



*The following information comprises the minutes for a 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**

**5/24/2022  
REGULAR MEETING**

COUNCIL MEMBERS PRESENT: Council Member Mary Hamlin  
Council Member David Happe  
Council Member Alberto Sanchez  
Mayor Pro Tem Colleen Wallace  
Mayor Kyle Pingree\*

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Doug Schulze, City Manager\*  
Serita Young, Assistant City Attorney  
Marie Calderon, City Clerk  
Caroline Patton, Deputy City Clerk  
Art Vela, Director of Public Works\*\*  
Adam Rush, Community Development Director\*\*  
Thomas Miller, Electric Utility Director  
Suzanne Cook, Finance Director\*\*  
Matthew Hamner, Chief of Police  
Ralph Wright, Parks and Recreation Director  
Jim Steffens, Power Resources and Revenue Administrator  
Laurie Sampson, Executive Assistant  
John Garside, Multimedia Specialist

\*Participated remotely from the Business Center of South Point Hotel, Casino & Spa located at 9777 Las Vegas Boulevard South, Las Vegas, Nevada 89183.

\*\*Participated via Zoom or Teleconference.

**1. CALL TO ORDER**

Mayor Pingree called the regular meeting to order at 5:05 p.m.

- 1.1. Invocation – Pastor Dave Kieffer of Our Savior’s Lutheran Church provided the invocation.
- 1.2. Pledge of Allegiance – Mayor Pro Tem Wallace led the Pledge of Allegiance.

## 1.3. Roll Call

COUNCIL MEMBER	PRESENT	ABSENT
Hamlin, Mary	X	
Happe, David	X	
Pingree, Kyle	X	
Sanchez, Alberto	X	
Wallace, Colleen	X	

2. **AGENDA APPROVAL**

## 2.1. Approve Agenda

**Motion to approve the agenda.**

Motion by Council Member Happe  
Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle	X				
Sanchez, Alberto	X				
Wallace, Colleen	X				

Motion approved by a vote of 5-0.

3. **PRESENTATION(S)**

None

4. **REPORT ON CLOSED SESSION**

Assistant City Attorney Young reported on closed session agenda item 3.1, which included a discussion with no final or reportable action.

5. **PUBLIC COMMENTS, CORRESPONDENCE, APPOINTMENTS, CITY COUNCIL COMMITTEE REPORTS, CITY MANAGER REPORT, AND CITY ATTORNEY REPORT**5.1. **PUBLIC COMMENTS**

**Ellen Carr** said she felt the tables in the room were creating a wall between the Council the residents.

**Inge Schuler** commented on fireworks prevention drones.

**Bill Hobbs** commented on the tables present in the room. He said he was in support of the group A Better Banning.

**Juanita Diaz** spoke in response to Mr. Hobbs' comments regarding A Better Banning. She challenged his claim the group was helping the community by boycotting businesses and threatening to sue to City. Ms. Diaz said she was Vice Chair of the Parks and Recreation Commission and they are not made aware of projects before they go to Council for approval. She said the state of the City's parks was poor and necessary repairs were needed.

**Kathleen Dale** said A Better Banning was a wonderful group that should be supported by the City. She suggested the City Council read a recent letter to the editor in the Record Gazette.

**Harry Sullivan** spoke on the Banning Municipal Airport.

**Alejandro Geronimo** said he felt he was cut off during public comment in a previous meeting and asked if there was a time limit exception for elected officials.

Assistant City Attorney Young explained that since Mr. Geronimo was not an elected member on the City Council, he was subject to the same time limits as everyone else. Should members of the City Council wish to seek his input on an agenda item they can ask him to comment.

5.2. CORRESPONDENCE

None

5.3. APPOINTMENTS

5.3.1. Making Appointments to the City's General Plan Advisory Committee (GPAC) to Participate in the City's Update to the Land Use and Circulation Elements of the General Plan

Community Development Director Adam Rush explained that two applicants had withdrawn and suggested City Council continue this item to the next regular meeting.

**Motion to appoint continue the General Plan Advisory Committee appointments.**

Motion by Council Member Happe  
Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle	X				
Sanchez, Alberto	X				
Wallace, Colleen	X				

Motion approved by a vote of 5-0.

#### 5.4. CITY COUNCIL COMMITTEE REPORTS

**Mayor Pro Tem Wallace** reported on updates she received via email from the Southern California Regional Council of Governments (SCAG).

**Council Member Hamlin** said she attended the Riverside County Transportation Commission (RCTC) meeting, where she learned about the ribbon-cutting event for improvements on highway 60 through the Badlands.

**Mayor Pingree** reported he was in Las Vegas attending the International Conference of Shopping Centers (ICSC) conference in hopes of bringing new businesses into the City of Banning.

#### 5.5. CITY MANAGER REPORT

None

#### 5.6. CITY ATTORNEY REPORT

None

### 6. CONSENT ITEMS

- 6.1. Approval of Minutes of the May 10, 2022 City Council Meetings
- 6.2. Approval and Ratification of Accounts Payable and Payroll Warrants Issued in the Month of April 2022
- 6.3. Receive and File Cash, Investments and Reserve Report for the Month of April 2022
- 6.4. Receive and File Police Department Statistics for the Month of April 2022
- 6.5. Receive and File Fire Department Statistics for the Month of April 2022
- 6.6. Public Works Capital Improvement Project Tracking List
- 6.7. Consideration of Resolution 2022-57, Awarding a Construction Agreement for Project No. 2022-02, "Street Rehabilitation at Various Locations" to Matich Corporation of San Bernardino, California in the Amount of \$848,796.00 and Establishing a Total Project Budget of \$933,675.60 and Rejecting All Other Bids
- 6.8. Consideration of Resolution 2022-58, Approving a List of Projects to be Funded for Fiscal Year 2022/2023 by Senate Bill (SB) 1 "The Road Repair and Accountability Act of 2017"
- 6.9. Consideration of Resolution 2022-59, Approving Amendment 1 to the Canon Financial Services Agreement for Copier Lease to Include Banning Electric

- Utility's Plotter for an Annual Purchase Order Amount not to Exceed \$22,000.00 through March 2026
- 6.10. Consideration of Resolution 2022-60, Approving Amendment No. 2 to the Professional Services Agreement with IMEG Corporation Increasing the Total Compensation by \$8,703 and Extending the Term of Agreement through May 31, 2022 for Additional Construction Management Services (CMS)
  - 6.11. Consideration of Resolution 2022-61, Approving the Short-Range Transit Plan for Fiscal Years 2022/2023 through 2024/2025 and Authorize the Submittal of the Fiscal Year 2022/2023 Funding Claims
  - 6.12. Consideration of Resolution 2022-62, Approving an Agreement with Aikins IT to Provide, Install, and License Cameras for the Banning Police Station in the amount of \$138,334
  - 6.13. Consideration of Resolution 2022-63, Establishing Rates for Fiscal Year 2023 Solid Waste Collection, Transportation, Disposal and Recycling Services
  - 6.14. Consideration of Resolution 2022-64 Awarding Engineering Services and System Analysis for 220kV Substation Connection to the Southern California Edison (SCE) 220kV System to Auriga Corporation of Milpitas, California

#### Public Comments

**Kathleen Dale** asked for an update on the Sun Lakes Boulevard Extension project, particularly studies prepared for the environmental review process.

Director of Public Works Art Vela responded that several of the environmental studies being completed for the project are almost and will be available for the public. The City does not yet have a concrete funding plan for construction of the project.

#### **Motion to approve the consent agenda as presented.**

Motion by Council Member Happe

Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle	X				
Sanchez, Alberto	X				
Wallace, Colleen	X				

Motion approved by a vote of 5-0.

#### **7. PUBLIC HEARING(S)**

None

## **8. REPORTS OF OFFICERS**

### **8.1. Summer 2022 Energy Prices**

Electric Utility Director Tom Miller introduced Jim Steffens.

#### Public Comment

**Bill Hobbs** commented on electric car facilities and the increased use of electric vehicles.

**Susan Shotts** said she was a resident of Serrano del Vista and the addition of solar panels cut their energy bills by half.

Power Administrator Jim Steffens responded to their concerns.

### **8.2. Consideration of an Exclusive Negotiation Agreement (ENA) Between City of Banning, Grandave Capital, LLC, and First Industrial Realty Trust**

City Manager Doug Schulze presented the staff report.

#### Public Comment

**Harry Sullivan** spoke in opposition to closing the airport.

**Ellen Carr** said she felt it was a bad idea to close the airport and the City could make it profitable if it invested the money from the Federal Aviation Administration (FAA).

**Cindy Barrington** spoke in opposition, citing safety considerations.

**Kathleen Dale** said she felt the Council was moving toward a CEQA violation and asked a number of clarifying questions about the proposed agreement.

**Bill Hobbs** said the airport made him feel good and that it was aesthetically pleasing.

City Manager Schulze addressed several concerns, including the public process that will occur should Council decide to move forward with closure of the Municipal Airport and CEQA considerations. He said that Chief Hopkins of CalFire confirmed that the airport closure would not impact fire safety in the City. He spoke to the deposit included in the draft agreement and other details of the deal, including the timing of First Industrial entering discussions with the City.

Assistant City Attorney Young clarified that for the purposes of CEQA, an Exclusive Negotiating Agreement (ENA) is not a project.

**Motion to approve the Exclusive Negotiation Agreement.**

Motion by Council Member Sanchez  
Seconded by Mayor Pro Tem Wallace

COUNCIL MEMBER	YES	NO	ABSTAIN	RECUSE	ABSENT
Hamlin, Mary	X				
Happe, David	X				
Pingree, Kyle	X				
Sanchez, Alberto	X				
Wallace, Colleen	X				

Motion approved by a vote of 5-0.

**9. DISCUSSION ITEM(S)**

None

**10. ITEMS FOR FUTURE AGENDAS**

10.1. New Items

10.2. Pending Items:

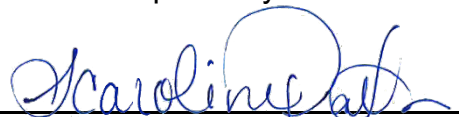
1. Permanent Homeless Solution
2. Shopping Cart Ordinance Update
3. Golf Cart/EV Ordinance (On hold)
4. Airport Advisory Commission
5. Business-Friendly Zoning (Wallace)
6. Community Garden Project (Sanchez)
7. Internship Program (Hamlin)

Mayor Pingree noted that he had posted the meeting agenda outside the Business Center at his teleconference location in Las Vegas. A photo is attached as Exhibit A.

**11. ADJOURNMENT**

Mayor Pingree adjourned the meeting at 7:44 p.m.

Minutes Prepared by:

  
Caroline Patton, Deputy City Clerk

**This entire meeting may be viewed here:**

<https://banninglive.viebit.com/index.php?folder=City+Council+Meetings>

**All documents related to this meeting are available here:**  
<http://banning.ca.us/ArchiveCenter/ViewFile/Item/2646>

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**ATTACHMENTS:**

Exhibit A – Proof of Notice at Teleconference Location

Exhibit B – Agenda Item 8.1: Revised Staff Report

Exhibit C – Agenda Item 8.2: Revised Draft of Exclusive Negotiating Agreement under Consideration

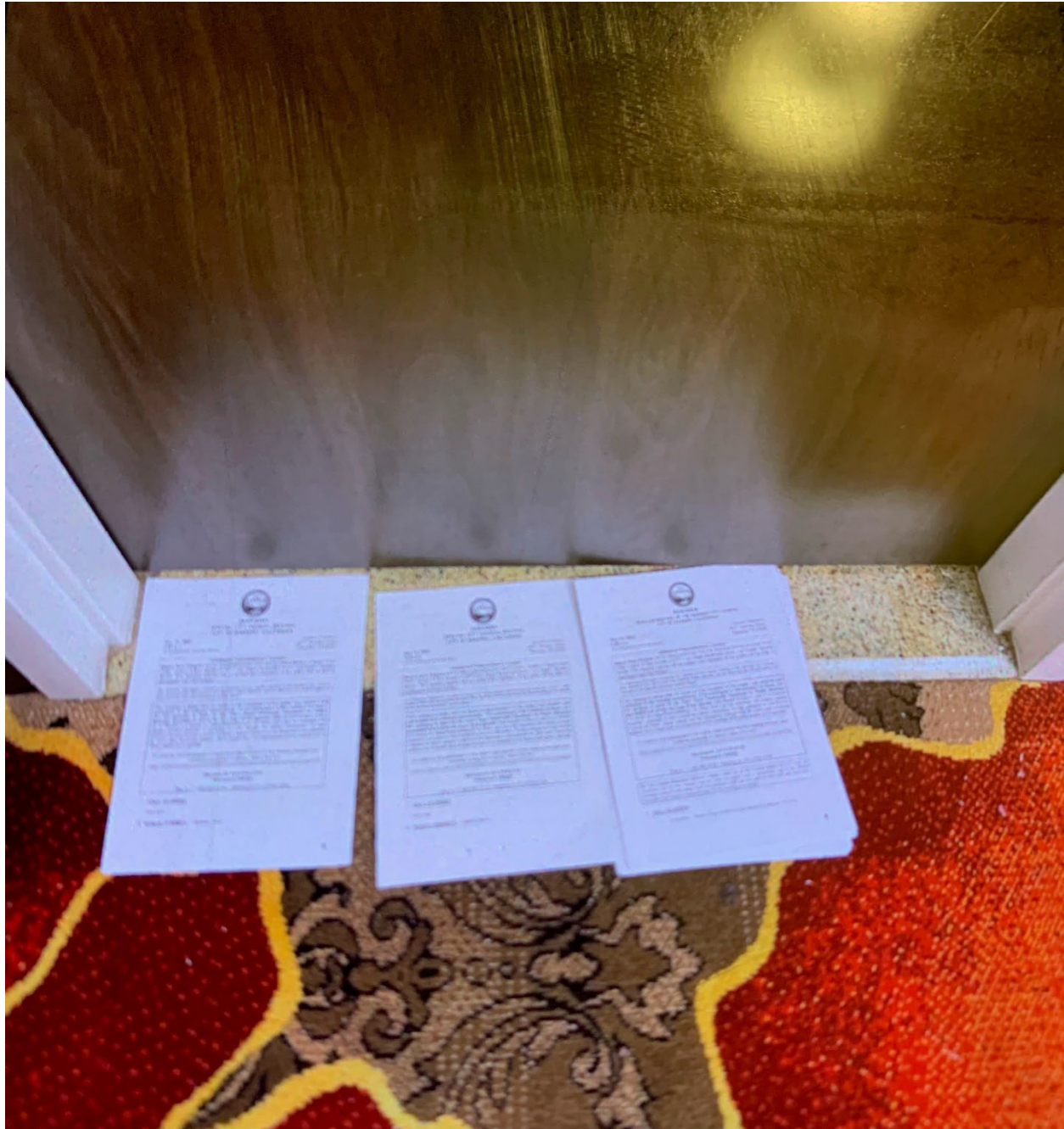
Exhibit D – Agenda Item 8.2: Revised Attachment No. 1 to Proposed ENA

Exhibit E – Agenda Item 8.2: Public Comment



## Exhibit A

### Proof of Posting Agenda Notice at Teleconference Location Provided by Mayor Kyle Pingree on May 24, 2022





**CITY OF BANNING  
STAFF REPORT**

**TO:** CITY COUNCIL

**FROM:** Douglas Schulze, City Manager

**PREPARED BY:** Jim Steffens

**MEETING DATE:** May 24, 2022

**SUBJECT:** Summer 2022 Energy Prices (Receive and File)

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**SUMMARY:**

Traditionally the Electric Utility ("Utility") fully hedges the price of its expected energy needs for each summer (July through September). However, due to the exorbitant contract prices of financial energy hedges for the summer of 2022, the Utility is currently situated to be short this summer for the hours from 4 PM to 9 PM. Based on average summer peak load data from 2021, the Utility will be short a high of 2 MW for the hour 8 PM. However, if the summer of 2022 is hotter than the summer of 2021, or if any other factors increase its load, the Utility could be even shorter. Nevertheless, the Utility is currently operating under the premise that, unless the contract prices of financial energy hedges drop significantly before the summer begins, the Utility will maintain its current short position.

**BACKGROUND:**

The Utility's load is much higher in the summer than during the rest of the year. For example, the **average** peak load during the non-summer months is 15 MW, while the **average** peak load during the summer is 37 MW. Similarly, the **highest** non-summer peak load in 2021 was 24 MW, while the **highest** summer peak load was 49 MW. (It should be noted that although the highest peak load in the summer of 2021 was 49 MW, only 1% of the hours in the summer of 2021 were greater than 45 MW, only 7% of the hours were greater than 40 MW, and only 17% of the hours were greater than 35 MW.)

The Utility has 15 MW of baseload resources, and 8 MW of solar resources. With this resource portfolio, the Utility has excess resources for the non-summer months but is short resources for the hot summer months. Traditionally, to cover the shortfall each summer the Utility enters into financial energy hedges to reduce the price volatility of the energy that we must purchase in the CAISO wholesale energy markets. These financial energy hedges ensure that the Utility will be paying a predetermined fixed price for energy that we purchase in the CAISO Day Ahead energy markets for every hour hedged. For

example, consider a hedge with a contract price of \$50 per MW. For every hour during the term of the hedge, we pay the counterparty \$50 per MW. In return, the counterparty pays us per MW what the wholesale CAISO Day Ahead market price is for that hour. The net result is that we pay \$50 per MW, no matter what the CAISO wholesale market price is. If the CAISO price for a particular hour is greater than \$50, the hedge is successful for that hour, and we reduce our energy expenses. If the CAISO price is less than \$50 per MW, we pay more for the energy than we would have absent the hedge. Either way, the goal of the hedge is to reduce the volatility of our summer energy expenses. The key is to enter into hedges with favorable contract prices. If we lock in prices that are too expensive, it can have a detrimental effect on our budget. Historically, the Utility has judiciously chosen favorably priced financial hedges that have reduced summer energy expenses every summer except for one summer.

Hedges come in three different standard hourly time periods: (1) "24 Hours per Day"; (2) "Traditional Peak" – 16 hours per day (7 AM to 10 PM); or (3) "Super Peak" – 9 hours per day (2 PM to 10 PM). The Utility generally enters into a mixture of 24 Hour per Day and Super Peak hedges to match our summer load as closely as possible. The Utility was able to enter into 13 MW, 3-year summer strip of 24 Hour per Day hedge at an elevated, but not unreasonable, price. However, the contract prices for the Super Peak hedges have been so high for the summer of 2022, the Utility has not been able to procure them at a reasonable contract price level. Super Peak contract prices were \$66 for the summer of 2020 and \$98 for the summer of 2021. However, the Super Peak contract prices for the summer of 2022 have been greater than \$170 per MW. Even with going out into the future with a 3-year summer strip, the Super Peak prices are still greater than \$150. To put these prices in perspective, the average CAISO Super Peak wholesale prices in the summer of 2021 was \$89. Locking in a price as high as \$170 for 828 hours per contracted MW (92 summer days x 9 hours per day = 828 hours) could have detrimental effects upon the Utility's budget. Granted, it is likely that summer Super Peak energy prices will be higher this summer due to the reasons discussed below. But absent a crystal ball, it still may not be prudent to lock in prices so high. For all we know, this could end up being a somewhat normal summer from a weather perspective. For example, the summer of 2020 had two days with rolling blackouts, leading everyone to be concerned about the summer of 2021. However, the summer of 2021 was uneventful with stable wholesale energy prices.

Attachment "A" shows the Utility's available resources for this summer compared to the average hourly peak loads from the summer of 2021. Compared to the average hourly peaks of summer 2021, the Utility has sufficient or excess resources from 10 PM at night until 3 PM in the afternoon. However, the Utility is short resources from 4 PM to 9 PM. This time is the period usually covered by the Super Peak hedges. Based upon the 2021 data, the largest shortage we have for covering the average peak is 2 MW during the hour 8 PM. The four hours highlighted in orange and yellow indicate the evening hours when the CAISO wholesale energy prices tend to be the highest.

There are several reasons why the Super Peak contract prices have been so high for this summer:



1. It was anticipated that approximately 4,000 MW of additional battery storage was going to be added to the CAISO grid during the first half of 2022 to help cover the summer evening peak loads. However, due to supply chain issues, approximately 40% of these projects will not be ready by the summer.
2. A recent CAISO tariff change has caused some market uncertainty, and traders have priced in this uncertainty.
3. The drought is now in its third year, meaning that there will be less hydroelectricity this summer.
4. The war in Ukraine has elevated natural gas prices and brought a lot of uncertainty into the natural gas markets for this summer. This factor will likely affect the price of energy during the evening peak hours after the solar resources on the grid have dissipated. Once the sun goes down, natural gas peaker plants are a significant source of energy on the grid.

The Utility has already taken steps to create a long-term solution to this issue. To help ensure that the Utility never faces this issue again, the Utility has started hedging further out into the future. By spreading out when we enter hedges, we will be much better prepared in case there are pricing anomalies in any one year. We already have a 3-year summer strip hedge, which is 24 Hour per Day, 13 MW, and covers the summers of 2022 through 2024. Additionally for the summer of 2024, we have entered into a 5 MW Super Peak hedge at a reasonable contract price of \$97.50, and a 5 MW Traditional Peak hedge at a very reasonable contract price of \$70.25.

Another longer-term partial solution would be to add our own battery storage resources once the prices of battery storage become more economically attractive. The Utility could then use the battery storage to serve load during the expensive evening hours when solar is coming off the grid. Conversely, adding more solar would not help the pricing issue as the greatest price volatility occurs in the evening hours when solar stops producing.

However, the ultimate solution is that enough energy storage will be added to the CAISO grid that the high evening CAISO wholesale energy prices will get arbitrated away. It is extremely certain that this solution will occur, the only question is when. There are thousands of MW of energy storage projects either in the CAISO queue or waiting to be added to the CAISO queue. The timing of many of these projects will depend on the supply chain issues. Many experts estimate that there will be sufficient energy storage on the grid by the summer of 2025 to start arbitrating away the high evening energy prices.

#### **FISCAL IMPACT:**

There are too many variables to do an exact analysis of the fiscal impacts of either entering into Super Peak hedges at these elevated prices or not. We would have to estimate our load for every summer hour from 4 PM to 9 PM and estimate the CAISO

wholesale energy prices for every summer hour from 4 PM to 9 PM. Without a crystal ball, accurately estimating these variables is nearly an impossible task.

However, we have done a break-even analysis based upon: (1) the Super Peak contract price: and (2) a percentage increase in CAISO wholesale energy prices during the Super Peak summer hours compared to those same hours from the summer of 2021. For example, if we were to enter into a Super Peak hedge with a contract price of \$170, Super Peak CAISO wholesale energy prices would have to increase 91% from the summer of 2021 in order for the Utility to break even on the hedge. This summer has some unique issues occurring, but we have never seen a CAISO wholesale energy price increase of this magnitude since the western energy crisis of 2001.

The break-even analysis also offers another useful reference point. The analysis shows that if the average Super Peak prices increase 0% from the average Super Peak prices of summer 2021, entering into a 10 MW Super Peak hedge at a price of \$170 would increase energy expenses by \$671,000.

#### **ALTERNATIVES:**

1. Enter a Super Peak hedge of 5-10 MW at current elevated prices. At this MW level, the Utility would be covered to a level greater than the average peak of the summer of 2021. However, the contract price is so high right now that locking in the current price would put the Utility significantly over budget.
2. Wait and hope for a dip in Super Peak contract prices. Hedges for the summer can be entered into up to June 29<sup>th</sup>. If there is no dip, go into the summer short for the hours from 4 PM to 9 PM. Based on 2021 data, the largest shortage for covering estimated average peak is 2 MW during the hour 8 PM. This option exposes the Utility to market price volatility, which would be manageable under most conditions, but which could also be substantial if there is a major Black Swan event this summer.

#### **ATTACHMENTS:**

1. Attachment "A" shows the Utility's available resources for this summer compared to the average hourly peaks from the summer of 2021.

Approved by:

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Douglas Schulze  
City Manager

**Attachment "A" UPDATED**

	<b>1 AM</b>	<b>2 AM</b>	<b>3 AM</b>	<b>4 AM</b>	<b>5 AM</b>	<b>6 AM</b>	<b>7 AM</b>	<b>8 AM</b>	<b>9 AM</b>	<b>10 AM</b>	<b>11 AM</b>	<b>12 AM</b>
<b>Average Q3 2021 Load:</b>	<b>19</b>	<b>17</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>16</b>	<b>17</b>	<b>19</b>	<b>21</b>	<b>23</b>	<b>26</b>
Avg. 2021 Q3 Price:	\$57	\$53	\$52	\$51	\$52	\$56	\$63	\$54	\$45	\$44	\$44	\$48
<b><u>RESOURCES:</u></b>												
BEU Resource Portfolio	15	15	15	15	15	15	16	19	22	22	22	22
7 x 24 Hedge	<b>13</b>	13	13	13	13	13	13	13	13	13	13	13
7 x 9 Hedge												
Totals:	<b>28</b>	<b>28</b>	<b>28</b>	<b>28</b>	<b>28</b>	<b>28</b>	<b>29</b>	<b>32</b>	<b>35</b>	<b>35</b>	<b>35</b>	<b>35</b>
<b>Long / (Short)</b>	<b>9</b>	<b>10</b>	<b>11</b>	<b>12</b>	<b>12</b>	<b>11</b>	<b>12</b>	<b>15</b>	<b>16</b>	<b>14</b>	<b>12</b>	<b>9</b>
	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>	<b>Long</b>

# Attachment "A" UPDATED

	1 PM	2 PM	3 PM	4 PM	5 PM	6 PM	7 PM	8 PM	9 PM	10 PM	11 PM	12 PM
<b>Average Q3 2021 Load:</b>	29	32	34	36	37	36	34	31	29	26	23	21
Avg. 2021 Q3 Price:	\$53	\$59	\$64	\$72	\$76	\$89	\$127	\$134	\$97	\$83	\$67	\$61
<b><u>RESOURCES:</u></b>												
BEU Resource Portfolio	22	22	22	22	23	23	20	17	16	15	15	15
7 x 24 Hedge	13	13	13	13	13	13	13	13	13	13	13	13
7 x 9 Hedge		0	0	0	0	0	0	0	0	0		
Totals:	35	35	35	35	36	36	33	30	29	28	28	28
<b>Long / (Short)</b>	<b>6</b>	<b>3</b>	<b>1</b>	<b>(1)</b>	<b>(1)</b>	<b>(0)</b>	<b>(1)</b>	<b>(2)</b>	<b>(0)</b>	<b>2</b>	<b>5</b>	<b>7</b>
	Long	Long	Long	SHORT	SHORT	SHORT	SHORT	SHORT	SHORT	Long	Long	Long

**EXCLUSIVE NEGOTIATING AGREEMENT**

This EXCLUSIVE NEGOTIATING AGREEMENT (“ENA”) is dated as of May \_\_\_\_, 2022, and is entered into by and between the CITY OF BANNING (“City”), and FIRST INDUSTRIAL ACQUISITIONS II, LLC, a Delaware limited liability company (“Developer”), and GRANDAVE CAPITAL, LLC, a California limited liability company (“Grandave”). The City and the Developer are sometimes individually referred to herein as a “Party” and are sometimes collectively referred to herein as the “Parties.”

**R E C I T A L S**

A. The City owns the land in the City of Banning, California described on Exhibit “A” (the “Property”).

B. Developer desires to apply for various entitlements for a mixed use project for the Property including a movie studio and industrial warehouse and distribution development, with multiple buildings (collectively, the “Project”), and enter into a “disposition and development agreement” with the City and Grandave (“DDA”) for the Property and Project. (Developer and Grandave contemplate that a movie studio by Grandave would be developed pursuant to terms of a separate ground lease agreement between Developer and Grandave.)

C. The Developer and the City will likely incur significant costs in negotiating and preparing California Environmental Quality Act (“CEQA”) documents, processing entitlements, and negotiating the DDA.

D. The Developer has requested that the City negotiate with the Developer on an exclusive basis for a specified period of time to establish the terms and conditions of the entitlements and DDA.

E. On October 27, 2020, the City entered into a previous ENA with Grandave which expired on April 30, 2021; that was extended by a second ENA that was entered into on April 27, 2021 which expired on December 31, 2021; and the City and Grandave then entered into still another ENA dated January 1, 2022 which expires on June 30, 2022 (“Existing Grandave ENA”).

F. The City and Grandave desire to terminate the Existing Grandave ENA, and the City, Grandave, and Developer desire to enter into this ENA. The City, Grandave, and Developer all desire that this ENA supersede, and that they terminate, the Existing Grandave ENA.

NOW, THEREFORE, the Parties hereto agree as follows:

1. The term of this ENA shall commence on the date hereof and shall end on the earlier of: (i) the Expiration Date (as hereinafter defined), or (ii) the date on which the City or the Developer terminates this ENA as provided in Section 3 below (the “ENA Period”). The Existing Grandave ENA is terminated as of the date hereof.

2. The “Expiration Date” shall mean November \_\_\_\_, 2023 [EIGHTEEN MONTHS], subject to extension as set forth in the following sentence. The City Manager may



# DRAFT

extend the term of this ENA for up to six (6) months by written notice to Developer provided all of the terms of the DDA shall have been negotiated and shall be acceptable to City staff (it being contemplated that additional time may be necessary to complete compliance with CEQA and City entitlements for the Project or to obtain federal approval for the closure of the airport on the Property). Following the exercise of any such extension, the Expiration Date shall be the last day of the ENA Period as so extended.

3. The City Manager may terminate this ENA by written notice to the Developer if: (i) the Developer should fail to comply with or perform any material provisions of this ENA and such failure is not cured within thirty (30) days after City Manager's delivery of written notice to the Developer (or if such failure is intrinsically—by its nature—unable to be cured within such thirty (30) day period, then the City Manager may not terminate this ENA if the cure is promptly commenced within such thirty (30) day period, and Developer thereafter Developer continuously and diligently prosecutes the cure to completion), or (ii) the Developer and City have reached an impasse in their negotiations, as determined by the City Manager in good faith. The Developer may terminate this ENA by written notice to the City if the Developer determines that it does not wish to pursue the Project any further.

4. During the ENA Period, the City shall not negotiate with any person or entity other than the Developer for the sale, lease, or development of the Property. Negotiations for Developer shall be conducted by Ryan McClean of FIRT.

In exchange for such exclusivity and negotiation rights (in a very competitive real estate market for warehouse space, and for commercial property generally), Developer shall pay to City the sum of \$2,000,000.000 as an ENA fee ("ENA Fee") within ten (10) days after execution of this ENA by City and delivery of this executed ENA and City's wiring instructions to Developer (which shall be delivered by email to [rmcclean@firstindustrial.com](mailto:rmcclean@firstindustrial.com)), time being of the essence of such payment requirement. If a DDA is approved, then the ENA Fee shall be a deposit under the DDA, and applied against the Purchase Price (as hereinafter defined) at the closing of the conveyance of land from City to Developer under the DDA if such DDA is approved, and such closing occurs, but will be liquidated damages under the DDA payable to City if Developer defaults under the DDA. ~~The~~Except as otherwise provided in this Section 4, the ENA Fee will not be refundable, even in the event the City Council does not ultimately approve the DDA if such decision follows the City staff's formal presentation of the DDA with a recommendation for approval.

If Developer does not timely deliver the entire ENA Fee, the City Manager (in his or her sole and absolute discretion, the implied covenant of good faith and fair dealing being hereby waived by Developer in that regard) may terminate this ENA by written notice to Developer, and following any such termination by the City, any portion of the ENA Fee previously delivered to the City will be immediately returned to Developer.

Until the date that is ninety (90) days after the date of this ENA (such date, the "Initial Review Period Expiration Date"), if Developer determines, in its sole discretion, that (a) the results of its environmental investigations of the Property are inconclusive, unacceptable or require additional environmental inspections, or (b) any lien, claim, encumbrance, restriction, covenant, condition, exception to title or other matter disclosed by any preliminary report or

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commitment for an owner's title insurance policy or a survey of the Property renders title unacceptable to Developer, in its sole and absolute discretion, or (c) the negotiations with City staff as to the terms of the DDA will not likely result in a DDA acceptable to Developer, then Developer may terminate this ENA by written notice to City Manager, given not later than 5:00 p.m. (Pacific Time) on the Initial Review Period Expiration Date, whereupon the ENA Fee shall be immediately returned to Developer (without interest) and neither party shall have any further obligation or liability under this Agreement except as may be otherwise expressly provided hereunder.

If Developer does not so terminate this ENA, then Developer shall have no right under the DDA to terminate the DDA as a result of any such title or survey matter, or any physical condition of the Property, except for material changes to such title or physical condition that occur after the completion of Developer's title and physical condition reviews/investigations prior to the Initial Review Period Termination Date (except that if Developer fails to complete its title review, survey or physical inspections, then Developer shall have no right under the DDA to terminate the DDA as a result of any such title or survey matter, or any physical condition of the Property except for material changes to such title or physical condition that occur after the Initial Review Period Expiration Date). Developer shall have the burden of proof with respect to any claim that such a material change to title or physical condition shall have occurred, and the DDA shall so provide.

If at any point after the Initial Review Period Expiration Date and prior to the date that is six (6) calendar months after the date of this ENA, the Developer or the City terminates this ENA, then City shall return eighty percent (80%) of the ENA Fee to Developer (without interest). If at any point after the date that is six (6) calendar months after the date of this ENA and prior to the date that is twelve calendar months after this ENA, the Developer or City terminates this ENA, then City shall return fifty percent (50%) of the ENA Fee to Developer (without interest).

Developer agrees that the purchase price for the Property in the DDA shall be no less than \$150,000,000 (the "Purchase Price"), but Developer acknowledges that if the Property is sold to Developer for less than its appraised fair market value (based on an appraisal that is reasonably "current" as of the date of the sale), then subject to the "de minimis" exception for prevailing wages under California Labor Code 1720, that would require that Developer agree in the DDA and Grandave agree in its ground lease (for the benefit of the City, as an express third party beneficiary), to pay prevailing wages and obtain the bonds contemplated/required by, and otherwise comply with, California's prevailing wage statutes.

5. The Developer shall deliver the materials and information identified on Attachment No. 1 attached hereto to the City within the times set forth on Attachment No. 1; provided, that each of the time periods set forth on Attachment No. 1 may be extended by Developer for an additional period of thirty (30) days by delivery of written notice thereof to the City, but in no event shall the extension of any of the time periods set forth on Attachment No. 1 result in an extension of the ENA Period (except that the ENA Period may otherwise be extended as provided in Section 2). Additionally, within ten (10) days after each calendar month during the ENA Period (as extended under Section 2 above, if applicable), the Developer shall provide a written report to the City describing in reasonable detail the Developer's activities with

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respect to the Project during such calendar month (i.e., the calendar month preceding the date of the report).

Concurrently with its execution and delivery of a counterpart of this ENA, Developer and Grandave shall also execute and deliver a counterpart of the Right of Entry Agreement in the form attached hereto as Attachment No. 3.

6. During the ENA Period, the City shall: (a) complete (or cause to be completed) the tasks set forth in Attachment No. 2 attached hereto, and (b) cooperate in good faith with Developer in securing the necessary approvals for the Project from governmental agencies having jurisdiction over the Project (including Developer's attempt to have the FAA approve closure of the airport on the Property).

7. The Developer shall reimburse the City for the City's actual out-of-pocket costs and expenses (including reasonable legal fees and consultants costs) incurred in preparing this ENA and fulfilling its obligations under this ENA, including, but not limited to: (i) the costs of negotiating and preparing the entitlements, potential development agreement, and other approvals required for the Project (including approvals under Section 6(b) above); and (ii) the costs of appraisals, economic consultants and the like used by the City to evaluate the Project, proposed transaction terms, and/or the DDA and any related documents or agreements (collectively, the "Reimbursable Costs"). The Reimbursement Costs shall not include costs of complying with the California Environmental Quality Act ("CEQA"); those costs shall be the subject of a separate Deposit and Reimbursement Agreement as normally required by City in its governmental capacity.

Concurrently with its execution and delivery of a counterpart of this ENA, the Developer shall deposit with the City the sum of One Hundred Thousand and No/100 Dollars (\$100,000.00) (the "Reimbursement Funds"). The Reimbursement Funds may be used and applied from time to time by the City to pay or reimburse itself for Reimbursable Costs not otherwise paid or reimbursed by the Developer. The City shall deliver to the Developer a calendar quarterly statement describing the amount(s) deducted from the Reimbursement Funds and the expenses being paid with such amount(s), with reasonable evidence of the expenses. The Developer shall deposit with the City funds sufficient to replenish the Reimbursement Funds (the "Additional Funds") held by the City within ten (10) business days after delivery to Developer of written demand by the City Manager.

Any Reimbursement Funds (including any Additional Funds) not applied as herein set forth shall be returned to the Developer (along with a final accounting of the application of the Reimbursement Funds and any Additional Funds) within thirty (30) days after the earlier of: (i) the execution of the DDA, or (ii) the expiration or earlier termination of this ENA. The provisions of this Section shall survive the expiration or earlier termination of this ENA, to the extent that Reimbursable Costs have been incurred for which there are insufficient Reimbursement Funds then on deposit.

Notwithstanding anything to the contrary in this ENA, express or implied, but subject to Developer's right to deposit the Additional Funds, the City shall have the right in its sole and absolute discretion to cease evaluation of submittals relating to the Project, stop any

other staff work and/or work of its consultants and stop negotiating or discussing the Project, the entitlements, the DDA and other Project approvals and agreements if the City Manager reasonably determines that the Reimbursement Funds then on deposit are not sufficient to pay for all of the projected/established Reimbursable Costs projected/estimated in good faith by the City Manager and Developer does not deposit such Additional Funds within ten (10) business days after City Manager's delivery of written notice to the Developer.

8. The City and the Developer acknowledge that all applicable requirements of CEQA must be met in order for the City to approve Project entitlements and for the City to enter into the entitlements, the DDA and other approvals required for the Project, and that this may require reports and/or analyses (collectively, the "CEQA Documents"). The Developer will, at its cost, fully cooperate with the City in the City's preparation of CEQA Documents.

9. The Parties understand and agree that no Party is under any obligation whatsoever to approve the entitlements or enter into the DDA, and that notwithstanding its approval of this ENA, each party shall have the right to disapprove the entitlements, the DDA, and other approvals for the Project, its sole and absolute discretion, and in that regard, the Developer hereby expressly agrees that the City shall not be bound by any implied covenant of good faith and fair dealing in connection with such approval or disapproval of any of the DDA (and Developer hereby waives such implied covenant in that regard). In the event of the expiration or earlier termination of this ENA, the City shall be free to negotiate with any persons or entities with respect to the Property. No consents, approvals, comments or discussions by staff shall diminish, affect or waive: (i) rights of the City to later impose conditions and requirements under CEQA; (ii) the right of the City not to approve the entitlements, the DDA or other Project approvals; or (iii) the City's other governmental rights, powers and obligations.

10. The Developer shall indemnify, defend, and hold the City and its officers, directors, members, employees, agents and contractors harmless from any and all claims, liabilities, losses, damages (actual and direct, but not punitive, speculative or consequential), costs and expenses actually suffered or incurred by the City and directly relating to or arising out of this ENA or the Developer's failure to perform any obligation of the Developer under this ENA (subject to any required notice and applicable cure period under this ENA), or any challenges to the validity of this ENA (based on CEQA noncompliance or otherwise), and the foregoing shall include any claims by Grandave against City except for any claim by Grandave that City has breached its obligations to Grandave under this ENA. The Developer's obligations under the preceding sentence shall survive the expiration or earlier termination of this ENA.

11. The Developer represents and warrants that its undertakings pursuant to this ENA are for the purpose of development of the Property and not for speculation in land, and the Developer and Grandave recognize that, in view of the importance of the development of the Property to the general welfare of the community, the qualifications and identity of the Developer and its principals are of particular concern to the City; therefore, this ENA may not be assigned by the Developer or Grandave without the prior express written consent of the City Manager in his sole and absolute discretion. However, the City acknowledges that the Developer may intend to form a new entity to be party to the DDA, and Developer may do so provided that such new entity is controlled and majority-owned by Developer or by owners of Developer, and provided, further, that the Developer first delivers to City a copy of the new

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entity's organizational documents and any amendments thereto, the applicable executed assignment and assumption agreement, and any other documents necessary for the City to confirm compliance with the foregoing ownership and control conditions.

12. Any notice, request, approval or other communication to be provided by one Party to the other shall be in writing and provided by certified mail, return receipt requested, or a reputable overnight delivery service (such as Federal Express) and addressed as follows:

Developer:

First Industrial Realty Trust  
c/o First Industrial Realty Trust, Inc.  
898 N. Pacific Coast Highway, Suite 175  
El Segundo, California 90245  
Attention: Ryan McClean

with a required copy to:

Barack Ferrazzano Kirschbaum & Nagelberg, LP  
200 West Madison, Suite 3900  
Chicago, Illinois 60606  
Attn: Ryan Smith  
Telephone: (312) 629-7321

Grandave:

Grandave Capital, LLC  
PO Box 880367  
San Diego, CA 92168  
Attn: Ruben Islas

City:

City of Banning  
99 E. Ramsey Street  
Banning, CA 92220  
Attn: City Manager

Notices shall be deemed delivered: (i) if sent by certified mail, then upon the date of delivery or attempted delivery shown on the return receipt; and (ii) if delivered by overnight delivery service, then one (1) business day after delivery to the service as shown by records of the service.

13. This ENA constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof. There are no agreements or understandings between the Parties and no representations by either Party to the other as an inducement to enter into this ENA, except as

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may be expressly set forth herein, and any and all prior discussions and negotiations between the Parties are superseded by this ENA.

14. This ENA may not be altered, amended or modified except by a writing duly authorized and executed by all Parties.

15. No provision of this ENA may be waived except by an express written waiver duly authorized and executed by the waiving Party.

16. If any Party should bring any legal action or proceeding relating to this ENA or to enforce any provision hereof, the Party in whose favor a judgment or decision is rendered shall be entitled to recover reasonable attorneys' fees and expenses from the other. The Parties agree that any legal action shall be filed in and shall occur in the County of Riverside, California.

17. The interpretation and enforcement of this ENA shall be governed by the laws of the State of California.

18. Time is of the essence of each and every provision hereof in which time is a factor.

19. This ENA may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same ENA.

20. Executed counterparts of this ENA may be delivered electronically by email to: dschulze@banningca.gov (for the City), and to rmclean@firstindustrial.com (for the Developer).

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

**CITY:**

CITY OF BANNING

By: \_\_\_\_\_  
Douglas Schulze, City Manager

**DEVELOPER:**

FIRST INDUSTRIAL ACQUISITIONS II,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Johannson Yap  
Chief Investment Officer

ATTEST:

\_\_\_\_\_  
Sara Caroline Patton, Deputy City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_

**DRAFT**

Kevin G. Ennis, City Attorney

**GRANDAVE:**

GRANDAVE  
a California limited CAPITAL, liability LLC company

By: Ruben \_\_\_\_\_ Islas, Manager

**EXHIBIT “A”**

**DESCRIPTION OF PROPERTY**

The land in the City of Banning, County of Riverside, State of California, described as follows:

APNs: 532-130-011, 012, and 018; 532-150-002 AND 003; 532-180-034; 532-240-009;  
532-250-009



**ATTACHMENT NO. 1**

**SPECIFIC DEVELOPER TASKS**

1. On or before \_\_\_\_\_, 2022, the Developer shall deliver the following items for City staff review and preliminary approval:
  - i) Preliminary site plan and revised architectural concept drawings identifying the location, building envelopes, general configuration, uses, parking and traffic circulation, and proposed design characteristics of the Project.
  - ii) Conceptual development program (“Development Program”) for the Project that include a breakdown of the proposed scope of development including a range of building square footage and number of parking spaces and landscaped areas, improvements, proposed public amenities, circulation, and uses.
2. On or before \_\_\_\_\_, 2022, the Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, discretionary permits.
3. On or before \_\_\_\_\_, 2022, the Developer shall deliver to the City for staff review and approval, a preliminary financing plan for the Project.
4. On or before \_\_\_\_\_, 2022, the Developer shall submit to the City an updated schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of the Project (the “Development Schedule”).
5. On or before \_\_\_\_\_, 2022, the Developer shall deliver to the City for staff review and approval, an organizational chart of the Developer related entity proposed to be a party to the Agreements.
6. On or before \_\_\_\_\_, 2022, the Developer shall deliver to the City fully completed and executed development applications.
7. On or before \_\_\_\_\_, 2022 [NINETY DAYS AFTER DATE OF ENA], the Developer shall obtain and review a preliminary report for the Property from a title company selected by the Developer and copies of the documents listed as title exceptions therein, and shall if desired by Developer obtain/perform a survey based on such preliminary report, and shall deliver copies of the reports and documents and any survey to the City, together with a written description of any objections the Developer may have to any of the title exceptions (and the rationale for the objections). In connection with any survey, Developer and its surveyor shall comply with the Right of Entry Agreement in the form attached hereto as Attachment No. 3.
8. On or before \_\_\_\_\_, 2022 [NINETY DAYS AFTER DATE OF ENA], the Developer shall inspect the Property, including obtaining and review a Phase I environmental (hazmat) report for the Property, and if recommended by the Phase I, a Phase II report, and in

connection therewith, Developer and its consultants shall comply with the Right of Entry Agreement in the form attached hereto as Attachment No. 3. The Developer shall promptly deliver copies of the final signed reports to the City when received.

9. On or before \_\_\_\_\_, 2022, Developer shall deliver to City a term sheet for, and a draft, of the ground lease between Developer and Grandave, and shall thereafter diligently negotiate the terms thereof. Thereafter, Developer and Grandave shall keep City staff informed as to the progress of negotiations, and any terms that relate to the scope or construction of improvements by Grandave.

10. On or before \_\_\_\_\_, 2022, Developer and Grandave shall deliver to City a copy of the executed ground lease (which may state that its effectiveness is conditioned upon the closing of the conveyance of land by City to Developer under the DDA, and which may have its rental terms, and other terms that do not relate to the Grandave project, redacted).

**ATTACHMENT NO. 2**

**SPECIFIC CITY TASKS**

1. The City shall provide to the Developer copies of all currently written information regarding the Property in its possession, to the extent not previously delivered to the Developer and to the extent material to the Property or Project and not subject to the attorney-client or attorney work-product privilege.
2. Subject to Developer's execution of a Deposit and Reimbursement Agreement of the sort typically required by City in connection with CEQA, and Developer's timely making any required deposits thereunder, the City shall use good faith efforts to prepare and process any required CEQA Documents as soon as reasonably possible after submission by the Developer of a complete development application and payment of applicable fees/deposits.
3. The City shall provide a draft of the DDA to the Developer, and shall thereafter revise said draft periodically to the extent permitted by the negotiations.

**ATTACHMENT NO. 3**

**FORM OF RIGHT OF ENTRY AGREEMENT**

(Attached.)

## RIGHT OF ENTRY AND ACCESS AGREEMENT

THIS RIGHT OF ENTRY AND ACCESS AGREEMENT (“Agreement”) is dated \_\_\_\_\_, 2022 and is entered into by and between the CITY OF BANNING (the “City”), FIRST INDUSTRIAL ACQUISITIONS II, LLC, a Delaware limited liability company (“Developer”), and GRANDAVE CAPITAL, LLC, a California limited liability company (“Grandave”).

### R E C I T A L S

A. City, Developer and Grandave have entered into an Exclusive Negotiating Agreement dated substantially concurrently herewith (the “ENA”) with respect to certain real property described in the ENA, and hereinafter referred to as the “Site”.

B. The ENA contemplates that the City, Developer and Grandave will negotiate a disposition and development agreement (“DDA”) for the Site, and requires that Developer and Grandave commence their due diligence inspections of the Site (“Inspections”) during the term of the ENA.

C. Consequently, City, Developer and Grandave desire to enter into this Agreement to provide access to the Site to Developer for purposes of commencing such Inspections.

**NOW, THEREFORE**, in consideration of the foregoing recitals, the ENA, the mutual covenants and agreements contained herein, and other consideration, the sufficiency of which are hereby acknowledged, City, Developer and Grandave do hereby covenant and agree as follows:

1. Term. This Agreement shall be effective upon the date hereof, and unless earlier terminated by City pursuant to Section 12 below, shall expire upon the expiration or earlier termination of the ENA.

2. Access.

a. Access by Developer. Subject to Developer’s compliance with the terms and provisions of this Agreement, Developer and Developer’s consultants who are designated in writing to City (collectively, “Developer’s Designees”) shall have the right to enter upon the Site for the purpose of performing the Inspections provided they make arrangements for entry at least two (2) days in advance with \_\_\_\_\_ of the City at \_\_\_\_\_, who shall have the right to require that he or another City staff person or City consultant staff person accompany the Developer or Developer’s Designee, as applicable, during performance of the Inspections; provided, however, that such the failure of such representative to attend a previously scheduled Inspection shall not require Developer or Developer's Designee to reschedule such inspection.

b. Access by Grandave. Subject to Grandave’s compliance with the terms and provisions of this Agreement, Grandave and Grandave’s consultants who are designated in writing to City (collectively, “Grandave’s Designees”) shall have

the right to enter upon the Site for the purpose of performing the Inspections provided they make arrangements for entry at least two (2) days in advance with \_\_\_\_\_ of the City at \_\_\_\_\_, who shall have the right to require that he or another City staff person or City consultant staff person accompany the Grandave or Grandave's Designee, as applicable, during performance of the Inspections; provided, however, that such the failure of such representative to attend a previously scheduled Inspection shall not require Grandave or Grandave's Designee to reschedule such inspection.

3. Indemnity.

a. Developer. Developer shall indemnify, defend and hold City harmless from and against any and all claims, liabilities, damages (actual, but not punitive, speculative or consequential), losses, costs and expenses of any kind or nature whatsoever, including, without limitation, attorneys' fees and expenses and court costs (collectively, "Losses") that City actually suffers or incurs as a direct result of (i) a breach of Developer's agreements set forth in this Agreement in connection with the Inspections or (ii) physical damage to the Site or bodily injury caused by Developer or Developer's Designees during its exercise of the right of inspection granted under this Agreement, but expressly excluding Losses arising out of latent defects, the displacement or disturbance of materials not placed on the Site by Developer or Developer's Designees, the discovery of pre-existing conditions, the negligence or misconduct of City, or any diminution in value in the Site arising from, or related to, matters discovered by Developer or Developer's Designees during any Investigations. The indemnification and defense obligations of Developer contained herein shall survive the expiration or earlier termination of this Agreement and the ENA for a period of (1) year.

b. Grandave. Grandave shall indemnify, defend and hold City harmless from and against any and all claims, liabilities, damages (actual, but not punitive, speculative or consequential), losses, costs and expenses of any kind or nature whatsoever, including, without limitation, attorneys' fees and expenses and court costs (collectively, "Losses") that City actually suffers or incurs as a direct result of (i) a breach of Grandave's agreements set forth in this Agreement in connection with the Inspections or (ii) physical damage to the Site or bodily injury caused by Grandave or Grandave's Designees during its exercise of the right of inspection granted under this Agreement, but expressly excluding Losses arising out of latent defects, the displacement or disturbance of materials not placed on the Site by Grandave or Grandave's Designees, the discovery of pre-existing conditions, the negligence or misconduct of City, or any diminution in value in the Site arising from, or related to, matters discovered by Grandave or Grandave's Designees during any Investigations. The indemnification and defense obligations of Grandave contained herein shall survive the expiration or earlier termination of this Agreement and the ENA for a period of (1) year.

4. Reports. Developer and Grandave shall promptly provide to City copies of all final signed surveys, letters, studies and reports related to or arising from the Inspections.

5. Insurance.

a. Developer. Developer at its sole expense shall procure and maintain in full force and effect from and after the date on which Developer or any of its agents, contractors, consultants, officers or employees enters the Site for any purpose, all of the insurance described in Exhibit "A" hereto, and otherwise comply with said Exhibit "A", and makes the grants/waivers described in Exhibit "A". Prior to entering upon the Site, Developer shall deliver to City copies of certificates of liability insurance showing that such policies are in effect, and showing the additional insured coverage required by Exhibit "A". Thereafter, copies of all required policies shall be furnished from time to time promptly following written request therefor.

b. Grandave. Grandave at its sole expense shall procure and maintain in full force and effect from and after the date on which Grandave or any of its agents, contractors, consultants, officers or employees enters the Site for any purpose, all of the insurance described in Exhibit "A" hereto, and otherwise comply with said Exhibit "A", and makes the grants/waivers described in Exhibit "A". Prior to entering upon the Site, Grandave shall deliver to City copies of certificates of liability insurance showing that such policies are in effect, and showing the additional insured coverage required by Exhibit "A". Thereafter, copies of all required policies shall be furnished from time to time promptly following written request therefor.

6. Limitations. City does not hereby convey to Developer or Grandave any right, title or interest in or to the Site, but merely grants the specific and limited contractual rights and privileges hereinabove set forth.

7. Notices. Except as otherwise expressly provided herein, any notice, demand, request, consent, approval or communication that either party desires or is required to give to the other party shall be in writing and shall be addressed as follows and given by United States certified mail, postage prepaid, return receipt requested or by nationally recognized overnight mail service (such as FedEx).

**If to the Developer:**

First Industrial Realty Trust  
c/o First Industrial Realty Trust, Inc.  
898 N. Pacific Coast Highway, Suite 175  
El Segundo, California 90245  
Attention: Ryan McClean  
Email: rmcclean@firstindustrial.com

with a required copy to:

Barack Ferrazzano Kirschbaum & Nagelberg, LP  
200 West Madison, Suite 3900  
Chicago, Illinois 60606  
Attn: Ryan Smith  
Telephone: (312) 629-7321  
Email: ryan.smith@bfkn.com

**If to Grandave:**

Grandave Capital, LLC  
PO Box 880367  
San Diego, CA 92168  
Attn: Ruben Islas

**If to the CITY:**

City of Banning  
99 E. Ramsey Street  
Banning, CA 92220  
Attn: City Manager

8. Term. This Agreement shall terminate on the date (the “Termination Date”) that is the earliest of (i) the execution and delivery of the DDA by City and Developer, (ii) the expiration or termination of the ENA.

9. Assignment. This Agreement may not be assigned by Developer or Grandave, in whole or in part.

10. Governing Law. This Agreement shall be construed, enforced and interpreted in accordance with the laws of the State of California.

11. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

12. Default; Termination. If Developer or Grandave fail to cure a default by Developer or Grandave hereunder within thirty (30) days after City Manager’s delivery of written notice to the Developer and Grandave (or such other period of time if such failure cannot by its nature be cured within such thirty (30) day period, so long as Developer and/or Grandave diligently proceeds with efforts to cure such failure), the City Manager may terminate the Agreement by further written notice to Developer and Grandave.

13. Counterparts. This Agreement may be executed in counterparts and delivered by electronic transmission (e.g., .PDF format/email), to dschulze@banningca.gov (for delivery to



City) and to rmclean@firstindustrial.com (for delivery to Developer), each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Right of Entry and Access Agreement as of the day and year first written above.

**CITY:**

CITY OF BANNING

By: \_\_\_\_\_  
Douglas Schulze,  
City Manager

**DEVELOPER:**

FIRST INDUSTRIAL ACQUISITIONS II,  
LLC, a Delaware limited liability company

By: \_\_\_\_\_  
Johannson Yap  
Chief Investment Officer

Attest:

\_\_\_\_\_  
Caroline Patton,  
Deputy City Clerk

**GRANDAVE:**

GRANDAVE CAPITAL, LLC  
a California limited liability company

By: \_\_\_\_\_  
Ruben Islas, Manager

## EXHIBIT “A”

### INSURANCE REQUIREMENTS

1. Developer (hereinafter referred to as “Contractor” in this Exhibit “A”)—meaning each of the two parties comprising Developer--shall, prior to entering onto the Site, procure and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder (consisting of inspections and tests) by Contractor, its agents, representatives, employees or subcontractors. The cost of such insurance shall be borne by the applicable Contractor.

2. Minimum Scope and Limit of Insurance. Coverage shall be at least as broad as:

A. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$2,000,000 per occurrence. If a general aggregate limit applies, the general aggregate limit shall be twice the required occurrence limit (these limits may be achieved by a combination of a primary policy and an excess or umbrella liability policy). The policy shall include broad form contractual liability coverage.

B. **Automobile Liability:** ISO Form Number CA 0001 covering any auto (Code 1), or if Contractor has no owned autos, hired (Code 8) and non-owned autos (Code 9), with combined single limit no less than \$1,000,000 per accident for bodily injury and property damage.

C. **Workers’ Compensation** insurance as required by the State of California, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

3. Contractor should check with Contractor’s insurance advisors to verify compliance and determine if additional coverage or limits may be needed to adequately insure Contractor’s obligations under this agreement. These are the minimum required and do not in any way represent or imply that such coverage is sufficient to adequately cover Contractor’s liability under this agreement. These insurance requirements shall not in any way relieve Contractor of liability in excess of such coverage, nor shall it preclude City from taking such other actions as are available to it under any other provisions of this agreement or law. These insurance requirements shall not in any way act to reduce coverage that is broader or includes higher limits than those required. If Contractor maintains broader coverage and/or higher limits than the minimums shown above, City requires and shall be entitled to the broader coverage and/or the higher limits maintained by Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage required, which are applicable to any given loss, shall be available to City.

4. The insurance to be provided by Contractor under this agreement shall not include any endorsement limiting coverage available to City that is otherwise required herein; and any

policy or endorsement language that (i) negates coverage to City for City's own negligence; (ii) limits the duty to defend City under the policy; (iii) provides coverage to City only if Contractor is negligent, or (iv) permits the recovery of defense costs from any additional insured. The insurance provided under this agreement shall not contain any restrictions or limitations which are inconsistent with City's rights under this agreement.

5. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:

A. **Additional Insured Status.** The City of Banning, its City Council, its officers, officials, employees, agents, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability additional insured coverage shall be provided in the form of an endorsement to Contractor's insurance at least as broad as ISO Form CG 20 10 (ongoing operations) and CG 20 37 (completed operations).

B. **Separation of Insureds.** A separation of insureds provision must apply for all the additional insureds, ensuring that Contractor's insurance shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the insurer's limits of liability.

C. **Primary Coverage.** For any claims related to this contract, Contractor's insurance coverage shall be primary insurance coverage at least as broad as ISO CG 20 01 04 13 as respects City, its City Council, its officers, officials, employees, agents, and volunteers. Any insurance or self-insurance maintained by City, its City Council, its officers, officials, employees, agents, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.

D. **Notice of Cancellation/Change in Coverage.** Each insurance policy required above shall state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed except after thirty (30) days' prior written notice has been given to City, except that ten (10) days' prior written notice shall apply in the event of cancellation for non-payment of premium. Prior written notice shall be sent to City pursuant to the Notices provisions of this agreement.

E. **Waiver of Subrogation.** Contractor hereby grants to City a waiver of any right to subrogation which any insurer of Contractor may acquire against City, its City Council, its officers, officials, employees, agents, and volunteers from Contractor by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not City has received a waiver of subrogation endorsement from the insurer.

Contractor's Workers' Compensation policy shall be specifically endorsed from the insurer with a waiver of subrogation in favor of City, its City Council, its officers, officials, employees, agents, and volunteers. A blanket endorsement is insufficient and

unacceptable in satisfying this requirement. Said endorsement from the insurer must be received, reviewed, and approved by City prior to right of entry.

F. Self-Insured Retentions. Self-insured retentions must be declared to and approved by City. City may require Contractor to purchase coverage with a lower retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.

G. Acceptability of Insurers. Insurance is to be placed with insurers authorized to conduct business in the state of California with a current A.M. Best's rating of no less than A:VII. The current A.M. Best rating for each insurer shall be noted on a cover letter provided by the producer of the Certificate(s) of Insurance.

H. Certificate Holder. Certificate Holder on each insurance certificate shall be addressed pursuant to the Notices provisions of this agreement.

I. Verification of Coverage. Contractor shall furnish City with certificates and all required amendatory endorsements or copies of the applicable policy language effecting coverage required by this clause. A statement on an insurance certificate will not be accepted in lieu of the actual endorsements required herein. Each insurance certificate shall specifically identify this agreement. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require copies of all required insurance policies, including endorsements required by these specifications, at any time.

J. Failure to Maintain Insurance Coverage. If Contractor, for any reason, fails to maintain insurance coverage which is required pursuant to this contract, the same shall be brought to Contractor's attention in writing and, if not cured within 5 (five) business days, be deemed a material breach of contract. City, at its sole option, may terminate this contract at any time and file for damages from Contractor resulting from said breach. Alternatively, City may, upon written notice and, if not cured within 5 (five) business days, purchase such coverage (but has no special obligation to do so), and without further notice to Contractor, the City may deduct from sums due to Contractor any premium costs advanced by City for such insurance.

K. Special Risks or Circumstances. City reserves the right to modify these requirements at any time, including limits, based on its good-faith assessment of the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

Document comparison by Workshare 10.0 on Tuesday, May 24, 2022 12:02:21 PM

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Moved cell	
Split/Merged cell	
Padding cell	

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## Exhibit D - Agenda Item 8.2

### ATTACHMENT NO. 1

#### SPECIFIC DEVELOPER TASKS

1. On or before August 15, \_\_\_\_\_, 2022, the Developer shall deliver the following items for City staff review and preliminary approval:
  - i) Preliminary site plan and revised architectural concept drawings identifying the location, building envelopes, general configuration, uses, parking and traffic circulation, and proposed design characteristics of the Project.
  - ii) Conceptual development program (“Development Program”) for the Project that include a breakdown of the proposed scope of development including a range of building square footage and number of parking spaces and landscaped areas, improvements, proposed public amenities, circulation, and uses.
2. On or before September 4, \_\_\_\_\_, 2022, the Developer and City staff shall determine the likely type and schedule for obtaining entitlements necessary for construction of the Project including, but not limited to, discretionary permits.
3. On or before September 4, \_\_\_\_\_, 2022, the Developer shall deliver to the City for staff review and approval, a preliminary financing plan for the Project.
4. On or before September 4, \_\_\_\_\_, 2022, the Developer shall submit to the City an updated schedule of development setting forth the proposed timetable for the commencement, substantial completion and final completion of the Project (the “Development Schedule”).
5. On or before September 4, \_\_\_\_\_, 2022, the Developer shall deliver to the City for staff review and approval, an organizational chart of the Developer related entity proposed to be a party to the Agreements.
6. On or before November 15, \_\_\_\_\_, 2022, the Developer shall deliver to the City fully completed and executed development applications.
7. On or before September 4, \_\_\_\_\_, 2022, the Developer shall obtain and review a preliminary report for the Property from a title company selected by the Developer and copies of the documents listed as title exceptions therein and shall deliver copies of the reports and documents to the City, together with a written description of any objections the Developer may have to any of the title exceptions (and the rationale for the objections), except for survey items.
8. On or before October 2, \_\_\_\_\_, 2022, the Developer shall obtain and review a Phase I environmental (hazmat) report for the Property, and if recommended by the Phase I, the Developer shall promptly obtain a Phase II report, and in connection therewith, Developer and its consultants shall comply with the Right of Entry Agreement in the form

attached hereto as Attachment No. 3. The Developer shall promptly deliver copies of the final signed reports to the City when received.

9. On or before September 4, \_\_\_\_\_, 2022, Developer shall deliver to City a term sheet for, and a draft, of the ground lease between Developer and Grandave, and shall thereafter diligently negotiate the terms thereof. Thereafter, Developer and Grandave shall keep City staff informed as to the progress of negotiations, and any terms that relate to the scope or construction of improvements by Grandave.
10. On or before November 15, \_\_\_\_\_, 2022, Developer and Grandave shall deliver to City a copy of the executed ground lease (which may state that its effectiveness is conditioned upon the closing of the conveyance of land by City to Developer under the DDA, and which may have its rental terms, and other terms that do not relate to the Grandave project, redacted).



**Exhibit E - Agenda Item 8.2**

Home (<https://nbaa.org/>) > Advocacy (<https://nbaa.org/advocacy/>) > Congressional GA Caucus



# Congressional GA Caucus



General Aviation (GA) Caucuses were formed in the U.S. House of Representatives and the Senate in 2009, to inform Members and staff about the importance of GA to the nation's economy and transportation system. Today, the House GA Caucus has more than 200 members, making it among the largest caucuses in the House of Representatives.

"The continued growth of these caucuses underscores the recognition by Congress that general aviation creates jobs, provides a transportation lifeline to communities across the country, helps businesses succeed and supports people and communities



in times of crisis,” said NBAA President and CEO Ed Bolen. “We are delighted to work with House and Senate Caucus Members to highlight the essential role general aviation, including business aviation, plays in every state and Congressional District.”

Below is a listing of all current House and Senate GA Caucus Members for the 117th Congress which convened in January 2021.

# Congressional GA Caucus Roster by State

## Alabama

### HOUSE MEMBERS

Aderholt, Robert (R-AL)

Brooks, Mo (R-AL)

Carl, Jerry (R-AL)

Rogers, Mike (R-AL)

Sewell, Terri (D-AL)

## Alaska

### SENATE MEMBERS

Murkowski, Lisa (R-AK)

Sullivan, Dan (R-AK)

### HOUSE MEMBERS

Young, Don (R-AK)

## Arizona