to this Agreement shall be effective on the date that Ordinance No. 1558 approving this Agreement becomes effective (the "Effective Date").

2.3 Ownership of Property. OWNER represents and covenants that it is the owner of a legal or equitable interest in the Property or a portion thereof.

2.4 Term. The term of this Agreement shall commence on the Effective Date and shall continue for a period of 10 years thereafter unless this term is modified or extended pursuant to the provisions of this Agreement. Parties acknowledge that the Planning Commission approved Conditional Use Permit 19-8009 contingent upon the Council's approval of the Agreement, furthermore the term of Conditional Use Permit 19-8009 is the same as the Term of this Agreement. In such case that the Term expires or the Agreement is otherwise terminated, OWNER shall completely remove the above-ground portions of the Electronic Message Center within the times and as provided under Section 5. Notwithstanding the foregoing provision, CITY and OWNER may agree to extend the Term of this Agreement pursuant to a mutual agreement in writing upon terms acceptable to both parties

2.5 Transfer.

2.5.1 Right to Transfer. OWNER shall have the right to transfer the Property in whole or in part (provided that no such partial transfer shall violate the Subdivision Map Act, Government Code Section 66410, et seq., or CITY Municipal Code) to any person, partnership, joint venture, firm or corporation at any time during the term of this Agreement; provided, however, that any such transfer shall include the assignment and assumption of the rights, duties and obligations arising under or from this Agreement and be made in strict compliance with the following conditions precedent:

(a) No transfer of any right or interest under this Agreement shall be made unless made together with the transfer of all or a part of the Property.

(b) Concurrent with any such transfer, or within fifteen (15) business days thereafter, OWNER shall notify CITY, in writing, of such transfer and shall provide CITY with an executed agreement by the transferee, in a form acceptable to CITY, and providing therein that the transferee expressly and unconditionally assumes all the duties and obligations of OWNER under this Agreement.

(c) Any transfer not made in strict compliance with the foregoing conditions shall constitute a default by OWNER under this Agreement. Notwithstanding the failure of any transferee to execute the agreement required by

Paragraph (b) of this Subsection 2.5.1, the burdens of this Agreement shall be binding upon such transferee, but the benefits of this Agreement shall not inure to such transferee until and unless such agreement is executed.

2.5.2 Release of Transferring Owner. Notwithstanding any transfer, a transferring OWNER shall continue to be obligated under this Agreement unless such transferring OWNER is given a release in writing by CITY, which release shall be provided by CITY upon the full satisfaction by such transferring OWNER of the following conditions:

- (a) OWNER no longer has a legal or equitable interest in all or any part of the Property.
- (b) OWNER is not then in default under this Agreement.
- (c) OWNER has provided CITY with the notice and executed agreement required under Paragraph (b) of Subsection 2.5.1 above.
- (d) The transferee provides CITY with security equivalent in all respects to any security previously provided by OWNER to secure performance of its obligations hereunder.

2.5.3 Subsequent Transfer. Any subsequent transfer after an initial transfer shall be made only in accordance with and subject to the terms and conditions of this Section.

2.5.4 Rights and Duties of Successors and Assigns. Any, each and all successors and assigns of OWNER shall have all of the same rights, benefits, duties, obligations and liabilities of OWNER under this Agreement.

2.6 Amendment of Agreement. This Agreement may be amended in whole or in part only by written consent of all Parties in the manner provided for in Government Code Section 65868 and Chapter 17.60 of the CITY Municipal Code, and pursuant to the amendment procedure set forth below. This provision shall not limit any remedy of CITY or OWNER as provided by this Agreement.

2.6.1 Initiation of Amendment. Any Party may propose an amendment to this Agreement. The Parties agree that it may be beneficial to enter into additional agreements or modifications of this Agreement in connection with the implementation of the separate components of the Development.

2.6.2 Consent. Except as otherwise provided in this Agreement, any amendment to this Agreement shall require both Parties' written consent. No amendment to all or any provision of this Agreement shall be effective unless set forth in writing and signed by each Parties' duly authorized representatives.

2.6.3 Procedure. Refinements and further development of the Development may demonstrate that changes are appropriate with respect to the details and performance of the Parties under this Agreement. The Parties desire to retain a certain degree of flexibility with respect to those items covered in general terms under this Agreement. If and when the Parties mutually find that changes, adjustments, or clarifications are appropriate to further the intended purposes of this Agreement, they may, unless otherwise required by law, effectuate the changes, adjustments, or clarifications without amendment to this Agreement through one or more operating memoranda mutually approved by the Parties. The operating memoranda may be approved on behalf of CITY by the CITY official or body specified in Section 2.6.4, and by any corporate officer or other person designated for the purpose in a writing signed by a corporate officer on behalf of OWNER. After execution of an operating memoranda it shall be attached to and incorporated into this Agreement as addenda. Unless otherwise required by law or by this Agreement, no changes, adjustments, or clarifications shall require prior notice or hearing, public or otherwise.

2.6.4 Tiered Amendment Review Procedure. The following CITY official or body may review and provide written consent necessary to amend the Agreement as follows.

(a) The Planning Department Director's consent may be provided for small amendments or minor amendments as defined in Section 3.4.

(b) Large and major amendments- shall be reviewed by the Planning Commission and approved by the City Council.

2.7 Termination and Cancellation. This Agreement may be cancelled, in whole or in part, by mutual consent of the Parties or their successors in interest in accordance with Government Code Sections 65867 and 65868. This Agreement shall be deemed terminated and of no further effect upon the occurrence of any of the following events:

(a) Expiration of the stated term of this Agreement as set forth in Section 2.4.

(b) Entry of a final judgment by a court of competent jurisdiction setting

aside, voiding or annulling the adoption of the ordinance approving this Agreement, provided the time for filing any appeal has expired.

(c) The adoption of a referendum measure overriding or repealing the ordinance approving this Agreement.

(d) Owner's election to terminate this Agreement. If OWNER elects not to develop Property consistent with the approved Conditional Use Permit 19-8009 in substantial conformance with the CITY approved site plan, OWNER shall provide notice of said election to the CITY and identify the portion of the Property that is subject to the notice of termination. Following receipt of OWNER's notice of election to terminate this Agreement in whole or in part, OWNER and CITY shall execute an appropriate instrument in recordable form evidencing such termination after following the procedures required by Government Code Sections 65867 and 65868

Upon the termination of this Agreement, no Party shall have any further right or obligation hereunder except with respect to any obligation to have been performed prior to such termination or ~~or with respect to removal obligations in Section 5 or~~ with respect to any default in the performance of the provisions of this Agreement which has occurred prior to such termination or with respect to any obligations which are specifically set forth as surviving this Agreement.

2.8 Notices.

(a) As used in this Agreement, "notice" includes, but is not limited to, the communication of notice, request, demand, approval, statement, report, acceptance, consent, waiver, appointment or other communication required or permitted hereunder.

(b) All notices shall be in writing and shall be considered given either: (i) when delivered in person to the recipient named below; or (ii) on the date of delivery shown on the return receipt, after deposit in the United States mail in a sealed envelope as either registered or certified mail with return receipt requested, and postage and postal charges prepaid, and addressed to the recipient named below.

All notices shall be addressed as follows:

If to CITY:

Deputy City Clerk of the City of Banning
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3102

with copies to:

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City Manager of the City of Banning
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3104

and

Community Development Director
99 East Ramsey Street
Banning, CA, 92220
(951) 922-3131

and

Richards, Watson & Gershon
350 South Grand Avenue, Suite 3700
Los Angeles, CA 90071
Attn: Kevin G. Ennis

If to OWNER:

Alex Garcia
AMG OUTDOOR
P.O. Box 77996
Corona, CA 92882
and

Paul Fisher
117 Pearl
Laguna Niguel, CA 92677

(c) Either Party may, by notice given at any time, require subsequent notices to be given to another person or entity, whether a Party or an officer or representative of a Party, or to a different address, or both. Notices given before actual receipt of notice of change shall not be invalidated by any such change.

3. DEVELOPMENT OF THE PROPERTY.

3.1 Rights to Develop. Subject to the terms of this Agreement including the Reservations of Authority, OWNER shall have a vested right to develop the Property in accordance with, and to the extent of, the Development Plan. The Project shall remain subject to all Subsequent Development Approvals required to complete the Project as contemplated by the Development Plan. Except as otherwise provided in this Agreement, the permitted uses of the Property, the density and intensity of use, the maximum height and size of proposed buildings and structures, and provisions for reservation and dedication of land for public purposes shall be those

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set forth in Conditional Use Permit 19-8009, which provides for the development of one double-face marquee electronic message center of maximum height of eighty (80') feet and maximum display face of 1,200 square feet (25' X 48') on real property located at 583 W. Livingston St. (APN: 540-192-005) zoned Downtown Commercial with the same General Plan Designation

3.2 Effect of Agreement on Land Use Regulations. Except as otherwise provided under the terms of this Agreement including the Reservations of Authority, the rules, regulations and official policies governing permitted uses of the Property, the density and intensity of use of the Property, the maximum height and size of proposed buildings and structures, and the design, improvement and construction standards and specifications applicable to development of the Property shall be the Existing Land Use Regulations. In connection with any Subsequent Development Approval, CITY shall exercise its discretion in accordance with the Development Plan, and as provided by this Agreement including, but not limited to, the Reservations of Authority. CITY shall accept for processing, review and action all applications for Subsequent Development Approvals, and such applications shall be processed in the normal manner for processing such matters.

3.3 Timing of Development. The City's Municipal Code sets forth a maximum two (2) years, with the ability for a one (1) year extension, to substantially construct the Electronic Message Center approved under Conditional Use Permit 19-8009.

3.4 Changes and Amendments. The Parties acknowledge that refinement and further development of the Project will require Subsequent Development Approvals and may demonstrate that changes are appropriate and mutually desirable in the Existing Development Approvals. In the event OWNER finds that a change in the Existing Development Approvals is necessary or appropriate, OWNER shall apply for a Subsequent Development Approval to effectuate such change and CITY shall process and act on such application in accordance with the Existing Land Use Regulations, except as otherwise provided by this Agreement including the Reservations of Authority as provided in Section 3.5 of this Agreement. If approved, any such change in the Existing Development Approvals shall be incorporated herein as an addendum to Exhibit "C", and may be further changed from time to time as provided in this Section. Unless otherwise required by law, as determined in CITY's reasonable discretion, a change to the Existing Development Approvals shall be deemed "minor" and not require an amendment to this Agreement provided such change does not:

- (a) Alter the permitted uses of the Property as a whole; or,
- (b) Increase the square-footage of the sign face above 1,200 s.f.; or,
- (c) Increase the maximum height and size of permitted structures in excess of five-percent (5%) of the originally approved criteria; or,
- (d) Delete of any development standards set forth in Conditional Use Permit 19-8009.

3.5 Reservations of Authority.

3.5.1 Limitations, Reservations and Exceptions. Notwithstanding any other provision of this Agreement, the following Subsequent Land Use Regulations shall apply to the development of the Property.

(a) Reasonable processing fees and charges of every kind and nature imposed by CITY to cover the estimated actual costs to CITY of processing applications for Development Approvals or for monitoring compliance with any Development Approvals granted or issued.

(b) Procedural regulations relating to hearing bodies, petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals and any other matter of procedure.

(c) Regulations governing construction standards and specifications including, without limitation, the Building Code, Plumbing Code, Mechanical Code, Electrical Code, Fire Code, Grading Code, and other uniform Codes adopted by the CITY and applicable in the CITY.

(d) Regulations imposing Development Exactions; provided, however, that no such subsequently adopted Development Exaction shall be applicable to development of the Property unless such Development Exaction is applied uniformly to development, either throughout the CITY or within a defined area of benefit which includes the Property. This Agreement shall not restrict the City's ability to adopt any future increase in development or impact fees.

(e) Regulations which may be in conflict with the Development Plan but which are reasonably necessary to protect the public health and safety. To the extent possible, any such regulations shall be applied and construed so as to provide OWNER with the rights and assurances provided under this Agreement.

(f) Regulations which are not in conflict with the Development Plan. Any regulation, whether adopted by initiative or otherwise, limiting the rate or timing of development of the Property shall be deemed to conflict with the Development Plan and shall therefore not be applicable to the development of the Property.

(g) Regulations which are in conflict with the Development Plan provided OWNER has given written consent to the application of such regulations to development of the Property.

3.5.2 Subsequent Development Approvals. This Agreement shall not prevent CITY, in acting on Subsequent Development Approvals, from applying Subsequent Land Use Regulations which do not conflict with the Development Plan, nor shall this Agreement prevent CITY from denying or conditionally approving any Subsequent Development Approval on the basis of the Existing Land Use Regulations or any Subsequent Land Use Regulation not in conflict with the Development Plan.

3.5.3 Modification or Suspension by State or Federal Law. In the event that State

or Federal laws or regulations, enacted after the Effective Date of this Agreement, prevent or preclude compliance with one or more of the provisions of this Agreement, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such State or Federal laws or regulations, provided, however, that this Agreement shall remain in full force and effect to the extent it is not inconsistent with such laws or regulations and to the extent such laws or regulations do not render such remaining provisions impractical to enforce.

3.5.4 Reconsideration for Compelling Public Necessity. Notwithstanding any other provision herein, this Agreement shall not restrict the ability of the City to reconsider or amend the Agreement upon the subsequent discovery of health and safety issues constituting a "compelling public necessity" (i.e., a new environmental health hazard is discovered), which would necessitate a reconsideration or amendment of the Agreement.

3.5.5 Intent. The Parties acknowledge and agree that CITY is restricted in its authority to limit its police power by contract and that the foregoing limitations, reservations and exceptions are intended to reserve to CITY all of its police power which cannot be so limited. This Agreement shall be construed, contrary to its stated terms if necessary, to reserve to CITY all such power and authority which cannot be restricted by contract.

3.5.6 City's Initial Approval. Notwithstanding any other provision in this Agreement, the initial approval of this Agreement does not bind CITY's authority to approve, conditionally approve, or deny future extensions of this Agreement or the corresponding Conditional Use Permit 19-8009.

3.6 Public Works. If OWNER is required by this Agreement to construct any public works facilities which will be dedicated to CITY or any other public agency upon completion, and if required by applicable laws to do so, OWNER shall perform such work in the same manner and subject to the same requirements as would be applicable to CITY or such other public agency if it would have undertaken such construction, including, but not limited to compliance with the California Labor Code with respect to payment of prevailing wages.

3.7 Provision of Real Property Interests by CITY. In any instance where OWNER is required to construct any public improvement on land not owned by OWNER, OWNER shall at its sole cost and expense provide or cause to be provided, the real property interests necessary for the construction of such public improvements. In the event OWNER is unable, after exercising reasonable efforts to acquire the real property interests necessary for the construction of such public improvements, and if so instructed by OWNER and upon OWNER'S provision of adequate security for costs CITY may reasonably incur, CITY shall negotiate the purchase of the necessary real property interests to allow OWNER to construct the public improvements as required by this Agreement and, if necessary, in accordance with the procedures established by law, use its power of eminent domain to acquire such required real property interests. OWNER shall pay all reasonable costs associated with such acquisition or condemnation proceedings. This Section 3.7 is not intended by the Parties to impose upon the OWNER an enforceable duty to acquire land or construct any public improvements on land not owned by OWNER, except to the extent that the OWNER elects to proceed with the development of the Project, and then only in accordance with

valid conditions imposed by the CITY upon the development of the Project under the Subdivision Map Act, Government Code Section 66410 et seq., or other legal authority.

3.8 Regulation by Other Public Agencies. It is acknowledged by the Parties that other public agencies not within the control of CITY possess authority to regulate aspects of the development of the Property separately from or jointly with CITY and this Agreement does not limit the authority of such other public agencies.

4. PUBLIC BENEFITS.

4.1 Intent. The Parties acknowledge and agree that development of the Property will detrimentally affect public interests which will not be fully addressed by the Development Plan and further acknowledge and agree that this Agreement confers substantial private benefits on OWNER which should be balanced by commensurate public benefits. Accordingly, the Parties intend to provide consideration to the public to balance the private benefits conferred on OWNER by providing more fully for the satisfaction of public interests.

4.2 Local Sales and Use Taxes. Electronic Message Center Site Plan operator have substantial control with respect to one-time sales and use taxes payable in connection with the construction of an Electronic Message Center Site Plan and a corresponding responsibility to assure that such sales and use taxes are reported and remitted to the California State Board of Equalization (BOE) as provided by law. Each franchise, real property interest agreement or development agreement required by this policy shall include all necessary provisions and construction contract requirements, consistent with law, to ensure allocation directly to the CITY, to the maximum extent possible under the law, of the sales and use taxes payable in connection with the construction of the Electronic Message Center Site Plan including, without limitation, provisions and requirements consistent with the following, consistent with the law:

(a) The OWNER of an Electronic Message Center who meets the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the Electronic Message Center Site Plan jobsite and report and remit all such taxable sales or uses pertaining to construction of the Electronic Message Center Billboard Site Plan using the permit or sub-permit for that jobsite to the maximum extent possible under the law.

(b) OWNER shall contractually require that all contractors and subcontractors whose contract with respect to the Electronic Message Center Site Plan exceeds \$100,000.00 ("Major Subcontractors") who meet the criteria set forth in applicable BOE regulations and policies must obtain a BOE permit, or sub-permit, for the Electronic Message Center Site Plan jobsite and report and remit all such taxable sales or uses pertaining to construction of the Electronic Message Center Site Plan using the permit or sub-permit for that jobsite to the maximum extent possible under the law.

(c) Prior to the commencement of any grading or construction of the

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Electronic Message Center, OWNER shall deliver to the CITY a list that includes, as applicable and without limitation, each contractor's and Major Subcontractor's business name, value of contract, scope of work on the Project, procurement list for the Project, BOE account numbers and permits or sub-permits specific to the Electronic Message Center Site Plan jobsite, contact information for the individuals most knowledgeable about the Electronic Message Center Site Plan and the sales and use taxes for such Electronic Message Center billboard site Site plan Plan, and, in addition, shall attach copies of each permit or sub-permit issued by the BOE specific to the Electronic Message Center Site Plan jobsite. Said list shall include all the above information for the OWNER, its contractors, and all Major Subcontractors. The OWNER shall provide updates to the CITY of the information required under this section within thirty (30) days of any changes to the same, including the addition of any contractor or Major Subcontractor.

(d) OWNER shall certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and the City of Banning, and will follow all applicable state statutes and regulations with respect to such reporting and remitting.

(e) OWNER shall contractually require that each contractor or Major Subcontractor certify in writing that they understand the procedures for reporting and remitting sales and use taxes in the State of California and City of Banning, and will follow all applicable state statutes and regulations with respect to such reporting and remitting.

(f) OWNER shall deliver to the CITY or its designee copies of all sales and use tax returns pertaining to the Electronic Message Center Site Plan filed by the OWNER, its contractors and Major Subcontractors. Such returns shall be delivered to the CITY or its designee within thirty (30) days of filing with the BOE. Such returns may be redacted to protect, among other things, proprietary information and may be supplemented by additional evidence that payments made complied with this policy.

(g) The CITY may, in its sole discretion, select and retain the services of a private sales tax consultant with expertise in California sales and use taxes to assist in implementing and enforcing compliance with the provisions of the agreement and that each Electronic Message Center Billboard Site Plan owner shall be responsible for all reasonable costs incurred for the services of any such private sales tax consultant and shall reimburse the CITY within thirty (30) days of written notice of the amount of such costs.

(h)

~~Owner shall obtain a CITY Business License and pay all applicable fees pursuant to Title 5 of the Banning Municipal Code and the Business License Fee Schedule adopted by the CITY, as amended.~~

~~(4)(g) OWNER shall be subject to a fee of at least \$50,000.00 per year, payable no later than May 1st of first full year, or fraction thereof, following the issuance of a Certificate of Occupancy by the CITY to be used at the sole discretion of the CITY.~~

4.3 Discount to Local Businesses. Local businesses with an annual gross income not in excess of one million dollars (\$1,000,000) will be provided with a 50% discount off of the normal (full rack) Electronic Message Center Billboard display rate(s).

4.4 Display of CITY Name, Logo, or Messaging. The Electronic Message Center described herein will bear the name or logo of the CITY of Banning and will, on a space available basis, display CITY sponsored public service announcements and advertising for local municipal programs and events at no charge to the CITY. The CITY shall be entitled to place public service announcements on the Electronic Message Center display, provided, however, that such public service announcements shall be limited to civic public service messages, including those sponsored by private organizations as approved by the CITY (hereinafter "Public Service Messages"). The term Public Service Message shall expressly exclude any message advertising any business, company or event where such message would have a direct and tangible economic benefit to a private, for-profit company. CITY shall be entitled to post up to one eight (8) second Public Service Message per minute on the display on a continuous basis. Notwithstanding the foregoing should CITY not utilize its allotment of advertising space, OWNER shall be entitled to lease that time for other advertising purposes. For all Public Service Messages, CITY shall be responsible for providing OWNER with the advertising copy and artwork. OWNER shall not be responsible for producing or substantially modifying any advertising copy for a Public Service Message, and shall display the Public Service Message no more than 3 days after receipt and approval of advertising copy. OWNER's obligation to provide and display Public Service Messages shall survive termination of this Agreement and shall remain in full force and effect until removal of the Electronic Message Center Billboard.

4.4.1. Advertising Limitation. OWNER covenants and agrees for itself, its successors and assigns that any advertising displayed shall not contain any advertising for adult entertainment, mud wrestling, alcohol (except beer and wine), tobacco products of any type, or other content that could be reasonably considered sexually explicit or pornographic by community standards. Objectionable advertising shall be set forth in the City Council agreement. CITY further reserves the right to object to any other advertising that may be considered detrimental to the image of the CITY. In such cases only, CITY shall inform OWNER in writing of the offensive advertising and request that it be removed. OWNER shall endeavor to cooperate with the CITY in assuring the removal of such advertising when such removal does not breach any existing contract or lease agreement held by OWNER.

4.5 Maintenance of the Site and Advertising Structure. OWNER shall maintain the Site and the Electronic Message Center in good condition.

4.6 Business License. OWNER shall obtain a CITY Business License and pay all applicable fees, pursuant to Title 5 of the Banning Municipal Code and the Business

License Fee Schedule adopted by the CITY, as amended

4.7 Fee. OWNER shall be subject to a fee of at least \$50,000.00 per year, payable no later than May 1st of first full year, or fraction thereof, following the issuance of a Certificate of Occupancy by the CITY to be used at the sole discretion of the CITY.

4.7.1 Penalty. The CITY may notify the OWNER if the Fee required pursuant to Section 4.7 is not received within 10 business days after the Due Date ("Late Notice") and there shall be no penalty if payment is made within 10 business days following the Late Notice. The date of the Late Notice shall mean the date that it is received by the OWNER after it has been placed by the CITY in the U.S. Mail, certified mail with return receipt. Failure to sign the return receipt shall not affect the date Late Notice is given. If CITY does not issue a Late Notice, penalties will begin to accrue if payment is not made within 30 days of the Due Date.

4.7.2 Late Payment Penalty Calculation. Late payment penalties shall be calculated as 5% of the Fee, as required by Section 4.7, due and payable for the current year, which shall be added to the Fee for that year for failure to make the full payment within 10 business days of the Late Notice.

4.7.3 Termination. Failure by OWNER to pay the Fee required by Section 4.7 to the CITY within 30 days following the Due Date of each year during the Term of this Agreement is considered a material Breach of this Agreement, and if not paid in full to the CITY, including all late penalties, within 10 business days after written notice to OWNER of such material Breach, CITY may terminate the Agreement, consistent with Section 8.4.

5. REMOVAL OF ELECTRONIC MESSAGE CENTER~~RESERVED~~

5.1 Removal by OWNER. OWNER has the right to negotiate an extension of the Term as an amendment to this Agreement. If the extension for the Term is not granted by the CITY, the Electronic Message Center will be removed within 180 days of the CITY's notice to OWNER of its decision not to extend the Agreement. In such instance, OWNER shall remove the above-ground portions of the structure of the Electronic Message Center within 180 days following the expiration of the Term of this Agreement, or upon earlier termination of the Agreement as set forth in this Agreement. A temporary suspension of the digital faces of the Electronic Message Center shall have no effect on this Agreement, which shall remain in full force and effect for the full Term unless otherwise terminated in accordance this Agreement.

5.2 CITY's Right to Removal. Provided OWNER is not in material Breach of the terms of this Agreement past any applicable written notice and cure period, CITY will not have the right to require removal of the Electronic Message Center. Should such a Breach occur, CITY may require OWNER to remove the Electronic Message Center within 180 days of the CITY's notice to OWNER of such Breach.

5.3 Property to Be Returned to Original or Better Condition. After removal of the

Electronic Message Center, either by CITY or by OWNER, OWNER shall return the site to its original condition or better. At a minimum, OWNER shall obtain a demolition permit for the Electronic Message Center and shall remove all parts of the Electronic Message Center, including the above-ground portions of the structure.

6. REVIEW FOR COMPLIANCE.

6.1 Annual Review. The CITY Community Development Director, in consultation with the CITY Manager and the CITY Attorney's Office, shall review this Agreement annually, on or before the Effective Date, in order to ascertain the good faith compliance by OWNER with the terms of the Agreement. On or before July 1st of each year, OWNER shall submit an annual monitoring report, in a form specified by the Community Development Director, providing all information necessary to evaluate such good faith compliance as determined by the Community Development Director. The failure of CITY to conduct the annual review shall not be a default under this Agreement. Further, OWNER shall not be entitled to any remedy for CITY's failure to conduct this annual review.

6.2 Special Review. The City Council may order a special review of compliance with this Agreement at any time. The Community Development Director, in consultation with the Office of the City Manager and City Attorney, shall conduct such special reviews.

6.3 Procedure.

(a) During either an annual review or a special review, OWNER shall be required to demonstrate good faith compliance with the terms of the Agreement. The burden of proof on this issue shall be on OWNER.

(b) Upon completion of an annual review or a special review, the Community Development Director shall submit a report to the City Council setting forth the evidence concerning good faith compliance by OWNER with the terms of this Agreement and his recommended finding on that issue.

(c) If the CITY Council finds on the basis of substantial evidence that OWNER has complied in good faith with the terms and conditions of this Agreement, the review shall be concluded.

(d) If the CITY Council makes a preliminary finding that OWNER has not complied in good faith with the terms and conditions of this Agreement, the Council may modify or terminate this Agreement as provided in Section 6.4 and Section 6.5. Notice of default as provided under Section 8.4 of this Agreement shall be given to OWNER prior to or concurrent with, proceedings under Section 6.4 and Section 6.5.

6.4 Proceedings Upon Modification or Termination. If, upon a preliminary finding under Section 6.3, CITY determines to proceed with modification or termination of this Agreement, CITY shall give written notice to OWNER of its intention so to do. The notice shall be given at least ten (10) calendar days prior to the scheduled hearing and shall contain:

(a) The time and place of the hearing;

(b) A statement as to whether or not CITY proposes to terminate or to modify the Agreement; and,

(c) Such other information as is reasonably necessary to inform OWNER of the nature of the proceeding.

6.5 Hearing on Modification or Termination. At the time and place set for the hearing on modification or termination, OWNER shall be given an opportunity to be heard and shall be entitled to present written and oral evidence. OWNER shall be required to demonstrate good faith compliance with the terms and conditions of this Agreement. The burden of proof on this issue shall be on OWNER. If the City Council finds, based upon substantial evidence, that OWNER has not complied in good faith with the terms or conditions of the Agreement, the CITY may terminate this Agreement or modify this Agreement and impose such conditions as are reasonably necessary to protect the interests of the CITY. The decision of the City Council shall be final, subject only to judicial review pursuant to Section 1094.5 of the Code of Civil Procedure.

6.6 Certificate of Agreement Compliance. If, at the conclusion of an annual or special review, OWNER is found to be in compliance with this Agreement, CITY shall, upon request by OWNER, issue a Certificate of Agreement Compliance ("Certificate") to OWNER stating that after the most recent annual or special review and based upon the information known or made known to the Community Development Director and City Council that (1) this Agreement remains in effect and (2) OWNER is not in default. The Certificate shall be in recordable form, shall contain information necessary to communicate constructive record notice of the finding of compliance, shall state whether the Certificate is issued after an annual or a special review and shall state the anticipated date of commencement of the next annual review. OWNER may record the Certificate with the County Recorder.

Whether or not the Certificate is relied upon by transferees or OWNER, CITY shall not be bound by a Certificate if a default existed at the time of the Periodic or Special Review, but was concealed from or otherwise not known to the Community Development Director or City Council.

7. INSURANCE.

7.1 Types of Insurance.

(a) **Liability Insurance.** Beginning on the Effective Date hereof and until completion of the Term, OWNER shall, at its sole cost and expense, keep or cause to be kept in force for the mutual benefit of CITY, as additional insured, and OWNER comprehensive broad form general liability insurance against claims and liabilities covered by the indemnification provisions of Section 9.3. Such policy shall provide for limits of at least Two Million Dollars (\$2,000,000) per occurrence and at least Four Million Dollars (\$4,000,000) in the aggregate for any accidents or occurrences, and at least One Million Dollars (\$1,000,000) for property damage. OWNER shall also furnish or cause to be furnished to CITY evidence that any contractors with whom OWNER has contracted for the performance of any work for which OWNER is responsible maintains the same coverage required of OWNER. The liability certificate of insurance shall name the CITY as additional

insured and include the appropriate additional insured endorsement form.

(b) Worker's Compensation. OWNER shall also furnish or cause to be furnished to CITY evidence reasonably satisfactory to it that any contractor with whom OWNER has contracted for the performance of any work for which OWNER is responsible hereunder carries worker's compensation insurance as required by law. At a minimum, OWNER shall provide for \$1,000,000 Employer's Liability. A waiver of subrogation rights endorsement form is required as well.

(c) Automobile Liability. OWNER shall furnish or cause to be furnished to CITY evidence reasonably satisfactory to it that any contractor with whom OWNER has contracted for the performance of any work for which OWNER is responsible hereunder carries automobile liability insurance as follows: Minimum of \$1,000,000 combined single limit per accident for bodily injury and property damage covering "any auto". Automobile certificate of insurance shall name the CITY as additional insured and include the appropriate additional insured endorsement form.

(d) Insurance Policy Form, Sufficiency, Content and Insurer. All insurance required by express provisions hereof shall be carried only by responsible insurance companies qualified to do business by California with an AM Best Rating of no less than "A". All such policies shall be non-assignable and shall contain language, to the extent obtainable, to the effect that (i) the insurer waives the right of subrogation against CITY and against CITY's agents and representatives except as provided in this Section; (ii) the policies are primary and noncontributing with any insurance that may be carried by CITY, but only with respect to the liabilities assumed by OWNER under this agreement; and (iii) the policies cannot be canceled or materially changed except after thirty (30) days' written notice by the insurer to CITY or CITY's designated representative OWNER shall furnish CITY with certificates evidencing the insurance. CITY shall be named as an additional insured on all liability policies of insurance required to be procured by the terms of this Agreement.

(e) CITY Waiver of Subrogation. To the extent this Agreement creates a claim of liability against OWNER, and to the extent the CITY is insured against such claim or liability, the CITY will obtain, to the extent reasonable, an endorsement waiving any right of subrogation that the insurer may otherwise have against OWNER; provided that if such a waiver is not available from the CITY's insurance company at a reasonable cost, the CITY will be relieved of its obligation to obtain a waiver of subrogation unless OWNER agrees to pay for the waiver.

7.2 Failure to Maintain Insurance and Proof of Compliance. OWNER shall deliver to CITY, in the manner required for notices, copies of certificates of all insurance coverage required of each policy within the following time limits:

(a) For insurance required above, within seven (7) days after the Effective Date.

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(b) The CITY can request to see updated copies of the current certificates of all insurance coverage required.

If OWNER fails or refuses to procure or maintain insurance as required hereby or fails or refuses to furnish CITY with required proof that the insurance has been procured and is in force and paid for, after complying with any applicable requirements of Section 6, the CITY may view such failure or refusal shall be a Default hereunder.

8. DEFAULT AND REMEDIES.

8.1 Remedies in General. It is acknowledged by the Parties that CITY would not have entered into this Agreement if it were to be liable in damages under this Agreement, or with respect to this Agreement or the application thereof.

In general, each of the Parties hereto may pursue any remedy at law or equity available for the breach of any provision of this Agreement, except that CITY shall not be liable in damages to OWNER, or to any successor in interest of OWNER, or to any other person, and OWNER covenants not to sue for damages or claim any damages:

- (a) For any breach of this Agreement or for any cause of action which arises out of this Agreement; or
- (b) For the taking, impairment or restriction of any right or interest conveyed or provided under or pursuant to this Agreement; or
- (c) Arising out of or connected with any dispute, controversy or issue regarding the application, validity, interpretation or effect of the provisions of this Agreement.

Notwithstanding anything in this Article 8 to the contrary, OWNER's liability to the CITY in connection with this Agreement shall be limited to direct damages and shall exclude any other liability, including without limitation liability for special, indirect, punitive, or consequential damages in contract, tort, warranty, strict liability or otherwise.

8.2 Specific Performance. The Parties acknowledge that money damages and remedies at law generally are inadequate and specific performance and other non-monetary relief are particularly appropriate remedies for the enforcement of this Agreement and should be available to all Parties for the following reasons:

- (a) Money damages are unavailable against CITY as provided in Section 8.1 above.
- (b) Due to the size, nature and scope of the project, it may not be practical or possible to restore the Property to its natural condition once implementation of this Agreement has begun. After such implementation, OWNER may be foreclosed from other choices it may have had to utilize the Property or portions thereof. OWNER has invested significant time and resources and performed extensive planning and processing of the Project in agreeing to the terms of this Agreement and will be investing even more significant time and resources in implementing the Project in reliance upon the terms of

this Agreement, and it is not possible to determine the sum of money which would adequately compensate OWNER for such efforts.

8.3 General Release. Except for non-damage remedies, including the remedy of specific performance and judicial review as provided for in Section 8.2 and Section 6.5, OWNER, for itself, its successors and assignees, hereby releases the CITY, its officers, agents, employees, and independent contractors from any and all claims, demands, actions, or suits of any kind or nature whatsoever arising out of any liability, known or unknown, present or future, including, but not limited to, any claim or liability, based or asserted, pursuant to Article I, Section 19 of the California Constitution, the Fifth Amendment of the United States Constitution, or any other law or ordinance which seeks to impose any other monetary liability or damages, whatsoever, upon the CITY because it entered into this Agreement or because of the terms of this Agreement. OWNER hereby waives the provisions of Section 1542 of the Civil Code which provides: "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."

8.4 Termination or Modification of Agreement for Default of OWNER. Subject to the provisions contained in Section 6.5 herein, CITY may terminate or modify this Agreement for any failure of OWNER to perform any material duty or obligation of OWNER under this Agreement, or to comply in good faith with the terms of this Agreement (hereinafter referred to as "default"); provided, however, CITY may terminate or modify this Agreement pursuant to this Section only after providing written notice to OWNER of default setting forth the nature of the default and the actions, if any, required by OWNER to cure such default and, where the default can be cured, OWNER has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.5 Termination of Agreement for Default of CITY. OWNER may terminate this Agreement only in the event of a default by CITY in the performance of a material term of this Agreement and only after providing written notice to CITY of default setting forth the nature of the default and the actions, if any, required by CITY to cure such default and, where the default can be cured, CITY has failed to take such actions and cure such default within 60 days after the effective date of such notice or, in the event that such default cannot be cured within such 60 day period but can be cured within a longer time, has failed to commence the actions necessary to cure such default within such 60 day period and to diligently proceed to complete such actions and cure such default.

8.6 Attorneys' Fees. In any action at law or in equity to enforce or interpret this Agreement, or otherwise arising out of this Agreement, including without limitation any action for declaratory relief or petition for writ of mandate, the Parties shall bear their own attorneys' fees.

9. THIRD PARTY LITIGATION.

9.1 General Plan Litigation. CITY has determined that this Agreement is consistent

with its General Plan, and that the General Plan meets all requirements of law. OWNER has reviewed the General Plan and concurs with CITY's determination. The Parties acknowledge that:

- (a) Litigation may be filed challenging the legality, validity and adequacy of the General Plan; and,
- (b) If successful, such challenges could delay or prevent the performance of this Agreement and the development of the Property.

CITY shall have no liability in damages under this Agreement for any failure of CITY to perform under this Agreement or the inability of OWNER to develop the Property as contemplated by the Development Plan of this Agreement as the result of a judicial determination that on the Effective Date, or at any time thereafter, the General Plan, or portions thereof, are invalid or inadequate or not in compliance with law.

9.2 Third Party Litigation Concerning Agreement. OWNER shall defend, with counsel approved by the CITY, at its expense, including attorneys' fees, indemnify, and hold harmless CITY, its officers, agents, employees and independent contractors from any claim, action or proceeding against CITY, its officers, agents, employees or independent contractors to attack, set aside, void, or annul the approval of this Agreement or the approval of any permit granted pursuant to this Agreement, including, but not limited to, on ground of compliance with the California Environmental Quality Act. CITY shall promptly notify OWNER of any such claim, action or proceeding, and CITY shall cooperate in the defense. This indemnification includes, without limitation, the payment of all penalties, fines, judgments, awards, decrees, attorneys' fees, and related costs or expenses, and the reimbursement of CITY, its elected officials, employees, and/or agents for all legal expenses and costs incurred by each of them. CITY may in its discretion participate in the defense of any such claim, action or proceeding.

9.3 Indemnity. In addition to the provisions of 9.2 above, OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability whatsoever, based or asserted upon any act or omission of OWNER, its officers, agents, employees, subcontractors and independent contractors, for property damage, bodily injury, or death (OWNER's employees included) or any other element of damage of any kind or nature, relating to or in any way connected with or arising from the activities contemplated hereunder, including, but not limited to, the study, design, engineering, construction, or completion of the Development, save and except claims for damages arising through the sole active negligence or sole willful misconduct of CITY. OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any legal action based upon such alleged acts or omissions. CITY may in its discretion participate in the defense of any such legal action.

9.4 Environment Assurances. OWNER shall indemnify and hold CITY, its officers, agents, employees and independent contractors free and harmless from any liability, based or asserted, upon any act or omission of OWNER, its officers, agents, employees, subcontractors, predecessors in interest, successors, assigns and independent contractors for any violation of any federal, state or local law, ordinance or regulation relating to industrial hygiene or to environmental conditions on, under or about the Property, including, but not limited to, soil and groundwater

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conditions, and OWNER shall defend, at its expense, including attorneys' fees, CITY, its officers, agents, employees and independent contractors in any action based or asserted upon any such alleged act or omission. CITY may in its discretion participate in the defense of any such action.

9.5 Reservation of Rights. With respect to Sections 9.2, 9.3 and 9.4 herein, CITY reserves the right to either (1) approve the attorney(s) which OWNER selects, hires or otherwise engages to defend CITY hereunder, which approval shall not be unreasonably withheld, or (2) conduct its own defense, provided, however, that OWNER shall reimburse CITY forthwith for any and all reasonable expenses incurred for such defense, including attorneys' fees, upon billing and accounting therefor.

9.6 Survival. The provisions of Sections 8.1 through 8.3, inclusive, Section 8.6 and Sections 9.1 through 9.6, inclusive, shall survive the termination of this Agreement.

10. MORTGAGEE PROTECTION.

The Parties hereto agree that this Agreement shall not prevent or limit OWNER, in any manner, at OWNER's sole discretion, from encumbering the Property or any portion thereof or any improvement thereon by any mortgage, deed of trust or other security device securing financing with respect to the Property. CITY acknowledges that the lenders providing such financing may require certain Agreement interpretations and modifications and agrees upon request, from time to time, to meet with OWNER and representatives of such lenders to negotiate in good faith any such request for interpretation or modification. CITY will not unreasonably withhold its consent to any such requested interpretation or modification provided such interpretation or modification is consistent with the intent and purposes of this Agreement. Any Mortgagee of the Property shall be entitled to the following rights and privileges:

(a) Neither entering into this Agreement nor a breach of this Agreement shall defeat, render invalid, diminish or impair the lien of any mortgage on the Property made in good faith and for value, unless otherwise required by law.

(b) The Mortgagee of any mortgage or deed of trust encumbering the Property, or any part thereof, which Mortgagee, has submitted a request in writing to the CITY in the manner specified herein for giving notices, shall be entitled to receive written notification from CITY of any default by OWNER in the performance of OWNER's obligations under this Agreement.

(c) If CITY timely receives a request from a Mortgagee requesting a copy of any notice of default given to OWNER under the terms of this Agreement, CITY shall provide a copy of that notice to the Mortgagee within ten (10) days of sending the notice of default to OWNER. The Mortgagee shall have the right, but not the obligation, to cure the default during the remaining cure period allowed such party under this Agreement.

(d) Any Mortgagee who comes into possession of the Property, or any part thereof, pursuant to foreclosure of the mortgage or deed of trust, or deed in lieu of such foreclosure, shall take the Property, or part thereof, subject to the terms of this Agreement. If the Planning Director, acting in consultation with the CITY Executive Officer and CITY Counsel, provides her prior written consent, which consent shall not be unreasonable

withheld, a Mortgagee in possession shall not have an obligation or duty under this Agreement to perform any of OWNER's obligations or other affirmative covenants of OWNER hereunder, or to guarantee such performance; provided, however, that to the extent that any covenant to be performed by OWNER is a condition precedent to the performance of a covenant by CITY, the performance thereof shall continue to be a condition precedent to CITY's performance hereunder. Any transfer by any Mortgagee in possession shall be subject to the provisions of Section 2.5 of this Agreement.

11. MISCELLANEOUS PROVISIONS.

11.1 Recordation of Agreement. This Agreement and any amendment, modification, termination or cancellation thereof shall be recorded with the CITY Recorder by the Clerk of the City Council within the period required by Section 65868.5 of the Government Code.

11.2 Entire Agreement. This Agreement sets forth and contains the entire understanding and agreement of the Parties, and there are no oral or written representations, understandings or ancillary covenants, undertakings or agreements which are not contained or expressly referred to herein. No testimony or evidence of any such representations, understandings or covenants shall be admissible in any proceeding of any kind or nature to interpret or determine the terms or conditions of this Agreement.

11.3 Severability. If any term, provision, covenant or condition of this Agreement shall be determined invalid, void or unenforceable, the remainder of this Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Agreement. Notwithstanding the foregoing, the provision of the Public Benefits set forth in Section 4 of this Agreement, including the payments set forth therein, are essential elements of this Agreement and CITY would not have entered into this Agreement but for such provisions, and therefore in the event such provisions are determined to be invalid, void or unenforceable, this entire Agreement shall be null and void and of no force and effect whatsoever.

11.4 Interpretation and Governing Law. This Agreement and any dispute arising hereunder shall be governed and interpreted in accordance with the laws of the State of California. This Agreement shall be construed as a whole according to its fair language and common meaning to achieve the objectives and purposes of the Parties hereto, and the rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in interpreting this Agreement, all Parties having been represented by counsel in the negotiation and preparation hereof.

11.5 Section Headings. All section headings and subheadings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

11.6 Gender and Number. As used herein, the neuter gender includes the masculine and feminine, the feminine gender includes the masculine, and the masculine gender includes the feminine. As used herein, the singular of any word includes the plural.

11.7 Joint and Several Obligations. If at any time during the term of this Agreement the

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Property is owned, in whole or in part, by more than one OWNER, all obligations of such OWNERS under this Agreement shall be joint and several, and the default of any such OWNER shall be the default of all such OWNERS.

11.8 Time of Essence. Time is of the essence in the performance of the provisions of this Agreement as to which time is an element.

11.9 Waiver. Failure by a Party to insist upon the strict performance of any of the provisions of this Agreement by the other Party, or the failure by a Party to exercise its rights upon the default of the other Party, shall not constitute a waiver of such Party's right to insist and demand strict compliance by the other Party with the terms of this Agreement thereafter.

11.10 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties and their successors and assigns. No other person shall have any right of action based upon any provision of this Agreement.

11.11 Force Majeure. Neither Party shall be deemed to be in default where failure or delay in performance of any of its obligations under this Agreement is caused by floods, earthquakes, other Acts of God, fires, wars, riots or similar hostilities, strikes and other labor difficulties beyond the Party's control, (including the Party's employment force). If any such events shall occur, the term of this Agreement and the time for performance by either Party of any of its obligations hereunder may be extended by the written agreement of the Parties for the period of time that such events prevented such performance, provided that the term of this Agreement shall not be extended under any circumstances for more than five (5) years.

11.12 Mutual Covenants. The covenants contained herein are mutual covenants and also constitute conditions to the concurrent or subsequent performance by the Party benefited thereby of the covenants to be performed hereunder by such benefited Party.

11.13 Successors in Interest. The burdens of this Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the Parties to this Agreement. All provisions of this Agreement shall be enforceable as equitable servitudes and constitute covenants running with the land. Each covenant to do or refrain from doing some act hereunder with regard to development of the Property: (a) is for the benefit of and is a burden upon every portion of the Property; (b) runs with the Property and each portion thereof; and, (c) is binding upon each Party and each successor in interest during ownership of the Property or any portion thereof.

11.14 Counterparts. This Agreement may be executed by the Parties in counterparts, which counterparts shall be construed together and have the same effect as if all of the Parties had executed the same instrument.

11.15 Jurisdiction and Venue. Any action at law or in equity arising under this Agreement or brought by a Party hereto for the purpose of enforcing, construing or determining the validity of any provision of this Agreement shall be filed and tried in the Riverside Historic Courthouse of the Superior Court of the County of Riverside, State of California, and the Parties hereto waive all provisions of law providing for the filing, removal or change of venue to any other court.

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11.16 Project as a Private Undertaking. It is specifically understood and agreed by and between the Parties hereto that the development of the Project is a private development, that neither Party is acting as the agent of the other in any respect hereunder, and that each Party is an independent contracting entity with respect to the terms, covenants and conditions contained in this Agreement. No partnership, joint venture or other association of any kind is formed by this Agreement. The only relationship between CITY and OWNER is that of a government entity regulating the development of private property and the owner of such property.

11.17 Further Actions and Instruments. Each of the Parties shall cooperate with and provide reasonable assistance to the other to the extent contemplated hereunder in the performance of all obligations under this Agreement and the satisfaction of the conditions of this Agreement. Upon the request of either Party at any time, the other Party shall promptly execute, with acknowledgement or affidavit if reasonably required, and file or record such required instruments and writings and take any actions as may be reasonably necessary under the terms of this Agreement to carry out the intent and to fulfill the provisions of this Agreement or to evidence or consummate the transactions contemplated by this Agreement.

11.18 Eminent Domain. No provision of this Agreement shall be construed to limit or restrict the exercise by CITY of its power of eminent domain.

11.19 Agent for Service of Process. In the event OWNER is not a resident of the State of California or it is an association, partnership or joint venture without a member, partner or joint venture resident of the State of California, or it is a foreign corporation, then in any such event, OWNER shall file with the CITY Community Development Director, upon its execution of this Agreement, a designation of a natural person residing in the State of California, giving his or her name, residence and business addresses, as its agent for the purpose of service of process in any court action arising out of or based upon this Agreement, and the delivery to such agent of a copy of any process in any such action shall constitute valid service upon OWNER. If for any reason service of such process upon such agent is not feasible, then in such event OWNER may be personally served with such process out of this CITY and such service shall constitute valid service upon OWNER. OWNER is amenable to the process so served, submits to the jurisdiction of the Court so obtained and waives any and all objections and protests thereto. OWNER for itself, assigns and successors hereby waives the provisions of The Hague Convention (Convention on the Service Abroad of Judicial and Extra Judicial Documents in Civil or Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638).

11.20 Designation of CITY Officials. Except for functions to be performed by the City Council, CITY may, at any time and in its sole discretion, substitute any CITY official to perform any function identified in this Agreement as the designated responsibility of any other official. CITY shall provide notice of such substitution pursuant to Section 2.8; provided, however, the failure to give such notice shall not affect the authority of the substitute official in any way.

11.21 Authority to Execute. The person executing this Agreement on behalf of OWNER warrants and represents that he has the authority to execute this Agreement on behalf of his corporation, partnership or business entity and warrants and represents that he has the authority to bind OWNER to the performance of its obligations hereunder.

11.22 Nonliability of City Officers and Employees. No official, officer, employee, agent or representative of CITY, acting in his/her official capacity, shall be personally liable to OWNER, or any successor or assign, for any loss, costs, damage, claim, liability, or judgment, arising out of or connection with this Agreement, or for any act or omission on the part of CITY.

11.23 Covenant against Discrimination. OWNER and CITY covenant and agree, for themselves and their respective successors and assigns, that there shall be no discrimination against, or segregation of, any person or group or persons on account of race, color, creed, religion, sex, marital status, national origin or ancestry, or any other impermissible classification, in the performance of this Agreement. Developer shall comply with the Americans with Disabilities Act of 1990, as amended (42 U.S.C. § 12101 et seq.).

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the day and year set forth below.

CITY OF BANNING

Dated: _____

PASSED, APPROVED, AND ADOPTED at a regular meeting of the City Council of the City of Banning, California, this _____ day of _____, 2020.

Daniela Andrade, Mayor
City of Banning

ATTEST:

Sonja De La Fuente, Deputy City Clerk
City of Banning

APPROVED AS TO FORM AND LEGAL CONTENT:

1303-0026\23859310 1/000

Kevin G. Ennis, City Attorney

11303-0096\9885931e\7000

CERTIFICATION:

I, Sonja De La Fuente, Deputy City Clerk of the City of Banning, California, do hereby certify that Ordinance 1558 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of February, 2020, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2020, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Sonja De La Fuente, Deputy City Clerk
City of Banning

11303-0096\23859310 17000

OWNER:

AMG OUTDOOR ADVERTISING, INC.

Dated: _____

By: _____

Print Name and Title: _____

Dated: _____

By: _____

Print Name and Title: _____

(ALL SIGNATURES SHALL BE ACKNOWLEDGED BEFORE A NOTARY PUBLIC.

EXECUTION ON BEHALF OF ANY CORPORATION SHALL BE BY TWO CORPORATE
OFFICERS.)

1303-0096/988/9310 1100

Development Agreement No.

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Development Agreement No. 20-1501

EXHIBIT "B"

MAP SHOWING PROPERTY AND ITS LOCATION

Development Agreement No. 20-1501

EXHIBIT C

EXISTING DEVELOPMENT APPROVALS

Ordinance No. 1547, § 3(Exh. A), adopted June 25, 2019

Specific Plan

Zoning

Conditional Use Permit 19-8009

The development approvals listed above include all conditions of approval in Conditional Use Permit 19-8009.

COPIES OF THE EXISTING DEVELOPMENT APPROVALS LISTED ABOVE ARE ON FILE IN THE CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT AND ARE INCORPORATED HEREIN BY REFERENCE.

11503-00261290593fym.doc

EXHIBIT D

EXISTING LAND USE REGULATIONS

1. City of Banning General Plan as amended through Resolution No. 2020-24
2. City of Banning Municipal Code as amended through Ordinance No. 1558

COPIES OF THE EXISTING LAND USE REGULATIONS LISTED ABOVE ARE ON FILE IN THE CITY OF BANNING COMMUNITY DEVELOPMENT DEPARTMENT AND ARE INCORPORATED HEREIN BY REFERENCE.

Development Agreement No. 20-1501

EXHIBIT "E"

ELECTRONIC MESSAGE CENTER SITE PLAN



**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Doug Schulze, City Manager**

PREPARED BY: **Suzanne Cook, Deputy Finance Director**

MEETING DATE: **February 25, 2020**

SUBJECT: **Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of January 2020**

RECOMMENDATION:

That City Council review and ratify the warrants for period ending **January 31, 2020**, per California Government Code Section 37208.

WARRANT SUMMARY:

Description	Payment #	Amount	Total Amount
Checks:			
Checks Issued during Month	172209 - 172641	\$ 1,801,861.34	
Voided / Reissue Check		\$ 8,049.55	
	Check Total		\$ 1,793,811.79
	Wires Total	1022	\$ 790,214.72
ACH payments:	9006623 - 9006654		
Payroll Direct Deposit	1/3/2020	\$ 410,075.91	
Payroll Direct Deposit	1/17/2020	\$ 391,955.18	
Payroll Direct Deposit	1/31/2020	\$ 377,811.07	
Other Payments		\$ 674,010.80	
	ACH Total		\$ 1,853,852.96
Payroll Checks:	12001 - 12024		
Payroll - Regular	1/3/2020	\$ 2,329.22	
Payroll Direct Deposit	1/17/2020	\$ 1,983.27	
Payroll - Regular	1/31/2020	\$ 1,980.01	
	Payroll Check Total		\$ 6,292.50
Total Warrants Issued for December 2019			\$ 4,444,171.97

Staff Report: January 2020 Accounts Payable & Payroll Warrants

February 25, 2020

Page 2 of 2

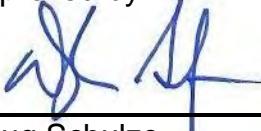
ATTACHMENTS:

- Fund List
- Warrant Report January 2020
- Warrant Report Detail January 2020
- Voided Check Log – January 2020
- Payroll Log
- Payroll Registers

https://banningca.gov/DocumentCenter/View/6976/Attachment-3---PMIA-LAIF_perform-January-2020

If you have any questions, please contact the Finance Department so that additional detailed information can be provided to you.

Approved by:



Doug Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL
FROM: Doug Schulze, City Manager
PREPARED BY: Suzanne Cook, Deputy Finance Director
MEETING DATE: February 25, 2020
SUBJECT: Receive and File Cash, Investments and Reserve Report for the Month of January 2020

RECOMMENDATION:

That City Council receive and file Cash, Investment and Reserve Report for **January 31, 2020** in accordance with California Government Code 53646.

CASH AND INVESTMENT SUMMARY:

Description	Prior Month	Current Month
Funds Under Control of the City		
Cash		
Cash on Hand	\$ 4,155.00	\$ 4,155.00
Checking and Savings Accounts	\$ 8,058,278.64	\$ 9,987,883.01
Investments		
LAIF	\$ 41,911,839.28	\$ 42,152,611.15
Brokerage	\$ 27,117,056.43	\$ 27,251,071.57
Total Funds Under Control of the City	\$ 77,091,329.35	\$ 79,395,720.73
Funds Under Control of Fiscal Agents		
US Bank		
Restricted Bond Project Accounts	\$ 14,774,442.81	\$ 14,782,678.97
Restricted Bond Accounts	\$ 4,820,322.84	\$ 4,820,346.57
Union Bank & SCPPA		
Restricted Funds	\$ 4,497,583.38	\$ 4,419,236.89
Total Funds Under Control of Fiscal Agents	\$ 24,092,349.03	\$ 24,022,262.43
Total Funds	\$ 101,183,678.38	\$ 103,417,983.16

RESTRICTED, ASSIGNED, COMMITTED AND RESERVED SUMMARY:

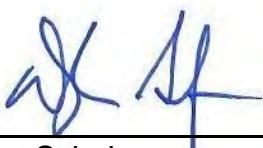
Description	Prior Month	Current Month
Total Funds	\$ 101,183,678.38	\$ 103,417,983.16
Restricted Funds	40,504,664.55	\$ 41,507,387.62
Assigned Funds - Specific Purpose	8,969,200.65	\$ 8,969,200.65
Committed Funds - Specific Purpose	3,242,731.75	\$ 3,242,731.75
Fund Balance Reserves	15,455,882.97	\$ 15,455,882.97
Total Restricted, Assigned, Committed and Reserves	\$ 68,172,479.92	\$ 69,175,202.99
Operating Cash - Unrestricted Reserves	\$ 33,011,198.46	\$ 34,242,780.17
Less Accounts held in Investments	\$ 27,117,056.43	\$ 27,251,071.57
Liquid Cash	\$ 5,894,142.03	\$ 6,991,708.60

ATTACHMENTS:

1. Cash, Investment and Reserve Report January 2020
<https://banningca.gov/DocumentCenter/View/6987/Attachment-2---IFB-No-19-037-Bid-Results>
2. Investment Report January 2020
<https://banningca.gov/DocumentCenter/View/6975/Attachment-2---Investment-Report-January-2020>
3. LAIF / PMIA Performance Report
https://banningca.gov/DocumentCenter/View/6976/Attachment-3---PMIA-LAIF_perform-January-2020

If you have any questions, please contact the Finance Department so that additional detailed information can be provided to you.

Approved by:



Doug Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Art Vela, Director of Public Works

MEETING DATE: February 25, 2020

SUBJECT: Public Works Capital Improvement Project Tracking List

RECOMMENDED ACTION:

This is informational only; receive and file report.

GOAL STATEMENT:

The purpose of presenting the attached Public Works Capital Improvement Project (CIP) Tracking List is to keep City Council and the public informed of the status of the various capital improvement projects that are currently managed by the Public Works Department.

BACKGROUND:

There are several planning, environmental, design and construction contracts that have been approved by City Council and/or the City Manager's office that are being managed by the Public Works Department. In an effort to keep the City Council and the public informed of the progress made and current status of each project, staff has prepared and will continue to update the attached Public Works CIP Tracking List. The list will be presented to City Council on a monthly basis.

FISCAL IMPACT:

None

ATTACHMENTS:

1. CIP Status List <https://banningca.gov/DocumentCenter/View/6995/Attachment-1-CIP-Update-February-2020>

Approved by:

A blue ink signature of Douglas Schulze.

Douglas Schulze, City Manager

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**CITY OF BANNING
CITY COUNCIL REPORT**

TO: **CITY COUNCIL**

FROM: **Douglas Schulze, City Manager**

PREPARED BY: **Matthew Hamner, Police Chief
Sol Ivett Avila, Executive Assistant**

MEETING DATE: **February 25,2020**

SUBJECT: **Police Department Statistics for January 2020**

RECOMMENDED ACTION:

Receive and File January 2020 Police Statistics.

BACKGROUND:

The Police Department provides statistics to the public and City Council upon request.

FISCAL IMPACT:

None

OPTIONS:

1. Receive and File

ATTACHMENT:

1. January 2020 Statistics
<https://banningca.gov/DocumentCenter/View/6980/January-2020-stats>

Approved by:

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Douglas Schulze
City Manager

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CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Todd Hopkins, Division Chief
Laurie Sampson, Executive Assistant

MEETING DATE: February 25, 2020

SUBJECT: Receive and File Fire Department Statistics for January 2020

RECOMMENDED ACTION:

Receive and file Fire Department statistics for January 2020.

BACKGROUND:

The Fire Department provides statistics to the public and City Council upon request.

JUSTIFICATION:

N/A

FISCAL IMPACT:

None

ATTACHMENTS:

1. Fire Statistics for January 2020
<https://banningca.gov/DocumentCenter/View/6972/Banning-January-2020-Fire-Report>

Approved by:

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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

MEETING DATE: February 25, 2020

SUBJECT: Adoption of Ordinance 1558, Approving and implementing Development Agreement No. 11 between the City of Banning and AMG Outdoor Advertising, Inc., for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005).

RECOMMENDED ACTION:

That the City Council:

Waive further reading and Adopt Ordinance 1558, An Ordinance of the City of Banning, California, Approving a Development Agreement No. 11 between the City of Banning and AMG Outdoor Advertising, Inc., for the Construction and Operation of an Electronic Message Center in the Downtown Commercial General Plan Designation and Zoning District on Real Property Located at 583 West Livingston Street (APN: 540-192-005).

APPLICANT INFORMATION:

Project Location: 583 W. Livingston Street

APN Information: 540-192-005

Project Applicant: AMG Outdoor Advertising, Inc.
359 North Sheridan Street
Corona, CA, 92880

Property Owner: Rami Khouri
18957 Van Buren Blvd. Suite C
Riverside, CA, 92508

BACKGROUND:

At the Planning Commission meeting of **May 1, 2019**, the Planning Commission considered a proposed Zoning Text Amendment ("Amendment") that authorized Electronic Message Centers ("digital sign") within the Downtown Commercial Zoning

District. At that meeting, the Planning Commission reviewed, and ultimately recommended approval to the City Council to adopt the Amendment. The zoning modification would authorize a digital sign subject to a Conditional Use Permit (CUP) and a Development Agreement (DA) or Lease Agreement (LA) because of City-owned property within the Downtown Commercial Zoning District. The Planning Commission version of the Amendment set forth a height limitation of 30-feet and a maximum sign face of 200 square-feet.

At the City Council meeting of **June 11, 2019** the Council conducted a public hearing and solicited testimony from the public, the business community, and developers of possible digital signs. During testimony provided by Mr. Alex Garcia of AMG Signs, the Council was informed that the minimum height and size – for a digital billboard to be economically viable along freeway frontage – is 80-feet in height and a single-side sign face of 1,200 square feet. The Conditional Use Permit currently before the Commission meets, but does not exceed, these standards.

Subsequent from the effective date of the ordinance amendment, AMG Signs submitted a Conditional Use Permit (CUP) application on **October 24, 2019**, for approval of CUP 19-8009. Upon receiving staff concurrence on the plans, CUP 19-8009 was scheduled for a Planning Commission public hearing on January 15, 2020, where the Commission solicited public testimony, conducted a public hearing, and ultimately approved Planning Commission Resolution 2020-02, which made the findings for exemptions from CEQA, approved CUP 19-8009 subject to conditions of approval (Attachment 3), and recommended approval of the Development Agreement to the City Council.

At the City Council meeting of **February 11, 2020**, the Council conducted a public hearing and solicited public testimony on the proposed Development Agreement (Attachment 2) and Ordinance (Attachment 1) authorizing the construction of an Electronic Message Center (e.g., Digital Billboard) at the above-referenced location. This digital billboard will be constructed and operated by AMG Outdoor Advertising, Inc. and is subject to further staff review relative to siting, design, construction, and building plan review.

REQUEST:

The applicant, AMG Outdoor Advertising, Inc. is requesting approval of a Development Agreement (DA) – along with its implementing ordinance, to construct and operate of an Electronic Message Center, at 583 W. Livingston Street in the Downtown Commercial (DC) Zoning District.

DESCRIPTION:

The project site is a 0.13-acre vacant lot. The project includes the construction of an 80-foot tall, double-faced, digital sign located at the southerly frontage of the property; which is adjacent to Livingston Street. The property is surrounded the I-10 freeway to the south and commercial properties on the north, east, and west property lines; which rarely in excess of two stories.

Land Use Summary Table

	Existing Land Use	Zoning Designation	General Plan Designation
Subject Site	Vacant Lot	Downtown Commercial (DC)	Downtown Commercial (DC)
North	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)
South	Caltrans R/W	N/A	N/A
East	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)
West	Commercial	Downtown Commercial (DC)	Downtown Commercial (DC)

ANALYSIS:**Zoning**

The site is located within the Downtown Commercial (DC) Zoning District; wherein Electronic Message Centers are authorized, subject to the approval of a Conditional Use Permit (CUP) and Development Agreement (DA) by both the Planning Commission and City Council.

These zoning modifications were presented to the City Council, during a regularly scheduled public meeting on June 11, 2019 and were subsequently adopted on June 25, 2019, making them effective on July 24, 2019.

CUP 19-8009 was the first application to be submitted under the new zoning requirements.

Development Agreement

The purpose of a Development Agreement according to Banning Municipal Code Section 17.60.010 is: *These provisions establish procedures and requirements for the consideration of Development Agreements between property owners and the City. It is intended that the provisions of this chapter shall be fully consistent, and in full compliance, with the provisions of Article 2.5 of Chapter 4 of Division 1 of Title 7 (commencing with Section 65864) of the California Government Code, and shall be so construed.*

Additionally, the Commission may recommend that the City Council approve or Conditionally Approve a Development Agreement application in whole or in part only if all of the following findings are made:

- A. *The proposed use is consistent with the General Plan;*
- B. *The proposed use is consistent with the any applicable Specific Plans;*
- C. *The proposed use is consistent with the Zoning Ordinance*
- D. *The proposed use will promote the welfare and public interest of the City*

Findings for the proposed Development Agreement are made and can be found in the attached Ordinance.

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

In accordance with §15303 (New Construction of Small Facilities) a Class 3 Categorical Exemption and §15332 (Infill Developments) a Class 32 Categorical Exemption of the California Environmental Quality Act (CEQA) Guidelines, the project is exempt from environmental review. A Class 3 Categorical Exemption consists of construction and location of limited numbers of new, small facilities or structures and a Class 32 Categorical Exemption consists of projects characterized as in-fill development meeting conditions described below:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value as habitat for endangered, rare or threatened species.
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.
- (e) The site can be adequately served by all required utilities and public services.

Findings for the project's exemptions from environmental review are made and can be found in the attached Ordinance.

MULTIPLE SPECIES HABITAT CONSERVATION PLAN (MSHCP):

The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

PUBLIC COMMUNICATION:

Proposed Ordinance 1558 and was advertised in the Record Gazette newspaper on January 31, 2020, for the City Council public hearing on February 11, 2020. Notice was also mailed to all property owners within 300-feet of the project site and posted in two public places.

ATTACHMENTS:

1. Ordinance 1558
https://banningca.gov/DocumentCenter/View/6977/ATTACHMENT-1---Ordinance-1558_Adopting-AMG-Electronic-Message-Center-Dev
2. Development Agreement No. 11
<https://banningca.gov/DocumentCenter/View/6978/ATTACHMENT-2---AMG-Digital-Advertising-Sign---Development-Agreement-v-2>
3. Planning Commission Approved Conditions of Approval for CUP 19-8009
<https://banningca.gov/DocumentCenter/View/6979/ATTACHMENT-3---DRAFT-CONDITIONS-OF-APPROVAL-Rev2>

Approved by:



Douglas Schulze, City Manager

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**CITY OF BANNING
BANNING UTILITY AUTHORITY REPORT**

TO: **BANNING UTILITY AUTHORITY**

FROM: **Douglas Schulze, City Manager**

PREPARED BY: **Art Vela, PE, Public Works Director/City Engineer**
Jennifer Jackson, Management Analyst

MEETING DATE: **February 25, 2020**

SUBJECT: **Resolution 2020-1 UA, Approving the Professional Services Agreement in the Amount of \$103,924 with U.S. Geological Survey for the Continued Implementation of a Stream Flow Monitoring Program Related to the San Gorgonio Flume**

RECOMMENDED ACTION:

Adopt Resolution 2020-1 UA:

1. Approving a 2019-2020 Professional Services Agreement with U.S. Geological Survey for the continued implementation of a stream flow monitoring program related to the San Gorgonio Flume in an amount not to exceed \$103,924.
2. Authorizing the City Manager or his designee to make necessary budget adjustments, appropriations and transfers related to the Professional Services Agreement.
3. Authorizing the City Manager to execute the Professional Services Agreement with U.S. Geological Survey.

BACKGROUND:

The City continues working with Banning Heights Mutual Water Company (BHMWC) and the San Gorgonio Pass Water Agency (SGPWA), referred to as the Participating Entities (PE), as they have for several years, to secure control of the San Gorgonio Flume once Southern California Edison's (SCE) Surrender Application has been accepted by the Federal Energy Regulatory Commission (FERC).

Because a portion of the Flume is located on federal land, once SCE's Surrender Application is accepted by FERC, the PE's must obtain approval from the United States Forest Service ("Forest Service") for those parts of the San Gorgonio Flume system that are not currently covered by an existing right-of-way. The Forest Service requires compliance with National Environmental Policy Act (NEPA) prior to the issuance of such approval, which in part, requires several studies and analysis including instream flow and diversion analysis.

JUSTIFICATION:

Approval of Resolution 2020-1 UA would allow for continuation of the stream monitoring program put in place in 2015 at the request of the Forest Service in order to provide supporting data that will be incorporated into technical studies submitted to the Forest Service.

The request to collect water diversion data by the Forest Service is consistent with Senate Bill (SB) 88, signed June 24, 2015 and approved by the Office of Administrative Law March 21, 2016. SB 88 puts forth measurement and reporting requirements for all water right holders that divert more than 10 acre-feet of water per year. Additionally, SB 88 requires that systems that divert over 1,000 acre-feet per year must have hourly reading of the water being diverted. The Flume system diverts, on average, 2,200 acre-feet per year. Approval of 2020-01 UA would provide the required diversion data to comply with SB 88.

Additionally, the stream flow monitoring program will provide real-time data which provides staff the opportunity to detect obstructions in the conveyance system allowing staff to be dispatched to make the necessary repairs in a timely manner.

FISCAL IMPACT:

If approved, the 2019-2020 Professional Service Agreement in the amount of \$103,924, will be funded by the Water Operations Fund Account 660-6300-471.90-78 (Flume Consultant Costs) which is budgeted to cover the term of the agreement.

Like previous years, the cost of the services to be provided by the USGS will be shared by the City of Banning, BHMWC, SGPWA and SCE as follows:

City of Banning:	\$ 38,124
San Gorgonio Pass Water Agency:	\$ 30,000
Banning Heights Mutual Water Co.:	\$ 20,000
Southern California Edison:	<u>\$ 15,800</u>
	\$103,924

ALTERNATIVES:

Reject Resolution 2020-1 UA. Rejection of staff's recommendation will make it difficult to comply with SB 88 and may not provide sufficient data to support technical studies.

ATTACHMENTS:

1. Resolution 2020-1 UA
<https://banningca.gov/DocumentCenter/View/6982/Attachment-1-USGS-RESO-2020-01UA-022520>
2. U.S. Geological Survey 2019-2020 Agreement
<https://banningca.gov/DocumentCenter/View/6981/Attachment-2-USGS-Agreement-022520>

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: Thomas Miller, Electric Utility Director
Brandon Robinson, Electrical Engineering Supervisor

MEETING DATE: February 11, 2020

SUBJECT: Adopt Resolution No. 2020-17, Approving the First Amendment to Contract Services Agreement C00229 with Electric Power Systems International, Inc.

RECOMMENDED ACTION:

The City Council adopt Resolution:

1. Approving the First Amendment to Contract Services Agreement C00229 with Electric Power System International, Inc. ("EPS") to include additional maintenance, testing, and modifications to Banning Electric Utility ("Utility") substations in an amount of \$829,982.07. The total contract amount will increase to \$980,517.07 for the Utility's Electric Substation Equipment Maintenance and Testing contract.
2. Authorizing the City Manager to execute the First Amendment to the Professional Services Agreement with EPS for Fiscal Year 2019/2020 for the Electric Substation Equipment Maintenance and Testing contract.

PROJECT DESCRIPTION:

The Utility owns and operates two (2) 4kV and four (4) 12kV distribution substations throughout the Banning electric service territory. The two 4kV substations, Alola and Airport Substations, are scheduled to be converted to 12kV substations which will include new and updated equipment. The Utility has a need to perform required preventative maintenance on the four remaining substations which include the San Gorgonio, Midway, 22nd Street, and Sunset Substations. These maintenance activities will increase the reliability of Banning's electric system.

BACKGROUND:

The City executed a contract with EPS in February of 2018 to complete several maintenance activities within the four 12kV substations. These activities include of testing substation breakers, transformers, switches, protective relays and other equipment by specialty technicians within the four 12kV stations; and in accordance with industry standards, specifications and maintenance schedules. All work is coordinated and inspected by Utility staff.

While performing maintenance for the Utility under this contract, EPS has identified and recommended that some of the equipment replaced or upgraded in order to better coordinate system protection, operations and future maintenance tasks. EPS has also identified specific maintenance tasks that could be completed by the Utility's powerline technician crews that would help deliver cost savings.

Included in the recommendations from EPS are several equipment upgrades that are required to ensure that the Utility protects and enhances the reliability of the distribution circuits providing power to various residential, commercial and industrial customers. The California Public Utilities Commission (CPUC) General Order No. 174 (GO174) defines standards for substation equipment inspection and maintenance protocols. These standards promote worker/operator safety and increased reliability of the grid. These maintenance activities also consider the California Air Resources Board (CARB) regulations described in Senate Bill 32 (2016) to reduce sulfur hexafluoride (SF6) emissions from gas-insulated equipment to less than 1% beginning in 2020 to less than 0.5% by year 2050.

The Utility has elected to take a gradual approach to completing the required upgrades that have been identified through the maintenance of the existing four 12kV substations. This includes completing the most critical components that will ensure long term reliability and reduce greenhouse gas emissions. Sunset Substation and 22nd Street Substation were two facilities that required immediate major maintenance work which includes replacing the 34.5kV SF6 gas insulated circuit breakers with clean-air vacuum interrupting circuit breakers, replacing 12.47kV gas insulated distribution circuit breakers with clean-air vacuum circuit breakers, relocating one of the step-down transformers at Sunset Substation to a more suitable substation location, and completing the necessary fiber optics and communications system rewiring to ensure that the Utility's SCADA necessities are met. A detailed scope of services is included herewith as Attachment 3.

FISCAL IMPACT:

An appropriation in the amount not-to-exceed \$\$829,982.07 from the Electric Capital Improvement Fund shall be transferred to Account No. 670-7000-473-30.06. 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.

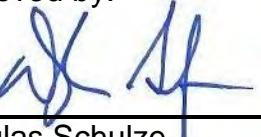
ALTERNATIVES:

1. Adopt the Resolution.
2. Reject the amendment, separate the additional maintenance tasks and request proposals through the formal bid process.

ATTACHMENTS:

1. Resolution 2020-17
<https://banningca.gov/DocumentCenter/View/6984/Attachment-1---Resolution-2020-17----Amending-CSA-with-EPS>
2. Professional Services Agreement C00229
<https://banningca.gov/DocumentCenter/View/6985/Attachment-2---C00229-Contract>
3. EPS Proposal and Contract Amendment for Recommended Maintenance Upgrades at 22nd Street and Sunset Substations
<https://banningca.gov/DocumentCenter/View/6983/Attachment-3---EPS-Contract-Amendment-and-Propossal>

Approved by:



Douglas Schulze
City Manager

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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
Jennifer Jackson, Management Analyst

MEETING DATE: February 25, 2020

SUBJECT: Adopt Resolution 2020-3 UA, Approving an Amendment to the Professional Services Agreement with Falen Law Offices, LLC for Legal Services related to the Transfer of the San Gorgonio Flume System in the amount of \$250,000

RECOMMENDED ACTION:

Staff Recommends that the Banning Utility Authority adopt Resolution 2020-3 UA:

1. Approving an Amendment to the Professional Services Agreement with Falen Law Offices, LLC for Legal Services related to the Transfer of the San Gorgonio Flume System for an amount not-to-exceed \$250,000.
2. Authorizing the City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the Amendment to the Professional Services Agreement with Falen Law Offices, LLC for Legal Services related to the Transfer of the San Gorgonio Flume System.
3. Authorizing the City Manager to execute the Amendment to the Professional Services Agreement with Falen Law Offices, LLC.

BACKGROUND:

For over several years, the City of Banning, in cooperation with Banning Heights Mutual Water Company and San Gorgonio Pass Water Agency, has been engaged in negotiations to secure control of the San Gorgonio Flume from Southern California Edison (SCE). SCE has attempted to surrender its license for the San Gorgonio hydroelectric system to the Federal Energy Regulatory Commission (FERC) for many years; however,

several outstanding issues must be resolved before FERC will issue an approval of the SCE application and the Flume transfer can be completed.

Due to the complex nature of the Flume transfer, as well as the significance of several other ongoing Water and Wastewater projects/activities, the City sought specialized legal services through a formal Request for Proposals (RFP) process in 2018.

As a result of that process, the firm of Churchwell White, LLP was selected to represent the City in Water and Wastewater matters, and Falen Law Offices, LLC was selected for representation for the San Gorgonio Flume project specifically.

Falen Law Offices, LLC was chosen based upon their experience and expertise dealing with projects that involve the Federal Land Policy and Management Act (FLPMA), US Forest Service appeals, the 1891 Right of Way Act and Federal land issues, all of which relate to the San Gorgonio Flume project.

Upon Council approval at the April 23, 2019 Council meeting, the City entered into a 2-year Professional Services Agreement with Falen Law Offices, LLC in the amount of \$100,000 for Legal Counsel Services for the Transfer of the San Gorgonio Flume Project.

JUSTIFICATION:

Since Agreement execution, Falen Law Offices, LLC, has worked tirelessly in reviewing historical documents and becoming versed in these longstanding negotiations to resolve the San Gorgonio Flume issue on behalf of the City. Through the FERC Dispute Resolution Service (DRS) process, negotiations continue regarding the proposed decommissioning and US Forest Service permitting agreement.

Although staff remains optimistic regarding the progress achieved thus far, additional revenue is necessary to continue working towards resolution of this complex matter. Negotiations are expected to continue into fiscal year 2021.

FISCAL IMPACT:

The Amendment to the Professional Services Agreement with Falen Law Offices, LLC in the amount of \$250,000 will continue to be funded by account 660-6300-471-90.78; this account has sufficient funds to accommodate the Amendment thru FY 2020/2021 (Agreement expires 8/14/2021).

The original contract with Falen Law Offices, LLC was for \$100,000; Amendment 1 will bring the total contract amount to \$350,000.

ALTERNATIVE:

Reject Resolution 2020-3 UA and provide further direction to staff.

ATTACHMENTS:

1. Resolution 2020-3 UA
https://banningca.gov/DocumentCenter/View/6992/Attachment-1-Resolution-2020-03UA_AmendmentToFalenAgreement
2. Original Agreement
https://banningca.gov/DocumentCenter/View/6993/Attachment-2-C00516_FALEN_LAW_OFFICES_LLC
3. Amendment 1 <https://banningca.gov/DocumentCenter/View/6994/Attachment-3-AmendmentToFallenAgreement-022520>

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: Art Vela, Director of Public Works

MEETING DATE: February 25, 2020

SUBJECT: Approving an Increase to the Purchase Order with Altec Industries, Inc., for Onsite Inspections and Repair of Bucket Trucks

RECOMMENDED ACTION:

Approving an increase to the purchase order with Altec Industries in the amount of \$20,000 for a total Fiscal Year 2019-2020 purchase order amount of \$20,000 and authorizing the City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the requested increase.

BACKGROUND:

The City of Banning owns 6 bucket trucks that are operated by the Street Division (1) to perform general maintenance services and the Electric Department (5) for overhead line repair and maintenance. In order to remain in compliance with safety standards and requirements regulated by Occupational Safety and Health Administration (OSHA) and American National Standards Institute (ANSI), annual bucket truck inspections are necessary which include inspection of aerial devices and boom platforms.

Electric Utility operations specifically require dielectric testing of the bucket trucks which is the process of applying high voltage to a device in order to determine the status of its electrical insulation. Other inspection tests to be performed on bucket trucks address structural, functional and operational aspects of the equipment. These regular inspections are designed to identify developing problems to avoid injuries or equipment downtime. Following the inspections, if any defects are found, they are categorized by severity and scheduled for repairs. Inspection certification is provided verifying annual inspection and operability.

All six City-owned bucket trucks utilize Altec aerial devices. In order to obtain inspection and repair services, staff has solicited the services of Altec Industries, Inc. (Altec), a company that has provided the City with reliable and effective services in the past. In addition, Altec Industries participated in a competitive bid process and was awarded a cooperative agreement and established pricing through Sourcewell; Contract Award 021418-AIC. For these reasons, staff respectfully requests to increase the annual blanket order with Altec for onsite inspections and repair of the bucket trucks in the amount of \$20,000.

JUSTIFICATION:

Annual inspections of bucket trucks are required in order to maintain compliance with safety standards related to the operation of bucket trucks.

Sourcewell issued a cooperative agreement to Altec under Contract Award 021418-AIC which is valid through March 14, 2022.

FISCAL IMPACT:

The Fleet Division operational budget will fund the annual onsite inspections and repairs as needed of the buckets trucks, Account No. 702-3800-480.38-52 (Auto Parts) and Account No. 702-3800-480.30-05 (Repair/Maint-Vehicles). An appropriate in the amount of \$20,000 is required to cover the increase in the purchase order. If approved, the total contract amount will be \$45,000.

ALTERNATIVE:

City Council may reject this approval which will result in delays in performing the required safety inspections and needed repairs.

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: **CITY COUNCIL**

FROM: **Douglas Schulze, City Manager**

PREPARED BY: **Art Vela, Director of Public Works**

MEETING DATE: **February 25, 2020**

SUBJECT: **Approving an Appropriation in the Amount of \$25,000 and an Increase to the Purchase Order with Sonsray Machinery, LLC for the As-Needed Repairs to the City's Heavy-Duty Equipment**

RECOMMENDED ACTION:

Approve an appropriation in the amount of \$25,000 and an increase to the purchase order with Sonsray Machinery, LLC in the amount of \$25,000 for a total Fiscal Year 2019-2020 purchase order amount of \$45,124 and authorizing the City Manager or designee to make necessary budget adjustments, appropriations and transfers related to the requested increase.

BACKGROUND:

On July 1, 2019, the City issued a purchase order for the repair and maintenance of its heavy-duty construction equipment and related accessories on an as needed basis in the amount of \$25,000 under the cooperative agreement issued through Sourcewell, formerly known as National Joint Powers Alliance (NJPA), #032515-CNH.

At this time, additional funding in the amount of \$25,000 is necessary in order to continue to provide repair and maintenance services of heavy-duty equipment to the various City departments through Fiscal Year 2019-2020. For this reason, staff respectfully request an increase to the annual blanket order with Sonsray Machinery, LLC for repair and maintenance services as needed for an annual blanket purchase order aggregate amount "not to exceed" \$45,124.

JUSTIFICATION:

Repairs and maintenance are necessary in order to maintain City-owned and operated heavy-duty equipment (e.g. backhoes, graders, loaders, etc.).

Sourcewell, formerly NJPA, issued a cooperative agreement to Sonsray Machinery, LLC under CO-OP NJPA #032515-CNH which is valid through May 13, 2023.

FISCAL IMPACT:

The Fleet Division operational budget will fund repairs and maintenance of heavy equipment as needed through Account No. 702-3800-480.38-52 (Auto Parts) and Account No. 702-3800-480.30-05 (Repair/Maint-Vehicles). An appropriate in the amount of \$25,000 is required to cover the increase in the purchase order.

ALTERNATIVE:

City Council may reject this approval which may result in an interruption of City operations due to delays in performing the required maintenance and repairs as needed.

Approved by:



Douglas Schulze
City Manager



CITY OF BANNING CITY COUNCIL REPORT

TO: CITY COUNCIL

FROM: Douglas Schulze, City Manager

PREPARED BY: Thomas Miller, Electric Utility Director
Brandon Robinson, Electrical Engineering Supervisor

MEETING DATE: February 25, 2020

SUBJECT: Adopt Resolution No. 2020-18, Awarding a Construction Agreement for IFB No. 19-037 Electric Utility Underground Construction Labor and Equipment Work to Gross Development Marketing, Inc./9500, Inc. and Establishing a Total Contract Budget of \$1,500,000 and Rejecting all Other Bids

RECOMMENDED ACTION:

The City Council adopt Resolution:

1. Approving the Award of a Construction Agreement for IFB No. 19-037 Electric Utility Underground Construction Labor and Equipment Work to Gross Development Marketing, Inc./9500, Inc. ("GDM") of Oceanside, CA. Approve a total contract budget in an amount not-to-exceed \$1,500,000 over three years.
2. Authorizing the City Manager to execute the Construction Agreement with GDM for Fiscal Year 2019/2020 for the Electric Substation Equipment Maintenance and Testing contract.

BACKGROUND:

City of Banning Electric Utility ("Utility") has serviced the City of Banning since 1922 and has built many overhead and underground electric utility distribution systems over its nearly 100 years in business. In order to ensure that the Utility continues to provide safe and reliable power to its customers, the Utility must maintain and replace electrical conduit and cable systems that are nearing the end of useful life cycles, implement measures that both improve electrical infrastructure and enhancing the aesthetic

environment of the City's inhabitants and visitors, and protect its distribution system within elevated wildfire threat districts as required by California Senate Bill 901. In order to achieve these goals, the Utility must complete new underground electric distribution systems and rehabilitate old, obsolete systems.

The Utility decided that it would help streamline construction performance and help deliver cost savings by pre-purchasing its materials for a variety of underground electric utility construction projects and utilizing a single contractor to provide labor and equipment to complete them. The Utility will have the ability to complete design drawings and bid units to submit to the construction contractor for cost and approval for each project.

On October 8, 2019, the Utility and Purchasing staff advertised an Invitation for Bids (IFB No. 19-037) on The Press-Enterprise and posted on PlanetBids. Additionally, email notifications were sent out to all vendors by PlanetBids. In response to these efforts, the City on November 26, 2019 received the following bids and electronic opened them through PlanetBids:

Companies

- 1) Gross Development Marketing, Inc./9500, Inc.
- 2) Hot Line Construction, Inc.
- 3) VCI Construction, Inc.
- 4) Asplundh Construction, LLC
- 5) Accurate Structural, Inc.

The complete unit bid prices for each contractor are included herewith as Attachment 2.

In order to choose the most equitable responsive bidder, Utility staff compared the bid units from each bidder by testing those bid units against three sample underground electric utility construction jobs. GDM produced the lowest total project price on each occasion based on the bid units provided in their response to IFB No. 19-037. The bid comparisons are attached herewith as Attachment 3.

JUSTIFICATION:

Rehabilitation:

The reconductoring of underground utilities is recommended due to wear and damage of existing unjacketed cable in some areas of the service territory. After years of continued service in certain neighborhoods, the heat from the unjacketed wire had molded to the conduit in many areas. As a result of similar primary cable faults within the City, the Utility has determined that it is critical to begin reconductoring in the locations where unjacketed cable is installed underground to bring our utility up to date with current regulations for underground electrical construction.

Wildfire Mitigation & Prevention:

The Utility understands that the threat of wildfire being caused by utility lines in areas of elevated wildfire risk will be eliminated through grid hardening. Undergrounding of the overhead utilities in these areas is one way to solve this issue.

Beautification:

The conversion to underground systems helps to reduce the overconcentration of overhead utilities and provide beautification to the City. The Utility has completed similar projects through Banning's Downtown Corridor and will look to expand on opportunities to place overhead utilities underground throughout other areas of the City and service territory.

FISCAL IMPACT:

The Utility will allocate funds from the Electric Fund and transfer to the appropriate account to be determined at the time of contract award for each specific project. Total construction costs over three-year contract shall not exceed \$1,500,000. 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.

ALTERNATIVES:

1. Adopt the Resolution.
2. Reject all bids, and request bids for each project through the formal bid process.

ATTACHMENTS:

1. Resolution 2020-18

https://banningca.gov/DocumentCenter/View/6986/Attachment-1---Resolution-2020-18---Awarding-IFB-No-19-037-to-GDM-Inc_1

2. IFB No. 19-037 Bid Results

<https://banningca.gov/DocumentCenter/View/6987/Attachment-2---IFB-No-19-037-Bid-Results>

3. IFB No. 19-037 Bid Comparison

<https://banningca.gov/DocumentCenter/View/6988/Attachment-3---IFB-No-19-037-Bid-Comparison>

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: Art Vela, Director of Public Works/ City Engineer

MEETING DATE: February 25, 2020

SUBJECT: Adopt Resolution 2020-26, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2020/2021.

RECOMMENDED ACTION:

That the City Council adopt Resolution No. 2020-26, Initiating Proceedings to Update Landscape Maintenance District No. 1 for Fiscal Year 2020/2021 in order to prepare for the assessments of the area.

BACKGROUND:

In accordance with the "Landscaping and Lighting Act of 1972" ("1972 Act") of the Streets and Highways Code, the City Council adopted a resolution on August 14, 1990 ordering the formation of Landscape Maintenance District (LMD) No. 1, ("the District") the boundaries of which are shown in Attachment "2". An additional five tracts and three tentative tracts were annexed (Annexation No. 1) into LMD No. 1 when the City Council approved Resolution No. 2005-36 on May 10, 2005. The District, by special benefit assessments, provides funding for the servicing and maintenance of certain landscape areas within the City of Banning, all of which are located in the public right-of-way. The 1972 Act requires that assessments are to be levied according to benefit rather than according to assessed value. Resolution No. 2020-26 will initiate the proceedings to update the District for Fiscal Year 2020/2021. A tentative schedule for updating the District, as required by the "Landscaping and Lighting Act of 1972," is attached hereto as Attachment "3" for your information.

JUSTIFICATION:

The City Council approved the formation of Landscape Maintenance District No. 1 by adopting Resolution No. 1990-59 on August 14, 1990. The adoption of Resolution No. 2020-26 will enable the City Engineer to prepare for the assessment for Fiscal Year 2020/2021.

FISCAL IMPACT:

Not applicable. A detailed estimate will be prepared and forwarded with the Engineer's Report.

ALTERNATIVE:

Do not approve Resolution 2020-26, which would result in staff not initiating the process of assessing the homeowners and properties within LMD No. 1 a fee to pay for maintenance and servicing costs. Expenses funded by the fee currently include the LMD contractor, utility costs (water and electric), miscellaneous costs (irrigation repair, flower and tree replacement, shrubs, etc.), and minor incidentals. Without an assessment, other funding sources would have to be utilized to pay for the expenses related to the operation and maintenance of LMD No.1.

ATTACHMENTS:

1. Resolution No. 2020-26
<https://banningca.gov/DocumentCenter/View/6989/Attachment-1--Reso-2020-26-LMD-Initiate-proceedings-for-FY-20-21>
2. LMD No. 1 Map for FY 2020/21
<https://banningca.gov/DocumentCenter/View/6990/Attachment-2--Landscape-Maintenance-District-No-1-Map->
3. Tentative Schedule for Updating LMD No. 1
<https://banningca.gov/DocumentCenter/View/6991/Attachment-3--Tentative-Schedule-for-Updating-Landscape-Maintenance-District-No-1>

Approved by:



Douglas Schulze
City Manager