

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

April 28, 2015
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

Per City Council Resolution No. 2010-38 matters taken up by the Council before 9:00 p.m. may be concluded, but no new matters shall be taken up after 9:00 p.m. except upon a unanimous vote of the council members present and voting, but such extension shall only be valid for one hour and each hour thereafter shall require a renewed action for the meeting to continue.

I. CALL TO ORDER

- Invocation – Rev. Daniel Pedraza, First Hispanic Baptist Church
- Pledge of Allegiance
- Roll Call – Councilmembers Miller, Moyer, Peterson, Welch, Mayor Franklin

II. REPORT ON CLOSED SESSION

III. PUBLIC COMMENTS/CORRESPONDENCE

PUBLIC COMMENTS – *On Items Not on the Agenda*

A five-minute limitation shall apply to each member of the public who wishes to address the Mayor and Council on a matter not on the agenda. A thirty-minute time limit is placed on this section. 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 or future study, research, completion and/or future Council Action.) (See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

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

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

IV. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 10

Items to be pulled _____, _____, _____ for discussion.

(Resolutions require a recorded majority vote of the total membership of the City Council)

1.	Approval of Minutes – Special Meeting – 04/14/15 <i>(Interviews)</i>	1
2.	Approval of Minutes – Special Meeting – 04/14/15.	2
3.	Approval of Minutes – Special Meeting – 04/14/15 <i>(Closed Session)</i>	53
4.	Approval of Minutes – Regular Meeting – 04/14/15	55
5.	Report of Investments for March 2015.	76
6.	Approval of Accounts Payable and Payroll Warrants for Month of March 2015.	83
7.	Ordinance No. 1487, 2 nd Reading: An Ordinance of the City Council of the City of Banning, California, Approving a Categorical Exemption and Zoning Text Amendment No. 15-97503 to Amend Chapter 17.36 (Sign Regulations) of the Zoning Ordinance (Title 17) of the Banning Municipal Code	86
8.	Legal Service Agreement with McIntyre Law Group	92
9.	Resolution No. 2015-26, Rejecting the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase and Rescinding the Approval of Resolution No. 2015-01, and Rejecting Any and All Bids Solicited for the City Street Sweeper Lease or Purchase	111
10.	Resolution No. 2015-32, Clarifying Appropriation Instructions for Resolution No. 2015-12	115

- Open for Public Comments
- Make Motion

V. PUBLIC HEARINGS

(The Mayor will ask for the staff report from the appropriate staff member. The City Council will comment, if necessary on the item. The Mayor will open the public hearing for comments from the public. The Mayor will close the public hearing. The matter will then be discussed by members of the City Council prior to taking action on the item.)

1.	Consideration of Ordinance No. 1486, Approving the Categorical Exemption and Ordinance No. 1486 to Amend Chapter 5.52 (Shopping Carts) of Title 5 (Business Licenses and Regulations) of the Banning Municipal Code.	
	Staff Report	119

Recommendation: That the City Council:

- (I) Conduct a public hearing on the Categorical Exemption and Ordinance No. 1486; and
- (II) Introduce Ordinance No. 1486 to approve a Categorical Exemption and Ordinance No. 1486.

Mayor asks the City Clerk to read the title of Ordinance No. 1486

“An Ordinance of the City Council of the City of Banning, California, Approving a Categorical Exemption and Amending Chapter 5.52 (Shopping Carts) of Title 5 (Business Licenses and Regulations) of the Banning Municipal Code.”

Motion: I move to waive further reading of Ordinance No. 1486.
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1487 pass its first reading and approval of the Categorical Exemption.

VI. REPORTS OF OFFICERS

1. Resolution No. 2015-33, Approving the Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Project Implementation Agreement.

Staff Report. 152

Recommendations: That the City Council adopt Resolution No. 2015-33, Approving the Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Canyon Project Implementation Agreement.

2. Review of Banning Police Department – Informational Report

Staff Report. 170

VII. ANNOUNCEMENTS/REPORTS (Upcoming Events/Other Items if any)

- City Council
- City Committee Reports
- Report by City Attorney
- Report by City Manager

VIII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items – City Council

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. (6/2015)
2. Discussion on how the City Council handles donations to the City.
3. Discussion regarding Animal Control Services (7/2015)
4. Discussion regarding Police Staffing 4/28/15)
5. Golf Cart Lanes (4/28/15)
6. Bond Workshop (Midyear Budget) (4/28/15)

7. Discussion regarding change in time for Council Meetings (4/28/15 – Part 2 – Goals)
8. Fee Study
9. Discussion on how to handle/address upcoming Assembly Bills

(Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

IX. ADJOURNMENT

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 Thursday, 7 a.m. to 5 p.m.

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

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]

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

April 28, 2015
5:00 p.m.

Banning Civic Center
Council Chambers
99 E. Ramsey St.

ADDENDUM

IV. CONSENT ITEMS

11. Settlement Agreement with Hunter Consulting, Inc. ("HCI") **118 A**

Posted on 4/23/15

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/14/2015
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on April 14, 2015 at 9:00 a.m. at the Banning Civic Center Large Conference Room, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Marie A. Calderon, City Clerk

INTERVIEWS

1. Candidate Interviews for City of Banning Parks and Recreation Commission

Mayor Franklin went over the process that they would be using this morning for the interview process.

The candidates present for the Parks and Recreation Commission interviews were Inge Schuler, Leroy Miller and Veronica Topete. The City Council asked each of the candidates various questions such as what improvements would you like to see in the park system, what do you know about the relocation of Dysart Park, how do you see the commission reaching out to the community, how would you expand park usage, what do you see the role of the commission being, what community activities have you attended in the last twelve months, why do you want to be a Parks and Recreation Commissioner, and how do you see the school district and the commission working together. The candidates also had an opportunity to ask the Council questions. After the interviews were completed there was Council discussion of the candidates. They were impressed with each of the candidates but only two could be appointed and they said that they would make their appointments at the regular Council meeting this evening.

ADJOURNMENT

By common consent the meeting adjourned at 11:03 a.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/14/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on April 14, 2015 at 11:11 a.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: James E. Smith, Interim City Manager
Dean Martin, Interim Administrative Services Dir.
Fred Mason, Electric Utility Director
Brian Guillot, Acting Community Development Dir.
Arturo Vela, Acting Public Works Director
Alex Diaz, Chief of Police
Tim Chavez, Battalion Chief
Michelle Green, Deputy Finance Director
Oliver Mujica, Contract Planner
John McQuown, City Treasurer
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

WORKSHOP ITEM

1. Electric Utility Workshop
(Presentation by Fred Mason, Electric Utility Director)

Director Mason addressed the Council stating that today they would be going over a basic background, operation review of the utility and look at resources, regulatory rates and a number of other areas as well. At this time Director Mason started his power-point presentation (attached Exhibit "A"). He started with the organizational chart of the Electric Utility Department; Electric Utility Stats; Banning Power Resources explaining each facility (San Juan Unit #3 in New Mexico will be shutting down in Dec. 2017, Palo Verde in Arizona, Hoover in Nevada, Geber South & Gould 2 in the Imperial Valley, Banning Lower & Middle Units currently evaluating the cost benefit of having the smaller upper units); Renewable Portfolio Standard; Current Renewable Resources; SJ3 Replacement Resources; SCPA (Southern California Public Power Authority) and Benefits; CASIO (California Independent System Operator) Benefits & Responsibilities; RPU (Riverside Public Utilities) Services Agreement; Regulatory; Reporting; Electric Utility Funds; Electric Operations – Revenues and Expenses

FY 14; Rate Stability Fund; Electric Utility 4 KV & 12 KV Circuits; Public Benefit Fund; 2007 Electric Bond Debt Service; Fixed vs. Variable Expense; Distributed Generation (Solar PV); Subsidizing PV Customers; Data Collection & Analysis; Smart Meters; Billing Cycles; and Proposed Electric Rate Design/Rate Reduction Plan.

Director Mason gave more information on some of the items he presented in his power-point.

There were various questions asked by the Council and staff response in regards to the power resources, energy purchases, annual revenues, transmission, congestion expense, power outages, power transactions, line loss age, cost of street lighting; excess energy sales, SCE (Southern California Edison) franchise fee percentage, rate stability fund minimum reserve, residential solar program, radio frequency meter; demand charges, peak demand, and why so long to give a refund to the customers.

Mayor Franklin asked Director Mason if he could bring the Council some information about how we could do a rate reduction and some different options so that the Council could look at what that would do; what we have to have and then what we can do for reducing the bills.

Director Mason said that he would be coming back to the Council with a number of options.

There was some further Council discussion in regards to rate reductions and possible rebates.

Mayor Franklin recessed the Special City Council meeting at 12:54 p.m.

Joint Meeting

Mayor Franklin called to order a Joint Meeting of the Banning City Council, the Banning Utility Authority and the City Council Sitting In Its Capacity of a Successor Agency at 1:38 p.m.

REPORTS

1. Fiscal Year 2014/15 Midyear Budget Review
(Staff Report – Dean Martin, Interim Administrative Services Dir./Deputy City Mgr.)

Interim Director Martin addressed the Council stating that they is pleased to present the changes that they are recommending mid-year for the 2014/15 budget. He gave his staff report as contained in the agenda packet and also per his power-point presentation (attached Exhibit "B"). He will be covering the General Fund which there is the greatest amount of discretion and generally the greatest interest, the Utility Funds (Utility Wastewater and Water), as well as, our other funds (Transit, Airport, Special Revenue, Capital Funds) and he will also briefly cover the Successor Agency which is now a fiduciary fund which they simply manage really on behalf of the State and the other parties that receive those sales tax revenues and then talk about future challenges.

Interim Director Martin started off with the process that they went through and continued on to General Fund – Revenues, General Fund – Expenditures, General Fund Status; General Fund

Available Resources – June 30, 2015; Water Funds; Wastewater Funds; Reclaimed Water Funds; Electric Funds; Special Revenue Funds; Capital Improvement Funds; Enterprise Funds; Internal Service Funds; Successor Agency; and Future Challenges.

Interim Director Martin explained some of the slides in more detail as he went through his presentation.

There were various questions asked by the Council and staff response in regards to employee severance payouts, amount of reserves, how much has Measure J already brought to the City and next payment amounts, auditing for Measure J, is pipeline replacement part of our annual budget every year and built in for future years, what is going on with the purple pipe and what will the project entail, is the tertiary treatment plant included in Fund 682 and is that enough funding, funding for Chromium 6, Fire Facility Development Fund what is it for and what can it be spent on, what is the approximately deficit of the airport, concern with sales tax, and Council would like a discussion in regards to Robertson's funds and how those revenues can be used also the life of the mine.

Mayor Franklin opened the item for public comments; there were none.

Motion Welch/Moyer: (I) That the City Council adopt Resolution No. 2015-27, Amending Its 2014-15 Fiscal Budget Per the Mid-Year Review Recommendations; (II) That the Banning Utility Authority adopt Resolution No. 2015-05 UA, Amending Its 2014-15 Fiscal Budget Per the Mid-Year Review Recommendations; (III) That the Successor Agency adopt Resolution No. 2015-03 SA, Amending Its 2014-15 Fiscal Budget Per the Mid-Year Review Recommendations. Motion carried, all in favor.

Mayor Franklin recessed the joint meeting at 2:27 p.m. and reconvened the Special City Council Meeting at 2:40 p.m.

REPORTS

1. Goal Setting Workshop – Part I
- Presentation by Dr. James Smith

Interim City Manager Smith said that this afternoon Dr. Smith is with us and he helped us first convene focus groups throughout the city to get their comments. Staff has looked at those comments with Dr. Smith and put together a report (attached Exhibit "C") that has themes from the different things that have come out of those meetings. These themes you will see reflected in the report and you will get the count of how many times these have reoccurred throughout our focus groups. We also still have an active survey that is on the City's website that you can give comments to on how to improve Banning. Again, a part of this is getting to a point where we are starting to look at our vision and how we look at the mission of the City and what we are expected to do and what residents are expected to do and from this hopefully today we will get a good sense of what the residents said, get a good sense of the vision that the Council would like to take a look at and also some materials were provided to look at examples of vision and mission statements from other cities (attached Exhibit "D").

Dr. James Smith addressed the Council and stated that as Interim City Manager said we have done community meetings where we had various times of day so that we could maximize the opportunity for people to participate. We held those community meetings in different parts of town and seven of those were held and had approximately 142 people who participated and they were able to so through a SWOT Analysis where they identified what they thought (in small groups) were the Strengths, Weaknesses, Opportunities and Threats for the city. This is a part of a process where we will first take a look at reviewing your mission and then we will look at the vision and go into goals and objective so we can set goals that help to measure whether or not you achieve your mission and the mission is naturally linked to the vision. At this time Dr. Smith went over each of the tables and explained the results.

Councilmember Miller said that he was not exactly certain what a vision does and what the difference a vision and a goal is for the community and how a vision is advertised or given to the public and what is the purpose for the public.

Dr. Smith said that a vision is a statement that says if we were all we could be this is what our city would be like. It usually starts with, "We will attempt..." or "We aspire to be..." It is an image of a perfect ideal based on what you know the citizens and the other stakeholders in the city would like of the City. The mission is more of a statement of what we do in order to achieve that vision. The mission is "this is what we are" not "what we plan to be or aspire to be" but this is what we are and this is what we do. At this time they went over the handout and had discussion in regards to vision and mission statements from other cities. Dr. Smith said in regards to where to you put this, you put this on your website and also the mission should be displayed in your Council Chambers so people know what is guiding you action plan and how you plan to achieve a mission that will ultimately result in your vision coming to fruition. The Council and staff continued to go over the handout of the example of the vision and mission statements. He said that the City of Banning has a good vision statement. You have a vision statement now that is a good mission statement.

Dr. Smith said if he wanted to summarize based on what he has been exposed to in the community meetings and with a set of subsequent meetings with the staff of the City it seems to him that people identify as having high value or pride, freedom, economic growth and development, art and culture, climate, and location. If we wanted to try to phrase that in a way that people want a strong and relevant economic that balances a love for open, undeveloped spaces with a desire to create growth and opportunity. He said that opportunity is an important element because you can see that there is a sizable group of people who felt that the absence of job opportunities overlapped with issues of safety because so many young adults cannot find employment so in that sense there is a need for opportunity. But there is also as one of the employees said everything seems to have two-sides to it in the same sense that people want economic development they also value the small town community feel so those things need to be balanced. There are a number of phrases here that we will talk about later and that can help guide you when you think about how you want to rephrase or revise your current vision which he read. The other thing that came up is that there is a sense that citizens want a relevant mission/vision, goals/objectives and not a set of only good sounding words. There is a sense that we have been through this before and we have a set of goals and we have not received a communication that the objectives have been met. So as you think about the vision we need to think in terms of a mission and goals that can be matched with measurable objectives that can

be reported out at regular intervals so that people have a sense that is based on a message from the Council if they are not being accomplished that you are at least moving in the direction of accomplishing things. He would like for the Council to collaborate and come up with some ideas for a new draft of your current vision. We want to take what we know about the desires of the citizens and especially those issues of economic development, communication and things that you can do something about and how you would integrate them into a vision for the City's future.

Meeting recessed at 3:04 p.m. and reconvened at 3:32 p.m.

Mayor Franklin said that Dr. Smith will work with staff to come back with some of the ideas that the Council had about our vision statement and ask staff to move forward in having a planning session within the next couple of weeks for us to talk about the vision, the mission and our goals.

ADJOURNMENT

By common consent the meeting adjourned at 3:32 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

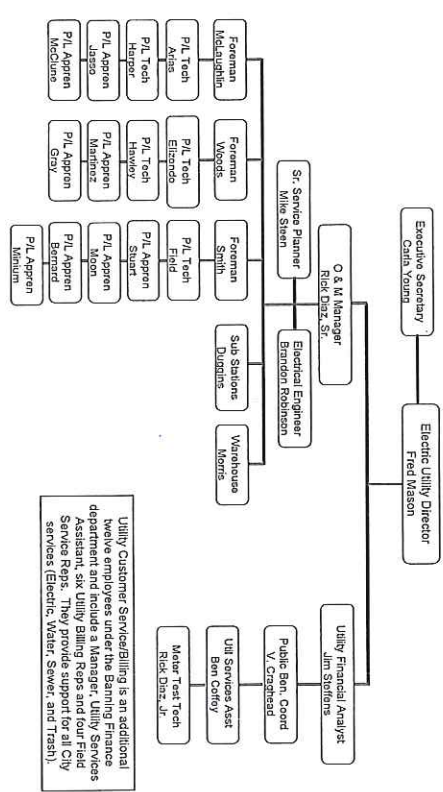
Exhibit "A"

City of Banning Electric Utility

City Council Workshop
April 14, 2015

(1)

City of Banning – Electric Utility Department



Enclosure 1/6/2015

(2)

Electric Utility Stats:

- Approximately 12,000 customers
- All time Peak Demand of 48 megawatts
- Annual Retail sales of 143,500,000 kWh
- Annual Revenues of \$30,300,000
- Power Resource capacity of 27.8 MW
- Contracted SJ3 replacement capacity 17 MW

(13)

Banning Power Resources

- San Juan Unit #3 (Coal)
- Palo Verde (Nuclear)
- Hoover (Hydro)
- Heber South & Gould 2 (Geothermal)
- Banning Lower & Middle Units (Hydro)

(4)

San Juan Unit #3

- 20 megawatts Capacity
- Baseload unit providing approximately 60% of the City's electricity needs
- Unit to be shutdown 12/31/2017 – per agreement between New Mexico and the Environmental Protection Agency (EPA)



(5)

(6)

Palo Verde Nuclear Plant

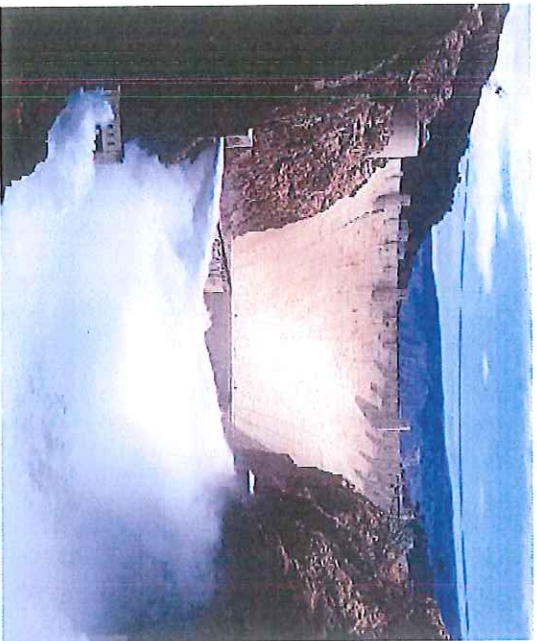
- 2 megawatts Capacity
- Baseload unit providing approximately 14% of the City's electricity needs
- Facility is not RPS eligible, but...
- Facility is emissions free



(7)

(8)

RPS (Renewable Portfolio Standard)



(9)

Hoover Hydro Facility

- 2 megawatts Capacity
- Use limited resource providing approximately 1% of the City's annual electricity needs
- Not RPS eligible, but...
- Facility is emissions free
- Unit is used as a "peaking" resource

(10)

RPS (Renewable Portfolio Standard)

Renewable Portfolio Standard

- In July 2007, the Banning City Council revised the City's Renewable Portfolio Standard and increased the goal from 20% by 2017 to 33% by 2020.
- The State is currently considering legislation to increase the RPS to 50% by 2030
- The City's intent is to have all new long-term Power Purchase Agreements be for renewable resources
- With the shutdown of San Juan in 2017 and the recently contracted renewable replacement power...
- Banning will be 77% renewable by 2018 – significantly exceeding the States proposed goal of 50% by 2030

(11)



(Heber Suth Facility)

(12)

Current Renewable Resources

- Heber South & Gould 2(Geothermal)
 - 3.4 MW of capacity
 - Provides approximately 14% of the City's electricity needs
- Banning Lower & Middle Hydro Units
 - 0.5 MW of capacity
 - New rebuilt facilities projected to provide approximately 3% of the City's electricity needs

(13)

SJ3 Replacement Resources

- Puente Hills (Landfill Gas)
 - 9 MW capacity
 - Baseload unit projected to provide 38% of the City's electricity needs
- Astoria II (Solar)
 - 8 MW capacity
 - Produces electricity when sunlight is available -- new system, which when completed is projected to provide 12% of the City's electricity needs
- These SJ3 replacement resources will reduce annual operating costs by approx \$3 – 4 Million allowing for a potential 10% rate reduction

(14)



(Puente Hills)

(15)



Copper Mountain, Boulder City, Nevada
(SCPFA Project)

(Astoria II will look similar to this.)

(16)

SCPPA Participation

- The majority of the City's power resources are procured through joint purchase or long-term contracts with SCPPA
- The City utilizes its membership in SCPPA to augment many of the utility functions
- The City was an originating member of SCPPA when it was formed
- However, some may ask the question....

(17)

What is SCPPA?

- Created in 1980 - the Southern California Public Power Authority (SCPPA) is a Joint Powers Agency (JPA)
- SCPPA's purpose is broadly defined to "create a separate public entity to undertake the planning, financing, development, acquisition, construction, operation and maintenance of one or more projects for the generation or transmission of electrical energy"
- Currently twelve members: Anaheim, Azusa, Banning, Burbank, Cerritos, Colton, Glendale, Los Angeles, Pasadena, Riverside, Vernon and the Imperial Irrigation District
- Members have a combined total of 2 Million meters serving a population of 4.8 Million people
- SCPPA provides economies of scale and scope to benefit all members – in a Cafeteria style

(18)

SCPPA at a Glance:

- Governed by a twelve-member Board of Directors – each member designates one primary representative
- SCPPA is subject to the Brown Act: all meetings are open to the public
- SCPPA Board approves all project and administrative budgets
- SCPPA bills participants monthly for their prorated share of the projects and programs they participate in
- SCPPA Audit Committee oversees an annual independent financial audit
- SCPPA's JPA model has lower overhead costs (<2%) than most JPAs
- Members account for costs in their own books & records

(19)

SCPPA Member Benefits

SCPPA offers planning services for participation in joint projects and programs, including

- **Power Resources**
 - Joint power generating projects & transmission analysis
 - R&D (presentations of new technologies and projects)
- **Public Benefit/Energy Efficiency Programs:**
 - Energy efficiency audits, retrofit and direct install programs
 - Electric Vehicles, EV Charging Stations
 - R&D (presentations of new technologies and programs)
- **Administration**
 - Regulatory & Legislative monitoring, updates, and reporting
 - Industry group member dues/fees (APPA, SEPA, WECC, etc.)
- **Training & consulting**

(20)

CAISO

- California Independent System Operator
- Created in 1996 by Assembly Bill 1890 and went "live" in March 1998
- Controls the State's high voltage transmission system and the Wholesale energy market
- Ensures adequate resources are available thru the Resource Adequacy Capacity requirements
- Banning became a Scheduling Coordinator in 1998
- Banning turned over control of its transmission, becoming a Participating Transmission Owner (PTO) in 2003

(21)

CAISO – Benefits & Responsibilities

- City's expense for owned and contracted Trans facilities is reimbursed thru the CAISO TRR
- Congestion expense is partially mitigated thru Congestion Revenue Rights (CRR)
- Only pay for actual transmission system usage
- Must have adequate Capacity (including Local) to cover Peak Demand
- Must schedule all resources into the CAISO Market
- Must have a Power Scheduling Operator 24/7
- Must comply with all Operating rules & regulations
- Subject to penalties for non-compliance

(22)

RPU – Utility Services Agreement

- Riverside Public Utilities and Banning entered into a USA for Riverside to provide CAISO required services to Banning
- Riverside provides Power Scheduling, Settlement, Bill Payment and Administrative services
- Banning receives additional unquantifiable/intangible Market & Policy Monitoring benefits
- Annual cost for the USA is \$548,000
- Bringing services in-house would require initial setup costs of \$640,000 and ongoing operating costs of \$2.3 Million per year

(53)

POWER TRANSACTIONS,
spread sheet



City of Arts & Innovation

April 3, 2016
Invoice # 186

Fred Mason
Electric Utility Director
City of Banning
909 E. Ramsey Street
PO Box 998
Banning, CA 92220

To bill you for Power Costs paid in March 2016, pursuant to the Utility Services Agreement, signed by Paul Toor on July 7, 2001.

EXPENSES:	
Capacity & Energy	\$
Transmission	\$67,624.98
Coordination, S&D	201,886.07
General & Administrative	47,648.00
	2,603.31
Total Expenses	\$ 1,240,023.37
Interest Income	
	\$ 7.33
Receipts:	
CAISO	Received 03/03/2016
CAISO	Received 03/03/2016
CAISO	Received 03/10/2016
CAISO	Received 03/17/2016
CAISO	Received 03/24/2016
CAISO	Received 03/31/2016
CAISO	Received 03/31/2016
CAISO	Received 03/31/2016
Total Receipts including Interest Income	\$ 1,153,640.12
Total Amount Due	\$ 1,086,083.25

This amount is due 15 days after date of invoice.

Please wire transfer funds to:

Union Bank
ABA# 1220-0044-6
Attn: Domestic Cash
Acct# 6733305920

Please provide confirmation to Ann E. Dale on the day of the transfer at (951) 826-2121 or by FAX at (951) 825-2557.

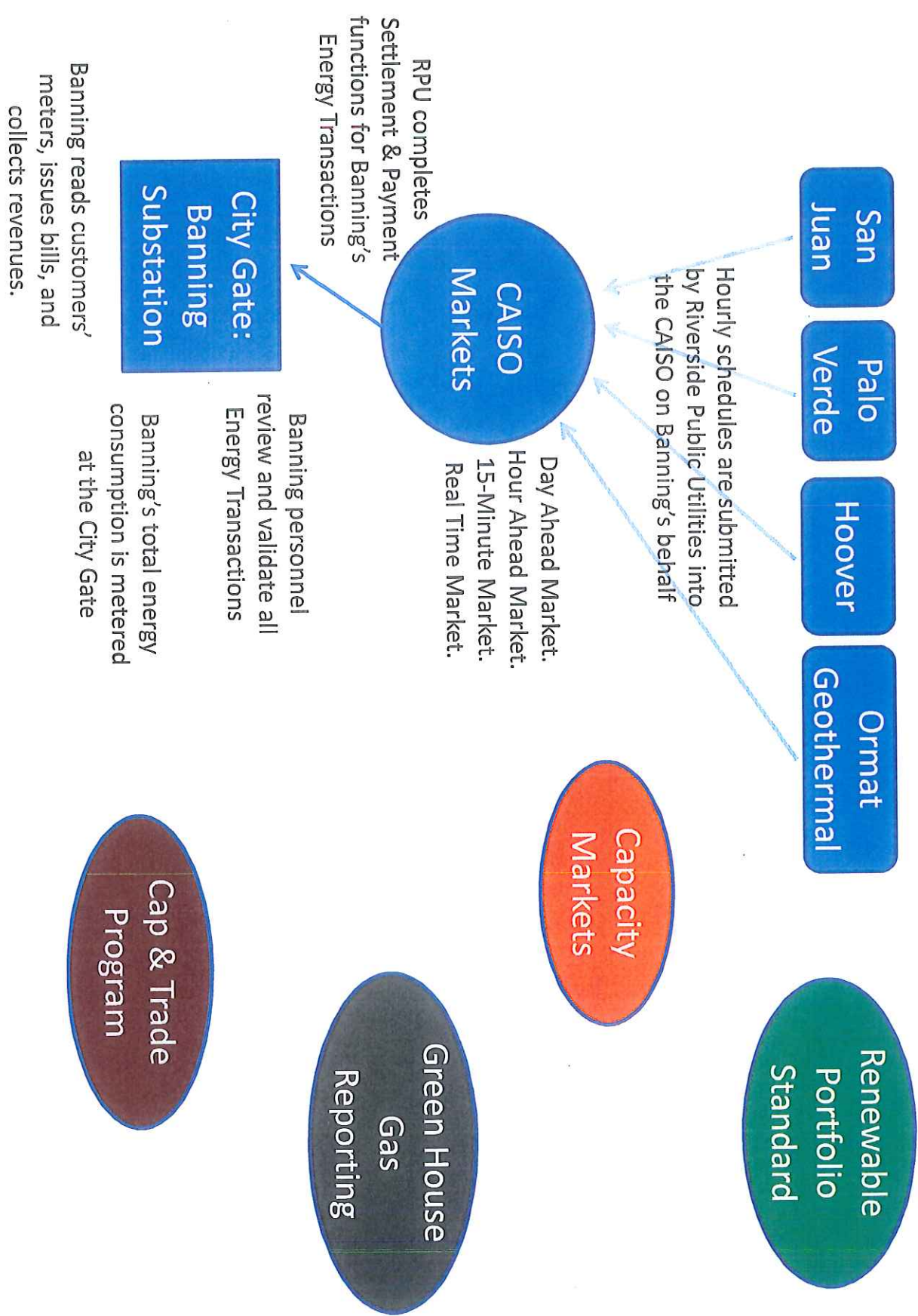
Aileen Ma
Utilities Fiscal Manager

Riverside Public Utilities Administration

3901 Orange Street • Riverside, CA 92501 • 951.826.5781 • RiversidePublicUtilities.com



(25)





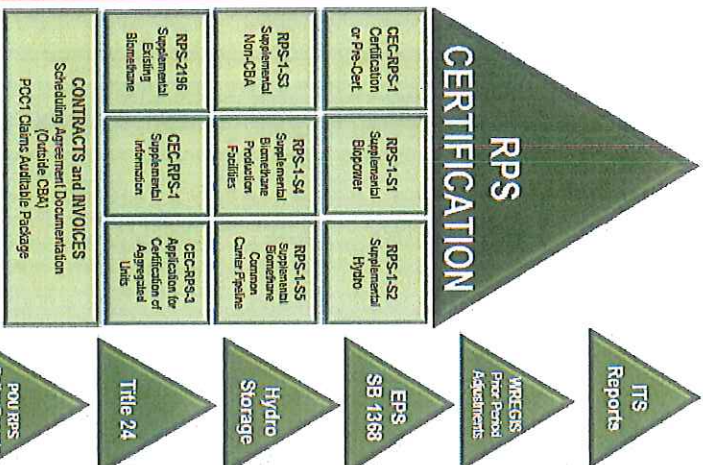
Regulatory

- California Energy Commission (CEC):
 - Primary State agency that sets policy for and regulates publicly owned utilities
 - Significant reporting requirements
- California Air Resources Board (CARB):
 - Administers Cap & Trade program
 - Green House Gas Reporting requirements
- California Public Utilities Comm. (CPUC):
 - Does not have direct jurisdiction over POU's, but indirectly thru General Order requirements

(A7)



POU REPORTING TO CEC ONLY (IN ADDITION TO OTHER STATE/FEDERAL REQUIREMENTS)



AS-NEEDED REPORTING

MANDATORY REPORTING		
2012	2013	2014
D 1305A Peak Demand 1305B Peak Demand 1305C Peak Demand 1305D Peak Demand 1305E Peak Demand 1305F Peak Demand 1305G Peak Demand 1305H Peak Demand 1305I Peak Demand 1305J Peak Demand 1305K Peak Demand 1305L Peak Demand 1305M Peak Demand 1305N Peak Demand 1305O Peak Demand 1305P Peak Demand 1305Q Peak Demand 1305R Peak Demand 1305S Peak Demand 1305T Peak Demand 1305U Peak Demand 1305V Peak Demand 1305W Peak Demand 1305X Peak Demand 1305Y Peak Demand 1305Z Peak Demand	HCO Claims Form 1305A Peak Demand 1305B Peak Demand 1305C Peak Demand 1305D Peak Demand 1305E Peak Demand 1305F Peak Demand 1305G Peak Demand 1305H Peak Demand 1305I Peak Demand 1305J Peak Demand 1305K Peak Demand 1305L Peak Demand 1305M Peak Demand 1305N Peak Demand 1305O Peak Demand 1305P Peak Demand 1305Q Peak Demand 1305R Peak Demand 1305S Peak Demand 1305T Peak Demand 1305U Peak Demand 1305V Peak Demand 1305W Peak Demand 1305X Peak Demand 1305Y Peak Demand 1305Z Peak Demand	WPRS Wind (1384) WPRS Wind (1385) WPRS Wind (1386) WPRS Wind (1387) WPRS Wind (1388) WPRS Wind (1389) WPRS Wind (1390) WPRS Wind (1391) WPRS Wind (1392) WPRS Wind (1393) WPRS Wind (1394) WPRS Wind (1395) WPRS Wind (1396) WPRS Wind (1397) WPRS Wind (1398) WPRS Wind (1399) WPRS Wind (1400) WPRS Wind (1401) WPRS Wind (1402) WPRS Wind (1403) WPRS Wind (1404) WPRS Wind (1405) WPRS Wind (1406) WPRS Wind (1407) WPRS Wind (1408) WPRS Wind (1409) WPRS Wind (1410) WPRS Wind (1411) WPRS Wind (1412) WPRS Wind (1413) WPRS Wind (1414) WPRS Wind (1415) WPRS Wind (1416) WPRS Wind (1417) WPRS Wind (1418) WPRS Wind (1419) WPRS Wind (1420) WPRS Wind (1421) WPRS Wind (1422) WPRS Wind (1423) WPRS Wind (1424) WPRS Wind (1425) WPRS Wind (1426) WPRS Wind (1427) WPRS Wind (1428) WPRS Wind (1429) WPRS Wind (1430) WPRS Wind (1431) WPRS Wind (1432) WPRS Wind (1433) WPRS Wind (1434) WPRS Wind (1435) WPRS Wind (1436) WPRS Wind (1437) WPRS Wind (1438) WPRS Wind (1439) WPRS Wind (1440) WPRS Wind (1441) WPRS Wind (1442) WPRS Wind (1443) WPRS Wind (1444) WPRS Wind (1445) WPRS Wind (1446) WPRS Wind (1447) WPRS Wind (1448) WPRS Wind (1449) WPRS Wind (1450) WPRS Wind (1451) WPRS Wind (1452) WPRS Wind (1453) WPRS Wind (1454) WPRS Wind (1455) WPRS Wind (1456) WPRS Wind (1457) WPRS Wind (1458) WPRS Wind (1459) WPRS Wind (1460) WPRS Wind (1461) WPRS Wind (1462) WPRS Wind (1463) WPRS Wind (1464) WPRS Wind (1465) WPRS Wind (1466) WPRS Wind (1467) WPRS Wind (1468) WPRS Wind (1469) WPRS Wind (1470) WPRS Wind (1471) WPRS Wind (1472) WPRS Wind (1473) WPRS Wind (1474) WPRS Wind (1475) WPRS Wind (1476) WPRS Wind (1477) WPRS Wind (1478) WPRS Wind (1479) WPRS Wind (1480) WPRS Wind (1481) WPRS Wind (1482) WPRS Wind (1483) WPRS Wind (1484) WPRS Wind (1485) WPRS Wind (1486) WPRS Wind (1487) WPRS Wind (1488) WPRS Wind (1489) WPRS Wind (1490) WPRS Wind (1491) WPRS Wind (1492) WPRS Wind (1493) WPRS Wind (1494) WPRS Wind (1495) WPRS Wind (1496) WPRS Wind (1497) WPRS Wind (1498) WPRS Wind (1499) WPRS Wind (1500)

68

Electric Utility Funds

FUND NAME	Available Resources @ July 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/(Loss) (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
670 Electric Operations	10,615,909	29,773,000	29,031,957	741,043	11,355,952
672 Rate Stability	6,032,185	220,500	-	220,500	6,252,685
673 Electric Improvement	7,325,237	15,141	1,228,899	(1,213,758)	6,111,479
674 2007 Elec Bond Project Fund	12,709,856	5,350	11,254,796	(11,249,446)	1,460,410
675 Public Benefit Fund	474,087	784,250	782,455	1,795	475,892
676 2007 Elec Bond Debt Service	297,957	2,673,276	2,673,076	200	298,157
Electric Subtotal	\$37,455,241	\$33,471,517	\$44,971,183	\$ (11,499,666)	\$ 25,955,576

(29)

Electric Operations - Revenues FY14

■ Metered Sales	\$26,536,119
■ Transmission & CRRs	1,911,507
■ Excess Energy Sales	1,208,868
■ Street Lighting	308,712
■ In Aid of Construction	170,735
■ Miscellaneous Revenue	186,847

Actual Total: \$30,322,788
Original Budget Total: \$30,005,000

(30)

Electric Operations - Expenses FY14

■ Capacity & Energy	\$13,660,222
■ Operations/Admin/Cust Svc	5,399,211
■ Transmission	2,690,717
■ Bond Debt Svc Payment	2,666,346
■ General Fund Transfer	<u>3,000,500</u>
Actual Total:	\$27,416,996

Original Budget Total: \$29,601,756

(31)

Electric Utility Funds

FUND NAME	Available Resources @ July 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/Loss (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
670 Electric Operations	10,615,909	29,773,000	29,031,957	741,043	11,356,952
672 Rate Stability	6,032,185	220,500	-	220,500	6,252,685
673 Electric Improvement	7,325,237	15,141	1,228,899	(1,213,758)	6,111,479
674 2007 Elec Bond Project Fund	12,709,886	5,350	11,254,796	(11,249,446)	1,460,410
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Electric Subtotal	\$37,455,241	\$33,471,517	\$44,971,183	\$ (11,499,666)	\$ 25,955,575

(32)

25

Rate Stability Fund

- Minimum Reserve amount is required to be 20% of projected Operating Revenues for the upcoming year
- Fund balance requirement is calculated each year during the Budget process

(33)

Electric Utility Funds

FUND NAME	Available Resources @ July 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/(Loss) (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
670 Electric Operations	10,615,909	29,773,000	29,031,967	741,043	11,356,952
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Electric Subtotal	\$37,455,241	\$33,471,517	\$44,971,183	\$ (11,499,666)	\$ 25,955,575

(34)

Electric Improvement Fund

- Fund is typically used to pay for projects of a capital nature that aren't included in the regular operating budget
 - Rebuild hydro generating units
 - Block wall around City Yard
 - New phone system
- Fund is replenished from excess Utility revenues typically resulting from wholesale market transactions and/or operational savings

(35)

Electric Utility Funds

FUND NAME	Available Resources @ JULY 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/Loss (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
670 Electric Operations	10,615,909	29,773,000	29,031,957	741,043	11,356,952
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673 Electric Improvement	7,325,237	15,141	1,228,898	(1,213,758)	6,111,479
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Electric Subtotal	\$37,455,241	\$33,471,517	\$44,971,183	\$(11,499,666)	\$ 25,955,575

(36)

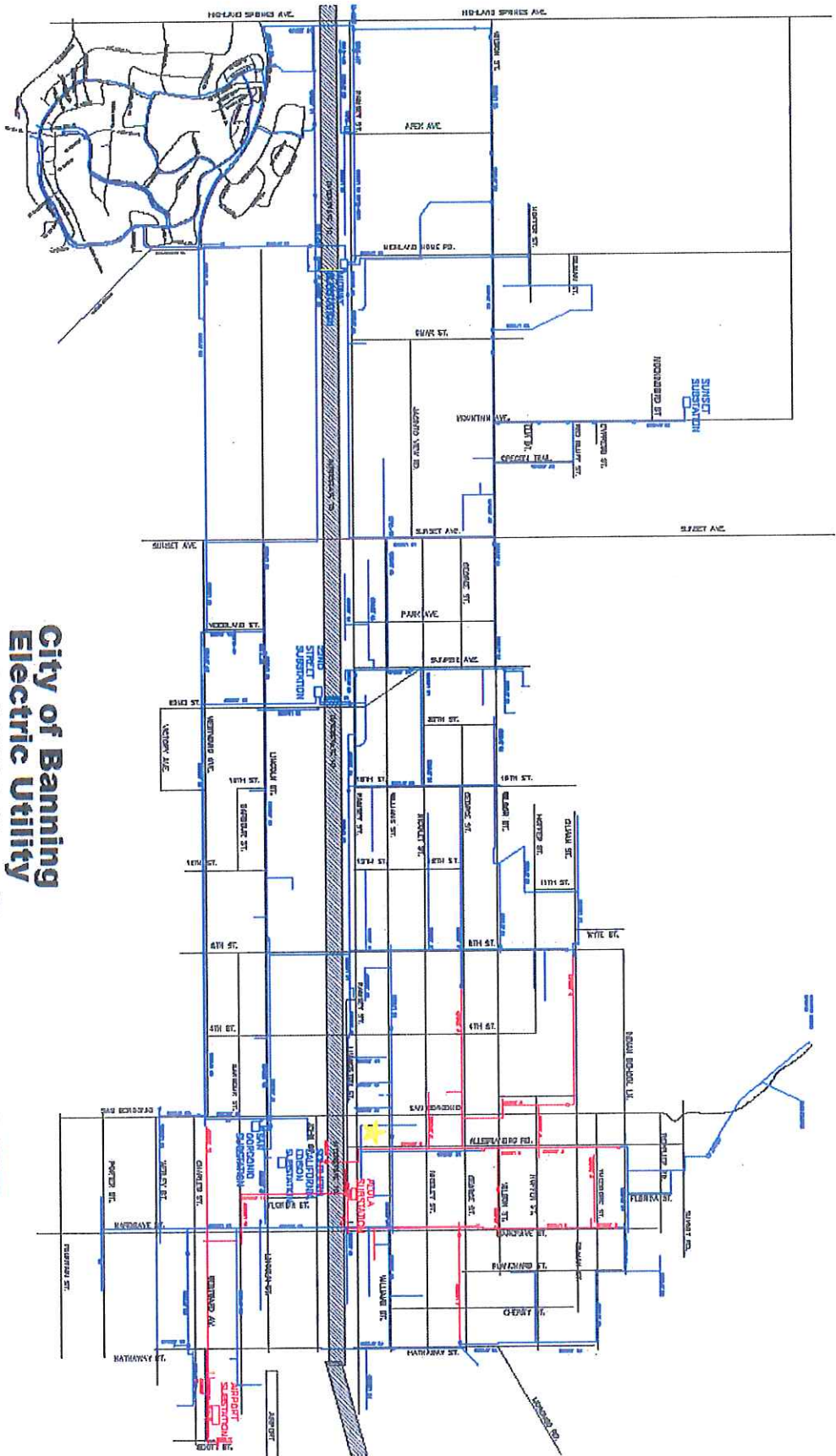
2007 Electric Revenue Bonds Project Fund

- Original Bond issuance of \$45,790,000
- Repurchased \$5,800,000 from market
- Annual Debt Service payment \$2,673,000
- Bond proceeds can only be spent on those specific projects authorized by Council
- New Sunset substation, warehouse, 4kV - 12kV conversion, and substation upgrades will allow the Utility to operate more efficiently and also prepare it for the future

(37)

**City of Banning
Electric Utility
4KV & 12KV Circuits**

4KV CIRCUITS
12KV CIRCUITS



(38)

04/13/15

Electric Utility Funds

FUND NAME	Available Resources @ July 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/(Loss) (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
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(39)

Public Benefit Fund

- Funding comes from a 2.85% surcharge mandated by AB1890
- Funds can only be used for the following:
 - Energy efficiency programs
 - Renewable energy
 - Research Development & Demonstration (RD&D) to advance science or technology
 - Services for Low-Income customers

(40)

Electric Utility Funds

FUND NAME	Available Resources @ July 1, 2014	FY 2014-15 Adjusted Revenue	FY 2014-15 Adjusted Expenditures	Proj. YTD Gain/(Loss) (Col. 2-3)	Proj. Balance @ June 30, 2015 (Col. 1+4)
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676 2007 Elec Bond Debt Service	297,957	2,673,276	2,673,076	200	298,157
Electric Subtotal	\$37,455,241	\$33,471,517	\$44,971,783	\$ (11,499,666)	\$ 25,955,575

(41)

Fixed vs Variable Expense

The following percentages are based on FY14 actual expenses:

■ Capacity/Owned resources	37%
■ Debt Service	10%
■ Personnel/System Maintenance	25%
■ General Fund Transfer	10%
■ Transmission	10%
■ Energy	8%

82%

(42)

Fixed vs Variable Expense

The following percentages are w/o SJ3 and utilize the replacement energy contracts:

■ Capacity/Owned resources	6%
■ Debt Service	10%
■ Personnel/System Maintenance	25%
■ General Fund Transfer	10%
■ Transmission	10%
■ Energy	39%

51%

(43)

Distributed Generation (Solar PV)

- State law requires that electric utilities offer Net Energy Metering (NEM)
- Banning currently has 161 customers on the NEM rate
- Currently the Utility loses over \$200,000 per year in revenue, and it keeps rising
- but...the Utility only "avoids" the Variable expenses and pays all Fixed expenses
- With the current rate design, customers on the NEM rate avoid paying all Utility costs

(44)

Subsidizing PV Customers

- Customers with Solar installations are being subsidized by those without Solar systems
- A statewide study is being done to determine how to mitigate this situation
- SB1 prohibits charging PV customers differently than non-PV customers
- One option is to change the electric rate design to use Demand Charges to recover "fixed" expenses from all customer classes

(45)

Data Collection & Analysis

- Need to collect data regarding the peak demand for various building types during each season throughout the City
- Study requires the installation of "smart" meters
- Data analysis would be complete by end of FY16
- If Council approves the new rate design, it would result in a significantly lower Energy (kWh) charge and a new Demand charge for all customers
- Overall amount of electric bills would not change, just two billing components instead of one
- Some Commercial customers already have a Demand charge on their bills

(46)



Smart Meters

- City wide installation of electric smart meters would cost approximately \$1.8 Million
- It would provide for remote reads and turn-on/off
- Reduce Field Service manpower requirements by a minimum of 25%
- Would allow for future installation of a complete Advanced Metering Infrastructure (AMI) system
- Allow for better scheduling of meter routes to reduce fluctuation in billing cycle days

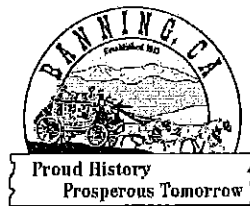
(47)

Cycle	Read Time	# of METERS	Prev Month Read Date	Earliest Read Date (27 days)	Max Read Date (34 days)	Target Read Date	Meter Reader Name:	Actual Number of Billing Days
15	B	5	337	2/6	3/5	3/12	Tommy	31
16	A	6	440	2/6	3/5	3/12	Miguel	31
16	B	7	321	2/6	3/5	3/12	Miguel	32
17	A	5	325	2/9	3/8	3/15	Todd	29
17	B	5	288	2/9	3/8	3/15	Todd	29
18	A	4.5	258	2/9	3/8	3/15	Todd	29
18	B	5	316	2/9	3/8	3/15	Todd	30
19	A	4.5	209	2/10	3/9	3/16	Miguel	29
19	B	5	349	2/10	3/9	3/16	Miguel	29
20	A	4	227	2/11	3/10	3/17	Tommy	28
20	B	4.5	222	2/11	3/10	3/17	Miguel	29
21	A	6	505	2/11	3/10	3/17	Tommy	29
21	B	8	716	2/12	3/11	3/18	Todd	28
21	C	4	120	2/12	3/11	3/18	Tommy	32
22	A	2.5	126	2/12	3/11	3/18	Tommy	32
22	B	6	477	2/12	3/11	3/18	Miguel	32
22	C	5	478	2/13	3/12	3/19	Todd	32
23	A	12	991	2/13	3/12	3/19	Tom/Miguel	32
23	B	5.5	369	2/17	3/16	3/23	Todd	29
24	A	4.5	573	2/17	3/16	3/23	All	29
24	B	5	291	2/17	3/16	3/23	Tommy	29
24	C	5	295	2/17	3/16	3/23	Miguel	29
25		10	747	2/17	3/16	3/23	Miguel	30

(48)

Midyear Presentation Fiscal Year 2014-15

April 14, 2015



Agenda

- General Fund
- Utilities
- Other funds
- Successor Agency
- Future challenges

Process

- Department review
- Finance review
- Update Fund Summary Status and available resources based on June 30, 2014 year end actual balances
- Prepare budget adjustments for Council approval
- Budget and Finance Committee review

General Fund – Revenues

Midyear Adjustments:	
Mining Tax	\$275,000
Litigation Recoveries	628,241
Net Increase in Revenues	\$903,241

General Fund – Expenditures

Midyear Adjustments to Payroll

City Manager	\$(218,177)
Police/Dispatch/Code Enf/Fire	(281,700)
Building Safety & Planning	(67,820)
Public Works	(51,533)
Fiscal Services	(45,866)
City Council/Personnel	(33,910)
Community Services	(1,080)
Net Decrease in Expected Payroll Expenditures	<u>\$(700,086)</u>
Other Expenditure Decreases	<u>(130,591)</u>
Total Decreased Expenditures	<u>\$(830,677)</u>

General Fund-Expenditures

Other Expenditure Adjustments	
Police Overtime	\$ 181,000
Contract Services	168,425
Professional Services	95,500
Legal	72,276
Miscellaneous- Net	10,198
SUBTRACT Expected Expenditure Decreases	(830,677)
Net Allocation Adjustment	<u>\$(306,128)</u>

General Fund Status

FY15 Adopted Budget Surplus/(Deficit)	\$ 0
<u>Adjustments during first 6 months:</u>	
Encumbrances	(125,160)
Net new appropriations	0
Net continuing appropriations - grants	10,848
Net continuing appropriations - other	(172,272)
Adjusted Budget (before midyear)	(286,584)
<u>Midyear adjustments:</u>	
ADD: Increase in Revenues – net	903,241
ADD: Decrease in Expenditures	306,128
Revised Budget w/ midyear adjustments	1,209,369
Revised net gain (loss) to General Fund	\$ 922,785

General Fund Available Resources June 30, 2015

Audited Balance at July 1, 2014	\$4,035,369
Net Gain in General Fund	922,785
Projected Balance at June 30, 2015*	\$4,958,154

*Net of amounts assigned for capital replacement, city programs, and litigation contingency.

Water Funds

<u>Water Funds</u>	<u>Available resources @ 6/30/2014</u>	<u>Projected YTD Gain(loss)</u>	<u>Projected balance @ 7/1/2015</u>
660 – Water Operations	9,119,214	(413,223)	8,705,991
661 – Water Capital Facilities	4,257,849	(2,800,934)	1,456,915
663 – BUA Water Capital Project	2,349,219	(797,100)	1,552,119
669 – BUA - Water Debt Service	83,365	(1,100)	82,265
Combined Fund Balance >>>	15,809,647	(4,012,357)	11,797,290

Wastewater Funds

<u>Wastewater Funds</u>	<u>Available resources @ 6/30/2014</u>	<u>Projected YTD Gain(loss)</u>	<u>Projected balance @ 7/1/2015</u>
680 – Wastewater	1,368,226	(84,842)	999,329
681 – Wastewater Capital Facility	10,647,349	(766,915)	9,880,434
683 – BUA Wastewater Capital Project	3,265,600	(535,697)	2,729,903
685 – State Revolving Loan	772,942	1,393	774,335
689 – BUA Wastewater Debt Service	89,556	500	90,056
Combined Fund Balance >>>	16,143,673	(1,385,561)	14,758,112

Reclaimed Water Funds

<u>Reclaimed Water Funds</u>	<u>Available resources @ 6/30/2014</u>	<u>Projected YTD Gain(loss)</u>	<u>Projected balance @ 7/1/2015</u>
662 – Irrigation Water	1,294,516	(1,287,369)	7,147
682 – Wastewater Tertiary	4,100,894	(1,522,959)	2,577,935
Combined Fund Balance >>>	5,395,410	(2,810,328)	2,585,082

Electric Funds

<u>Electric Funds</u>	<u>Available resources @ 6/30/2014</u>	<u>Projected YTD Gain(loss)</u>	<u>Projected balance @ 7/1/2015</u>
670 - Operations	10,615,909	741,043	11,365,952
672 - Rate Stability	6,032,185	220,500	6,252,685
673 - Electric Improvement	7,325,237	(1,213,758)	6,111,479
674 - Electric Bond Project Fund	12,709,856	(11,249,446)	1,460,410
675 - Public Benefit Fund	474,097	1,795	475,892
678 - Electric Debt Service Fund	297,957	200	298,157
Combined Fund Balance >>>	37,455,241	(11,499,666)	25,955,575

Special Revenue Funds

- Includes funds that are restricted in use. Examples include:
 - Gas Tax
 - Measure A
 - Grants
 - Development impact funds
- Total Adjusted Revenues \$ 5,355,848
- Total Adjusted Expenditures \$ 6,441,037

Capital Improvement Funds

- Includes funds that are restricted in use.
 - i.e. Development impact funds, major capital projects
- Sunset Grade Separation project represents the majority
 - Revenue \$ 2,296,802
 - Reimbursement for prior year Sunset Grade Separation expenditures
- Total Adjusted Revenues \$ 2,318,603
- Total Adjusted Expenditures \$ 437,776

Enterprise Funds

- Includes funds that are considered to be like a business:
 - Airport
 - Transit
 - Refuse

- Total Adjusted Revenues \$ 6,073,381
- Total Adjusted Expenditures \$ 6,039,809

Internal Service Funds

- Include funds that provide services to other City operations. These include:
 - Insurance (worker's compensation & general liability)
 - Fleet
 - Information services
 - Utility billing services

- Total Adjusted Revenues \$ 6,660,646
- Total Adjusted Expenditures \$ 6,714,015

Successor Agency

Overview

- Successor Agency approves ROPS every 6 months
- Oversight Board approves ROPS
- Department of Finance approves ROPS
- Last ROPS approved was ROPS 15-16 A

<u>Successor Agency Funds</u>	<u>Available resources @ 6/30/2014</u>	<u>Projected YTD Gain(loss)</u>	<u>Projected balance @ 7/1/2015</u>
805 - Redevelopment Obligation Retirement Fund	1,584,311	(31,082)	1,553,229
810 - Successor Housing Agency	37,703	50	37,753
830 - Debt Service Fund	44,280	134,395	178,675
850 - Successor Agency	1,558,705	(23,480)	1,535,225
855 - Tax Alloc Bonds - 2007	7,432,656	(1,737,055)	5,695,601
856 - Tax Alloc Bonds - 2003	243,223	32,974	276,197
857 - Low/Mod Tax Alloc Bonds - 2003	472,012	900	472,912
Combined Fund Balance >>>	11,372,890	(1,623,298)	9,749,592

Future Challenges

General Fund

- Increasing costs with PERS.
- Best use of mining tax revenues given pending litigation and eventual mine closeout.
- Allocation of scarce General Fund resources to meet need for improved city services.
- Aging city assets and deferred maintenance.
- Potential hit to General Fund due to projected 25% reduction in gas tax revenues (approx \$220,000).

Recommendation

- Approve the resolutions amending the estimated revenues and appropriations for the Fiscal Year 2014/2015 budget for the City of Banning, Banning Utility Authority and Successor Agency

Data from 2015 Community Focus Group Meetings

The information presented here will aid in defining strategic objectives for planning purposes. Economic Development emerged as the overwhelmingly dominant topic in all community meetings. More effective communication is also critically important to those who participated. On the positive side, affordable housing and the small-town community image and feel were clearly viewed as advantages for the city. The climate and general location—close to Morongo, Cabazon, and the cities of Riverside, Palm Springs, and San Bernardino—make it a particularly attractive place to live. In general, people expressed satisfaction with the public-safety services. However, public safety intersected with economic development on the topic of youth and employment opportunities. Banning has a large elderly population that is uncomfortable with unemployed and idle young adults.

Community meetings were organized to provide a forum for people to express their opinions. The purpose of these community meetings was to provide the Banning city manager and elected officials with input from residents, business owners, and other city stakeholders regarding the issues confronting the city. This input will be used to update the city's strategic plan and to take action toward improvements.

The methodology for data collection included seven community meetings. These meetings were scheduled to maximize community participation. Approximately 142 people participated. The meetings took place at a variety of times, including mornings, afternoons, and evenings. Weekday and weekend events were scheduled. Geographically, at least one event was scheduled for every side of the city.

Attendees participated in table exercises to answer questions about the city. Four to six people were grouped at the tables. We limited the number of people at each table to six in order to provide all participants an opportunity to express their views and to ensure that all opinions were recorded. One person at each table served as a recorder and wrote down all the ideas from their table.

The groups from each table "reported out" and shared their ideas with all other participants in the room. After a short discussion, the reporting sheets were collected to be summarized in this report. The data will be further condensed after it is reviewed and discussed by the city leaders. However, it is important that the essence of all comments be seen, because all comments were produced and agreed upon by groups of stakeholders.

The primary table exercise was a SWOT analysis (strengths, weaknesses, opportunities, and threats). The information that resulted is listed on the following pages.

Threats	Item count	Table count	Estimated person count
Econ Dev	9	31	109
Public Safety	5	14	49
Communication	4	12	42
Safety / Econ Dev	1	4	14
Grand Total	19	61	214

Ranking and Themes	Theme Area	Table count	Duplicated Pers
Econ Dev	Not gaining more middle-class housing	6	21
Communication	Lack of cohesiveness on city council	5	18
Econ Dev	Lack of job opportunities	5	18
Econ Dev	Inability to attract business	5	18
Public Safety	Losing our idle young people to crime	5	18
Communication	Communication problems (weak mechanisms for	4	14
Econ Dev	Building deterioration	4	14
Econ Dev	Rivalry between Banning and Beaumont	4	14
Public Safety	Losing the small town feel	4	14
Safety / Econ Dev	Weak code enforcement	4	14
Econ Dev	Empty storefronts downtown	3	11
Communication	Poor relationship between city residents and Sun Lakes	2	7
Econ Dev	Too many rentals	2	7
Public Safety	Gang influences from other cities	2	7
Public Safety	Drugs and homelessness	2	7
Communication	Rivalry between Banning and Beaumont	1	4
Econ Dev	Sacrifice of property (land giveaway) for court house and	1	4
Public Safety	Beaumont students come to Banning for continuation	1	4
Public Safety	Street Crime	1	4
		61	214

Opportunities Themes	Item count	Table count	Estimated person count
Econ Dev	10 //	52	182
Public Safety	1	7	24.5
Transportation	2	6	21
Communication	3	4	14
Econ Dev / Beautification	1	4	14
Econ Dev	1	2	7
Grand Total	18	75	263

B	C	D	E
Ranking & Theme	Goal Area	Table count	estimated person count
Econ Dev	Close proximity to Cabazon and Morongo	14	49
Econ Dev	Inexpensive land for development	11	39
Econ Dev	Close to metropolitan areas	9	32
Public Safety	Small town image	7	25
Econ Dev	Attracting tourists and visitors	5	18
Econ Dev	Rental Rates	4	14
Transportation	Proximity to the freeway	4	14
Econ Dev / Beautification	Arts community	4	14
Econ Dev	Chamber of Commerce	3	11
Communication	Celebrate the city in social media (Facebook, etc.)	2	7
Econ Dev	Farmer's Market	2	7
Transportation	Railroad access	2	7
Econ Dev	Shopping for local residents and visitors	2	7
Econ Dev	College campus in city	2	7
Econ Dev	Food4Less on the Eastside	1	4
Communication	Block parties to bring people together	1	4
Communication	Internet access allow people to work from home	1	4
Econ Dev	Unused airport property	1	4
		75	263

Strengths Themes	Item count	Table count	Estimated person count
Locally developed features	6	20	70
Public Safety	5	26	91
Transportation	4	14	49
Communication	2	2	7
Natural attributes	2	16	56
Communication / Public Safety	1	8	28
Econ Dev	1	6	21
Facilities	1	1	3.5
History and tradition	1	2	7
Grand Total	23	95	332

Ranking & Themes	Goal Area	Table count	estimated person count
Public Safety	Affordable housing	8	28
Communication / Public Safety	Sense of community	8	28
Natural attributes	Climate	8	28
Natural attributes	Location	8	28
Transportation	New courthouse	6	21
Transportation	Low traffic in most places (high traffic at)	6	21
Econ Dev	Large residential lots	6	21
Public Safety	Access to community college classes	5	17.5
Locally developed features	Sun Lakes	5	17.5
Public Safety	Proximity to Cabazon and Morongo	5	17.5
Locally developed features	Movie (Fox Theater)	4	14
Public Safety	Very little graffiti	4	14
Public Safety	Small town feeling	4	14
Locally developed features	Senior Center	3	10.5
Locally developed features	Art Galleries	3	10.5
Locally developed features	Restaurants	3	10.5
Locally developed features	Access to fast-food	2	7
History and tradition	Stagecoach history	2	7
Communication	Courteous city employees	1	4
Communication	Customer services from utilities company	1	3.5
Facilities	Effective drainage system	1	3.5
Transportation	Concerts in the park	1	3
Transportation	Sunset grade separation	1	3
		95	332

Weakness Themes	Item count	Table Count	Estimated person count
Econ Dev	37	8	129
Communication	21	11	73
Econ Dev/Beautification	13	3	45
Public safety	12	5	42
Transportation	8	5	28
Beautification	6	2	21
Communication / transparency	1	1	3
Facilities	1	1	3
Grand Total	99	36	346

Ranking & Theme	Goal Area	Table count	estimated person
Econ Dev	Weak local economy and weak job opportunities	9	32
Econ Dev	Empty storefronts	8	28
Econ Dev/Beautification	City's image	7	25
Econ Dev	Not business friendly	6	21
Econ Dev	No grocery stores	5	18
Communication	Weak planning & weak execution of plans	5	18
Beautification	Poor street maintenance -- No street sweeping	5	18
Public safety	Slow police response (especially at night)	4	14
Public safety	Few activities for youth (17 to 20)	4	14
Econ Dev/Beautification	Zoning regulations are not as effective as they should be	4	14
Econ Dev	Promote development in the areas designated as art zoning	3	11
Communication	Differences of opinion create problems for finding consensus	3	11
Econ Dev	Food desert (economic segregation)	3	11
Transportation	Poor public transportation	3	11
Communication	High electric bills	2	7
Communication	City council members who can't work together	2	7
Communication	Lots of planning -- weak on execution	2	7
Public Safety	No homeless shelter -- homeless epidemic	2	7
Econ Dev	Too much reliance on property tax for revenue	2	7
Econ Dev/Beautification	Weak code enforcement	2	7
Communication	Micro-management from council members	2	7
Transportation	Street signage is missing from many residential streets	2	7
Public Safety	Not enough handicapped parking	1	4
Public Safety	Main street is too dark	1	4
Transportation	Not enough sidewalks	1	4
Communication	Need friendlier website	1	4
Communication	Low visibility of council in the community (except for the mayor)	1	4
Communication	Poor communication from city council (little transparency)	1	4
Econ Dev	Downtown blight	1	4
Transportation	Noise from railroad trains	1	4
Facilities	Older library	1	4
Communication	Council hides behind the Brown Act	1	4
Communication	City needs a resource guide	1	4
Beautification	Tree maintenance	1	4
Transportation	No bike paths or bike racks in downtown area	1	4

Examples of Vision and Mission Statements

Vision Statements	Mission Statements
City of San Bernardino	
Our vision for the City of San Bernardino is for it to be strong and prosperous. The City of San Bernardino will be the hub of economic growth in the Inland Empire. San Bernardino will offer a wide range of housing, recreation, cultural, education, and employment opportunities for all who come live and work here. A strong sense of community will continue to grow and thrive within our city limits	Our mission is to provide quality and cost effective services to the people of San Bernardino. We will provide excellence in leadership through the allocation of public resources to City programs that are responsive to community priorities and maximize opportunities for economic, educational and cultural viability
Crafton Hills College	
CHC will be the college of choice for students who seek deep learning, personal growth, a supportive community, and a beautiful collegiate setting	The mission of CHC is to advance the educational, career, and personal success of our diverse campus community through engagement and learning.
Phoenix, AZ	
We will make Phoenix a great place to live, work and visit by fostering a dynamic and sustainable environment with exceptional public services	To improve the quality of life in Phoenix through efficient delivery of outstanding public services.
Flagstaff, AZ	
The City of Flagstaff is a safe, diverse, vibrant, and innovative community with a unique character and high quality of life. The City fosters and supports a balance of economic, environmental, educational and cultural opportunities.	To protect and enhance the quality of life of its citizens
Palm Springs	
<p>(Organized Neighborhoods of PS) ONE-PS Vision Statement (what we aspire to in the future)</p> <p>ONE-PS aspires to be the broadly recognized and generally accepted consensus voice of the residents of Palm Springs.</p> <p>We will be an increasingly visible and identifiable organization, providing all geographic areas within the City experienced leadership and effective representation for the benefit of our community.</p> <p>We will be a sought-after resource for information, opinion and perspective on matters of interest to Palm Springs and thereby have an impact on decisions affecting our City.</p> <p>Our events will be eagerly anticipated, well-attended and fully staffed with motivated volunteers. Our composition will be as inclusive and as diverse as our City.</p> <p>Our impact on the community will help attract new residents to move here and businesses to establish or relocate here. We will be part of the welcome on their arrival.</p> <p>We will be a component of the overall Palm Springs "brand," contributing to our City's appeal, recognition and stature throughout the state, the nation and the world.</p>	<p>ONE-PS is a network of Palm Springs neighborhoods that gives voice to the issues and concerns of our community. We collectively seek practical solutions, and promote two-way communication between City residents and City officials on matters and events of broad civic and social interest.</p> <p>Responsibility for decision-making and recommendations lies with representatives of formally certified neighborhoods. All City constituencies are potential partners, advisors, and beneficiaries.</p> <p>We encourage the exchange of information and promote civic involvement. We sponsor and coordinate activities such as regular meetings, forums, task-specific work groups and social events and disseminate word of our activities primarily through these encounters and via the Internet.</p> <p>Our goal is to improve the quality of life for Palm Springs residents and to enhance the experience of our visitors. Our objectives are to create an informed and engaged citizenry, to encourage pride in our City and a sense of responsibility for it and to strengthen the City's overall economic and competitive standings.</p> <p>We believe organized neighborhoods empower Palm Springs.</p>
Pasadena, CA	
Pasadena will combine world class events, science and technology, arts and culture, history and architecture with great neighborhoods and opportunities for all.	The City of Pasadena is dedicated to delivering exemplary municipal services responsive to our entire community and consistent with our history, culture and unique character.

City Values

Responsiveness
 Honesty and integrity
 Accountability
 Excellence
 Open, clear and frequent communication
 Innovation
 Diversity and inclusiveness

Fallon, NV

The vision for the City of Fallon is a community of excellence for outstanding and cost-effective municipal services, which features a clean, safe and aesthetically pleasing environment, with strong, diverse economic and business opportunities.

The City of Fallon's mission is to provide top-quality, fiscally responsible municipal services in a manner that promotes the high standards of our City. Further, the mission of our City's elected officials is to make the required decisions and set policy that furthers the best interests of our residents and the City.

Things that people identified as having high value: --- Pride, freedom, open spaces, economic growth, art & culture, climate, location ...

What people seem to want: A strong and relevant economy that balances a love for open undeveloped spaces with our desire to create growth and opportunity.

- Maintain a balanced, inclusive, and open approach to policy-making and city leadership.
- Partner with residents and businesses to create a positive climate for economic development
- Maintain a balanced, inclusive, and open approach to policy-making and city leadership.
- Citizen participation that promotes open communication, mutual respect, and the development of community leaders
- Work with areas residents to revitalize neighborhoods and business districts with appropriate spaces for art and culture.
- Institute a comprehensive economic development strategy
- Communicate accurately and frequently between city leadership, residents, and city partners
- Develop a transportation plan that addresses current needs and anticipate the future.
- Ensure that budget processes are sustainable and align with strategic goals and objectives

Core Values

- The health and safety of residents.
- Preservation of a vibrant community that respects the city's unique character and heritage
- Prudent fiscal policies and practices.
- Preservation of the community's quality of life
- A healthy natural environment with emphasis on conservation, open space, climate protection and sustainability.
- Economic vitality with an emphasis on small and local businesses.
- Strong and effective communication systems
- Cultivation of community leadership through citizen participation on government commissions, boards and committees

Key Issues

- Traffic mitigation, multimodal transportation and parking (Car, bus, bike, bus).
- Infrastructure maintenance and enhancement.
- Attraction and retention of local serving businesses.
- Budget management and mitigating fiscal impacts of the state and local economy.
- Effective two way communication between City staff/Council and the community.
- Excellence in customer service.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/14/15
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Franklin on April 14, 2015 at 4:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: James E. Smith, Interim City Manager
Lona N. Laymon, Assistant City Attorney
Colin Tanner, Attorney – Aleshire & Wynder, LLC
Stephen Onstot, Attorney – Aleshire & Wynder, LLC
Brian Guillot, Acting Community Development Director
Rita Chapparosa, Deputy Human Resources Director
Art Vela, Acting Public Works Director
Marie A. Calderon, City Clerk

CLOSED SESSION

Assistant City Attorney Laymon said closed session tonight will consist of two cases of potential initiation of litigation pursuant to Government Code Section 54956.9 (d)(2); existing litigation matter pursuant Government Code Section 54956.9 (d)(1) – a) Robertson's Ready Mix, Lt., v. City of Banning and the Banning City Council, et al (there is no update on that item and do not expect any discussion in closed session on that item); b) Burk, Takata, and Purvis vs. City of Banning et al; Case No. RIC 1408547; c) Takata vs. City of Banning – Case No. ROC 502374; real property negotiations pursuant to Government Code Section 54956.8 to confer with its real property negotiator in regards to Fire Memories Museum – 5261 W. Wilson Street - APN: 408-134-009; and labor negotiations pursuant to the provisions of Government Code Section 54957.6 - City is represented by the City Attorney and negotiations are with International Brotherhood of Electrical Workers (IBEW) – Utility Unit and General Unit, Banning Police Officers Association (BPOA), and San Bernardino Public Employees Association (SBPEA).

Mayor Franklin opened the closed session items for public comments; there were none.

Meeting went into closed session at 4:03 p.m. and reconvened at 4:53 p.m.

ADJOURNMENT

By common consent the meeting adjourned at 4:53 p.m.

Marie A. Calderon, City Clerk

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

04/14/15
REGULAR MEETING

A regular meeting of the Banning City Council and a joint meeting of the Banning City Council and the City Council Sitting in Its Capacity of a Successor Agency was called to order by Mayor Franklin on April 14, 2015, at 5:00 p.m. at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT: Councilmember Miller
Councilmember Moyer
Councilmember Peterson
Councilmember Welch
Mayor Franklin

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: James E. Smith, Interim City Manager
Lona N. Laymon, Assistant City Attorney
Dean Martin, Interim Administrative Services Director
Rita Chapparosa, Deputy Human Resources Director
Michelle Green, Deputy Finance Director
Fred Mason, Electric Utility Dir.
Art Vela, Acting Public Works Director
Alex Diaz, Interim Chief of Police
Tim Chavez, Battalion Chief
Brian Guillot, Acting Community Development Director
Oliver Mujica, Contract Planner
Sonja De La Fuente, Office Specialist
Marie A. Calderon, City Clerk

The invocation was given by Bishop Dusty Headley, Banning Ward of the Church of Jesus Christ of Latter Day Saints. Councilmember Welch led the audience in the Pledge of Allegiance to the Flag.

REPORT ON CLOSED SESSION

Assistant City Attorney said Council at 4:00 p.m. convened into closed session on four items. There was either no discussion or just a general update of the closed session items and there was no reportable action.

PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS

PUBLIC COMMENTS – On Items Not on the Agenda

Arthur D'Souza, owner of Aarons Store, 321 W. Ramsey addressed the Council stating that on November 20th there was a fire at their store but as a result of their whole team at Aarons starting from Atlanta to the local team, to the team here at the City and members of the Council who individually took so much concern, to the new City Manager Jim Smith who came at the right time to give them the extra shot in the arm and energized them the building is now complete. It took about two months to drop it down in a careful manner to see that the structure stood and it took just a month to build it up and they will be having a grand reopening on May 1, 2015. He invited everyone to attend this event because he considers this a pride of the whole city and they received support from every single official at city hall. They were pro-active, helpful and very, very positive with their suggestions. He wanted to say thank you so much to everyone.

Maggie Scott resident of Banning addressed the Council stating that she had a couple of issues that have not been taken care of as of yet. Last year she reported the house on the corner of Almond Way and Nicolet that is a dumping ground for everything. She was told that it would take at least three months to get in contact with the owner and it is now going on six months and it is still an eyesore. She would like to know what is going on with that issue. It seems to be swept under the rug that it is not important but it is important to her and her neighborhood. She feels there has been plenty of time to get in touch with the owner and would like it addressed as soon as possible. Also, she would like to know when something will be done about Hathaway Street. She was told that it would be sometime until it is addressed but every time we have a storm it is bad. The street is closed, all the water and debris goes down west underneath the bridge; when will you start working on that project. Beside the street there is a big trench that the water has made and you pretty much could lay down there and no one would know you were there. When she called about this during the last storm the City came in and filled in the holes on the street which was fine but on the corner of Williams and Hathaway if anyone made a sharp turn they would have been in the ditch. The City covered a little bit of that up but it is like that all the way down from Williams to Ramsey Street. What can be done about that? The City said they were going to put in curbs but the way they talk it is going to be years and she feels that something should be done now. Also grass is growing on the edge of the asphalt and if you go over too far, you are in the ditch and would have to be towed out. She feels that someone should go and take a look at it and she was told someone did look at it but nothing has been done about it. It is really bad on Hathaway and she really wants to push this because she is concerned about the neighborhood the way things are going on over there and wanted to bring it to the attention of the City Council because she had already reported it.

Don Smith said that he has to follow-up on the last speaker. He said that he has a few code enforcement complaints that he has no idea what is going on with them. He feels it is a policy problem. Somebody turns in a complaint and nobody ever gets back to that person about here is what the City is trying to do to accomplish it, here is what the City needs to accomplish it, here is where it stands so you might be left feeling that you are being completely ignored. Peacock Valley II has pretty small front yards and the house next door to one of his properties has 8 cars parked in the driveway, front lawn, side lawn all in view of the street and they are either running a car repair facility or car sale facility so he filed a complaint asking code enforcement to do something about it because it is ruining the whole street. He doesn't hear anything so he files a second one and he still doesn't hear anything so he files a third one with pictures this time and he still hasn't heard anything. He doesn't believe that the City just took his complaint and threw it

away; he assumes that they acted on it but he has no idea what they did or what they need to do or how the owner is responding. He thinks it is a policy problem. Somebody needs to get back to the people saying we are not ignoring you and we are trying to fix the problem but there are legal hurdles. You feel like you are being ignored and that certainly is not what you want the public to think so he thinks it is a policy thing and something you need to handle.

Inge Schuler resident of Banning addressed the Council stating that in regards to the code enforcement issues it is a long-standing problem in the city whether we are looking at Ramsey Street our first impression to the people that come off the freeway going west at the Ramsey Street exit is not pretty or inviting. Since you talked a little bit about economic development when somebody comes into town and see that weed-choked property whether it is going as far as Hathaway or Hargrave it is just not very pretty and she feels something can be done. Also, nothing seems to have been done about the billing cycles. She still has these interesting notifications on her bill that the billing cycle far exceeds the number of days in a month and something needs to be done about it. You had it on items for future discussion and it still has disappeared so she doesn't know what is going on with that item. Now we have a lot of problems in town and we know that they need to be addressed and people need to get involved and it is difficult to get people out of their homes to get involved in city functions, neighborhood functions, etc. and in view of that she is particularly concerned that one of our citizens Mr. Sakurai has spent an inordinate amount of time with a tempest in a teapot about parking. There are many more things that he could spend his considerable energy on. Real issues rather than going on this little vendetta that seems to have been going on since last September and maybe he could actually deal with something that is important and be constructive. She hopes that is going to happen.

Mayor Franklin said in regards to her comment about the billing cycle they did have a workshop on that today but they will have another one that will be coming up to talk a little bit more about that subject and that will be publically noticed also.

Rick Pippenger citizen of the city of Banning addressed the Council stating that he has been a citizen of Banning for about 35 years and has come to this Council quite a few times off and on and sometimes he has agreed with the Council and sometimes he has not agreed but he never called anybody names or raised hate and discontent with anybody and everybody has a right to their opinion and he thanked and applauded the Council for sitting up there because you take a lot of abuse. In regards to some letters that were in the newspaper this past weekend everybody can pick on everybody but when somebody comes back at the person that is calling everybody names and doing bad things and isn't even picking on them referring to Don Peterson and Mr. Sakurai he is always coming up with something on him and now we have this new guy Dennis McKee and he doesn't even think he is a citizen of Banning and he comes in with a great big long letter stomping on Don Peterson and there was nothing in Don's response that was accusatory or anything; he just stated the facts. He is a disabled veteran and entitled to a disable parking spot.

Heather Rhoades, Inland Behavioral & Health Services addressed the Council stating that they are a community-based, non-profit, federally qualified healthcare provided. IBHS has provided services in the city of San Bernardino geared towards persons with low income, the disenfranchised, the uninsured and the underinsured since their inception in 1978. In 2012,

IBHS expanded to serve Riverside County here in Banning. Their newest facility is Banning Family Community Health Center located at 1070 E. Ramsey. Here at IBHS they are dedicated to helping the community achieve and maintain general good health, education and welfare through commitment in providing excellent services in the area of physical healthcare including dental, substance abuse treatment, mental health improvement, homeless services, and prevention education. She is part of the outreach team and Covered California team and their goal is to help network with organizations, churches and other entities which may motivate, promote and create and empower the community. Their vision is to network with our community and agencies to diminish hunger, homelessness, substance abuse, violence, and gang related activity in the community. They also assist with many applications including Covered California health insurance, medical health insurance, CalFresh, SSI, unemployment and all the services that they do as an outreach team are absolutely free. They are open Monday through Friday 8 a.m. to 5 p.m. and their dental and pharmacy are up and running as well. They have a few upcoming events: 1) Women's Health Fair on May 20th; 2) Men's Health Fair on June 24th; and 3) their 11th Annual Golf Tournament on June 5, 2015 at the Morongo Golf Club at Tukwet Canyon at 8:00 a.m. in honor of "Living Up to the Gold Standard". IBHS attained accreditation in both Ambulatory and Behavioral Health from the Joint Commission combined with a Primary Care Medical Home certification on June 30, 2014. This is a highly sought designation and they are one of the few health centers in Southern California with this honor. With this Gold Seal Approval comes great responsibility and higher standards to abide by. This will allow IBHS to continuously provide exceptional service to their patients and communities and invited everyone to join then this year in celebrating their distinguished accomplishments and this is what the golf tournament will be in honor of and it will also honor Dr. John F. Wilson who unfortunately passed away early this year. He was also the City Attorney for the City of Banning for a while so if anyone would like to make a speech or contribute they would be more than welcome to have you in attendance.

Fred Sakurai addressed the Council stating that a couple of weeks ago there was a personal attack against him in the newspaper and when he tried to submit a response the Record Gazette said there was no space available so they did not publish his response and said they would do it in two weeks. Two weeks later it still was not published so he feels that he would like to get his response out. His response reads: "Dear Editor, I decided to take the high road rather than the Peterson road and rather he would suggest that Mr. Peterson re-read his letter and that he could submit an apology at any time. The publisher of the Record Gazette decided that he did not want to have the bickering in his newspaper sort of like the media Brown Act so that is as far as it goes. So he doesn't know if that means a censorship of all his letters or if he is going to be censured here on the rostrum; he hopes not. He would like to continue saying what is on his mind and he would hope that there will not be any bickering but a statement of facts rather than appealing to the Ruth Ellis school of creative writing. Thank you."

Gary Hironimus addressed the Council stating that he wasn't going to speak tonight but for two and a half years now we have all listened to Fred Sakurai stand up here and attack Mr. Peterson and to a lesser extent Mr. Miller sometimes subtly and sometimes blatantly; always unfounded and bogus accusations over and over, month after month. Ironically he has even accused you of wrong doing for not responding to his tirades at the podium even though he knows full well that you are prohibited by law from doing just that. Fred knew back in September of 2013, a year and a half ago, that Mr. Peterson had a disabled placard and it didn't matter to him and he still made

a big deal of it and a year and a half later he is still making the same accusations in the paper that it is wrong. He believes that the State is the sole arbiter of who is handicapped enough to use handicap spaces and if the State had decided that Mr. Peterson is, since obviously that is the case and he has a handicap placard or plate, then it certainly is not Mr. Fred Sakurai or Mr. Dennis McKee's job to decide who is handicapped enough to use those spaces. We get it Fred, you don't like him but he was duly elected and you will have to put up with him for another year and a half. A lot of good is happening in this city. Mr. Miller's letter last week in the Record Gazette was phenomenal and it listed a lot of great things happening. That is what we should be focusing on instead of continuing to stand up here and attack our elected officials.

Rick Pippenger said that Mr. McKee basically in his article in the newspaper called Mr. Peterson a liar. Basically he said he couldn't be injured during Tet because there was no Tet in 1969. Well if you go on google and you take Vietnam Tet Offensive 1969 and there it is; it is easy to find. You don't need to call someone a liar for it. If Mr. Sakurai has all these ideas, why doesn't he come up with a positive idea? Something that he can suggest the City do that would be of betterment to the community instead of just spanking everyone all the time; it is wrong.

Alex Diaz, Police Chief said he wanted to remind the public that there are some survey's out there and one is a Goal Setting Survey that the City is currently handling and we want more participation. Also, they are currently working on the police survey and have had a really great turnout from the citizens and he would love to see 30,000 surveys and he knows it is not going to happen but the more they get obviously they can integrate that into their three-year plan and come up with some really good solutions. The third item is code enforcement. He understands the frustration from our citizens in regards to code enforcement and understands that one of the big issues in the past was the lack of communication. He said that they are working as hard as they can and trying to implement the new software system and hopefully it should be operational within the next four to five weeks. But the way the program is going to work it is going to create a data base and the software itself will give a reminder to our code enforcement team to contact the people that are calling to file complaints. It will get better but he is asking the public to bear with them while they put this program together and provide training to the code enforcement team. The communication aspect of it will get better so please just bear with them.

CORRESPONDENCE – None at this time.

PRESENTATIONS

1. Proclamation - May 2015 as "Mental Health Month"
Presentation by Mayor and City Council Members

Mayor Franklin said that many of us have been touched my mental health and she asked Carole Schaudt to comment on it. Carole thanked everyone and said she is proud of this proclamation and it took her two years to include in the proclamation the events that they have in the desert area or desert region on May 12th. Also, they are now called the Behavioral Health Commission and she is the area's Commissioner. What they have done and worked hard for is that someone who has mental issues and medical issues that both those issues are worked on together. For this region they hope soon that when they have someone who has a alcohol or drug related issue and a police officer has to stay with them at a hospital that they will soon have a team so those

officers can be released. They will have a team that can stay with those 5150 patients. She thanked the Council for this proclamation.

2. Banning Stagecoach Days Association Report – Amy Pippenger

Amy Pippenger addressed the Council stating that Carl Douglass is passing out a flyer with information on their upcoming BBQ, last year's rodeo program and some sponsor pages so the Council has an idea of what they have been working on. Ms. Pippenger gave a brief overview of what occurred at Stagecoach Day 2014 and gave their financial report. Last year they brought back the Stagecoach Days Rodeo Queen Contest which had been absent for six years so it took a look of work and they were successfully and had 13 girls participate. Harmony Latham the 2014 Miss Rodeo Queen has done an awesome job of representing the City and has gone to rodeos throughout California, Arizona and Oklahoma. If anyone is interested the 2015 Rodeo Queen applications they are available at www.stagecoachdays.net and their Stagecoach Days Kickoff Dance and Rodeo Queen Coronation will be held August 15th. Last year they brought back a professional rodeo and partnered with Honeycutt to provide all of their stock and also partnered with Grand Canyon Professional Rodeo Association. They brought in over 300 contestants last year and they came from California, Arizona, New Mexico, Utah and Nevada and competed for \$6,000 in prize money and they know as an Association that they need to increase the prize money to get the higher caliber contestants and they are working on that. This year's events will take place September 11th through 13th. She went over the various events that they had last year and their motto was "Believe in Banning". For this year they will be adding a Sunday Rodeo and seeking donations for extra bleachers, they will have a Junior Rodeo for ages 4 to 17. On August 22nd they will have the California Junior Rodeo at Dysart Park. They will have a new carnival vendor this year and increasing their vendor count. The parade was very positive and parade applications are available at the same website. She displayed their profit and loss statement and it cost them \$105,441.22, they had an income of \$104,064.93 and lost \$1,376.29. As a first year team taking on such a big event they are saying they were successful. They are a non-profit and they don't want to lose money but they are not also here to make tons of money off the community. Some items were lumped together so they don't have breakdowns on their sponsor money and gate revenue general admission and rodeo. Last year there was a \$6,900 arena upgrade and the Laura May Stewart Foundation gave them a \$6,000 dollar grant and they were able to put in a return basically fencing to get the animals from one side of the arena to the other end of the arena safely. They are currently seeking out donations to permanently put in holding pens. They consider 2014 to be a success because they set out to get families involved and saw attendance at the parade and attendance at Dysart Park increase. They will be doing fundraisers or get more people involved in the community and do things with the community that are not all horse related and will be having a pancake breakfast, trap shoot, bowling night on April 30th and all the money that they make from all of these events goes to help them pay for the Stagecoach Days events. They will also have a BBQ and a Horseshoe Tournament on June 20th. Whiskerino and Hatterino on July 10th, Rodeo Dance on August 15th and they are trying to get a Wine Walk scheduled for Oct. 3rd. She gave more detail on some of the events. She also said that whoever did the design of the Sunset Underspass/Overpass it is awesome and she appreciates that you recognize that we are a stagecoach town. Her motto for Stagecoach Days is "If you build it, they will come" and the people have shown us if we provide it they will support us.

3. Introduction of New Employee in Community Development Dept.

Director Guillot introduced Adi Soto and stated that she is the Office Specialist in Community Development. She has been a resident of the Pass Area for about three years and also has a fine record of doing volunteer service with the City so in the past she has had some experience and that is very much appreciated. She is bilingual and quite helpful and you will see her at the Planning counter helping with both planning and building and safety.

4. Introduction of New Police Department Employees

Chief Diaz introduced Debbie Shubin stating that she has been a dispatcher for the last couple of years and before that she was one of our Community Resource Officers and she has now transitioned over to Code Enforcement so she is the second position in Code Enforcement and she has been there now for three weeks and getting trained.

Chief Diaz said that they have four new additions to the Banning Police Department family and he introduced each of the officers.

- Reserve Officer Daniel Arenas was born and raised in Riverside CA. He is married to his wife Daisy and has 3 kids (Marissa 16, Nathan 14, and Jasel 13). His hobby is youth coaching and dedicates 8-10 hours a week to coaching youth baseball and soccer. The reason Daniel wanted to be a reserve police officer with Banning PD is because of the gratification that comes with being able to help people and to be able to make a positive impact on the community.
- Officer Robert Castro was born in Orange, California and grew up in Anaheim, California. Robert has been married to his wife Barbara for 22 years. They have a twenty year old son, Bobby. Bobby is a full time student at California Baptist University in Riverside, California. Robert's family is the most important part of his life and are his biggest supporters of Robert becoming a Police Officer. Robert and his family enjoy going to Angel baseball games and hiking trails. Robert is excited about his new career opportunity with the Banning Police Department.
- Officer Dana Mikles was born August 8, 1975 in Bakersfield California; he grew up in Lompoc, Ca just north of Santa Barbara. Dana graduated from Cabrillo High School in 1994. After High School Dana joined the Air Force and was stationed in Florida for two years and then Edwards AFB until August of 2000. In September of 2000, Dana transitioned to the Air Force Reserves and is still presently serving. Dana has been in the Military for almost 21 years, 18.5 of those years active duty. Dana has been married to his wife Daisy for 11 years and has 2 kids (Gabriel 10 and Janelle 6) Dana has numerous hobbies which include running/ Lifting weights, cycling, riding motorcycles and snowboarding.
- Officer William Adrian Auer was born and raised in Los Angeles County (La Puente). He enlisted in the United States Marine Corps right after graduation and ultimately earned the rank of Sergeant. He spent over 9 years in the Marine Corp, serving deployments all over the world. After his enlistment, William worked for the US Department of State as a High Threat Protection Specialist. In April 2014, William decided to finally pursue his lifelong dream of becoming a Police Officer, and paid for own way through the Riverside Sheriff's Academy; William graduated and received an

award for being "Top Shot" in his class. Officer Auer has already begun the Field Training Officer Program and loves every minute of it.

City Clerk at this time swore in each of the new police officers.

APPOINTMENTS

1. Appointments to Parks and Recreation Advisory Committee

Mayor Franklin said that there were three applicants and unfortunately we only have two openings. The Council did interview all three candidates this morning and found them all to be very well qualified but unfortunately the Council can only make two appointments to this Commission.

Motion Moyer/Miller that the Council appoint Inge Schuler and Leroy Miller to the Parks and Recreation Commission. Motion carried, all in favor.

2. Designation of Voting Delegates and Alternates to the SCAG (Southern California Association of Governments) General Assembly Conf. – May 7-8, 2015 in Palm Desert, California.

Mayor Franklin said that she would be attending as a policy member for SCAG and asked if anyone on the Council would like to volunteer for the delegate from the City. Councilmember Moyer volunteered.

Motion Welch/Franklin to approve Councilmember Moyer as the delegate for the City of Banning. Motion carried, all in favor.

3. Appointment of an Ad Hoc Committee to Negotiate a City Manager Contract with Candidate James E. Smith.

Mayor Franklin said that the appointments are Councilmembers Art Welch and George Moyer.

Motion to Peterson/Franklin to accept the appointments of the Ad Hoc Committee of Art Welch and George Moyer. Motion carried, all in favor.

CONSENT ITEMS

Mayor Franklin said that Consent Items 8, 10 and 11 are pulled.

1. Approval of Minutes – Special Meeting – 03/19/15 (*Advance*)

Recommendation: That the minutes of the Special Meeting of March 19, 2015 be approved.

2. Approval of Minutes – Special Meeting – 03/24/15 (*Closed Session*)

Recommendation: That the minutes of the Special Meeting of March 24, 2015 be approved.

3. Approval of Minutes – Regular Meeting – 03/24/15

Recommendation: That the minutes of the Regular Meeting of March 24, 2015 be approved.

4. Report of Investments for February 2015

Recommendation: That the City Council receive and file the monthly Report of Investments.

5. Approval of Accounts Payable and Payroll Warrants for Month of February 2015

Recommendation: That the City Council review and ratify the following reports per the California Government Code.

6. RCTC (Riverside County Transportation Commission) SRTP (Short Range Transit Plan) Funding Request for City Services Allocation

Recommendation: Approve the request to RCTC for additional SRTP funding in the amount of \$132,094 to cover the allocation of City internal costs.

7. Resolution No. 2015-23, Declaring the Intention to Levy and Collect Assessments within Landscape Maintenance District No 1, During the Fiscal Year 2015/16, Pursuant to the Landscaping and Lighting Act of 1972 for the Maintenance and Servicing of Landscaping, Approving the Engineer's Report, and Setting the Date for the Public Hearing for the Levy of Said Assessment.

Recommendation: That the City Council adopt Resolution No. 2015-23.

9. Resolution No. 2015-28, Opposing Senate Bill 608 Regarding Homelessness

Recommendation: That the City Council adopt Resolution No. 2015-28.

12. Resolution No. 2015-31, Opposing Assembly Bill 1220 Regarding Transient Occupancy Taxes and Residential Short-Term Rental Units.

Recommendation: That the City Council adopt Resolution No. 2015-31.

Motion Moyer/Welch to approve Consent Items 1 through 7, 9 and 12. Mayor Franklin opened the item for public comments; there were none. **Motion carried, all in favor.**

8. Resolution No. 2015-24, Approving the Measure "A" Five Year Capital Improvement Plan.

Acting Director Vela gave the staff report as contained in the agenda packet.

Councilmember Miller said the reason he pulled this item was because we just had Mrs. Scott complain about Hathaway Street and Williams down to Ramsey Street. He asked how you choose the streets that are going to be repaired or paved.

Acting Director Vela said that a couple of years ago they hired a company by the name of Mission Geographic and they did a survey throughout the entire city with some highly advanced equipment and inventoried every single street and graded each street on specific traits and then Public Works took that information and put it into their GIS system and they update their 5-Year CIP list based on the grades that that program gave them. Hathaway was mentioned actually in that list but it was not put on the list for this year and was something that they were going to discuss at a future time. They recently received a grant from Caltrans to improve a portion of Ramsey Street on the east side and there has been in-house discussion to include the intersection of Ramsey Street and Wilson and will move forward to make those improvements there but there still is an opportunity to add Hathaway to the list. Even if the Council were to approve the list tonight RCTC allows revisions to the list and it is a very easy administrative change that they are allowed to make. Mr. Vela said if this list is approved tonight, they can change it in the future or revise the list and bring it back to Council.

There were further questions and comments from the Council to staff in regards to including Hathaway on the list for action this evening. The Council also wanted a report back on Hathaway Street in regards to moving it ahead on the list. There were also questions in regards to the survey that was done on the streets and how often a physical survey is done.

Mayor Franklin opened the item for public comments; there were none.

Motion Miller/Moyer to adopt approve Consent Item No. 8 to adopt Resolution No. 2015-24, Approving the Measure "A" Five Year Capital Improvement Plan. Motion carried, all in favor.

10. Resolution No. 2015-29, Supporting Assembly Bill 35 Regarding Income Taxes, Credits, Low-Income Housing and Allocation Increase.

Oliver Mujica gave the staff report on this item as contained in the agenda packet.

Councilmember Peterson said in researching this bill it was submitted by Assembly Member David Chiu and presently the State of California has \$70 million dollars that they have in available tax credits and all of a sudden they want to increase that to \$370 million dollars. He read the following, "In an attempt to reassert the State's backing of low income housing Atkins is championing a package of bills that would expand the low income housing tax credit by \$300,000 million dollars helping California use federal funds becoming available and direct savings from Proposition 47, the Housing Support, for people emerging from incarceration." He believes that this is to provide low income housing for people getting out of jail and then increasing the bond debt up by \$300,000 million dollars or syphoning off the federal funds as they become available or redistributing the federal funds.

Mr. Mujica said the amount of the increase is correct but it is not just limited to those who were released from incarceration. It is added to the definition. The definition of affordable housing

has been expanded significantly over the course of the several years where income levels have been reduced, race has also been included, demographics and so the umbrella of affordable housing has become far more reaching in these days and so now with tax credits it allows for municipalities and developers to partner to seek these tax exempt bonds to develop residential developments.

Councilmember Peterson said in addition to that Atkins is fueling the fire in which she is being opposed by the real estate association in the state and they have been opposing her bill and have already wiped off her one bill already and she is coming back with Assembly Bill 1335 which ties in with Chiu's Assembly Bill 35. Councilmember Peterson read: "Then there is the Atkins Assembly Bill 1335 that would create a perpetual source of affordable housing funding by levying a \$75 dollar fee on real estate transaction documents. A similar bill perished last year which the State Realtors Association opposed. While the California Association of Realtors has not taken a position on AB 1335 representatives say a 'transaction fee' imposes an unfairly narrow burden." Councilmember Peterson said he doesn't agree with either bill. He is not for anything that is going to bring more taxes on the people. He doesn't appreciate WRCOG or whoever it is bringing us these bills asking us to support them and approve them. It is up to the Council to decide what it is we are going to approve.

Mayor Franklin said to clarify it is not WRCOG. This came from the League of California Cities and the reason it came like this was so the Council would have an opportunity to say whether or not we would support it. What we gave was their recommendation but it is up to every Council that is bringing this forward before their boards to talk about whether to support or oppose bills that are going before the State Legislature.

There was further Council questions and comments with staff in regards to the difference between low income housing and affordable housing, sections in the bill of things we must follow, low cost housing, this being a hidden tax specifically on real estate documents. Councilmember Miller recommended that the Council should oppose this bill rather than support it.

Councilmember Peterson said when he was reading a couple of paragraphs out of the Merced Sun Star newspaper regarding the bills we already approved opposing Senate Bill 608 and for those of you that don't know what SB 606 is, if it would have passed, it would have been called the "Right to Rest Bill". The "Right to Rest" is for the homeless people and they would have a right to rest in any public place that they want. It includes vehicles parked in front of your house, old RV's, they have a right to roost in the city park, the city sidewalk and they were going to amend a section for the police, Penal Code Section 647, and allows that to occur.

Mayor Franklin opened the item for public comment.

The following people had some questions or concerns or general comments in regards to this item (*any written comments handed to the City Clerk will be attached as an exhibit to the minutes*):

Don Smith said that he originally wanted to discuss Consent Items 8, 10, 11 and 12 because what he wanted to discuss was homelessness and specifically how that affects us in Banning. He has lived in town for 50 years now and this is absolutely the worst homelessness, pan-handling has

been in the history of Banning and he went over his concerns with people breaking into people's yards going through trash cans taking recyclables and other things. He doesn't think that any of these bills is necessarily a good idea and it doesn't solve the problem. It certainly doesn't solve the problem in Banning. We need municipal codes that we can actively enforce to help solve this problem.

Gary Hironimus said he tends to agree with Councilmembers Miller, Peterson and Moyer because it is a hidden tax but what really bothers him is that by supporting this bill what does it accomplish. It accomplishes nothing other than letting the sponsor of the bill, the writer of the bill, go in front of the legislature and say I have X number of cities supporting this to try to get their bill to pass and quite frankly our legislators are supposed to be representing their individual constituents; not specific cities.

Heather Rhoads said in regards to homelessness she knows that their company is not geared solely towards homelessness but one of the jobs that they do is to help gather those resources whether it is from other cities such as Riverside, Hemet, San Jacinto, Beaumont, all around to help get people back on their feet whatever their situation may be; specifically in this case homelessness. Send them to their center and they will help.

Linda Pippenger resident of Banning said that when the Council was talking initially about the \$75.00 she thinks that there was kind of an implication that it was a sale of a property where it would cost \$75.00. She believes that is wrong; it is per document. So it would cost a lot of money and would be \$75.00 per document.

Chief Diaz said in regards to some of the issues brought forward by some of the citizens we know and understand that we have a homeless issue. As of a month ago Banning is partnering with other cities not only in the Pass Area but also with Yucaipa so the heads of all the police and sheriff agencies were getting together to come up with a plan that is similar across the board. They share the same information and the same resources and thus prevent the population of homeless people moving from city to city. Their goal is to come up with a plan to help our homeless population and that will educate our public on things they shouldn't be doing.

There was further Council comments in regards to homelessness, services where they can get help and the need to address this in their goal setting.

Motion Peterson/Miller to approve Consent Item No. 10 to "rewrite" Resolution No. 2015-29 to "oppose" Assembly Bill 35 regarding income taxes, credits, low-income housing and allocation increase. Motion carried, all in favor.

11. Resolution No. 2015-30, Supporting Assembly Bill 1335 Regarding Building Homes and Jobs.

Motion Peterson/Welch to approve Consent Item No. 11 to "rewrite" Resolution No. 2015-30 to "oppose" Assembly Bill 1335 regarding building homes and jobs. Mayor Franklin opened the item for public comment; there were none. Motion carried, all in favor.

PUBLIC HEARINGS

1. Consideration of Resolution No. 2015-21, Approving the General Plan Annual Progress Report for Calendar Year 2014.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet. One thing that they might amend in the report is that between the time this item was taken to the Planning Commission and the time it was placed on the Council agenda we received certification on our Housing Element and it will be included in the report.

Mayor Franklin opened the public hearing on this item for comments from the public; there were none. Mayor Franklin closed the public hearing on this item.

Motion Moyer/Peterson that the City Council adopt Resolution No. 2015-21, Approving the General Plan Annual Progress Report for Calendar Year 2014 and include the approved Housing Element. Motion carried, all in favor.

2. Consideration of Ordinance No. 1487, Approving the Categorical Exemption and Zone Text Amendment No. 15-97503 to Amend Chapter 17.36 (Sign Regulations) of the Zoning Ordinance (Title 5) of the Banning Municipal Code.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet. He also went over the Sign Advisory Committee's recommendations regarding sign regulations and also showed a graphic of wall signs showing the percentage of the area that would be used.

Councilmember Peterson said that when he looks at pictures of the downtown area from the 40's and 50's he sees huge neon signs, big arrows, billboards and flashing signs and to him it may be big but it was an exciting time and maybe it could still be somewhat exciting but he thinks you have these small dinky signs and when you go down the street you are straining to find the name of the business so he is glad to see that they went to the larger size and allow people some more freedom.

Councilmember Welch said he agrees with Councilmember Peterson on this except for one thing but one of the things that bothers him is that we have some establishments in our downtown area that plaster flyers to cover all of their windows for their daily specials. He believes that those are not permissible. It creates a junky look. It also impairs their ability to be safe.

Acting Director Guillot said in the context of sign permits we are talking about permanent signs. Temporary signs are a different kind of category. He said what they might do is to discuss that with code enforcement and the police chief to consider that and they are looking at Ramsey Street to improve the view.

Councilmember Miller said he was on the subcommittee that made those recommendations and wanted to make sure the way it is written here he understands to be what we asked for. He said in Section 17.36.060 on page 308 he doesn't understand the way it is written here; it is amended to prevent them or permit them.

Acting Director Guillot said the way it is written is that all banners, flags and pennants would be prohibited in the Downtown Commercial District so that would allow them in all of our other commercial districts.

Councilmember Miller said in Section 17.36.060 (J) it says portable signs or A-frame signs are permitted except in the Downtown Commercial area. He doesn't remember them approving that or asking that and it seems to him that the Downtown Commercial area is the area where A-frame signs would be most desirable and likely to have restaurants and that type of facility that would want A-frames.

Acting Director Guillot said again, that is understood maybe in reverse. "Portable signs and A-frame signs are prohibited except in the Downtown Commercial area."

Mayor Franklin thanked everyone on the sign committee who worked on this because it is such a hot topic. The only thing she didn't see is the sign fees and she hopes it will be addressed. Is there a plan to work on the sign fees?

Acting Director Guillot said the adjustment of fees usually has to be done through a study so he was going to wait for the opportune time when we are studying more than just sign fees to present that. In the meantime they have just the provision that they talked about for incubator signs in the downtown commercial area.

Mayor Franklin said if there is for some reason a business that really wants to do something outside of what we have in the ordinance do have the right to come to the Planning Commission to ask for an exemption or not.

Acting Director Guillot said certainly any developer can ask for fees to be waived but he believes that they would have to go to the Council.

Mayor Franklin said not for fees. Let's say for instance they want to do some fancy sign or something they want to bring can they still come to the Planning Commission to request an exemption and then the Planning Commission can hear it or not.

Acting Director Guillot said we would review sign applications in accordance with the code. Making exceptions to the code is problematic in that if you do for one what is the justification. Certainly we would take every project on a case by case basis and certainly if we had a project that involved something significant regarding their signs we could then propose a development agreement or a zone change.

Mayor Franklin opened the public hearing on this item for comments from the public.

Don Smith congratulated the sign committee in making the sign more visible because it will theoretically make it easier to find businesses, attract business and generate more sales tax. He does not particularly like the flags on the street and feels they are pretty tacky. He liked the response that they are going to come back with fee study and would like the Council to set a date for it to come back and not wait for eight years. Also, a lot of our signs are really simple and he brought this up a couple of months ago before the committee started where you would simply take out the old business piece of a plastic sign for instance, Fred's Tax Service, and now it is a real estate office so you replace it with "Smith Real Estate" and you really changed nothing and the fee is \$600 dollars. So when they do the fee study you can't lump all the signs together and the costs should be different.

Mayor Franklin closed the public hearing on this item seeing no one else coming forward.

At this time the Assistant City Attorney Laymon read the title of the ordinance. Ordinance No. 1487, An Ordinance of the City Council of the City of Banning, California Approving a Categorical Exemption and Zoning Text Amendment No. 15-97503 to Amend Chapter 17.36 (Sign Regulations) of the Zoning Ordinance (Title 17) of the Banning Municipal Code."

Motion Welch/Moyer to waive further reading of Ordinance No. 1487. Motion carried, all in favor.

Motion Welch/Miller that Ordinance No. 1487 pass its first reading including the adoption of the categorical exemption. Motion carried, all in favor.

JOINT MEETINGS

Mayor Franklin recessed the regular City Council meeting and called to order a joint meeting of the Banning City Council and the Banning City Council Sitting In Its Capacity of a Successor Agency.

PUBLIC HEARING

1. Consideration of Resolution No. 2015-22 and Successor Agency Board Resolution No. 2015-02 SA, Approving the Sale of Grant of Exclusive Easement within the Banning Municipal Airport to the Southern California Gas Company.
(Staff Report – Brian Guillot, Acting Community Development Director)

Acting Director Guillot gave the staff report as contained in the agenda packet and also displayed a graphic of the area being considered.

Mayor Franklin asked Acting Director Guillot to brief go over why this is being done now.

Acting Director Guillot said as it relates to the Gas Company they are regulated by the federal government and have been required to upgrade their safety on their systems and you have probably seen some of their construction projects that have gone right through our town where they have some pits and are opening up the pipelines and examining them, pressure testing them and certifying that the pipes are in good shape. Also they are adding these tests or monitoring stations so that is why this project is coming to us and they are doing this all through their own

system so we are not alone and it just so happens that we own that part where they would like to put the valve system.

Mayor Franklin opened the public hearing on this item for comments from the public.

Gary Hironimus addressed the Council stating that this is being done for safety purposes and he noticed that the northern most of two easements is located right at the end of the runway where planes make a U-turn on to the side area next to the runway. He is thinking that is not a real safe place to put above-ground high pressure gas equipment.

Mayor Franklin closed the public hearing on this item seeing no one else coming forward.

Acting Director Guillot said he can understand the concern but believes the scale might have something to do with it. His little drawing is probably 20 times larger than the actual facility and it is not even on airport property so it is outside any airport safety zone. He believes the taxiway is 65 feet wide so you would say this is maybe 120 to 130 feet away from that runway. The underground pipe is already there and the monitoring station is what they are going to be building.

Motion Peterson/Welch that the City Council adopt Resolution No. 2015-22, Approving the Sale of the Grant of Exclusive Easements within the Banning Municipal Airport (APN: 532-130-011) to the Southern California Gas Company; and include the adoption of Resolution No. 2015-02 SA, Approving the Sale of the Grant of Exclusive Easements within the Banning Municipal Airport (APN: 532-130-011) to the Southern California Gas Company. Motion carried, all in favor.

Mayor Franklin recessed the joint meeting and reconvened the regular City Council Meeting.

REPORTS OF OFFICERS

1. Event Sponsorship Policy
(Staff Report – Dean Martin, Interim Administrative Services Director)

Director Martin gave the staff report on item as contained in the agenda packet.

Mayor Franklin added that there was a request to amend the recommendation to exclude signature events like “Stagecoach Days” that would be defined by Council in regards to the limits for the in-kind or donation services.

Director Martin said that he would exclude signatures events with respect to amount limitations as defined by the City Council.

Councilmember Welch said he thinks that one of their concerns, if he is reading it right, there is a maximum amount that can be given over a period of time for the program and with the signature event and that would take in “cash” or “in-kind” we would be lucky to do one major event a year. Mayor Franklin said that is why it would exclude “signature events” that the City defines as such.

Councilmember Moyer said that he and Councilmember Miller are on the Budget and Finance Committee and we get requests every day and the whole idea was to put everybody on a level playing field so we have some specifications to go by when we are determining who we are going to help and so nobody could say that we were picking and choosing to our own personal likings.

Councilmember Miller said he was on the committee and at the time, he believes, on page 418 in regards to the additional documents required and the first one is a "current list of your organization's Board of Directors and appropriate affiliations" and he also requested that information also be given as to salaries of the directors in that if we take a look under several applicants and one, for example, has purely volunteers running it and another one had somebody who is a director who is paid \$100,000.000 and in his opinion he would certainly be much more likely to think of giving the money to the one that is purely a volunteer organization. So he would like to see in that list a statement of the salaries of any one on the board and he had discussed that at the Budget and Finance meeting. Another change, which he also discussed at the meeting (see page 422) it states: "At the conclusion of the event, provide a report on the results of the vent (i.e., how many attended versus expectations; if possible, attendee demographics including from what part of the city or areas outside of the city; any data pertinent to analyzing the effectiveness of the event)." One of the most important results we certainly want to see is "how was the money spent and copies of the receipts for the money". Those two should be added to this application.

Mayor Franklin asked Councilmember Miller if he wanted to include under salaries, also anybody that is on the staff because they may not be on the board but you may be paying a staff member \$100,000.00. Councilmember Miller said that would be nice.

There was some Council discussion on operational costs/expenses as listed on page 413 C.1 Funding.

Director Martin said to clarify he would be making the following changes: Page 18, under Additional Documents Required, he will add a list of salaries of staff and Board of Directors (anybody that is getting money). And on page 422, how the money that was awarded spent and would like to see copies of receipts.

Mayor Franklin opened the item for public comments.

Carl Douglas, resident of Banning and Chairman of the Stagecoach Days Association expressed his gratitude in the Council realizing that there are signature events in our community that will require more funding in order to put on an event for our city or the surrounding communities. He would like the Council to really take a look at this before a decision is made on the dollar figures even for the organizations that are not "signature events" or that the City or City staff provide other organizations some sort of dollar figure so that know what they are getting into before they are trying to put on an event. The Stagecoach Days Association does not know to-date what it cost them for in-kind services such as police, water, and electricity so those are fees where you are blind as an organization so it would be very helpful to know the costs for these services and to cap it at \$5,000 would not be good. A little bit more transparency on what it

would cost to do an event before you said yes we can say \$5,000 is reasonable would be appreciated for other organizations in the community.

Don Smith addressed the Council stating that he agrees with Carl Douglas. When you said a signature event "Stagecoach Days" immediately in his mind what popped up was "The Playhouse Bowl Association" which is older than Stagecoach Days. He has no idea what the in-kind of providing the services for electricity and police for those events are because they don't get cash. There was a time when Banning was more prosperous and we actually gave cash donations to those events but lately we have just been giving in-kind donations and if the in-kind donations cost more than \$5,000 and you cap those in-kind donations at \$5,000, these events will no longer occur because they won't be able to afford to just like Stagecoach Days that lost \$1,000 from the reserve account he thinks Playhouse Bowl also dipped into reserves last year. He knows that the Council hasn't defined "signature events" yet but he would suggest that "Playhouse Bowl" is a signature event as well.

Mayor Franklin closed the item for further public comments. In regards to this item she thinks the effort was just to get us started because we didn't have a policy before so it helps to have a starting point and it is something that they can review later but as was earlier recommended that we do look to see what the "signature events" are in the city and that will come back to the Council and it will give everyone another opportunity and if you disagree at that point, you could let us know.

Councilmember Moyer said that they could also list Stagecoach Days and any other signature events" and make that general now and then we could identify as we go along.

Mayor Franklin said we will be looking at it and we did need a policy and so it gives us a starting point and it might be revised later on if needed.

Motion Welch/Miller that the City Council approve the attached policy for loans or donations sponsoring events promoting the city of Banning with the recommended changes tonight for signature events. Motion carried, all in favor.

2. Resolution No. 2015-20, Awarding the Construction Contract for Project No. 2015-01EL, Lincoln Street, airport and City Yard Electrical Distribution Improvements and Rejecting All Other Bids.
(Staff Report – Fred Mason, Electric Utility Director)

Director Mason gave the staff report on this item as contained in the agenda packet. There were no questions from the Council.

Mayor Franklin opened the item for public comments; there were none.

Motion Peterson/Moyer that the City Council: (I) Adopt Resolution No. 2015-20, Approving the Award of the Construction Contract for Project No. 2015-01EL, Lincoln St., Airport and City Yard Electrical Distribution Improvements to Regency-Pacific Development Corp. of Beaumont, CA, in the amount not to exceed \$441,120.00, and rejecting all other bids; (II.) Authorize the Interim City Manager to execute the

construction and professional services contract agreements and amendments related to Project No. 2015-01EL, Lincoln St., Airport and City Yard Electrical Distribution Improvements; and (III.) Authorizing the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers related to the project and to approve change orders within the 10% contingency. Motion carried, all in favor.

ANNOUNCEMENTS/REPORTS *(Upcoming Events/Other Items if any)*

City Council

Councilmember Moyer –

- Last Friday he was in Ontario all day with the League of California Cities and Sunday and Monday he was in Sacramento with the Community Association Institute going over all of the proposed laws that are in Sacramento right now of which there are about 150. Many, many, many of them have the potential of limiting our local control and our ability to self-regulate. At the next meeting he will try to review a couple of these and maybe a couple of more at each meeting until they get through all of them.

Councilmember Welch –

- The owner of Aarons Furniture Store addressed the Council earlier this evening and they have remodeled that whole store and it is gorgeous and even moved the front door to the side street. He invited all of us to ribbon gutting and grand reopening on Friday, May 1st at 10:00 a.m. County Supervisor Marion Ashley will also be in attendance.
- On Thursday, April 23rd at the Beaumont Civic Center there is a Job and Educational Resource Fair for veterans, military families and friends and it is open to all job seekers. It begins at 9:00 a.m. to 1:00 p.m. There will be an opportunity for people to improve or sharpen their resume writing skills, interviewing techniques, and a class on “Dress for Success”. Representatives from EDD will be on hand to help with any employment questions along with the VA system.

Mayor Franklin –

- April 15th there will be a packing for the soldiers who are serving overseas at the Beaumont Civic Center from 8 a.m. to noon so if anyone is interested in participating or donating they can to Pass Area Supporting Soldiers.
- April 18th there will a Bulky Item Drop-Off Day and Free Document Shredding at Dysart Park from 8:00 a.m. to 1 p.m.
- April 25th the 9th Annual Disaster Preparedness Expo will be held with a focus on our youth so there will be several exhibits for the youth and they will be giving away bicycles and scooters and for the adults there will be a television and some other items.
- She attended several meetings and already spoke about the homeless report that they had but they also had a report from the Riverside County Transportation Commission and after 16 years of planning they have finally approved the “Mid-County Parkway” which would go from Perris to Corona.

ITEMS FOR FUTURE AGENDAS

New Items -

Councilmember Miller said at the closed session they discussed the flume briefly and we all know that the flume has cost a great deal of money for consultants in the past and is likely to cost

a great deal of money in the future so he thinks it is worthwhile to have a workshop to discuss the flume to discuss our future expenditures and exactly what we want to do in order to make sure the flume remains part of our property. He would like this to be a workshop and would like it rapidly since we really need a consultant soon. **There was consensus of the Council for a workshop.**

Mayor Franklin would like the fee study to be put on a future agenda. Also we talked at one point and said that once we had our housing element certified that we would go back and look at our housing throughout the city (high density) and she would like that on a future agenda. We also had a long discussion today in regards to various bills that would be coming forward to the legislature. We are hearing more and more about bills and some we may want to support and some we may not want to support. She would like to have on a future meeting a discussion of how we should address some of these things that are coming because they give us very little turnaround time to even get them on the agenda. **There was Council consensus to put this on a future agenda.**

City Committee Reports - None

City Attorney Report

Assistant City Attorney Laymon said that the Council has received in meetings and the City has also received some citizen critiques of about the alleged waiver of certain development impact fees commonly called "DIF's" for the Pardee Homes Project. Some of the citizen's comments have alleged that the City has agreed to waive upwards of \$12 million dollars in fees for the project. She said their office in conjunction with the Planning Director pulled some of the potential fee waiver scenarios together and got some more information just so that they could bring more of the facts to the public's attention. First thing to note is that the Pardee Project is actually not entitled to automatic fee waivers. Instead the project can only get a fee credit for no more than 500 residential units if those units are permitted and in vertical construction within five years after the affected date of the development agreement which would be about early 2020. And the construction time frame of 500 units in five years is actually a very expedited schedule for a project of this magnitude. As the Council is aware the Pardee Development Agreement can actually run upwards of 45 to 50 years so that is a very expedited schedule and there is absolutely no guarantee that they will meet that schedule and if they don't, and if they are unwilling or unable to build 500 residential units in the expedited time frame, then there will be fewer or no DIF waivers whatsoever; so that is the first thing to keep in mind. Also, if we plug in the numbers for even a best case scenario from Pardee's perspective assuming that Pardee does meet the schedule and builds the 500 units in the short time frame the value of the DIF waivers to which they would be entitled is about \$6.4 million; nothing near the \$12 million dollar number. Again, also under this maximum incentive scenario the City would still be collecting, just for Phase I, over \$9 million in development impact fees from the project. Because the fee waivers only apply to Phase I, we would be getting the full value of all fees for all other phases in the project and if we calculate that out, again assuming best case scenario, maximum fee waivers for Pardee, the project would be producing approximately \$56.3 million dollars in development impact fees for the City. She said that these were some numbers they put together and wanted to bring it to the Council's attention for future reference.

Report by City Manager – Nothing to report at this time.

ITEMS FOR FUTURE AGENDAS

Pending Items:

1. Discussion regarding City's ordinance dealing with sex offenders and child offenders. (6/2015)
2. Discussion on how the City Council handles donations to the City.
3. Discussion regarding Animal Control Services (7/2015)
4. Discussion regarding Police Staffing 4/28/15)
5. Golf Cart Lanes (4/28/15)
6. Bond Workshop (Midyear Budget) (4/28/15)
7. Discussion regarding change in time for Council Meetings (4/28/15 – Part 2 – Goals)

(Dates attached to pending items are the dates anticipated when it will be on an agenda. The item(s) will be removed when completed.)

ADJOURNMENT

By common consent the meeting adjourned at 7:33 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES REFLECT ACTIONS TAKEN BY THE CITY COUNCIL. A COPY OF THE MEETING IS AVAILABLE IN DVD FORMAT AND CAN BE REQUESTED IN WRITING TO THE CITY CLERK'S OFFICE.

CITY COUNCIL AGENDA

Date: April 28, 2015

TO: City Council

FROM: Dean Martin, Interim Administrative Services Director

SUBJECT: Report of Investments for March 2015

RECOMMENDATION: The City Council receive and file the monthly *Report of Investments*.

JUSTIFICATION: State law requires that a monthly report of investments be submitted to the Governing Legislative Body.

BACKGROUND/ANALYSIS: This report includes investments on hand at the end of March 2015. As of March 31, 2015, the City's operating funds totaled \$78,025,333. Included in Successor Agency operating funds is \$817,147 of restricted CRA bond proceeds that are on deposit with LAIF and reflected separately on the Summary Schedule.

As of March 31, 2015 approximately 40% of the City's unrestricted cash balances were invested in investments other than LAIF.

The March Investment Report includes the following documents:

- Summary Schedule of Cash and Investments
- Operational Portfolio Individual Investments
- Individual Investments with Fiscal Agent
- Investment Report Supplemental Information

The attached Summary Schedule of Cash and Investments has been updated to show the rate of earnings allowance received from Wells Fargo Bank. The amount earned reduces the total amount of bank fees charged.

FISCAL DATA: The latest reports from the State indicate that the average interest achieved by the Local Agency Investment Fund (LAIF) was increased to 0.278% in March. The average rate for all investments in March was 0.399%.

RECOMMENDED BY:



Dean Martin
Interim Administrative Services Director

APPROVED BY:



James E. Smith
Interim City Manager

Summary Schedule of Cash and Investments**Operating Funds****Petty Cash**

Amount

3,705

Bank Accounts

	Interest Rate	Amount
Wells Fargo Bank	0.200% *	3,883,003
Bank of America-Airport	0.020%	3,801
Bank of America-Parking Citations	0.020%	3,002
Bank of America-CNG Station	0.020%	<u>3,398</u>

Money Market and Bank Account Sub-Total

3,893,204

Government Pools

Account #1 Operating Amount	44,266,937	
Account #1 CRA Bond Cash Bal.	817,147	
Local Agency Investment Fund: Account #1	0.278%	45,084,084
Account #2 Successor Agency Cash Bal	0	
Local Agency Investment Fund: Account #2	0.278%	<u>0</u>

*Government Pool Sub-Total*45,084,084**Operating Cash Balance****48,980,993****Restricted Operating Funds**

Riverside Public Utilities- Highmark U.S. Government Money Market Fund	0.010%	1,193,345
California ISO Corp- Union Bank		100,199
Worker's Compensation Program- (PERMA)		1,818,806

Other Investments

Investments-US Bank/Piper Jaffray - See Page 2	0.638%	25,931,989
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Operating Funds Total**78,025,333****Fiscal Agent**

US Bank

Amount

34,644,626***Fiscal Agent Total*****34,644,626**

* Rate of earnings allowance received, offsets analyzed bank charges.

City of Banning Investment Report

March 31, 2015

Operational Portfolio Individual Investments

Par Value	Investment Description	Coupon Rate	Interest Rate	Maturity Date	Purchase Date	Date	Discount or (Premium) Amortization	Market Value
<u>Bank Accounts</u>								
3,883,003	Wells Fargo Bank-Operating	n/a	0.20%	daily	varies	3,883,003	n/a	3,883,003
3,801	Bank of America-Airport	n/a	0.02%	daily	varies	3,801	n/a	3,801
3,002	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,002	n/a	3,002
3,398	Bank of America-Parking Citations	n/a	0.02%	daily	varies	3,398	n/a	3,398
Sub-total								3,893,204
<u>Government Pools</u>								
45,084,084	L.A.I.F. account #1	n/a	0.278%	daily	varies	45,084,084	n/a	45,084,084
0	L.A.I.F. account #2	n/a	0.278%	daily	varies	0	n/a	0
								45,084,084
<u>Investments-US Bank/Piper Jaffray</u>								
1,000,000	FHLMC Mtn	n/a	0.570%	6/20/2016	6/6/2013	1,000,000		1,000,700
1,000,000	FNMA	n/a	0.750%	12/19/2016	6/19/2013	1,000,000		1,000,700
2,000,000	FHLMC Mtn	n/a	0.375%	6/24/2016	12/24/2013	2,000,000		2,000,600
2,000,000	FHLMC Mtn	n/a	0.500%	6/27/2016	12/27/2013	2,000,000		1,997,640
2,000,000	FHLMC Mtn	n/a	0.750%	12/27/2016	12/27/2013	2,000,000		2,002,120
2,000,000	Federal Home Loan Bks	n/a	0.700%	12/27/2016	3/27/2014	2,000,000		2,002,380
2,000,000	Federal Home Loan Bks	n/a	0.900%	3/27/2017	3/27/2014	2,000,000		2,000,820
2,000,000	Federal Home Loan Bks	n/a	0.500%	7/15/2016	4/15/2014	2,000,000		2,001,620
1,000,000	Federal Home Loan Bks	n/a	1.050%	4/17/2017	4/17/2014	1,000,000		1,000,360
1,700,000	FHLMC Mtn	n/a	0.700%	12/30/2016	6/30/2014	1,700,000		1,700,493
2,000,000	FHLMC Mtn	n/a	0.750%	2/28/2017	11/28/2014	2,000,000		2,002,100
2,000,000	FHLMC Mtn	n/a	0.800%	5/26/2017	11/26/2014	2,000,000		2,001,320
2,000,000	Federal Home Loan Bks	n/a	1.200%	5/24/2018	11/6/2014	2,000,000		1,996,660
3,224,476	Money Market	n/a	0.010%	daily	varies	3,224,476	0	3,224,476
US Bank/Piper Jaffray Average Rate=								25,931,989
Average Rate All=								0.399%

It has been verified that this investment portfolio is in conformity with the City of Banning's investment policy which was approved by the City Council on January 13, 2015. The Treasurer's cash management program provides sufficient liquidity to meet estimated future expenditures for a period of six months. The weighted average maturity of the pooled investment portfolio is 200 days and does not include Bond Reserve Fund Investments.

City of Banning Investment Report

March 31, 2015

Individual Investments with Fiscal Agent

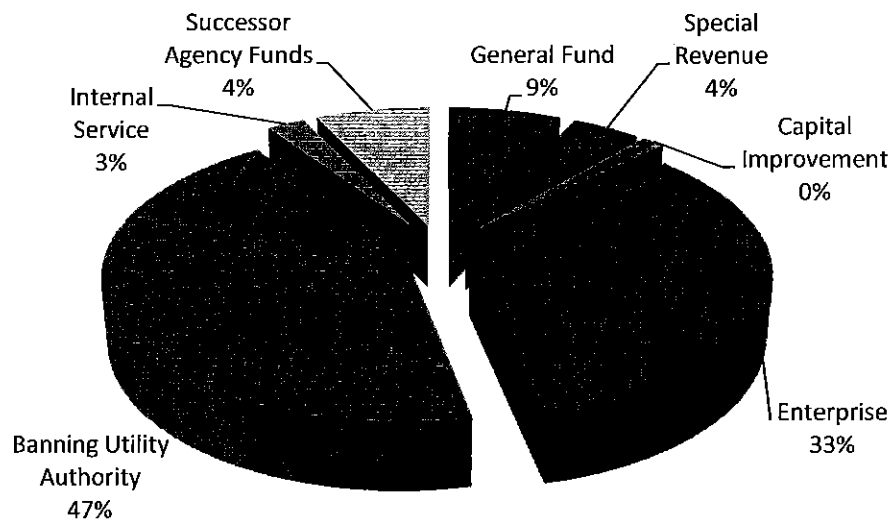
Bond Issue Description	Bond Maturity Date	Investment Description	Current Yield	Bond Reserve Bond Maturity Date	Minimum Reserve Requirement	3/31/2015 Market Value
COB IMPROVEMENT DISTRICT LIMITED OBLIGATION BONDS SERIES 2005A						
2005 Fair Oaks Ranch Estates	2035	US Bank Mmkt 5-Ct	0.020%	daily	188,024	223,057
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION, SERIES 2003						
2003 CRA Tax Allocation Bonds	2028	U S Treasury Bill	4.61%	1/29/2015	971,250	991,466
		US Bank Mmkt 5-Ct	0.02%	daily	0.86	20,791
		US Bank Mmkt 5-Ct	0.020%	daily	5.55	375,006
		US Bank Mmkt 5-Ct	0.020%	daily	3.95	250,009
		US Bank Mmkt 5-Ct	0.000%	daily		12
Surplus Fund						
COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING TAX ALLOCATION PARITY BONDS, SERIES 2007						
Redevelop Fund	2037	US Bank Mmkt 5-Ct	0.020%	daily	127.85	8,333,491
Reserve Fund		US Bank Mmkt 5-Ct	0.020%	daily	1,875,100	1,875,192
Special Fund		US Bank Mmkt 5-Ct	0.000%	daily	0.51	10
Surplus Fund		US Bank Mmkt 5-Ct	0.000%	daily		11
BUA - WASTEWATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES						
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily		2
Principal Account		US Bank Mmkt 5-Ct	0.000%	daily		4
		US Bank Mmkt 5-Ct	0.200%	daily	50.11	3,266,256
BUA - WATER ENTERPRISE REVENUE BONDS REFUNDING AND IMPROVEMENT PROJECTS 2005 SERIES						
Interest Account		US Bank Mmkt 5-Ct	0.000%	daily		12
Principal Account		US Bank Mmkt 5-Ct	0.000%	daily		21
Reserve Fund		US Bank Mmkt 5-Ct	0.020%	daily	2,310,738	2,311,024
Project Fund		US Bank Mmkt 5-Ct	0.020%	daily	24.58	1,602,362
BFA - ELECTRIC SYSTEM REVENUE BONDS 2007 SERIES						
		US Bank Mmkt 5-Ct	0.000%	daily		12
		US Bank Mmkt 5-Ct	0.020%	daily	2,672,050	2,672,316
Acquisition & Construction		US Bank Mmkt 5-Ct	0.020%	daily	195.21	12,723,571
*Paid Semi-Annually-Deposited into Money Mkt Account						
Total						517.05 34,644,626

City of Banning

Investment Report Supplemental Information

Pooled Cash Distribution

Investment reports for cities typically do not include the cash balance of the individual funds that make up the total pooled cash. This is primarily due to timing differences between when investment reports are prepared and when month end accounting entries are posted. Investment reports are usually prepared first. However, the pie chart below provides an understanding of the percentage distribution of the investments by fund type. The percentages were calculated using the average cash balances from the twelve month period of Jan. 2014 to Dec. 2014. *(The percentages will be updated quarterly.)*



The Table below describes the funds that are included within the Fund Types used for the pie chart.

Fund Type	Description of Funds
Governmental	General Fund
Special Revenue	Restricted Funds (i.e. CFDs, grants)
Capital Improvement	Development Impact Fee funds
Enterprise	Airport, Transit, Refuse, Electric
Banning Utility Authority	Water, Wastewater, Reclaimed water
Internal Service	Risk Management, Fleet, IT, Utility Services
Successor Agency Funds	Previously called Redevelopment Agency

Summary Schedule – Line item descriptions

Petty Cash –

The City maintains petty cash in various departments for incidental purchases. This line item includes the cash drawers for cashiering in utility billing.

Bank Accounts –

When reviewing the *Report of Investments*, please keep in mind that the balances shown on the *Summary Schedule of Cash and Investments* for bank accounts are “statement” balances. They reflect what the financial institution has on hand as of particular date and lists on their statement. They are not “general ledger” balances. General ledger balances reflect all activity through a particular date (i.e. all checks that have been written and all deposits that have been made) and is what we show on our books (the general ledger). The general ledger balance more accurately reflects the amount of cash we have available.

It should be noted that statement balances and general ledger balances can differ significantly. For example – on June 30th the statement balance for Wells Fargo Bank could show \$1,000,000, however, staff may have prepared a check run in the amount of \$750,000 on the same day. Our general ledger balance would show \$250,000, as the Wells Fargo statement does not recognize the checks that have been issued until they clear the bank.

For investment decisions and cash handling purposes staff relies on the balance in the general ledger. Staff does not invest funds that are not available. Sufficient funds must be kept in the bank accounts to cover all checks issued.

- Wells Fargo Bank – This is the City checking account. All cash receipts, payroll and accounts payables checks are processed through this account. Balances fluctuate based on activity and cash flow needs. As excess funds accumulate, they are transferred to LAIF to increase earnings. The Summary Schedule of Cash and Investments shows the rate of earnings allowance received from the bank. The amount earned reduces the total amount of bank fees charged.
- Bank of America – Airport – The City maintains a Trust account for credit card purchases made at the airport. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – Parking Citations – The City maintains a Trust account for the processing of parking citations through Turbo Data. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.
- Bank of America – CNG – The City maintains a Trust account for credit card purchases of CNG fuel made at the City yards. When the account balance exceeds \$3000, excess funds are transferred to the Wells Fargo Bank account.

Summary Schedule – Line item descriptions – Cont.

Government Pools –

- Local Agency investment Fund – Account #1
 - This account includes both City pooled funds and a restricted cash balance related to the CRA bonds. Investments in LAIF are limited to \$50M.
- Local Agency investment Fund – Account #2
 - There is currently no balance in this account.
 - Note: When the State established the cutoff date of January 31, 2012 for the elimination of the Redevelopment Agency, LAIF staff recommended a transfer of the available balance from the CRA account to the City account to protect the funds from a rumored State raid or freezing of the funds.

Restricted Operating Funds at Riverside Public Utilities –

The City Electric operation has an agreement with Riverside Public Utilities (RPU) to purchase power for the City. Part of the agreement requires that the City maintain a balance in the trust account used by RPU. The City does not control the investments or earnings of the trust account.

Restricted Operating Funds at California ISO-

The California ISO facilitates the purchase and sale of the City's electricity. The City participates in periodic Congestion Revenue Rights (CRR) auctions to acquire financial hedges for transmission congestion. In order to participate in the CRR auctions the City was required to have a secured form of financial security in the amount of \$100,000. A cash deposit was placed with Union Bank in March, 2012 to meet the requirements. The account is an interest bearing collateral account.

Restricted Operating Funds at PERMA-

The City participates in a JPA with the Public Entity Risk Management Authority (PERMA), who provides administration for the City's worker's compensation insurance program. PERMA requires the City to deposit funds into an account used by PERMA for the payment of worker's compensation claims. The City does not control the investments or earnings of this account.

Other Investments –

Currently the City works with a Piper Jaffray broker to make various investments per the City policy and in accordance with State guidelines. The Broker is not on retainer, nor do they receive a City paid fee with each investment. Funds in the Money Market fluctuate as securities mature or get called. Staff is in the process of investing the Money Market funds over several months. We will be adding an additional broker to provide more investment options.

Fiscal Agent / US Bank –

Unspent bond proceeds and required bond reserves are invested by the Fiscal Agent in accordance with the bond documents.

CITY COUNCIL AGENDA

Date: April 28, 2015
TO: City Council
FROM: Dean Martin, Interim Administrative Services Director
SUBJECT: Approval of Accounts Payable and Payroll Warrants for Month of March 2015

RECOMMENDATION: The City Council review and ratify the following reports per the California Government Code.

FISCAL DATA: The reports in your agenda packet cover "Expenditure Disbursements" and "Payroll Expenses" for the month of March 2015.

The reports are:

Expenditure approval lists	
March 5, 2015	180,634.68
March 12, 2015	275,452.11
March 19, 2015	299,382.35
March 26, 2015	648,818.95
April 21, 2015	3,211,566.19 (March Month End)
Payroll check registers	
March 6, 2015	6,419.11
March 20, 2015	3,688.36
Payroll direct deposits*	
March 6, 2015	250,695.78
March 20, 2015	237,089.75

As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

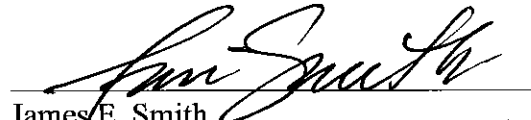
Report Prepared by: Jenna Harrell, Accounts Payable

RECOMMENDED BY:

A handwritten signature in cursive script, appearing to read "Dean Martin", written over a horizontal line.

Dean Martin
Interim Administrative Services Director

APPROVED BY:

A handwritten signature in cursive script, appearing to read "James E. Smith", written over a horizontal line.

James E. Smith
Interim City Manager

CITY of BANNING

Fund/Department Legend

Fund/Department Legend

001 General Fund Departments

0001 – General
1000 – City Council
1200 – City Manager
1300 – Human Resources
1400 – City Clerk
1500 – Elections
1800 – City Attorney
1900 – Fiscal Services
1910 – Purchasing & A/P
2060 – TV Government Access
2200 – Police
2210 – Dispatch
2279 – TASIN – SB621 (Police)
2300 – Animal Control
2400 – Fire
2479 – TASIN – SB621 (Fire)
2700 – Building Safety
2740 – Code Enforcement
2800 – Planning
3000 – Engineering
3200 – Building Maintenance
3600 – Parks
4000 – Recreation
4010 – Aquatics
4050 – Senior Center
4060 – Sr. Center Advisory Board
4500 – Central Services
4800 – Debt Service
5400 – Community Enhancement

All Other Funds

002 – Developer Deposit Fund
003 – Riverside County MOU
100 – Gas Tax Street Fund
101 – Measure A Street Fund
103 – SB 300 Street Fund
104 – Article 3 Sidewalk Fund
110 – CDBG Fund
111 – Landscape Maintenance
132 – Air Quality Improvement Fund
140 – Asset Forfeiture/Police Fund
148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 – State Park Bond Fund
190 – Housing Authority Fund
200 – Special Donation Fund
201 – Sr. Center Activities Fund
202 – Animal Control Reserve Fund
203 – Police Volunteer Fund

204 – D.A.R.E. Donation Fund
300 – City Administration COP Debt Service
360 – Sun Lakes CFD #86-1
365 – Wilson Street #91-1 Assessment Debt
370 – Area Police Computer Fund
375 – Fair Oaks #2004-01 Assessment Debt
376 – Cameo Homes
400 – Police Facilities Development
410 – Fire Facilities Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities Fund
441 – Sunset Grade Separation Fund
444 – Wilson Median Fund
451 – Park Development Fund
470 – Capital Improvement Fund
475 – Fair Oaks #2004-01 Assessment District
600 – Airport Fund
610 – Transit Fund
660 – Water Fund
661 – Water Capital Facilities
662 – Irrigation Water Fund
663 – BUA Water Capital Project Fund
669 – BUA Water Debt Service Fund
670 – Electric Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 – '07 Electric Revenue Bond Project Fund
675 – Public Benefit Fund
678 – '07 Electric Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
682 – Wastewater Tertiary
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Risk Management Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
805 – Redevelopment Obligation Retirement Fund
810 – Successor Housing Agency
830 – Debt Service Fund
850 – Successor Agency
855 – 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – Project Fund

2nd Read.

ORDINANCE NO. 1487

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA APPROVING A
CATEGORICAL EXEMPTION AND ZONING TEXT
AMENDMENT NO. 15-97503 TO AMEND CHAPTER 17.36
(SIGN REGULATIONS) OF THE ZONING ORDINANCE
(TILE 17) OF THE BANNING MUNICIPAL CODE**

WHEREAS, on June 24, 2014, the City Council adopted Resolution No. 2014-50 establishing a Sign Advisory Committee to advise the City Council regarding the City of Banning sign regulations that will benefit the business community; and

WHEREAS, on November 19, 2014, the Sign Advisor Committee forwarded their recommendations regarding sign regulations to the Planning Commission; and

WHEREAS, on February 4, 2015, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to review and discuss the recommendations of the Sign Advisory Committee and, upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to prepare an Ordinance based upon the recommendations of the Sign Advisory Committee regarding amendments to the sign regulations; and

WHEREAS, the City Council has authority per Chapter 17.116 of the Municipal Code to approve, approve with modifications, or disapprove amendments to the Zoning Ordinance; and

WHEREAS, on March 4, 2015, during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2015-04 recommending to the City Council the adoption of Ordinance No. 1487 approving the Categorical Exemption and Zone Text Amendment No. 15-97503; and

WHEREAS, on the 3rd day of April 2015, the City gave public notice as required under Chapter 17.68 of the Zoning Ordinance by advertising in the Record Gazette newspaper of the holding of a public hearing at which the Categorical Exemption and Zone Text Amendment would be considered; and

WHEREAS, on the 14th day of April 2015, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to the proposed amendments, and at which time the City Council considered the Categorical Exemption and Zone Text Amendment No. 15-97503; and

WHEREAS, at this public hearing on the 14th day of April 2015, the City Council considered and heard public comments on the proposed Categorical Exemption and Zone Text Amendment; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 14th day of April 2015.

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

SECTION 1. ENVIRONMENTAL.

California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the Planning Commission has analyzed proposed Zone Text Amendment No. 15-97503 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this resolution will trigger individual analysis and documentation related to CEQA, as applicable. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 15-97503 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)

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

SECTION 2. REQUIRED FINDINGS – ZONE TEXT AMENDMENT NO. 15-97503.

The California Government Code and Section 17.116.050 of the City of Banning Zoning Ordinance require that Zone Text Amendments meet certain findings prior to the approval by the City Council. The following findings are provided in support of the approval of the Zone Text Amendment No. 15-97503.

Finding No. 1: The proposed Zone Text Amendment No. 15-97503 is consistent with the goals and policies of the General Plan.

Findings of Fact: Proposed Zone Text Amendment No. 15-97503 is consistent with the goals and policies of the General Plan, insofar as the General Plan designations and Zoning designations will not change, and the text amendments will result in clarifying the goals, policies and programs of the General Plan. The primary General Plan Economic Development Goal states *"A balanced, broadly-based economy that provides a full range of*

economic and employment opportunities, while maintaining high standards of development and environmental protection". The proposed amendments to the signage regulations will foster methods to better promote local businesses, thereby enhancing the economic vitality of the City.

Finding No. 2: The proposed Zone Text Amendment No. 15-97503 is internally consistent with the Zoning Ordinance.

Findings of Fact: Proposed Zone Text Amendment No. 15-97503 is consistent with the existing provisions of the Zoning Ordinance. The proposed amendment will modify and update development standards pertaining to on-premise signs within the limits established by the Zoning Ordinance. Additionally, staff has reviewed and compared the proposed changes and finds no conflicting statements or inconsistencies in the Zoning Ordinance.

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

Findings of Fact: In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed proposed Zone Text Amendment No. 15-97503 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Zoning Ordinance do not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this resolution will trigger individual analysis and documentation related to CEQA, as applicable. Therefore, it can be seen with certainty that there is no possibility that Zone Text Amendment No. 15-97503 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

SECTION 3. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

1. **Adoption of Categorical Exemption.** In accordance with Public Resources Code Section 21006 and CEQA Guidelines Section 15061 the City Council hereby adopts the Categorical Exemption prepared pursuant to CEQA Guidelines Section 15061(b)(3) for Zone Text Amendment No. 15-97503.

2. **Approve Zone Text Amendment No. 15-97503.** Approve Zone Text Amendment No. 15-97503 amending Title 17 (Zoning Ordinance) of the Banning Municipal Code as follows:

Section 17.36.050(A) is amended as follows:

- A. Window signs not exceeding two (2) square foot and limited to business identification, hours of operation, address, and/or emergency information. (Neon signs of any size require a permit, if allowed.)*

Section 17.36.060(C) is amended as follows:

- C. All banners, flags, and pennants in the Downtown Commercial zoning district and located within fifty (50) feet of a residential property.*

Section 17.36.060(E) is deleted in its entirety.

Section 17.36.060(J) is amended as follows:

- J. Portable signs or A-frame signs, except in the Downtown Commercial zone and shall not pose a hazard to pedestrians; and, shall be stable under all-weather conditions or shall be removed.*

Section 17.36.060(S) is amended as follows:

- S. Signs which singly or in combination with other signs block more than 33% for solid lettering (or up to 50% if perforated vinyl window signs) of the view from any window or door of any structure used or occupied by people for more than an hour of a typical day, in all zoning districts of the City.*

Section 17.36.110(B)(2) is amended as follows:

- 2. Wall signs. Each business in Downtown Commercial zoning district shall be permitted wall signs per occupancy footage. The area devoted to such signs shall not exceed one square foot of sign area per one foot of building frontage, and shall not exceed 50 square feet of sign area. An introductory sign of a maximum of 5 square feet shall be allowed for 25 percent of the sign fee to encourage business in the Downtown Commercial zoning district. Each business in all other commercial and industrial zoning districts shall be permitted wall signs per the area of the wall (length times height of the wall). The area devoted to such signs shall not exceed 20 percent of the wall area. The sign area maximum for wall signs shall not apply to a freeway-oriented wall sign proposed to be located and designed in such a manner as to be viewed primarily in a direct line of sight from a main traveled roadway of a freeway or a freeway on-ramp/off-ramp and advertising onsite retail or service-oriented businesses. Freeway-oriented wall signs shall be subject to all requirements*

of section 17.36.110(B)(6), including requiring the approval of a conditional use permit.

SECTION 4. SEVERABILITY.

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 5. PUBLICATION; EFFECTIVE DATE.

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

PASSED, APPROVED, AND ADOPTED this 28th day of April, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning, California

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1487 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _14th day of April, 2015, and was duly adopted at a regular meeting of said City Council on the 28th day of April, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA

Date: April 28, 2015
TO: City Council
FROM: David Kwon, Aleshire & Wynder, Deputy City Attorney
SUBJECT: Legal Service Agreement with McIntyre Law Group

RECOMMENDATION:

Approve a contingency fee contract for legal services in the collection of judgment due to City from case of *SMITH V. HANNA* (RSC Case No. RIC 474602, Appellate Case No. E045670).

BACKGROUND:

For the past few years, the City has made efforts to collect on the judgments against Mr. James C. Smith ("Mr. Smith") and co-defendant, David Dysart ("Mr. Dysart") in the above referenced cases. Mr. Dysart and Mr. Smith filed suit against former Councilmember Barbara Hanna challenging statements she made at a council meeting against their business. The City defeated the actions through an Anti-SLAPP motion (basically a motion to defeat "Strategic Lawsuits Against Public Participation"). The California anti-SLAPP law was enacted by the state Legislature almost twenty years ago to protect the petition and free speech rights of all Californians. Upon winning its Anti-SLAPP motion the City received the subject judgments for its attorneys' fees and costs.

Including interest charges, the total pay-off amount for the *Smith v. Hanna* judgments exceeds \$80,000. The City has filed a judgment lien for any and all real property owned by Mr. Smith and Mr. Dysart through the Riverside County Recorder.

ANALYSIS

It is recommended that the best and most economical solution to collect on the judgment in *Smith v. Hanna* is to engage a collections attorney on a contingency fee basis. Pursuant to Council direction, our office has solicited a proposal from a reputable local collections law firm, McIntyre Law Group ("McIntyre"). McIntyre agrees to provide the following services on a contingency fee basis which shall be 25% of the total gross recovery:

- o Preparation of filing of an abstract judgment and business personal property lien;
- o Online investigation;
- o Realizing upon property subject to enforcement of the judgment by levy, garnishment and other lawful judicial remedies;
- o Filing a proof of claim in any bankruptcy case; and
- o Reporting significant developments to City.

In addition, and upon written consent of the City, McIntyre will also perform the following services are not provided on a contingency basis, but on an hourly basis:


- Defending any action commenced against City, including avoidance actions in bankruptcy;
- Prosecuting or defending any appeal or petition for an extraordinary writ;
- Prosecution of actions against third parties, including claims to avoid fraudulent transfers;
- Prosecution of a complaint to determine dischargeability in bankruptcy; and
- making motion to withdraw as counsel which is granted by the court.

FISCAL DATA: No fiscal impacts are expected.

RECOMMENDED BY:

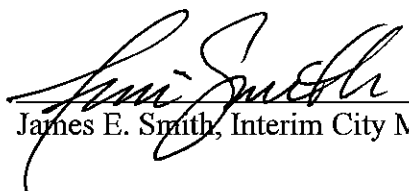
David J. Aleshire, City Attorney

REVIEWED BY:



Dean Martin, Interim Administrative
Services Director/Deputy City Manager

APPROVED BY:



James E. Smith, Interim City Manager

ATTACHMENT(S):

Legal Services Agreement with McIntyre Law Group

CITY OF BANNING
PROFESSIONAL SERVICES AGREEMENT FOR
ASSESSMENT COLLECTION SERVICES

THIS PROFESSIONAL SERVICES AGREEMENT (herein "Agreement") is made and entered into this ____ day of April, 2015, by and between the CITY OF BANNING, a general law city ("City") and McINTYRE LAW GROUP, a law firm (herein "Consultant").

NOW, THEREFORE, the parties hereto agree as follows:

1. SERVICES OF CONSULTANT

1.1 Scope of Services. In compliance with all of the terms and conditions of this Agreement, the Consultant shall perform the work or services set forth in the "Scope of Services" attached hereto as Exhibit "A" and incorporated herein by reference. Consultant warrants that it has the experience and ability to perform all work and services required hereunder and that it shall diligently perform such work and services in a professional and satisfactory manner.

1.2 Compliance With Law. All work and services rendered hereunder shall be provided in accordance with all ordinances, resolutions, statutes, rules, and regulations of the City and any Federal, State or local governmental agency of competent jurisdiction.

1.3 Licenses, Permits, Fees and Assessments. Consultant shall obtain at its sole cost and expense such licenses, permits, and approvals as may be required by law for the performance of the services required by the Agreement.

1.4 Special Requirements. Additional terms and conditions of this Agreement, if any, which are made a part hereof are set forth in the "Special Requirements" attached hereto as Exhibit "B" and incorporated herein by this reference. In the event of a conflict between the provisions of Exhibit "B" and any other provisions of this Agreement, the provisions of Exhibit "B" shall govern.

2. COMPENSATION

2.1 Contract Sum. For the services rendered pursuant to this Agreement, Consultant shall be compensated in accordance with the "Schedule of Compensation" attached hereto as Exhibit "C" and incorporated herein by this reference, but not exceeding the maximum contract amount of **TWENTY FIVE THOUSAND DOLLARS (\$25,000)** ("Contract Sum").

2.2 Invoices. Each month Consultant shall furnish to City an original invoice for all work performed and expenses incurred during the preceding month in a form approved by City's Director of Finance. By submitting an invoice for payment under this Agreement, Consultant is certifying compliance with all provisions of the Agreement. The invoice shall detail charges for all necessary and actual expenses by the following categories: labor (by sub-category), travel, materials, equipment, supplies, and sub-contractor contracts. Sub-contractor charges shall also be detailed by such categories. Consultant shall not invoice City for any duplicate services performed by more than one person.

City shall independently review each invoice submitted by the Consultant to determine whether the work performed and expenses incurred are in compliance with the provisions of this Agreement. Except as to any charges for work performed or expenses incurred by Consultant which are disputed by City. City will use its best efforts to cause Consultant to be paid within thirty (30) days of receipt of Consultant's correct and undisputed invoice; however, Consultant acknowledges and agrees that due to City warrant run procedures, the City cannot guarantee that payment will occur within this time period. In the event any charges or expenses are disputed by City, the original invoice shall be returned by City to Consultant for correction and resubmission. Review and payment by the City of any invoice provided by the Consultant shall not constitute a waiver of any rights or remedies provided herein or any applicable law.

2.3 Additional Services. City shall have the right at any time during the performance of the services, without invalidating this Agreement, to order extra work beyond that specified in the Scope of Services or make changes by altering, adding to or deducting from said work. No such extra work may be undertaken unless a written order is first given by the Contract Officer to the Consultant, incorporating therein any adjustment in (i) the Contract Sum for the actual cost of the extra work, and/or (ii) the time to perform this Agreement, which said adjustments are subject to the written approval of the Consultant. Any increase in compensation of up to ten percent (10%) of the Contract Sum but not exceeding a total contract amount of Five Thousand Dollars (\$5,000) or in the time to perform of up to ninety (90) days may be approved by the Contract Officer. Any greater increases, taken either separately or cumulatively must be approved by the City Council. No claim for an increase in the Contract Sum or time for performance shall be valid unless the procedures established in this Section are followed.

3. PERFORMANCE SCHEDULE

3.1 Time of Essence. Time is of the essence in the performance of this Agreement.

3.2 Schedule of Performance. Consultant shall commence the services pursuant to this Agreement upon receipt of a written notice to proceed and shall perform all services within the time period(s) established in the "Schedule of Performance" attached hereto as Exhibit "D" and incorporated herein by this reference. When requested by the Consultant, extensions to the time period(s) specified in the Schedule of Performance may be approved in writing by the Contract Officer but not exceeding ninety (90) days cumulatively.

3.3 Force Majeure. The time period(s) specified in the Schedule of Performance for performance of the services rendered pursuant to this Agreement shall be extended because of any delays due to unforeseeable causes beyond the control and without the fault or negligence of the Consultant, including, but not restricted to, acts of God or of the public enemy, unusually severe weather, fires, earthquakes, floods, epidemics, quarantine restrictions, riots, strikes, freight embargoes, wars, litigation, and/or acts of any governmental agency, including the City, if the Consultant shall within ten (10) days of the commencement of such delay notify the Contract Officer in writing of the causes of the delay. The Contract Officer shall ascertain the facts and the extent of delay, and extend the time for performing the services for the period of the enforced delay when and if in the judgment of the Contract Officer such delay is justified. The Contract Officer's determination shall be final and conclusive upon the parties to this Agreement. In no event shall Consultant be entitled to recover damages against the City for

any delay in the performance of this Agreement, however caused, Consultant's sole remedy being extension of the Agreement pursuant to this Section.

3.4 Term. Unless earlier terminated in accordance with Article 7 of this Agreement, this Agreement shall continue in full force and effect until completion of the services but not exceeding one (1) year from the date hereof, except as otherwise provided in the Schedule of Performance (Exhibit "D").

4. COORDINATION OF WORK

4.1 Representative of Consultant. Nathan T. McIntyre, Esq. is hereby designated as being the representative of Consultant authorized to act on its behalf with respect to the work and services specified herein and make all decisions in connection therewith. All personnel of Consultant and any authorized agents shall be under the exclusive direction of the representative of Consultant. Consultant shall utilize only competent personnel to perform services pursuant to this Agreement. Consultant shall make every reasonable effort to maintain the stability and continuity of Consultant's staff and subcontractors, and shall keep City informed of any changes.

4.2 Contract Officer. City Attorney is hereby designated as being the representative the City authorized to act in its behalf with respect to the work and services specified herein and to make all decisions in connection therewith ("Contract Officer"). The City Attorney shall have the right to designate another Contract Officer by providing written notice to Consultant.

4.3 Prohibition Against Subcontracting or Assignment. Consultant shall not contract with any entity to perform in whole or in part the work or services required hereunder without the express written approval of the City. Neither this Agreement nor any interest herein may be assigned or transferred, voluntarily or by operation of law, without the prior written approval of City. Any such prohibited assignment or transfer shall be void.

4.4 Independent Consultant. Neither the City nor any of its employees shall have any control over the manner, mode or means by which Consultant, its agents or employees, perform the services required herein, except as otherwise set forth. Consultant shall perform all services required herein as an independent contractor of City with only such obligations as are consistent with that role. Consultant shall not at any time or in any manner represent that it or any of its agents or employees are agents or employees of City, or that it is a member of a joint enterprise with City.

5. INSURANCE AND INDEMNIFICATION

5.1 Insurance Coverages. The Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, during the entire term of this Agreement including any extension thereof, the following policies of insurance which shall cover all elected and appointed officers, employees and agents of City:

(a) Commercial General Liability Insurance (Occurrence Form CG0001 or equivalent). A policy of comprehensive general liability insurance written on a per occurrence basis for bodily injury, personal injury and property damage. The policy of insurance shall be in

an amount not less than \$1,000,000.00 per occurrence or if a general aggregate limit is used, either the general aggregate limit shall apply separately to this contract/location, or the general aggregate limit shall be twice the occurrence limit.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for the Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by the Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Automotive Insurance (Form CA 0001 (Ed 1/87) including "any auto" and endorsement CA 0025 or equivalent). A policy of comprehensive automobile liability insurance written on a per occurrence for bodily injury and property damage in an amount not less than either (i) bodily injury liability limits of \$100,000 per person and \$300,000 per occurrence and property damage liability limits of \$150,000 per occurrence or (ii) combined single limit liability of \$1,000,000. Said policy shall include coverage for owned, non-owned, leased and hired cars.

(d) Professional Liability. Professional liability insurance appropriate to the Consultant's profession. This coverage may be written on a "claims made" basis, and must include coverage for contractual liability. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of or related to services performed under this Agreement. The insurance must be maintained for at least 5 consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of the City submit written evidence of this continuous coverage.

(e) Additional Insurance. Policies of such other insurance, as may be required in the Special Requirements in Exhibit "B".

(f) Subcontractors. Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and certified endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated herein.

All of the above policies of insurance shall be primary insurance and shall name the City, its elected and appointed officers, employees and agents as additional insureds and any insurance maintained by City or its officers, employees or agents shall apply in excess of, and not contribute with Consultant's insurance. The insurer is deemed hereof to waive all rights of subrogation and contribution it may have against the City, its officers, employees and agents and their respective insurers. The insurance policy must specify that where the primary insured does not satisfy the self-insured retention, any additional insured may satisfy the self-insured retention. All of said policies of insurance shall provide that said insurance may not be amended or cancelled by the insurer or any party hereto without providing thirty (30) days prior written notice by certified mail return receipt requested to the City. In the event any of said policies of insurance are cancelled, the Consultant shall, prior to the cancellation date, submit new evidence of insurance in conformance with this Section 5.1 to the Contract Officer. No work or services under this Agreement shall commence until the Consultant has provided the City with Certificates of Insurance or appropriate insurance binders evidencing the above insurance

coverages and said Certificates of Insurance or binders are approved by the City. City reserves the right to inspect complete, certified copies of all required insurance policies at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City.

The insurance required by this Agreement shall be satisfactory only if issued by companies qualified to do business in California, rated "A" or better in the most recent edition of Best Rating Guide, The Key Rating Guide or in the Federal Register, and only if they are of a financial category Class VII or better, unless such requirements are waived by the City's Risk Manager or other designee of the City due to unique circumstances.

5.2 Indemnification. To the full extent provided by law, Consultant agrees to indemnify, defend and hold harmless the City, its officers, employees and agents against, any and all actions, suits, claims, damages to persons or property, losses, costs, penalties, obligations, errors, omissions or liabilities, including paying any legal costs, attorneys fees, or paying any judgment (herein "claims or liabilities") that may be asserted or claimed by any person, firm or entity arising out of or in connection with the negligent performance of the work or services of Consultant, its officers, agents, employees, agents, subcontractors, or invitees, provided for herein ("indemnitors"), or arising from Consultant's indemnitors' negligent performance of or failure to perform any term, provision, covenant, or condition of this Agreement, except claims or liabilities to the extent caused by the sole negligence or willful misconduct of the City.

6. RECORDS, REPORTS, AND RELEASE OF INFORMATION

6.1 Records. Consultant shall keep, and require subcontractors to keep, such ledgers, books of accounts, invoices, vouchers, canceled checks, reports, studies or other documents relating to the disbursements charged to City and services performed hereunder (the "books and records"), as shall be necessary to perform the services required by this Agreement and enable the Contract Officer to evaluate the performance of such services and shall keep such records for a period of three years following completion of the services hereunder. The Contract Officer shall have full and free access to such books and records at all times during normal business hours of City, including the right to inspect, copy, audit and make records and transcripts from such records.

6.2 Reports. Consultant shall periodically prepare and submit to the Contract Officer such reports concerning the performance of the services required by this Agreement or as the Contract Officer shall require.

6.3 Confidentiality and Release of Information.

(a) All information gained or work product produced by Consultant in performance of this Agreement shall be considered confidential, unless such information is in the public domain or already known to Consultant. Consultant shall not release or disclose any such information or work product to persons or entities other than the City without prior written authorization from the Contract Officer.

(b) Consultant shall not, without prior written authorization from the Contract Officer or unless requested by the City Attorney, voluntarily provide documents, declarations, letters of support, testimony at depositions, response to interrogatories or other information

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concerning the work performed under this Agreement. Response to a subpoena or court order shall not be considered "voluntary" provided Consultant gives the City notice of such court order or subpoena.

(c) If Consultant provides any information or work product in violation of this Agreement, then the City shall have the right to reimbursement and indemnity from Consultant for any damages, costs and fees, including attorney's fees, caused by or incurred as a result of Consultant's conduct.

(d) Consultant shall promptly notify the City should Consultant be served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions or other discovery request, court order or subpoena from any party regarding this Agreement and the work performed there under. The City retains the right, but has no obligation, to represent Consultant or be present at any deposition, hearing or similar proceeding. Consultant agrees to cooperate fully with the City and to provide the City with the opportunity to review any response to discovery requests provided by Consultant.

6.4 Ownership of Documents. All studies, surveys, data, notes, computer files, reports, records, drawings, specifications, maps, designs, photographs, documents and other materials (the "documents and materials") prepared by Consultant in the performance of this Agreement shall be the property of the City and shall be delivered to the City upon request of the Contract Officer or upon the termination of this Agreement, and Consultant shall have no claim for further employment or additional compensation as a result of the exercise by the City of its full rights of ownership use, reuse, or assignment of the documents and materials hereunder. Moreover, Consultant with respect to any documents and materials that may qualify as "works made for hire" as defined in 17 U.S.C. § 101, such documents and materials are hereby deemed "works made for hire" for the City.

7. ENFORCEMENT OF AGREEMENT AND TERMINATION

7.1 California Law. This Agreement shall be interpreted, construed and governed both as to validity and to performance of the parties in accordance with the laws of the State of California. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of Riverside, State of California.

7.2 Disputes; Default. In the event that Consultant is in default under the terms of this Agreement, the City shall not have any obligation or duty to continue compensating Consultant for any work performed after the date of default. Instead, the City may give notice to Consultant of the default and the reasons for the default. The notice shall include the timeframe in which Consultant may cure the default. This timeframe is presumptively thirty (30) days, but may be extended, if circumstances warrant. During the period of time that Consultant is in default, the City shall hold all invoices and shall, when the default is cured, proceed with payment on the invoices. If Consultant does not cure the default, the City may take necessary steps to terminate this Agreement under this Article.

7.3 Legal Action. In addition to any other rights or remedies, either party may take legal action, in law or in equity, to cure, correct or remedy any default, to recover damages for any default, to compel specific performance of this Agreement, to obtain

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declaratory or injunctive relief, or to obtain any other remedy consistent with the purposes of this Agreement. Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties are cumulative and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other party. Notwithstanding any contrary provision herein, Consultant shall file a statutory claim pursuant to Government Code Sections 905 et. seq. and 910 et. seq., in order to pursue any legal action under this Agreement.

7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon thirty (30) days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer. In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2.

7.5 Termination for Default of Consultant. If termination is due to the failure of the Consultant to fulfill its obligations under this Agreement, City may, after compliance with the provisions of Section 7.2, take over the work and prosecute the same to completion by contract or otherwise, and the Consultant shall be liable to the extent that the total cost for completion of the services required hereunder exceeds the compensation herein stipulated (provided that the City shall use reasonable efforts to mitigate such damages), and City may withhold any payments to the Consultant for the purpose of set-off or partial payment of the amounts owed the City as previously stated.

8. MISCELLANEOUS

8.1 Covenant Against Discrimination. Consultant covenants that, by and for itself, its heirs, executors, assigns and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color creed, religion, sex, marital status, national origin, ancestry, or other protected class in the performance of this Agreement. Consultant shall take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color creed, religion, sex, marital status, national origin, ancestry, or other protected class

8.2 Non-liability of City Officers and Employees. No officer or employee of the City shall be personally liable to the Consultant, or any successor in interest, in the event of any default or breach by the City or for any amount, which may become due to the Consultant or to its successor, or for breach of any obligation of the terms of this Agreement.

8.3 Notice. Any notice, demand, request, document, consent, approval, or communication either party desires or is required to give to the other party or any other shall be in writing and either served personally or sent by prepaid, first-class mail, in the case of the City, to the City Manager and to the attention of the Contract Officer, at City of Banning, 99 East Ramsey Street, California 92220 and in the case of the Consultant, to the person at the address designated on the execution page of this Agreement.

8.4 Integration; Amendment. It is understood that there are no oral agreements between the parties hereto affecting this Agreement and this Agreement supersedes and cancels any and all previous negotiations, arrangements, agreements and understandings, if any, between the parties, and none shall be used to interpret this Agreement. This Agreement may be amended at any time by the mutual consent of the parties by an instrument in writing.

8.5 Severability. In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.

8.6 Waiver. No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party's consent to or approval of any act by the other party requiring the party's consent or approval shall not be deemed to waive or render unnecessary the other party's consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

8.7 Attorneys' Fees. If either party to this Agreement is required to initiate or defend or made a party to any action or proceeding in any way connected with this Agreement, the prevailing party in such action or proceeding, in addition to any other relief which any be granted, whether legal or equitable, shall be entitled to reasonable attorney's fees, whether or not the matter proceeds to judgment.

8.8 Corporate Authority. The persons executing this Agreement on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Agreement on behalf of said party, (iii) by so executing this Agreement, such party is formally bound to the provisions of this Agreement, and (iv) the entering into this Agreement does not violate any provision of any other Agreement to which said party is bound.

[Signatures on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first-above written.

CITY:

CITY OF BANNING

James Smith, City Manager

ATTEST:

Marie A. Calderon, City Clerk

APPROVED AS TO FORM:
ALESHIRE & WYNDER, LLP

David J. Aleshire, City Attorney

CONSULTANT:

McIntyre Law Group

By: _____
Name: Nathan T. McIntyre
Title: Attorney at Law

Address: 166 West Ramsey Street
Banning, CA 92220

Two signatures are required if a corporation.

NOTE: CONSULTANT'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONSULTANT'S BUSINESS ENTITY.

[END OF SIGNATURES]

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, 2015 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
<input type="checkbox"/>	LIMITED	
<input type="checkbox"/>	GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/>	OTHER	_____

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

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

STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

On _____, 2015 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

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

CAPACITY CLAIMED BY SIGNER		DESCRIPTION OF ATTACHED DOCUMENT
<input type="checkbox"/>	INDIVIDUAL	_____
<input type="checkbox"/>	CORPORATE OFFICER	TITLE OR TYPE OF DOCUMENT

	TITLE(S)	
<input type="checkbox"/>	PARTNER(S)	_____
<input type="checkbox"/>	LIMITED	
<input type="checkbox"/>	GENERAL	NUMBER OF PAGES
<input type="checkbox"/>	ATTORNEY-IN-FACT	_____
<input type="checkbox"/>	TRUSTEE(S)	
<input type="checkbox"/>	GUARDIAN/CONSERVATOR	DATE OF DOCUMENT
<input type="checkbox"/>	OTHER _____	

SIGNER IS REPRESENTING:

(NAME OF PERSON(S) OR ENTITY(IES))

SIGNER(S) OTHER THAN NAMED ABOVE

EXHIBIT "A"

SCOPE OF SERVICES

I. Consultant will perform the following services on a contingency fee basis (hereinafter "Contingent Fee Services"):

A. City as judgment creditor engages Consultant as counsel to collect the judgment obtained in the case of *James C. Smith, et al. v. Barbara Hanna* (RSC Case No. RIC 474602, Appellate Case No. E045670). Consultant agrees to take such actions, efforts, and steps deemed by Consultant to be advisable and economically justifiable in the pursuit of collecting City's judgment. Services rendered for a contingent fee include:

- i. Domestication of the judgment if rendered in a state other than California;
- ii. Preparation and filing of an abstract of judgment and business personal property lien;
- iii. Online investigation;
- iv. Realizing upon property subject to enforcement of the judgment by levy, garnishment and other lawful judicial remedies;
- v. Filing a proof of claim in any bankruptcy case; and
- vi. Reporting significant developments to City.

II. Services which will *not* be rendered for a contingent fee, but which may be rendered for an hourly fee of \$250 per hour, in addition to the contingent fee, ("Hourly Fee Services") include:

- A. Defending any action commenced against City, including avoidance actions in bankruptcy;
- B. Prosecuting or defending any appeal or petition for an extraordinary writ;
- C. Prosecution of actions against third parties, including claims to avoid fraudulent transfers;
- D. Prosecution of a complaint to determine discharge ability in bankruptcy; and
- E. Making any motion to withdraw as counsel which is granted by the court.

III. Consultant promises to abide by this Agreement, and to:

- A.** Competently and diligently provide the legal services described above.
- B.** Keep City informed of his progress, and of any important developments.
- C.** Respond promptly to City's telephone calls and letters.
- D.** Cooperate with City so that City may be effectively represented.

EXHIBIT "B"

SPECIAL REQUIREMENTS (Superseding Contract Boilerplate)

1. Section 1.5, is hereby added to this Agreement to read as follows:

"1.5 No Guaranties of Outcome. Many claims referred to collection lawyers are not collected due to the disappearance of debtors, the lack of available assets, or bankruptcy. Nothing in this Agreement, and no statement made to City before or after this Agreement is signed, is intended as a promise or guaranty of collection. Consultant's comments about the anticipated outcome are expressions of opinion only."

2. Section 7.4, Termination Prior To Expiration, is hereby amended to read as follows:

"7.4 Termination Prior to Expiration of Term. This Section shall govern any termination of this Contract except as specifically provided in the following Section for termination for cause. The City reserves the right to terminate this Contract at any time, with or without cause, upon ~~thirty (30)~~ ten days' written notice to Consultant, except that where termination is due to the fault of the Consultant, the period of notice may be such shorter time as may be determined by the Contract Officer. In addition, the Consultant reserves the right to terminate this Contract at any time, with or without cause, upon sixty (60) days' written notice to City, except that where termination is due to the fault of the City, the period of notice may be such shorter time as the Consultant may determine. Upon receipt of any notice of termination, Consultant shall immediately cease all services hereunder except such as may be specifically approved by the Contract Officer. Except where the Consultant has initiated termination, the Consultant shall be entitled to the Contingent Fee of 25% of all gross recovery that is derived from the Contingent Fee Services (as defined in Exhibit "A") provided by Consultant ~~for compensation for all services rendered prior to the effective date of the notice of termination and for any services authorized by the Contract Officer thereafter in accordance with the Schedule of Compensation or such as may be approved by the Contract Officer.~~ In the event the Consultant has initiated termination, the Consultant shall be entitled to compensation only for the reasonable value of the work product actually produced hereunder, but not exceeding the compensation provided therefore in the Schedule of Compensation Exhibit "C". In the event of termination without cause pursuant to this Section, the terminating party need not provide the non-terminating party with the opportunity to cure pursuant to Section 7.2."

3. Section 7.6, File Closing, is hereby added to the Agreement to read as follows:

"7.6 File Closing. Consultant may determine that further active efforts to collect are unlikely to yield results and would not be economically practical for Consultant as a matter of business judgment. In that case, Consultant may notify City that Consultant is closing its file (a "Closing Notice"). After giving a Closing Notice, Consultant shall have no further professional

responsibility to continue to make active attempts to locate the debtor or the debtor's assets, conduct further investigation, renew any judgment or judgment lien, or report to the City. Consultant may in its business judgment, but is not required to, renew any judgment or judicial lien after a Closing Notice is given."

4. Section 7.7, Return of City's File, is hereby added to the Agreement to read as follows:

"7.7 Return of City's File. Upon City's written request Consultant will, whether or not all fees owing under this Agreement have been paid, make City's file (with the exception of Consultant's work product) available for pickup by City at Consultant's office. Consultant may at any time request in writing that City take possession of all or a portion of City's file."

EXHIBIT "C"

SCHEDULE OF COMPENSATION

- I. Consultant shall perform the Contingent Fee Services on a contingency fee basis as follows:**
 - A. Which shall be computed as a twenty-five percent (25%) of the total gross recovery obtained in relation to the matter in which is derived from the Consultant's Contingent Fee Services.
 - B. Contingent Fee shall be paid regardless of whether (1) payment is tendered to Consultant or directly to City; (2) collection was the result of services provided by Consultant; or (3) a "Closing Notice" has been given closing Consultant's file.
 - C. In the event that rights in property are obtained pursuant to settlement, judgment or execution, Consultant's shall be entitled to an undivided twenty five percent (25%) ownership interest in such property (irrespective of any different percentage set forth in this Agreement). Such interest shall be deemed to have been created at the time City acquires rights in such property, in payment of Consultant's fee in relation to that recovery. Such interest is not intended by the parties for purposes of security. City agrees to execute, at Consultant's request, all documents reasonably required to perfect such interest, including, *e.g.*, quitclaim deeds.
- II. Consultant shall perform the Hourly Fee Services at a rate of \$250 per hour.**
- III. The City will compensate Consultant for the Services performed upon submission of a valid invoice. Each invoice is to include:**
 - A. Line items for all the work performed, the number of hours worked, and the hourly rate.
 - B. Line items for all materials and equipment properly charged to the Services.
 - C. Line items for all other approved reimbursable expenses claimed, with supporting documentation.
 - D. Line items for all approved subcontractor labor, supplies, equipment, materials, and travel properly charged to the Services.
- IV. The total compensation for the Services shall not exceed the Contract Sum as provided in Section 2.1 of this Agreement.**

EXHIBIT "D"

SCHEDULE OF PERFORMANCE

- I. Consultant shall perform all services timely in accordance with a schedule approved by the Contract Officer.**
- II. The Contract Officer may approve extensions for performance of the services in accordance with Section 3.2.**

CITY COUNCIL MEETING

DATE: April 28, 2015

TO: City Council

FROM: Art Vela, Acting Director of Public Works

SUBJECT: Resolution No. 2015-26, "Rejecting the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase and Rescinding the Approval of Resolution No. 2015-01, and rejecting any and all bids solicited for the City street sweeper lease or purchase"

RECOMMENDATION: The City Council adopt Resolution No. 2015-26, "Rejecting the Lease of One (1) New Elgin CNG Crosswind with an Option to Purchase and Rescinding the Approval of Resolution No. 2015-01, and rejecting any and all bids solicited for the City street sweeper lease or purchase."

JUSTIFICATION: Per the Administrative Policy, a department head may recommend the rejection of any bid if it is determined to be in the best interest of the City. The City Council may reject any and all bids with or without cause and if the bids are rejected, the bids may be re-solicited or the purchase may be abandoned.

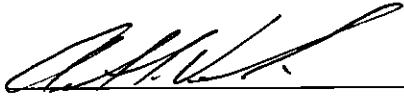
BACKGROUND: On January 13, 2015, the City Council approved Resolution No. 2015-01, "Authorizing the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase" ("Elgin Sweeper Lease/Purchase"). Following this approval, on January 15, 2015, staff received a bid protest from Mar-Co Equipment Company challenging the Elgin Sweeper Lease/Purchase. After staff's investigation and research of the procurement process, street sweeper specifications and regulatory compliance, staff determined that it is in the best interest of the City to rescind the approval of Resolution No. 2015-01.

Street sweeping is a crucial function in keeping the City's streets and community clean. Street sweeping also helps prevent debris from entering storm drains, which eventually flow into local waterways, which is a requirement of the City's National Pollution Discharge Elimination System (NPDES) permit. Consequently, staff will further investigate the City's best options for continuing its street sweeping operation. Once the most viable and best option is determined, a recommendation will be brought forward for City Council's review and approval.

FISCAL DATA: Approval of this resolution does not have a fiscal impact on the City.

SIGNATURES NEXT PAGE

RECOMMENDED BY:



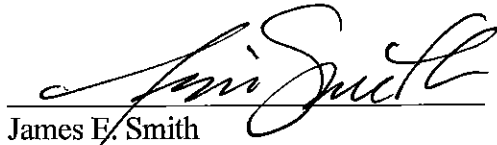
Art Vela,
Acting Director of Public Works

REVIEWED BY:



Dean Martin
Interim Administrative Service Services

APPROVED BY:



James E. Smith
Interim City Manager

RESOLUTION NO. 2015-26

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, REJECTING THE LEASE OF ONE (1) NEW ELGIN CNG CROSSWIND J SWEEPER WITH AND OPTION TO PURCHASE AND RESCINDING THE APPROVAL OF RESOLUTION NO. 2015-01, AND REJECTING ANY AND ALL BIDS SOLICITED FOR THE CITY STREET SWEEPER LEASE OR PURCHASE

WHEREAS, on January 13, 2015, the City Council approved Resolution No. 2015-01, "Authorizing the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase" ("Elgin Sweeper Lease/Purchase") and following this approval, on January 15, 2015, staff received a bid protest from Mar-Co Equipment Company challenging the Elgin Sweeper Lease/Purchase; and

WHEREAS, upon further research of the procurement process, street sweeper specifications and regulatory compliance, staff has determined that it is in the best interest of the City to rescind the approval of Resolution No. 2015-01 and reject any and all bids solicited for the City street sweeper lease or purchase; and

WHEREAS, street sweeping is a crucial function in keeping the City's streets and community clean, as well as preventing debris from entering storm drains which eventually flow into local waterways; and

WHEREAS, staff will further investigate the City's options for continuing its street sweeping operation and once the most viable and best option for the City is determined, a request will be brought forward for City Council's review and approval; and

WHEREAS, per the Administrative Policy, a department head may recommend the rejection of any bid if it is determined to be in the best interest of the City and the City Council may reject any and all bids with or without cause; if bids are rejected, bids may be re-solicited or the purchase may be abandoned.

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

SECTION 1. The City Council adopt Resolution No. 2015-26, "Rejecting the Lease of One (1) New Elgin CNG Crosswind J Sweeper with an Option to Purchase and Rescinding the Approval of Resolution No. 2015-01, and rejecting any and all bids solicited for the City street sweeper lease or purchase."

PASSED, APPROVED AND ADOPTED this 28th day of April, 2015.

Deborah Franklin, Mayor
City of Banning

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-26 was duly adopted by the City Council of the City of Banning at a regular meeting thereof held on the 28th day of April, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA

DATE: April 28, 2015
TO: Honorable Mayor and City Council
FROM: Fred Mason, Electric Utility Director
SUBJECT: Resolution 2015-32, "Clarifying Appropriation Instructions for Resolution No. 2015-12"

RECOMMENDATION: Adopt Resolution No. 2015-32, "Clarifying Appropriation Instructions for Resolution No. 2015-12".

BACKGROUND: The City Council adopted Resolution No. 2015-12 on March 24, 2015, awarding the construction and professional services contracts for Project No. 2014-04 "Corporate Yard Warehouse" and rejecting all other bids. The Staff Report provided the different cost factors and funding sources and clearly stated, "Funds in the amount of \$2,473,910.31 are available in account 674-7000-473.90-11, New Building – City Yards. The remaining amount of \$1,471,706.69 will be appropriated from the Electric Improvement Fund, which currently has a balance of \$6,924,309.00."

In addition, SECTION 10 of the Resolution stated, "The Administrative Services Director is to make the necessary budget adjustments, appropriations, and transfers related to the project and to approve change orders within the 10% contingencies."

However, the Finance department has indicated that those two sections did not provide the necessary clarity on the funding authorization, and has asked that a resolution be adopted which clearly states that Council approves the appropriation of \$1,471,706.69 from the Electric Improvement Fund. Therefore staff is requesting approval of Resolution No. 2015-32 authorizing the appropriation of \$1,471,706.69 from the Electric Improvement Fund for Project No. 2014-04.

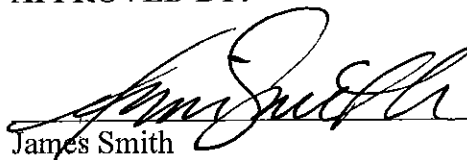
FISCAL DATA: Funds in the amount of \$2,473,910.31 are available in account 674-7000-473.90-11, New Building – City Yards. The remaining amount of \$1,471,706.69 will be appropriated from the Electric Improvement Fund, which currently has a balance of \$6,924,309.00.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



James Smith
Interim City Manager

REVIEWED BY:

A handwritten signature in black ink, appearing to read "Dean Martin", written over a horizontal line.

Dean Martin

Interim Administrative Services Director

RESOLUTION NO 2015-32

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING CLARIFYING
APPROPRIATION INSTRUCTIONS FOR RESOLUTION NO. 2015-12**

WHEREAS, the City Council adopted Resolution No. 2015-12 at its regularly scheduled meeting of March 24, 2015; and

WHEREAS, Resolution No. 2015-12 provided funding for Project No. 2014-04 "Corporate Yard Warehouse"; and

WHEREAS, the Finance Department determined that there was a lack of clarity in the language authorizing the appropriation of funds in Resolution No. 2015-12 and requested a new resolution to provide that clarity; and

WHEREAS, the City Council authorizes the appropriation of \$1,471,706.69 from the Electric Improvement Fund to be used for Project No. 2014-04;

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

SECTION 1. Adopt Resolution No. 2015-32, authorizing the appropriation of \$1,471,706.69 from the Electric Improvement Fund to be used for Project No. 2014-04.

SECTION 2. Authorize the Administrative Services Director to make the necessary budget adjustments, appropriations, and transfers related to the project.

PASSED, APPROVED AND ADOPTED this 28th day of April, 2015.

Deborah Franklin, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-32 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of April, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

CITY COUNCIL AGENDA

DATE: April 28, 2015
TO: Honorable Mayor and City Council
FROM: David J. Aleshire, City Attorney
SUBJECT: Settlement Agreement with Hunter Consulting, Inc. ("HCI")

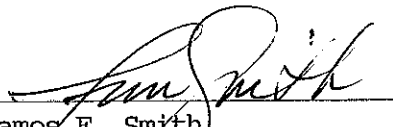
RECOMMENDATION: Approve the agreement and authorize the Interim City Manager to execute it.

KEY FACTS: In July, 2011 there was a chemical spill at 553 E. Ramsey. The City spent approximately \$1.8 million to respond to it, and then brought two suits to recover the costs of clean up. The first suit was against the property owner, Mary Ann Dureau, and the City recovered approximately \$625,000 from her. The second suit was against HCI, the contractor that did the cleanup work, for the balance of approximately \$1.2 million based on the City's discovery during the Dureau matter that HCI overcharged the City by that amount. Such lawsuit is pending and due to go to trial in July, 2015. Discovery in such suit showed that HCI does not have insurance coverage for this matter, and its two principals do not have sufficient assets to respond to damages. Accordingly, on March 24, 2015 the City Council authorized a settlement whereby defendants would pay the City \$50,000 in exchange for a dismissal with prejudice. The agreement effectuating such settlement is attached hereto as Exhibit A and is submitted for Council approval.

RECOMMENDED BY:

David J. Aleshire
City Attorney

APPROVED BY:



James E. Smith
Interim City Manager

REVIEWED BY:



Dean Martin, Interim Administrative
Services Dir./Deputy City Manager

Attachments:

Exhibit "A": Settlement Agreement

Exhibit "A"

SETTLEMENT AGREEMENT AND MUTUAL RELEASE OF ALL CLAIMS

This Settlement Agreement and Mutual Release of All Claims (hereinafter "Agreement") is made and entered by and between Plaintiff City of Banning, a municipal corporation ("Plaintiff") and Defendants Hunter Consulting, Inc. dba HCI Environmental & Engineering Service, Gregory Parker, and Charles Robert Guy (collectively "Defendants"). Plaintiff and Defendants are collectively referred to as the "Parties" herein.

RECITALS

- A. There is currently pending with the Riverside County Superior Court, an action entitled City of Banning v. Hunter Consulting, Inc., et al. Case No. RIC 1311358 (hereinafter the "Action"). In the Action, Plaintiff filed the Complaint alleging certain claims and damages against Defendants arising out of an oil spill clean up that occurred on or about July 25, 2011 in the City of Banning. By way of the Action, Plaintiff alleges causes of action for the following: (1) Negligent Misrepresentation; (2) Fraud; (3) False Claims Act; (4) Professional Malpractice; (5) Breach of Contract; (6) Breach of Implied Covenant of Good Faith and Fair Dealing; and (7) Breach of Warranty.
- B. The real property that is the subject of the oil spill and the Action is located at 553 East Ramsey Street, Banning, California (hereinafter the "Subject Property".)
- C. The Parties to the Agreement now wish to forever buy their peace and enter into this Agreement in order to bar and preclude any further potential liability and exposure forever with respect to the Subject Property and the Action.
- D. It is understood that in order to accomplish the intent of buying their peace, the Parties have agreed to release any and all claims relating to the issues, allegations, claims, demands, suit, contentions or disputes, which arise from or are related to the Subject Property and the Action in any manner whatsoever, which are presently asserted or may or could be asserted in the future. It is the express intent and desire of the Parties to forever discharge one another from any potential liability arising out of or relating to the Subject Property and the Action in any manner whatsoever, whether such claim has been asserted or not.

NOW, THEREFORE, in consideration of the above recitals and the covenants and agreements contained herein, the Parties hereto agree as follows:

1. **Mutual Release and Discharge of Claims.** In consideration of the terms and conditions called for herein, the Parties to this Agreement completely release and forever discharge one another and each of their respective representatives, predecessors and successors in interest, heirs, insurers and re-insurers, relatives, affiliates, assigns, parent

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and/or subsidiary companies, members of any board, and their past, present and future principals, officers, directors, shareholders, officers, servants, members, partners, subsidiaries, affiliated companies, agents, independent contractors, employees, employers, heirs, relatives, assignees, devisees, attorneys (hereinafter "Releasees") of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damage, costs, losses of services, expenses, compensation, and indemnification rights, whether they be actual, implied, expressed or perceived, which the parties to this Agreement have had, now have, or which may hereafter accrue in the future or otherwise are acquired, on account of, or in any way arising out of, the claims, damages and allegations relating to the Subject Property and the Action.

2. **Settlement Amount.** The total settlement amount is fifty thousand dollars and zero cents (\$50,000.00). Defendants shall pay the Settlement Amount to Plaintiff within thirty (30) calendar days of full execution of the Agreement.

3. **Waiver under Civil Code Section 1542.** It is expressly acknowledged and understood by the Parties to this Agreement that there is a risk that as of now and subsequent to the execution of this Agreement, the Parties and Releasees may incur or suffer loss or damage, but that such loss or damage is unknown or unexpected at the time of the execution of this Agreement. There is also a risk that loss, damage or injury now known with respect to the issues settled by this Agreement may become worse or greater than now known or expected. The purpose of this Agreement is to release all parties to this Agreement, as well as all Releasees defined above, from all such known or unknown, expected or unexpected, claims which are related to or arise out of the Subject Property and the claims, damages and allegations set forth in the Action. The Parties, for themselves and their Releasees, acknowledge that this Agreement and all releases and waivers contained herein are intended to and do apply to all such known or unknown, expected or unexpected risk, loss, damage and/or injury which are related to or arise out of the Subject Property and the claims, damages and allegations set forth in the Action.

In particular, it is further understood and expressly agreed by the Parties to the Agreement that all rights or claims of right under Section 1542 of the California *Civil Code* are expressly waived with respect to all losses, damages and/or injuries which arise out of or are related to the Subject Property and the claims and allegations set forth in the Action, which Code Section reads as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR"

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It is expressly acknowledged and understood by the parties to this Agreement that the foregoing waiver of the provisions of Section 1542 of the California *Civil Code* was separately bargained for and provides additional consideration for entering into this Agreement. The Parties to the Agreement consent that this release and waiver of Section 1542 shall be given full force and effect under the law in accordance with each and all of the express terms and provisions, including those terms and provisions related to such unknown and unsuspected claims, demands, and causes of action. In light of the Parties' desire to forever discharge one another from any further liability, they expressly intend to waive any protection afforded to them under Section 1542.

4. **Representations and Warranties.** Each party represents and warrants to the other that, except as otherwise expressly provided in this Agreement, they are not relying on any representation whatsoever, whether express or implied, including without limitation representations of fact or opinion made by or on behalf of the parties herein, in entering this Agreement.

In executing this Agreement, the Parties each warrant and represent to the other that they are the only persons, firms or entities having any interest in any of the claims which are described or referred to in the Action or which are released in this Agreement or otherwise referred to herein. The Parties further represent and warrant to the other that they have not sold, assigned, transferred or purported to sell, assign or transfer to any person, firm or entity, either voluntarily or involuntarily, any claim, cause of action, or right or any portion of any of the foregoing, based on, arising out of, or in connection with any matter, fact or thing described or set forth in this Agreement. Each party shall indemnify, defend and hold the other party harmless from and against all claims or demands based upon or arising in connection with any such prior assignment or transfer, or any such purported assignment or transfer, of any claims or other matters released herein.

5. **Dismissal.** Within ten (10) calendar days receipt of the settlement funds described herein and full execution of the Agreement, Plaintiff shall execute and file a Request for Dismissal, with prejudice.

6. **Confidentiality.** To the fullest extent permitted by law, the Parties shall endeavor to keep the terms of this Agreement confidential and shall not disclose its contents unless lawfully requested.

7. **Covenant not to Sue.** In consideration of the terms and conditions called for herein and the above release, the Parties to this Agreement hereby agree and covenant not to sue one another for any reason whatsoever on account of, or in any way arising out of the Subject Property, including but not limited to, the claims, damages and allegations relating to the Action.

8. **Costs and Attorney's Fees.** The Parties to this Agreement shall not seek to recover from each other or any Releasee the costs of suit or attorney's fees incurred in connection with the Action or the negotiations or preparation of this Agreement. Each party shall bear its own costs and attorney's fees except as may be set forth herein.

9. **Binding.** This Agreement and each and all of the representations, warranties and covenants of the parties made herein is binding upon the successors, assigns, heirs and representatives of the parties and each and all of their respective successors, assigns, heirs and representatives.

10. **No Duress or Undue Influence.** The Parties to this Agreement mutually warrant and represent they have read and understand this Agreement and that this Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any party hereto. The Parties hereby acknowledge that they have been represented in negotiations and for the preparation of this Agreement by legal counsel of their own choice; that they have read this Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Agreement and of the legal effects of each and every provision thereof.

11. **Integration.** This Agreement contains the sole and entire agreement and understanding between the parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments or understandings related hereto, if any, are hereby merged herein. No representations, oral or otherwise, express or implied, other than those specifically contained in this Agreement, have been made between the parties.

12. **Neutral Interpretation.** This Agreement and the documents and instruments executed in connection with this Agreement constitute the product of negotiations of the Parties, and the enforcement hereof shall be interpreted in a neutral manner and not more strongly for or against any party based upon the source of the draftsmanship hereof.

13. **Modification.** No provision hereof may be waived unless in writing signed by all parties hereto. Waiver of any one provision herein shall not be deemed to be a waiver of any other provision herein. This Agreement may be modified or amended only by a written agreement executed by all of the parties hereto.

14. **No Admission of Liability.** This Agreement is intended to save litigation expense and to effect the compromise and settlement of claims and defenses which are denied, disputed and contested, and nothing contained herein shall be construed as an admission by any party of any liability of any kind to any other party. The parties agree that each party expressly denies that it is in any way liable or indebted to any other party and this Agreement shall not be interpreted to infer that any party has engaged in any conduct giving rise to a liability to the other party.

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15. **Retention of Jurisdiction.** The Parties agree that this Agreement is fully enforceable pursuant to California *Code of Civil Procedure* section 664.6 in the Action and that the court may enter judgment pursuant to that section. The Parties consent that the Riverside County Superior Court shall retain jurisdiction over them to enforce this Agreement notwithstanding any dismissal of the Action.

16. **Choice of Law/Venue.** This Agreement shall be construed in accordance with the laws of the State of California. In the event this Agreement must be enforced by a court of law, the parties hereby agree that said action shall be tried in the State of California, County of Riverside.

17. **Counterparts.** This Agreement may be executed in one or more subparts or counterparts, each of which shall be an original but all of which, together, shall be deemed to constitute a single document.

18. **Survival.** The warranties and representations made in this Agreement are deemed to survive the execution of this Agreement and dismissal of the Action.

19. **Severability.** If any provision of this Agreement is found to be illegal, invalid, or unenforceable under present or future laws effective during the term of this Agreement, such provisions shall be fully severable, provided that the Parties retain the benefits of the Agreement, including the release and dismissals and compensation. This Agreement shall be construed and enforced as if such illegal, invalid, or enforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provisions or by severance from this Agreement.

20. **Headings.** Headings used in this Agreement are for convenience of reference only and shall not be considered a part of this Agreement or construed to affect the interpretation of any of its provisions.

21. **Enforcement of Agreement.** Should legal action be necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, in addition to any other relief prevailing party is entitled to.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the date first above written and hereby represent that their attorneys have indicated their approval as to form by each of the Party's respective signatures in the appropriate spaces below.

[INTENTIONALLY LEFT BLANK]

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Dated: _____, 2015

CITY OF BANNING

By: _____

Print Name: _____

Title: _____

Dated: _____, 2015

HUNTER CONSULTING, INC.

By: _____

Print Name: _____

Title: _____

Dated: _____, 2015

GREGORY J. PARKER

By: _____

Print Name: _____

Dated: _____, 2015

CHARLES ROBERT GUY

By: _____

Print Name: _____

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**CITY COUNCIL MEETING
PUBLIC HEARING**

DATE: April 28, 2015

TO: City Council

FROM: Brian Guillot, Acting Community Development Director

SUBJECT: Consideration of Ordinance No. 1486 Approving the Categorical Exemption and Ordinance No. 1486 to Amend Chapter 5.52 (Shopping Carts) of Title 5 (Business Licenses and Regulations) of the Banning Municipal Code

RECOMMENDATION:

The Planning Commission recommends that the City Council:

1. Conduct a public hearing on the Categorical Exemption and Ordinance No. 1486; and
2. Introduce Ordinance No. 1486 (Attachment 1) to approve:
 - a. Categorical Exemption and Ordinance No. 1486.

JUSTIFICATION:

The City has received numerous complaints from the business community and residents regarding abandoned shopping carts. Basically, the complaint is that the number of shopping carts abandoned in fields and along roadways does not contribute to a positive view of the City. This issue would seem to counteract the **General Plan Economic Development Element Goal** of providing:

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

In particular, the presence of abandoned shopping carts might discourage business development and opportunities due to the perceived negative views and implications. Therefore, the City Council directed staff to review the existing regulations, meet with the stakeholders, and propose changes to the regulations that would address the problem directly.

BACKGROUND:

On September 26, 1995, the City Council adopted Resolution No. 11995-150 regulating shopping carts used by local retailers in accordance with Business and Professions Code Section 22435-22435.8.

On August 6, 2014, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to consider complaints from the community regarding abandoned shopping carts and upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to meet with the businesses and other stakeholders to solicit their comments and concerns regarding this issue and to discuss possible solutions.

On September 24, 2014, City staff held a meeting with local retail businesses and other interested parties, and it was the opinion of the group that there appears to be adequate ordinances in place, but there is a lack of enforcement to address the issues related to abandoned and stolen shopping carts.

On February 4, 2015, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to discuss options for revising the shopping cart regulations that meets the needs of both the community and the economic interests of those involved and to seek direction from the Planning Commission as to how to proceed with in this issue and, upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to prepare an Ordinance to address the issue of abandoned shopping carts within the City.

On April 1, 2015, during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2015-06 recommending to the City Council the adoption of Ordinance No. 1486 approving the Categorical Exemption and amending Chapter 5.52 of Title 5 of the Banning Municipal Code (Attachment 2).

RECOMMENDED PROVISIONS:

The following is a summary of the proposed amendment to the City's shopping cart regulations (a complete copy of Chapter 5.52 [Shopping Carts] is contained in Attachment 3) based upon the direction given by the Planning Commission:

Section 5.52.010 (Identification of Shopping Carts) will include new provisions, as follows:

"A. Findings and Purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the City of Banning. The accumulation of wrecked, dismantled and abandoned shopping carts on public or private property also tends to create conditions that reduce property values, promoting blight and deterioration in the City. The intent of this Chapter is to insure that measures are taken by store owners to prevent the removal of shopping carts from store premises and parking lots, to make the removal of shopping carts a violation of this Code, and to

facilitate the retrieval of abandoned carts as permitted by State law. Further, this Chapter is intended to supplement existing State law regarding shopping carts as set forth in California Business & Professions Code, section 22435, et seq."

"B. Enforcement of Chapter.

(a) Every cart owned or provided by any business establishment in the City of Banning must have a sign permanently affixed to it that contains the following information:

- 1) Identifies the owner of the cart or the name of the business establishment, or both;
- 2) Notifies the public of the procedure to be utilized for authorized removal of the cart from the business premises;
- 3) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City of Banning law;
- 4) Lists a telephone number to contact to report the location of the abandoned cart; and
- 5) Lists an address for returning the cart to the owner or business establishment.

(b) Failure to comply may subject the violator to any civil, criminal, or administrative remedies as provided by law."

"C. Prohibiting Removal or Possession of Abandoned Cart.

(a) It shall be unlawful to either temporarily or permanently remove a cart from the premises or parking area of a business establishment without the express prior written approval of the owner or on-duty manager of the business establishment. Written permission shall be valid for a period not to exceed 72 hours.

(b) It shall be unlawful to be in possession of a cart that has been removed from the premises or parking area of a business establishment unless it is in the process of being immediately returned to the owner or business establishment.

(c) This section shall not apply to carts that are removed for the purposes of repair or maintenance.

(d) Failure to comply may subject the violator of the cart to any civil, criminal, or administrative remedies as provided by law."

"D. Mandatory Plan to Prevent Cart Removal/Evaluation Report.

Every owner shall develop and implement a specific plan to prevent customers from removing carts from the business premises ("prevention plan"). The prevention plan must include the following elements and a detailed description of how they will be implemented:

(a) Notice to Customers. Written notification shall be provided to customers that removal of carts from the premises and parking lots are prohibited and a violation of state and local law. This notice may be provided in the form of flyers, warnings on shopping bags, or any other form of written notification that will effectively notify customers of the prohibition.

(b) Signs shall be placed in pertinent places near door exits and near parking lot exits that warn customers that cart removal is prohibited and constitute a violation of state and local law.

(c) Specific physical measures shall be implemented to prevent cart removal from the business premises. These measures may include, but are not limited to, disabling devices on all carts, posting of a security guard to deter and stop customers who attempt to remove carts from the business premises, bollards and chains around business premises to prevent cart removal, security deposits required for use of all carts, or the rental or sale of carts that can be temporarily or permanently used for transport of purchases. As an alternative to implementing specific physical measures, a business shall contract with a cart retrieval service to retrieve carts removed from its business premises within a forty eight (48) hour period.

(d) If a prevention plan was in place the previous year, a report shall be submitted to the City evaluating the measures that were used and approved in the prior calendar year. The report shall include, but not be limited to, the inventory of carts owned/used by the business establishment and the number of carts that had to be replaced due to loss, theft or abandonment."

"E. Prevention Plan/Evaluation Report Timelines and Approval Process.

(a) Existing Owners. The proposed prevention plan for preventing cart removal shall be submitted for approval to the City Manager or his/her designee within thirty (30) days of receiving notice from the City that such a plan is

required pursuant to this Chapter. An evaluation report shall be submitted by January 1 of each year thereafter.

(b) New Businesses and Change in Ownership. If a new business begins conducting business in the City and provides carts to its customers, the new owner shall notify the City Manager or his/her designee within thirty (30) days of opening the business to the public and submit a new prevention plan or contract with a cart retrieval service. If an existing business changes ownership, the new owner shall notify the City Manager or his/her designee within thirty (30) days of the change and submit a new prevention plan, agree to adopt the existing prevention plan on file with the City for that business or contract with a cart retrieval service. An evaluation report shall be submitted by January 1 of each year thereafter.

(c) Approval. Within thirty (30) days of receipt of the prevention plan, the owner shall be notified whether the prevention plan is approved. If the plan is not approved, the notice shall state its reasons and provide recommendations to the owner to ensure plan approval. The owner shall submit a new prevention plan within fifteen (15) days of receiving this notice. Once a prevention plan is approved, the proposed measures shall be implemented by no later than thirty (30) days after City approval is given. If an evaluation report is submitted, the prevention measures shall be continued until and unless the City indicates that a measure(s) needs to be modified. Unless otherwise agreed, any modifications to the plan imposed by the City shall be implemented within thirty (30) days after the City notifies the owner of the needed modifications.

(d) Revocation. If more than sixty (60) carts are retrieved by the City within a six (6) month period, the owner's prevention plan will be revoked upon notification by the City and the owner will be required to submit a new prevention plan to the City Manager. Any owner failing to implement the new prevention plan within thirty (30) days of approval shall be subject to penalties under this Chapter."

Section 5.52.020 (Recovery of Shopping Carts by City Forces) will be amended, as follows:

- "A. ~~On and after the effective date hereof, any shopping cart, as defined herein, may be removed from the public right-of-way or public property of the city by any employee of the City of Banning upon actual or constructive notice to the owner that the shopping cart has been in such right-of-way for a period of twenty-four hours. Any shopping cart so removed shall be taken by the employee to the city yard. Such shopping cart shall remain there until claimed by the owner or the owner's authorized agent. Any cart remaining in the city yard for ninety-one days or more shall be disposed of as lost property. The provisions of this Chapter shall be enforced by any enforcement personnel. To the extent otherwise permitted by~~

law, said enforcement personnel may enter onto any public or private property in the City to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the City of Banning pursuant to any provision of this Chapter may be performed by any enforcement personnel. Any enforcement personnel are authorized to issue an administrative citation upon any owner whom they have reasonable cause to believe has violated any provision of this Chapter."

Section 5.52.040 (Administrative Costs and Fines) will include a new provision, as follows:

"Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) days of receiving actual notice from the City, shall pay the City's administrative costs for retrieving the cart(s) and providing the notification to the owner as may be established by resolution of the City Council. Any owner who fails to retrieve abandoned carts in accordance with this Chapter in excess of three times during a specified six month period, shall be subject to a \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the City in a one-day period."

Section 5.52.050 (Penalties for Failing to Submit a Prevention or Evaluation Report or to Implement Prevention Measures) will include a new provision, as follows:

"Any owner that fails to submit a prevention plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in this Chapter shall be required to place disabling devices on all carts owned/leased/used by the business to prevent removal of carts from the business premises and parking lots. Any owner that fails to submit an evaluation report or prevention plan by January 1 of each year or fails to place a disabling device on all carts, if applicable, shall be subject to a \$1,000.00 civil penalty, plus an additional penalty of \$50.00 for each day of non-compliance."

Section 5.52.060 (Notification for Retrieval of Abandoned Shopping Carts) will include a new provision, as follows:

"Pursuant to Business and Professions Code Section 22435.7, the City shall notify the owner of any abandoned carts owned or used by the business establishment that have been located within the City of Banning, if the City intends to impound the cart(s) pursuant to Section 22435.7. The owner shall have three (3) days from the date the notification is given, to retrieve the carts from the City."

Section 5.52.070 (Disposition of Shopping Carts After Thirty Days) will include a new provision, as follows:

“According to State Law, any cart not reclaimed from the City within thirty (30) days after notification to the owner shall be sold or otherwise disposed of by the City. Any cart that fails to have the identification required by State Law or this Chapter may be sold or otherwise immediately disposed of at the discretion of the City.”

Section 5.52.080 (Businesses Without Shopping Carts) will include a new provision, as follows:

“A business which does not own, rent, lease, or otherwise possess its own carts, but which receives a benefit by the use of carts owned by other businesses, merchants, grocers, or other similar establishments, shall provide a location upon its premises for the storage of carts and shall immediately contact a cart retrieval service to retrieve any carts that are left on the premises. This section specifically applies to recycling centers.”

ENVIRONMENTAL DETERMINATION:

California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the Community Development Department has analyzed proposed Ordinance No. 1486 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Banning Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Ordinance No. 1486 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Banning Municipal Code do not relate to any one physical project and are not subject to the MSHCP.

PUBLIC COMMUNICATION

The proposed Categorical Exemption and Ordinance was advertised in the Record Gazette newspaper on April 17, 2015 (Attachment 4). As of the date of this report, staff has not received any verbal or written comments for or against the proposal.

FISCAL IMPACT:

There will not be a fiscal impact to the City's General Fund as a result of the recommended action.

CONCLUSION:


The Planning Commission recommends that the City Council adopt Ordinance No. 1486 approving:

1. Categorical Exemption for Ordinance No. 1486; and
2. Ordinance No. 1486.

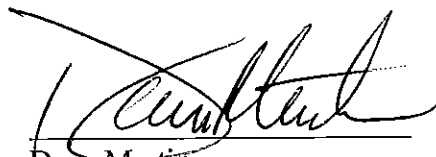
APPROVED BY:


James E. Smith
Interim City Manager

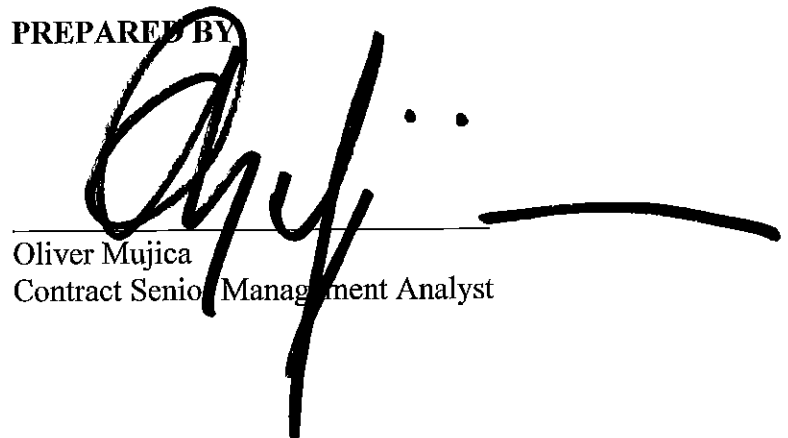
RECOMMENDED BY:


Brian Guillot
Acting Community Development Director

REVIEWED BY:


Dean Martin
Interim Administrative Services Director

PREPARED BY:


Oliver Mujica
Contract Senior Management Analyst

ATTACHMENTS:

1. Ordinance No. 1486
2. Planning Commission Resolution No. 2015-06
3. Chapter 5.52 (Shopping Carts)
4. Public Hearing Notice

ATTACHMENT 1
Ordinance No. 1486

ORDINANCE NO. 1486

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA APPROVING A
CATEGORICAL EXEMPTION AND AMENDING CHAPTER
5.52 (SHOPPING CARTS) OF TITLE 5 (BUSINESS
LICENSES AND REGULATIONS) OF THE BANNING
MUNICIPAL CODE**

WHEREAS, on September 26, 1995, the City Council adopted Resolution No. 11995-150 regulating shopping carts used by local retailers in accordance with Business and Professions Code Section 22435-22435.8; and

WHEREAS, the increasing number of shopping carts abandoned in fields and along roadways does not contribute to a positive view of the City, and this issue counteracts the General Plan Economic Development Element Goal of providing "a balanced, broadly-based economy that provides a full range of economic and employment opportunities, while maintaining high standards of development and environmental protection," and, in particular, the presence of abandoned shopping carts discourages business development and opportunities due to the perceived negative views and implications; and

WHEREAS, on August 6, 2014, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to consider complaints from the community regarding abandoned shopping carts and upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to meet with the businesses and other stakeholders to solicit their comments and concerns regarding this issue and to discuss possible solutions; and

WHEREAS, on September 24, 2014, City staff held a meeting with local retail businesses and other interested parties, and it was recognized by the group that there appears to be adequate ordinances in place, but there is a lack of enforcement to address the issues related to abandoned and stolen shopping carts; and

WHEREAS, on February 4, 2015, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to discuss options for revising the shopping cart regulations that meets the needs of both the community and the economic interests of those involved and to seek direction from the Planning Commission as to how to proceed with in this issue and, upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to prepare an Ordinance to address the issue of abandoned shopping carts within the City; and

WHEREAS, the City Council has authority pursuant to Section 1.04.040 (Amendatory Ordinances) of the City of Banning Municipal Code and California Government Code §50020 to approve, approve with modifications, or disapprove amendments to the Municipal Code; and

WHEREAS, on April 1, 2015, during a duly advertised public hearing, the Planning Commission adopted Resolution No. 2015-06 recommending to the City Council the adoption of Ordinance No. 1486 approving the Categorical Exemption and amending Chapter 5.52 (Shopping Carts) of Title 5 (Business Licenses and Regulations) of the Banning Municipal Code; and

WHEREAS, on the 17th day of April, 2015, the City gave public notice by advertising in the Record Gazette newspaper of the holding of a public hearing at which the Categorical Exemption and Ordinance No. 1486 would be considered; and

WHEREAS, on the 28th day of April, 2015, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to the proposed ordinance, and at which time the City Council considered the Categorical Exemption and Ordinance No. 1486; and

WHEREAS, at this public hearing on the 28th day of April, 2015, the City Council considered and heard public comments on the proposed Categorical Exemption and Ordinance; and

WHEREAS, the City Council has carefully considered all pertinent documents and the staff report offered in this case as presented at the public hearing held on the 28th day of April, 2015.

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

SECTION 1. ENVIRONMENTAL.

California Environmental Quality Act (CEQA)

In accordance with the requirements of the California Environmental Quality Act (CEQA), the City Council has analyzed proposed Ordinance No. 1486 and has determined that it is Categorically Exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines which provides that CEQA only applies to projects that have the potential for causing a significant effect on the environment. *Where, it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment; the activity is not subject to CEQA.* The amendments to the Banning Municipal Code do not relate to any one physical project and will not result in any physical change to the environment. Therefore, it can be seen with certainty that there is no possibility that Ordinance No. 1486 may have a significant adverse effect on the environment, and thus the adoption of this Ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Multiple Species Habitat Conservation Plan (MSHCP)

The amendments to the Banning Municipal Code do not relate to any one physical project and are not subject to the MSHCP.

SECTION 2. CITY COUNCIL ACTION.

The City Council hereby takes the following actions:

1. Banning Municipal Code §5.52.010 is hereby amended adding §5.52.010.C as follows:

“Findings and Purpose. Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the City of Banning. The accumulation of wrecked, dismantled and abandoned shopping carts on public or private property also tends to create conditions that reduce property values, promoting blight and deterioration in the City. The intent of this Chapter is to insure that measures are taken by store owners to prevent the removal of shopping carts from store premises and parking lots, to make the removal of shopping carts a violation of this Code, and to facilitate the retrieval of abandoned carts as permitted by State law. Further, this Chapter is intended to supplement existing State law regarding shopping carts as set forth in California Business & Professions Code, section 22435, et seq.”

2. Banning Municipal Code §5.52.010 is hereby amended adding §5.52.010.D as follows:

“Enforcement of Chapter.

(a) Every cart owned or provided by any business establishment in the City of Banning must have a sign permanently affixed to it that contains the following information:

1) Identifies the owner of the cart or the name of the business establishment, or both;

2) Notifies the public of the procedure to be utilized for authorized removal of the cart from the business premises;

3) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City of Banning law;

4) Lists a telephone number to contact to report the location of the abandoned cart; and

5) Lists an address for returning the cart to the owner or business establishment.

(b) Failure to comply may subject the violator to any civil, criminal, or administrative remedies as provided by law.”

3. Banning Municipal Code §5.52.010 is hereby amended adding §5.52.010.E as follows:

“Prohibiting Removal or Possession of Abandoned Shopping Carts.

(a) It shall be unlawful to either temporarily or permanently remove a cart from the premises or parking area of a business establishment without the express prior written approval of the owner or on-duty manager of the business establishment. Written permission shall be valid for a period not to exceed 72 hours.

(b) It shall be unlawful to be in possession of a cart that has been removed from the premises or parking area of a business establishment unless it is in the process of being immediately returned to the owner or business establishment.

(c) This section shall not apply to carts that are removed for the purposes of repair or maintenance.

(d) Failure to comply may subject the violator of the cart to any civil, criminal, or administrative remedies as provided by law.”

4. Banning Municipal Code §5.52.010 is hereby amended adding §5.52.010.F as follows:

“Mandatory Plan to Prevent Cart Removal/Evaluation Report. Every owner shall develop and implement a specific plan to prevent customers from removing carts from the business premises ("prevention plan"). The prevention plan must include the following elements and a detailed description of how they will be implemented:

(a) Notice to Customers. Written notification shall be provided to customers that removal of carts from the premises and parking lots are prohibited and a violation of state and local law. This notice may be provided in the form of flyers, warnings on shopping bags, or any other form of written notification that will effectively notify customers of the prohibition.

(b) Signs shall be placed in pertinent places near door exits and near parking lot exits that warn customers that cart removal is prohibited and constitute a violation of state and local law.

(c) Specific physical measures shall be implemented to prevent cart removal from the business premises. These measures may include, but are not limited to, disabling devices on all carts, posting of a security guard to deter and stop customers who attempt to remove carts from the business premises, bollards and chains around business premises to prevent cart removal, security deposits

required for use of all carts, or the rental or sale of carts that can be temporarily or permanently used for transport of purchases. As an alternative to implementing specific physical measures, a business shall contract with a cart retrieval service to retrieve carts removed from its premises within a forty eight (48) hour period.

(d) If a prevention plan was in place the previous year, a report shall be submitted to the City evaluating the measures that were used and approved in the prior calendar year. The report shall include, but not be limited to, the inventory of carts owned/used by the business establishment and the number of carts that had to be replaced due to loss, theft or abandonment.”

5. Banning Municipal Code §5.52.010 is hereby amended adding §5.52.010.G as follows:

“Prevention Plan/Evaluation Report Timelines and Approval Process.

(a) Existing Owners. The proposed prevention plan for preventing cart removal shall be submitted for approval to the City Manager or his/her designee within thirty (30) days of receiving notice from the City that such a plan is required pursuant to this Chapter. An evaluation report shall be submitted by January 1 of each year thereafter.

(b) New Businesses and Change in Ownership. If a new business begins conducting business in the City and provides carts to its customers, the new owner shall notify the City Manager or his/her designee within thirty (30) days of opening the business to the public and submit a new prevention plan or contract with a cart retrieval service. If an existing business changes ownership, the new owner shall notify the City Manager or his/her designee within thirty (30) days of the change and submit a new prevention plan, agree to adopt the existing prevention plan on file with the City for that business or contract with a cart retrieval service. An evaluation report shall be submitted by January 1 of each year thereafter.

(c) Approval. Within thirty (30) days of receipt of the prevention plan, the owner shall be notified whether the prevention plan is approved. If the plan is not approved, the notice shall state its reasons and provide recommendations to the owner to ensure plan approval. The owner shall submit a new prevention plan within fifteen (15) days of receiving this notice. Once a prevention plan is approved, the proposed measures shall be implemented by no later than thirty (30) days after City approval is given. If an evaluation report is submitted, the prevention measures shall be continued until and unless the City indicates that a measure(s) needs to be modified. Unless otherwise agreed, any modifications to the plan imposed by the City shall be implemented within thirty (30) days after the City notifies the owner of the needed modifications.

(d) Revocation. If more than sixty (60) carts are retrieved by the City within a six (6) month period, the owner's prevention plan will be revoked upon notification by the City and the owner will be required to submit a new prevention plan to the City Manager. Any owner failing to implement the new prevention plan within thirty (30) days of approval shall be subject to penalties under this Chapter."

6. Banning Municipal Code §5.52.020.A is hereby amended as follows:

~~"On and after the effective date hereof, any shopping cart, as defined herein, may be removed from the public right-of-way or public property of the city by any employee of the City of Banning upon actual or constructive notice to the owner that the shopping cart has been in such right-of-way for a period of twenty-four hours. Any shopping cart so removed shall be taken by the employee to the city yard. Such shopping cart shall remain there until claimed by the owner or the owner's authorized agent. Any cart remaining in the city yard for ninety-one days or more shall be disposed of as lost property. The provisions of this Chapter shall be enforced by any enforcement personnel. To the extent otherwise permitted by law, said enforcement personnel may enter onto any public or private property in the City to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the City of Banning pursuant to any provision of this Chapter may be performed by any enforcement personnel. Any enforcement personnel are authorized to issue an administrative citation upon any owner whom they have reasonable cause to believe has violated any provision of this Chapter."~~

7. Banning Municipal Code §5.52.040 is hereby added as follows:

"Administrative Costs and Fines. Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) days of receiving actual notice from the City, shall pay the City's administrative costs for retrieving the cart(s) and providing the notification to the owner as may be established by resolution of the City Council. Any owner who fails to retrieve abandoned carts in accordance with this Chapter in excess of three times during a specified six month period, shall be subject to a \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the City in a one-day period."

8. Banning Municipal Code §5.52.050 is hereby added as follows:

“Penalties for Failing to Submit a Prevention Plan or Evaluation Report or to Implement Prevention Measures. Any owner that fails to submit a prevention plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in this Chapter shall be required to place disabling devices on all carts owned/leased/used by the business to prevent removal of carts from the business premises and parking lots. Any owner that fails to submit an evaluation report or prevention plan by January 1 of each year or fails to place a disabling device on all carts, if applicable, shall be subject to a \$1,000.00 civil penalty, plus an additional penalty of \$50.00 for each day of non-compliance.”

9. Banning Municipal Code §5.52.060 is hereby added as follows:

“Notification for Retrieval of Abandoned Shopping Carts. Pursuant to Business and Professions Code Section 22435.7, the City shall notify the owner of any abandoned carts owned or used by the business establishment that have been located within the City of Banning, if the City intends to impound the cart(s) pursuant to Section 22435.7. The owner shall have three (3) days from the date the notification is given, to retrieve the carts from the City.”

10. Banning Municipal Code §5.52.070 is hereby added as follows:

“Disposition of Shopping Carts After Thirty Days. According to State Law, any cart not reclaimed from the City within thirty (30) days after notification to the owner shall be sold or otherwise disposed of by the City. Any cart that fails to have the identification required by State Law or this Chapter may be sold or otherwise immediately disposed of at the discretion of the City.”

11. Banning Municipal Code §5.52.080 is hereby added as follows:

“Businesses Without Shopping Carts. A business which does not own, rent, lease, or otherwise possess its own carts, but which receives a benefit by the use of carts owned by other businesses, merchants, grocers, or other similar establishments, shall provide a location upon its premises for the storage of carts and shall immediately contact a cart retrieval service to retrieve any carts that are left on the premises. This section specifically applies to recycling centers.”

SECTION 3. SEVERABILITY.

If any section, subsection, sentence, clause, or portion of this ordinance is, for any reason, held to be invalid or unconstitutional by a decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this ordinance. The City Council of the City of Banning hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, phrase or portion thereof, irrespective of the fact that any one or more sections, subsections sentences, clauses, phrases, or portions thereof may be declared invalid or unconstitutional.

SECTION 4. PUBLICATION; EFFECTIVE DATE.

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

PASSED, APPROVED, AND ADOPTED this ____ day of _____, 2015.

Deborah Franklin, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk
City of Banning, California

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1486 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the _____ day of _____ 2015, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2015, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning, California

ATTACHMENT 2
Planning Commission Resolution No. 2015-06

RESOLUTION NO. 2015-06

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA RECOMMENDING APPROVAL TO THE CITY COUNCIL OF ORDINANCE NO. 1486 TO REPEAL THE EXISTING PROVISIONS OF CHAPTER 5.52 (SHOPPING CARTS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE BANNING MUNICIPAL CODE AND APPROVING NEW PROVISIONS FOR CHAPTER 5.52 (SHOPPING CARTS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE BANNING MUNICIPAL CODE

WHEREAS, on September 26, 1995, the City Council adopted Resolution No. 11995-150 regulating shopping carts used by local retailers in accordance with Business and Professions Code Section 22435-22435.8; and

WHEREAS, on August 6, 2014, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to consider complaints from the community regarding abandoned shopping carts and upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to meet with the businesses and other stakeholders to solicit their comments and concerns regarding this issue and to discuss possible solutions; and

WHEREAS, on September 24, 2014, City staff held a meeting with local retail businesses and other interested parties, and it was recognized by the group that there appears to be adequate ordinances in place, but there is a lack of enforcement to address the issues related to abandoned and stolen shopping carts; and

WHEREAS, on February 4, 2014, during a regularly scheduled meeting, the Planning Commission conducted a Study Session to discuss options for revising the shopping cart regulations that meets the needs of both the community and the economic interests of those involved and to seek direction from the Planning Commission as to how to proceed with in this issue and, upon the conclusion of the Study Session, the Planning Commission provided direction to City staff to prepare an Ordinance to address the issue of abandoned shopping carts within the City; and

WHEREAS, on March 20, 2015, the City gave public notice by advertisement in the Record Gazette newspaper of a public hearing concerning proposed Ordinance No. 1486; and

WHEREAS, Ordinance No. 1486 proposes to amend Section 5.52.010 (Identification of Shopping Carts) to include new provisions, as follows:

"A. Findings and Purpose.

Abandoned shopping carts constitute a nuisance, create potential hazards to the health and safety of the public, and interfere with pedestrian and vehicular traffic within the City of Banning. The accumulation of wrecked, dismantled and

abandoned shopping carts on public or private property also tends to create conditions that reduce property values, promoting blight and deterioration in the City. The intent of this Chapter is to insure that measures are taken by store owners to prevent the removal of shopping carts from store premises and parking lots, to make the removal of shopping carts a violation of this Code, and to facilitate the retrieval of abandoned carts as permitted by State law. Further, this Chapter is intended to supplement existing State law regarding shopping carts as set forth in California Business & Professions Code, section 22435, et seq."

"B. Enforcement of Chapter.

(a) Every cart owned or provided by any business establishment in the City of Banning must have a sign permanently affixed to it that contains the following information:

- 1) Identifies the owner of the cart or the name of the business establishment, or both;*
- 2) Notifies the public of the procedure to be utilized for authorized removal of the cart from the business premises;*
- 3) Notifies the public that the unauthorized removal of the cart from the premises or parking area of the business establishment is a violation of State and City of Banning law;*
- 4) Lists a telephone number to contact to report the location of the abandoned cart; and*
- 5) Lists an address for returning the cart to the owner or business establishment.*

(b) Failure to comply may subject the violator to any civil, criminal, or administrative remedies as provided by law."

"C. Prohibiting Removal or Possession of Abandoned Cart.

(a) It shall be unlawful to either temporarily or permanently remove a cart from the premises or parking area of a business establishment without the express prior written approval of the owner or on-duty manager of the business establishment. Written permission shall be valid for a period not to exceed 72 hours.

(b) It shall be unlawful to be in possession of a cart that has been removed from the premises or parking area of a business establishment unless it is in the process of being immediately returned to the owner or business establishment.

(c) *This section shall not apply to carts that are removed for the purposes of repair or maintenance.*

(d) *Failure to comply may subject the violator of the cart to any civil, criminal, or administrative remedies as provided by law."*

"D. Mandatory Plan to Prevent Cart Removal/Evaluation Report.

Every owner shall develop and implement a specific plan to prevent customers from removing carts from the business premises ("prevention plan"). The prevention plan must include the following elements and a detailed description of how they will be implemented:

(a) *Notice to Customers. Written notification shall be provided to customers that removal of carts from the premises and parking lots are prohibited and a violation of state and local law. This notice may be provided in the form of flyers, warnings on shopping bags, or any other form of written notification that will effectively notify customers of the prohibition.*

(b) *Signs shall be placed in pertinent places near door exits and near parking lot exits that warn customers that cart removal is prohibited and constitute a violation of state and local law.*

(c) *Specific physical measures shall be implemented to prevent cart removal from the business premises. These measures may include, but are not limited to, disabling devices on all carts, posting of a security guard to deter and stop customers who attempt to remove carts from the business premises, bollards and chains around business premises to prevent cart removal, security deposits required for use of all carts, or the rental or sale of carts that can be temporarily or permanently used for transport of purchases. As an alternative to implementing specific physical measures, a business shall contract with a cart retrieval service to retrieve carts removed from its business premises within a forty eight (48) hour period.*

(d) *If a prevention plan was in place the previous year, a report shall be submitted to the City evaluating the measures that were used and approved in the prior calendar year. The report shall include, but not be limited to, the inventory of carts owned/used by the business establishment and the number of carts that had to be replaced due to loss, theft or abandonment."*

"E. Prevention Plan/Evaluation Report Timelines and Approval Process.

(a) *Existing Owners. The proposed prevention plan for preventing cart removal shall be submitted for approval to the City Manager or his/her designee*

within thirty (30) days of receiving notice from the City that such a plan is required pursuant to this Chapter. An evaluation report shall be submitted by January 1 of each year thereafter.

(b) New Businesses and Change in Ownership. If a new business begins conducting business in the City and provides carts to its customers, the new owner shall notify the City Manager or his/her designee within thirty (30) days of opening the business to the public and submit a new prevention plan or contract with a cart retrieval service. If an existing business changes ownership, the new owner shall notify the City Manager or his/her designee within thirty (30) days of the change and submit a new prevention plan, agree to adopt the existing prevention plan on file with the City for that business or contract with a cart retrieval service. An evaluation report shall be submitted by January 1 of each year thereafter.

(c) Approval. Within thirty (30) days of receipt of the prevention plan, the owner shall be notified whether the prevention plan is approved. If the plan is not approved, the notice shall state its reasons and provide recommendations to the owner to ensure plan approval. The owner shall submit a new prevention plan within fifteen (15) days of receiving this notice. Once a prevention plan is approved, the proposed measures shall be implemented by no later than thirty (30) days after City approval is given. If an evaluation report is submitted, the prevention measures shall be continued until and unless the City indicates that a measure(s) needs to be modified. Unless otherwise agreed, any modifications to the plan imposed by the City shall be implemented within thirty (30) days after the City notifies the owner of the needed modifications.

(d) Revocation. If more than sixty (60) carts are retrieved by the City within a six (6) month period, the owner's prevention plan will be revoked upon notification by the City and the owner will be required to submit a new prevention plan to the City Manager. Any owner failing to implement the new prevention plan within thirty (30) days of approval shall be subject to penalties under this Chapter."

WHEREAS, Ordinance No. 1486 proposes to amend Section 5.52.020 (Recovery of Shopping Carts by City Forces), as follows:

"A. ~~On and after the effective date hereof, any shopping cart, as defined herein, may be removed from the public right of way or public property of the city by any employee of the City of Banning upon actual or constructive notice to the owner that the shopping cart has been in such right of way for a period of twenty-four hours. Any shopping cart so removed shall be taken by the employee to the city yard. Such shopping cart shall remain there until claimed by the owner or the owner's authorized agent. Any cart remaining in the city yard for ninety-one days~~

~~or more shall be disposed of as lost property. The provisions of this Chapter shall be enforced by any enforcement personnel.~~ To the extent otherwise permitted by law, said enforcement personnel may enter onto any public or private property in the City to retrieve, remove, store, and dispose of any lost, stolen, or abandoned shopping cart, or any part thereof. Any act authorized to be performed by the City of Banning pursuant to any provision of this Chapter may be performed by any enforcement personnel. Any enforcement personnel are authorized to issue an administrative citation upon any owner whom they have reasonable cause to believe has violated any provision of this Chapter."

WHEREAS, Ordinance No. 1486 proposes to include a new Section 5.52.040 (Administrative Costs and Fines), as follows:

"Pursuant to Business and Professions Code Section 22435.7, any owner that fails to retrieve its abandoned cart(s) within three (3) days of receiving actual notice from the City, shall pay the City's administrative costs for retrieving the cart(s) and providing the notification to the owner as may be established by resolution of the City Council. Any owner who fails to retrieve abandoned carts in accordance with this Chapter in excess of three times during a specified six month period, shall be subject to a \$50.00 fine for each occurrence. An occurrence includes all carts owned by the owner that are impounded by the City in a one-day period."

WHEREAS, Ordinance No. 1486 proposes to include a new Section 5.52.050 (Penalties for Failing to Submit a Prevention or Evaluation Report or to Implement Prevention Measures), as follows:

"Any owner that fails to submit a prevention plan, implement the proposed plan measures, or implement any required modifications to the plan by the City within the time frames specified in this Chapter shall be required to place disabling devices on all carts owned/leased/used by the business to prevent removal of carts from the business premises and parking lots. Any owner that fails to submit an evaluation report or prevention plan by January 1 of each year or fails to place a disabling device on all carts, if applicable, shall be subject to a \$1,000.00 civil penalty, plus an additional penalty of \$50.00 for each day of non-compliance."

WHEREAS, Ordinance No. 1486 proposes to include a new Section 5.52.060 (Notification for Retrieval of Abandoned Shopping Carts), as follows:

"Pursuant to Business and Professions Code Section 22435.7, the City shall notify the owner of any abandoned carts owned or used by the business establishment that have been located within the City of Banning, if the City intends to impound the cart(s) pursuant to Section 22435.7. The owner shall have three (3) days from the date the notification is given, to retrieve the carts from the City."

WHEREAS, Ordinance No. 1486 proposes to include a new Section 5.52.070 (Disposition of Shopping Carts After Thirty Days), as follows:

"According to State Law, any cart not reclaimed from the City within thirty (30) days after notification to the owner shall be sold or otherwise disposed of by the City. Any cart that fails to have the identification required by State Law or this Chapter may be sold or otherwise immediately disposed of at the discretion of the City."

WHEREAS, Ordinance No. 1486 proposes to include a new Section 5.52.080 (Businesses Without Shopping Carts), as follows:

"A business which does not own, rent, lease, or otherwise possess its own carts, but which receives a benefit by the use of carts owned by other businesses, merchants, grocers, or other similar establishments, shall provide a location upon its premises for the storage of carts and shall immediately contact a cart retrieval service to retrieve any carts that are left on the premises. This section specifically applies to recycling centers."

WHEREAS, on April 1, 2015, the Planning Commission held the noticed public hearing at which time interested persons had an opportunity to testify in support of, or opposition to, the proposed ordinance and at which the Planning Commission considered Ordinance No. 1486.

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

SECTION 1. PLANNING COMMISSION ACTION.

The Planning Commission hereby takes the following action:

Adoption of Planning Commission Resolution No. 2015-06:

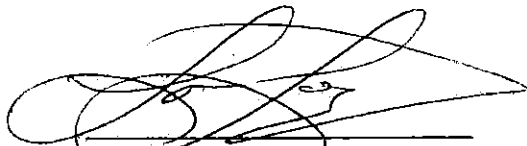
1. Recommending to the City Council the adoption of Ordinance No. 1486.

PASSED, APPROVED AND ADOPTED this 1st day of April 2015.



Kevin Siva, Chairman
Banning Planning Commission

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



Lona N. Laymon
Aleshire & Wynder, LLP
Assistant City Attorney
City of Banning, California

ATTEST:



Sandra Calderon, Recording Secretary
City of Banning, California

CERTIFICATION:

I, Sandra Calderon, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2015-06, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 1st day of April 2015, by the following vote, to wit:

AYES: *Siva, Briant, Ellis, Price, Shaw*

NOES: - 0 -

ABSENT: - 0 -

ABSTAIN: - 0 -

Sandra Calderon

Sandra Calderon, Recording Secretary
City of Banning, California

ATTACHMENT 3
Chapter 5.52 (Shopping Carts)

Chapter 5.52 - SHOPPING CARTS

Sections:

5.52.010 - Identification of shopping carts.

- A. On and after the effective date of this section each owner of a retail establishment providing three or more shopping carts for use by the patrons of the retail establishment, and the manager or person in charge of any retail establishment which provides three or more shopping carts for use by the patrons of the retail establishment, shall permanently affix to all shopping carts under the ownership and control of such owner, manager or person in charge the notification required under California Business and Professions Code Section 22435.1 to facilitate the enforcement of the provisions of California Business and Professions Code Section 22435 et seq.
- B. The applicable provisions of California Business and Professions Code Section 22435 et seq. are as follows:

§ Sec. 22435 Definitions

As used in this chapter:

(a) "Shopping cart" means a basket which is mounted on wheels or a similar device generally used in a retail establishment by a customer for the purpose of transporting goods of any kind.

(b) (Omitted)

(c) "Parking area" means a parking lot or other property provided by a retailer for use by a customer for parking an automobile or other vehicle.

§ 22435.1 Application; permanently affixed sign required; contents

The provisions of Section 22435.2 shall apply when a shopping cart...has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both; notifies the public of the procedure to be utilized for authorized removal of the cart from the premises; notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is a violation of state law; and lists a telephone number or address for returning the cart removed from the premises or parking area to the owner or retailer.

§ 22435.2 Unlawful acts

It is unlawful to do any of the following acts if a shopping cart... has a permanently affixed sign as provided in Section 22435.1:

(a) To remove a shopping cart from the premises or parking area of a retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(b) To be in possession of any shopping cart that has been removed from the premises or the parking area of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

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(c) To be in possession of any shopping cart with serial numbers removed, obliterated, or altered, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(d) To leave or abandon a shopping cart at a location other than the premises or parking area of the retail establishment with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(e) To alter, convert, or tamper with a shopping cart, or to remove any part or portion thereof or to remove, obliterate or alter serial numbers on a cart, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

(f) To be in possession of any shopping cart while that cart is not located on the premises or parking lot of a retail establishment, with the intent to temporarily or permanently deprive the owner or retailer of possession of the cart.

§ 22435.3 Violations; misdemeanor; application of other laws

Any person who violates any of the provisions of this chapter is guilty of a misdemeanor. The provisions of this section are not intended to preclude the application of any other laws relating to prosecution for theft.

§ 22435.4 Consent from owner

This chapter shall not apply to the owner of a shopping cart, or to a retailer, or to their agents or employees, or to a customer of a retail establishment who has written consent from the owner of a shopping cart or laundry cart or a retailer to be in possession of the shopping cart or laundry cart or to remove the shopping cart or laundry cart from the premises or the parking area of the retail establishment, or to do any of the acts specified in Section 22435.2.

§ 22435.5 Presumption and interference; ownership of carts

(a) (Omitted)

(b) In any criminal proceeding, it may be inferred that any shopping cart which has a sign affixed to it pursuant to Section 22435.1 is the property of the person or business named in the sign and has not been abandoned by the person or business named in the sign.

(Code 1965, § 11C-60.)

5.52.020 - Recovery of shopping carts by city forces.

- A. On and after the effective date hereof, any shopping cart, as defined herein, may be removed from the public right-of-way or public property of the city by any employee of the City of Banning upon actual or constructive notice to the owner that the shopping cart has been in such right-of-way for a period of twenty-four hours. Any shopping cart so removed shall be taken by the employee to the city yard. Such shopping cart shall remain there until claimed by the owner or the owner's authorized agent. Any cart remaining in the city yard for ninety-one days or more shall be disposed of as lost property.
- B. Before return of the shopping cart to the owner or the owner's agent, such person shall pay to the City of Banning a fee for the recovery and storage of each such shopping cart. The fee shall be in an amount set by resolution of the city council.

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(Code 1965, § 11C-62.)

5.52.030 - Penalty.

Any owner of a retail establishment providing three or more shopping carts for use by the patrons of the retail establishment, and each manager or person in charge of any retail establishment which provides three or more shopping carts for use by the patrons of the retail establishment, who does not affix and maintain on each shopping cart under their ownership and control the notification specified in California Business and Professions Code Section 22435.1 as set forth herein or as it may be subsequently amended, shall be guilty of a violation hereof. The punishment for such violation shall be as follows:

- A. A first violation shall constitute an infraction punishable by a fine not to exceed fifty dollars.
- B. A second violation shall constitute an infraction punishable by a fine not to exceed one hundred dollars.
- C. A third violation shall constitute an infraction punishable by a fine not to exceed two hundred fifty dollars.
- D. A fourth violation shall constitute a misdemeanor punishable by a fine, not to exceed one thousand dollars or six months in jail or both.
- E. Each day that each shopping cart shall remain without the notice described in Section 5.52.010 shall constitute a separate violation.

(Code 1965, § 11C-61.)

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ATTACHMENT 4
Public Hearing Notice

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

117036 - ORDINANCE NO. 1486

State of California)
County of Riverside) ss.

I am a citizen of the United States and a resident of the State of California; I am over the age of eighteen years, and not a party to or interested in the above matter. I am the principal clerk of the printer and publisher of Record Gazette, a newspaper published in the English language in the City of Banning, County of Riverside, and adjudicated a newspaper of general circulation as defined by the laws of the state of California by the Superior Court of the County of Riverside, under the date October 14, 1966, Case No. 54737. That the notice, of which the annexed is a copy, has been published in each regular and entire issue of said newspaper and not in any supplement thereof on the following dates, to-wit:

April 17, 2015

Executed on: 04/17/2015

At Banning, CA

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


Signature

NOTICE OF
PUBLIC HEARING
PURSUANT TO LAW, NOTICE IS HEREBY GIVEN of a Public Hearing before the City Council of the City of Banning, to be held on Tuesday, April 28, 2015, at 5:00 p.m. in the Council Chambers, City Hall, 99 East Ramsey Street, Banning, California, to consider the following: ORDINANCE NO. 1486: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING A CATEGORICAL EXEMPTION AND AMENDING CHAPTER 5.52 (SHOPPING CARTS) OF TITLE 5 (BUSINESS LICENSES AND REGULATIONS) OF THE BANNING MUNICIPAL CODE. Information regarding this matter can be obtained by contacting the City's Community Development Department at (951) 922-3125, or by visiting City Hall located at 99 East Ramsey Street, Banning. All parties interested in speaking either in support of or in opposition of this item are invited to attend said hearing, or to send their written comments to the Community Development Department of the City of Banning at P.O. Box 998, Banning, California, 92220. If you challenge any decision regarding the above proposal in court, you may be limited to raising only those issues you or someone else raised in written correspondence delivered to the Acting Community Development Director at, or prior to, the time the City Council makes its decision on the proposal; or, you or someone else raised at the public hearing or in written correspondence delivered to the hearing body at, or prior to, the hearing (California Government Code, Section 65009). BY ORDER OF THE ACTING COMMUNITY DEVELOPMENT DIRECTOR OF THE CITY OF BANNING, CALIFORNIA
Brian Guillot
Acting Community Development Director
Dated: April 14, 2015 Published: April 17, 2015
Published in
The Record Gazette
No. 117036
04/17, 2015

CITY COUNCIL AGENDA

DATE: April 28, 2015

TO: Honorable Mayor and City Council

FROM: Fred Mason, Electric Utility Director

SUBJECT: Resolution 2015-33, Approving the "Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Canyon Project Implementation Agreement"

RECOMMENDATION: Adopt Resolution No. 2015-33, approving the Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Canyon Project Implementation Agreement ("Agreement") included herewith as Attachment "A".

BACKGROUND: The City of Banning was one of fourteen entities ("Contractors") that executed the Boulder Canyon Project Electric Service Contract with the United States Department of Energy Western Area Power Administration ("Western") effective January 1, 1987 through September 30, 2017. This was the contract that allowed us to participate in the Hoover Dam Generation Project.

The contract established procedures for various financial audits of the books, records and financial statements of the Boulder Canyon Project ("Project"). An initial audit was completed in December 1995. The Implementation Agreement provides a process for the Contractors to hire an independent auditor to perform a Joint Audit prior to the closeout of the Electric Service Contracts on September 30, 2017. The Contractors have determined that the Southern California Public Power Authority ("SCPPA") should serve as the entity ("Contracting Party") responsible for contracting with an auditor to perform the Joint Audit. The attached Agreement details the responsibilities of the Contracting Party and its relationship to the Contractors.

All Contractors agreed to the Implementation Agreement Resolution #15-11, which is included in the Agreement as Exhibit A, and approved payment of the costs of a Joint Audit from the funds included in the Prior Year Carryover balance. It was agreed that each Contractor's share of the audit costs would be in proportion to that Contractor's Project percentage. Banning's Project percentage is 0.0733 percent. The amount authorized for the Joint Audit, per the Agreement, is \$1,500,000.00. Therefore, Banning's proportional share would be \$1,099.50, which has already been collected through the Project billing process.

The attached Agreement is intended to explicitly define and establish the procedures to be followed by the Contractors to perform an independent Joint Audit of the Project and to

explicitly define and establish the understandings among each of the Contractors as it relates to the responsibilities and obligations of the Contractors in relation to the performance of the independent Joint Audit of the Project. Staff recommends approval of Resolution No. 2015-33.

FISCAL DATA: Banning's share of the total Joint Audit cost is \$1,099.50, which has already been collected through the Project billing process.

RECOMMENDED BY:



Fred Mason
Electric Utility Director

APPROVED BY:



James Smith
Interim City Manager

REVIEWED BY:



Dean Martin
Interim Administrative Services Director

RESOLUTION NO 2015-33

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING THE "AGREEMENT RELATING TO THE JOINT AUDIT AMONG THE BOULDER CANYON PROJECT CONTRACTORS AND THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY PURSUANT TO THE BOULDER CANYON PROJECT ELECTRIC SERVICE CONTRACT AND THE BOULDER CANYON PROJECT IMPLEMENTATION AGREEMENT"

WHEREAS, the City of Banning was one of fourteen entities ("Contractors") that executed the Boulder Canyon Project Electric Service Contract with the United States Department of Energy Western Area Power Administration ("Western") effective January 1, 1987 through September 30, 2017; and

WHEREAS, the Contractors, as allowed, wish to conduct a Joint Audit prior to the closeout of the Electric Service Contracts on September 30, 2017; and

WHEREAS, the "Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Canyon Project Implementation Agreement" included herewith as Attachment "A", details the procedures to be followed as it relates to conducting the Joint Audit, as well as the responsibilities and obligations of the Contractors; and

WHEREAS, the City's proportional share of the Joint Audit cost is \$1,099.50, and has already been collected through the Project billing process;

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

SECTION 1. Adopt Resolution No. 2015-33, approving the "Agreement Relating to the Joint Audit Among the Boulder Canyon Project Contractors and the Southern California Public Power Authority Pursuant to the Boulder Canyon Project Electric Service Contract and the Boulder Canyon Project Implementation Agreement".

SECTION 2. Authorize the Interim City Manager, or his designee, to execute and administer all necessary documents related to said Agreement.

PASSED, APPROVED AND ADOPTED this 28th day of April, 2015.

Deborah Franklin, Mayor
City of Banning

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

David J. Aleshire, City Attorney
Aleshire & Wynder, LLP

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2015-33 was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 28th day of April, 2015, by the following vote, to wit:

AYES:

NOES:

ABSTAIN:

ABSENT:

Marie A. Calderon, City Clerk
City of Banning, California

Attachment “A”

AGREEMENT RELATING TO THE JOINT AUDIT
AMONG THE BOULDER CANYON PROJECT CONTRACTORS
AND
THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY
PURSUANT TO THE
BOULDER CANYON PROJECT ELECTRIC SERVICE CONTRACT
AND THE
BOULDER CANYON PROJECT IMPLEMENTATION AGREEMENT

AGREEMENT RELATING TO THE JOINT AUDIT
AMONG THE BOULDER CANYON PROJECT CONTRACTORS
AND
THE SOUTHERN CALIFORNIA PUBLIC POWER AUTHORITY

PURSUANT TO THE
BOULDER CANYON PROJECT ELECTRIC SERVICE CONTRACT
AND THE
BOULDER CANYON PROJECT IMPLEMENTATION AGREEMENT

1. THIS JOINT AUDIT AGREEMENT (this "Agreement") is entered into this _____ day of _____, 2015 by and between the Boulder Canyon Project Contractors, namely the Arizona Power Authority, the City of Boulder City, Nevada, the Colorado River Commission of Nevada, the Department of Water and Power of the City of Los Angeles, the Metropolitan Water District of Southern California, Southern California Edison Company, the City of Anaheim, California, the City of Azusa, California, the City of Banning, California, the City of Burbank, California, the City of Colton, California, the City of Glendale, California, the City of Pasadena, California, the City of Riverside, California, and the City of Vernon, California, hereinafter collectively referred to as the ("Contractors" and individually as "Contractor"), and the Southern California Public Power Authority ("SCPPA" or "the Contracting Party").

RECITALS

2. This Agreement is made with reference to the following facts, among others:
- (a) Each Contractor executed individual Boulder Canyon Project Electric Service Contracts with the United States Department of Energy Western Area Power Administration ("Western"), with concurrence of the United States Bureau of Reclamation ("Reclamation"), hereinafter referred to as (the "Electric Service Contract") effective January 1, 1987 through September 30, 2017.
 - (b) Reclamation, Western and all Contractors entered into a Boulder Canyon Project Implementation Agreement effective February 17, 1995, hereinafter referred to as the (the "Implementation Agreement").
 - (c) Section 17 of each Electric Service Contract provides that the authorized representatives of each party shall have access for any purpose to applicable portions of all books and records of the other Contractors, Reclamation, and Western relating to transactions associated with the Electric Service Contract.
 - (d) Section 15 of the Implementation Agreement establishes procedures for various financial audits of the books, records and financial statements of the Boulder Canyon Project,

hereinafter referred to as (the "Project"). An Initial Audit, as required in Section 15.2 of the Implementation Agreement, was completed in December 1995.

- (e) Section 15.4 of the Implementation Agreement, provides a process for the Contractors to hire an independent auditor to perform a ("Joint Audit"), as defined in the Implementation Agreement, prior to the close-out of the Electric Service Contracts.
- (f) The Contractors have determined that SCPPA, as the Contracting Party, should serve as the entity responsible for contracting with an auditor for the performance of the Joint Audit.
- (g) This Agreement details the responsibilities of the Contracting Party and its relationship to the Contractors.
- (h) Reclamation, Western, and all Contractors agreed to the Implementation Agreement Resolution #15-11¹(the "Resolution"), attached hereto as Exhibit A, which approved payment of the costs of a Joint Audit from the funds included in the Prior Year Carryover balance which were revenues surplus to the Project's prior year expenses, and that each Contractor's share of the audit costs would be in proportion to that Contractor's Project percentage indicated in Appendix G of the Implementation Agreement. The funds will be transferred to SCPPA to be used for payment of costs associated with the Joint Audit.
- (i) The Contractors have established an audit subcommittee (the "Audit Subcommittee") to make decisions relating to the Joint Audit, and this Agreement further details the responsibilities of the Audit Subcommittee.
- (j) This Agreement is intended to explicitly define and establish the procedures to be followed by the Contractors to perform an independent Joint Audit of the Project and to explicitly define and establish the understandings among each of the Contractors as it relates to the responsibilities and obligations of the Contractors in relation to the performance of the independent Joint Audit of the Project.

CONTRACTING PARTY RESPONSIBILITIES

- 3. The Contractors hereby designate SCPPA and SCPPA agrees to serve as the Contracting Party for the Joint Audit.
 - (a) The Contracting Party in consultation with the Audit Subcommittee, following receipt of payment from Reclamation under Section 5 of this Agreement, shall enter into a contract for professional auditing services with an independent auditor (the "Audit Contract") selected pursuant to this Agreement ("Independent Auditor") to perform the Joint Audit.
 - (b) The Contracting Party shall not assume any liability under the Audit Contract on behalf of any of the other Contractors, except as specified herein.
 - (c) The Contracting Party shall distribute to the Audit Subcommittee copies of all correspondence, documents, reports and data received by the Contracting Party from the Independent Auditor pertaining to the Joint Audit, as requested by each member of the Audit Subcommittee.

¹ "Adoption of Resolution to Reduce the Prior Year Carryover Balance by, and Application of the Resulting Funds Toward a Joint Audit of the Boulder Canyon Project"

- (d) The Contracting Party shall maintain a ("Master File"), which shall contain documents received or exchanged pursuant to the Audit Contract with the Independent Auditor. Contracting Party shall make the content of the Master file available to all Contractors after completion of the work under the Audit Contract and thereafter shall have no further obligation to maintain the Master File.
- (e) The Contracting Party shall provide express provisions in the Audit Contract to limit any payment obligation to the Independent Auditor to the lower of an amount agreed to by the Audit Subcommittee or \$1.5 million.
- (f) Following review and approval of invoices by the Audit Subcommittee, the Contracting Party shall make invoice payments to the Independent Auditor with funds received from Reclamation.
- (g) Once all payment obligations to the Independent Auditor under the Audit Contract and all payment obligations under this agreement have been satisfied, the Contracting Party shall return to the Contractors, based on their Project percentages indicated in Appendix G of the Implementation Agreement, any funds remaining after (i) determination of the Contractors that no Joint Audit will be performed, (ii) completion of a partial audit in lieu of the Joint Audit, or (iii) completion of the Joint Audit.

AUDIT SUBCOMMITTEE RESPONSIBILITIES

4. An Audit Subcommittee is hereby established by the Engineering and Operating Committee of the Contractors ("E&OC"), for the purpose of carrying out and ensuring the timely completion of the Contractors' responsibilities under Section 15.4 of the Implementation Agreement (the "Audit Subcommittee").
 - (a) The Audit Subcommittee shall consist of five members, comprised of two members who represent Contractors in the State of California, one member who represents the Contractors in the State of Arizona, one member who represents the Contractors in the State of Nevada, and one member who represents Reclamation and Western (each, an "Audit Subcommittee Member"). The Audit Subcommittee Members, and their alternates, are listed in Exhibit B attached hereto and made a part hereof. The Contractors in each state may replace their Audit Subcommittee Member through written notice of the change to all members of the Audit Subcommittee. The Audit Subcommittee will cause to be issued and delivered to all Contractors and the Contracting Party a new Exhibit B including the names of the new member and alternate.
 - (b) Unanimous consent or approval by all Audit Subcommittee Members present during a meeting of the Audit Subcommittee (in person or by telephone conference) shall be required on any matter coming before the Audit Subcommittee which falls within the authority of the Audit Subcommittee, as defined herein, except that all five Audit Subcommittee Members must unanimously approve decisions regarding the subject matter of Subsection 4(e) and 4(f) hereof.
 - (c) The Contractors acknowledge that the following documents have been developed and reviewed by all the Contractors:
 - (i) The "Request for Proposals for Las Vegas Area Audit Services,"

- (ii) The "Boulder Canyon Project Joint Audit Proposal Evaluation Tool," and
- (iii) The "List of Audit Firms to be Considered for RFP Purposes."
- (d) The Audit Subcommittee shall select an Independent Auditor for the Joint Audit and shall forward the name of the selected Independent Auditor to all Contractors and to the Contracting Party.
- (e) If, subsequent to the execution of the Audit Contract between the Contracting Party and the Independent Auditor, the Audit Subcommittee proposes to change the amount due and payable, the scope of services or deliverables, or the work schedule set forth in the Audit Contract, or make any other material change to the Audit Contract, implementation of such a recommendation will require an amendment to the Audit Contract approved by the Audit Subcommittee Members, provided such approval may not increase the amount specified in the Resolution.
- (f) The Audit Subcommittee Members, their alternates or designees, shall review and approve monthly invoices of the Independent Auditor, and shall forward the approved invoices to the Contracting Party in sufficient time to allow for timely payment. All invoices must be approved and forwarded or otherwise appropriately disputed by no later than ten full working days prior to due date as provided in the Audit Contract.
- (g) The Audit Subcommittee shall review the work product and deliverables of the Independent Auditor and shall provide direction to the Contracting Party regarding the acceptability of such work product and deliverables.
- (h) The work product of this Audit is for the exclusive use of the Contractors, Reclamation, Western and the Contracting Party (for the benefit of its members who are also Contractors) and shall not be used for any other purpose, except with the prior written approval of the Audit Subcommittee.
- (i) The Audit Subcommittee Members shall elect a Chair who will establish dates and times for meetings of the Audit Subcommittee (including telephone conferences), notify all Audit Subcommittee representatives of such meetings, call meetings of the Audit Subcommittee to order and close, arrange for recording of minutes for Audit Subcommittee meetings, set forth all decisions of the Audit Subcommittee in writing, and distribute all such written decisions to the Audit Subcommittee Members, all Contractors and to Contracting Party, as appropriate.
- (j) The Audit Subcommittee shall not allow the Independent Auditor to continue to perform work beyond that which can be paid for with available funds.

CONTRACTOR OBLIGATIONS

5. Section 15.4 of the Implementation Agreement establishes procedures for the Contractors to conduct an independent Joint Audit of the Project and lists a mechanism used in the Initial Audit for each Contractor to pay for its proportionate share of the Joint Audit as defined by Section 15.2.3 and Appendix G of the Implementation Agreement. In fulfillment of that payment mechanism, each Contractor hereby agrees to direct Reclamation to transfer the amount of \$1.5

million to the Contracting Party, as provided for in the Resolution, who will in turn use it to pay the amounts due to the Independent Auditor.

- (a) Each Contractor shall be individually responsible for its own covenants, obligations, and liabilities as herein provided. The Contractors agree that any dispute which arises between the Independent Auditor and the Contracting Party shall be managed through the Audit Subcommittee in consultation with the Contracting Party. The Audit Subcommittee shall advise and provide the Contracting Party with appropriate direction in managing any dispute with the Independent Auditor, provided any Audit Subcommittee decisions in managing any dispute shall require the prior written consent of the Contracting Party.
- (b) Each Contractor hereby agrees that the Contracting Party shall have no liability to any Contractor and Contractors agree to release the Contracting Party from any liability whatsoever, except liability that may arise solely from the gross negligence or intentional misconduct of the Contracting Party associated with the Contracting Party's responsibility to process payments to the Independent Auditor pursuant to an invoice by the Independent Auditor after review and approval by the Audit Subcommittee.
- (c) Each Contractor agrees that the Contracting Party may submit billings to the Audit Subcommittee for reimbursement of out-of-pocket expenses related to the administration of this Audit.
- (d) Each Contractor agrees to defend, indemnify and hold harmless Contracting Party, its members and their officers, agents, representatives, and employees, from and against any and all suits and causes of action, claims, charges, damages, demands, judgments, civil fines and penalties, or losses of any kind or nature whatsoever arising from its performance of its duties as a Contracting Party under the Audit Contract, except for liability that may arise solely from the gross negligence or intentional misconduct of the Contracting Party in its performance under the Audit Contract.
- (e) Each Contractor agrees that any cost or liability is a cost and liability of the Contractors under this Agreement proportioned based on their Project percentages indicated in Appendix G of the Implementation Agreement. Notwithstanding anything to the contrary in this Agreement, if there is a projected shortfall of funds to cover the cost of the Joint Audit, each contractor shall timely forward to the Contracting Party for payment its proportional share of any such costs as based on their Project percentages indicated in Appendix G of the Implementation Agreement.

TERM

6. This Agreement shall become effective upon execution by each Authorized Signatory (as described in Section 8 herein) and the Contracting Party and shall terminate upon the expiration or termination of the Audit Contract; provided that all of the obligation to make payments or any outstanding liability under the Audit Contract which either exists or may exist as of the date of termination of this Agreement, or which comes into existence at any future time as a result of any activity or transaction carried forth under this Agreement, shall survive such termination, along with the Contractors' remedies under this Agreement and under the Implementation Agreement regarding the Independent Auditor's duties under the Audit Contract.

NO OBLIGATION TO CONTINUE AUDIT IF PAYMENT NOT MADE

7. Nothing in this Agreement shall be construed to obligate the Contracting Party to continue to have performed the Joint Audit by the Independent Auditor in the absence of full and timely payment by each Contractor or Reclamation for the amount due and payable by each Contractor for the Joint Audit. If such situation arises, the Contractors agree to use the dispute resolution process provided for in the Implementation Agreement with the Contracting Party having the same rights provided to Contractors therein.

AUTHORITY TO ENTER INTO AGREEMENT

8. The Authorized Signatory of each Contractor and the Contracting Party executing this Agreement hereby represent that he or she has the requisite authority to bind and obligate the organization for whom he or she is signing to the terms and conditions of this Agreement pursuant to applicable law.

EXECUTION BY COUNTERPART

9. This Agreement shall be executed in sixteen (16) counterparts, and upon execution by all the Contractors and the Contracting Party, each executed counterpart shall have the same force and effect as an original instrument and as if all Contractors and Contracting Party had signed the same instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written above.

CITY OF ANAHEIM

Name:

Title:

ARIZONA POWER AUTHORITY

Name:

Title:

CITY OF AZUSA

Name:

Title:

CITY OF BANNING

Name:

Title:

CITY OF BOULDER CITY

Name:

Title:

CITY OF BURBANK

Name:

Title:

COLORADO RIVER COMMISSION of NV

Name:

Title:

CITY OF COLTON

Name:

Title:

CITY OF GLENDALE

Name:

Title:

LOS ANGELES DEPARTMENT OF WATER AND POWER

Name:

Title:

THE METROPOLITAN WATER DISTRICT OF SOUTHERN CALIFORNIA

Name:

Title:

CITY OF PASADENA

Name:

Title:

CITY OF RIVERSIDE

Name:

Title:

SOUTHERN CALIFORNIA EDISON

Name:

Title:

CITY OF VERNON

Name:

Title:

Southern California Public Power Authority

Name:

Title:

EXHIBIT A

Resolution # 15-11 of the Boulder Canyon Project Engineering and Operating Committee

ADOPTION OF RESOLUTION TO REDUCE THE PRIOR YEAR CARRYOVER BALANCE BY, AND APPLICATION OF THE RESULTING FUNDS TOWARD A JOINT AUDIT OF THE BOULDER CANYON PROJECT

WHEREAS:

1. The Boulder Canyon Project Contractors, namely, the Arizona Power Authority, the City of Boulder City, Nevada, the Colorado River Commission of Nevada, the Department of Water and Power of the City of Los Angeles, the Metropolitan Water District of Southern California, Southern California Edison Company, the City of Anaheim, California, the City of Azusa, California, the City of Banning, California, the City of Burbank, California, the City of Colton, California, the City of Glendale, California, the City of Pasadena, California, the City of Riverside, California, and the City of Vernon, California, (collectively, "the Contractors") executed individual Boulder Canyon Project Electric Service Contracts with the United States Department of Energy Western Area Power Administration "Western", with concurrence of the United States Bureau of Reclamation "Reclamation", hereinafter referred to as the "Pre-2017 Electric Service Contract", which are effective January 1, 1987 through September 30, 2017.
2. Reclamation, Western and all Contractors entered into a Boulder Canyon Project Implementation Agreement effective February 17, 1995, hereinafter referred to as the "Implementation Agreement".
3. The Contractors seek to conduct a Joint Audit of the Boulder Canyon Project ("BCP") relating to the closeout of the Hoover Electric Service Contracts, prior to the establishment of rates for years 2016 and 2017, and prior to the termination of the Pre-2017 Electric Service Contracts.
4. Western and Reclamation agree with the Contractors' that it is appropriate to conduct the Joint Audit.
5. Section 15 of the Implementation Agreement establishes procedures for various financial audits of the books, records and financial statements of the BCP.
6. Section 15.1 of the Implementation Agreement establishes the involvement of the Engineering and Operating Committee ("E&OC") in the conduct of audits.
7. Section 15.4 of the Implementation Agreement, provides a process for the Contractors to hire an independent auditor to perform a "Joint Audit", as defined in the Implementation Agreement, prior to the closeout of the Pre-2017 Electric

Service Contracts.

8. Section 12.4.1 of the Implementation Agreement authorizes the E&OC to provide liaison among Western, Reclamation and the Contractors with regard to engineering and operating matters, costs related to the BCP, and the Ten-Year Operating Plan.
9. Section 12.4.2 of the Implementation Agreement authorizes Reclamation to meet with the E&OC, and directs Reclamation to consider the E&OC's views prior to Reclamation's formulation of a proposed budget, and prior to Reclamation's final determination of future cost projections for Power Repayment Study Spreadsheet (PRSS) purposes.
10. Section 12.7.1 of the Implementation Agreement provides: "Western and Reclamation shall use best efforts to utilize the most current and up-to-date information in developing the PRSS. The data developed in accordance with 43 CFR 431.5 and Section 12.6 hereof, shall be used in the PRSS, unless prior to the distribution of the PRSS to the Contractors, other data is communicated to and reviewed with the Contractors."
11. The Federal Register Notice on BCP Rate Order No. WAPA-171, Vol. 80, No. 26 dated February 9, 2015 provides the opportunity for the public as well as the E&OC and the Contractors to provide comments or suggested changes to the FY 2016 BCP Base Charge and rates prior to May 11, 2015, the end of the consultation and comment period.

THE ENGINEERING AND OPERATING COMMITTEE THEREFORE RESOLVES THAT:

1. Reclamation shall be authorized and directed to reduce the Prior Year Carryover Balance ("CO") by refunding and transferring \$1.5 million (the "Joint Audit Funds") to an entity designated by the Contractors, to be used towards the cost of the Joint Audit. The CO is defined in section 13.2.10 of the Implementation Agreement as: "CO is the carryover of revenue surplus (+) or deficit (-) from the previous Fiscal Year as shown in the PRSS excluding the funds for the Working Capital balance established pursuant to Section 14.4 hereof." The Prior Year carryover balance is listed in column 16 of the proposed PRSS for the FY 2016 BCP rate process.
2. The Contractors shall enter into a contract with the entity designated under paragraph 1 above, regarding that entity's duties to contract with an Independent Auditor for performance of the Joint Audit.
3. The entity designated by the Contractors under paragraph 1 above, shall then enter into a contract with an Independent Auditor for completion of the Joint Audit (the "Audit Contract").
4. The E&OC will establish an audit subcommittee to make decisions relating to the Joint Audit, and perform other functions related thereto.

5. In the event there are any Joint Audit funds remaining after the later of the :
- i) determination by the Contractors that no audit will be performed;
 - ii) completion of a partial audit in lieu of the Joint Audit; or
 - iii) completion of the Joint Audit,

the entity designated by the Contractors under paragraph 1 shall return the remaining Joint Audit funds to the Contractors, based on their Project percentages set forth in Appendix G to the Implementation Agreement. The Contractors, by a separate written agreement of all the Contractors, may provide for a different disposition of any Joint Audit funds not required to complete the Joint Audit.

6. It is understood and acknowledged that the FY 2016 BCP Base Charge and rates will increase about 2% over what they would have been absent expenditures for the Joint Audit, due to the \$1.5 million reduction of the Prior Year Carryover balance.
7. Capitalized terms used in this Resolution and not defined herein have the meanings given to them in the Implementation Agreement.

THE FOREGOING RESOLUTION is hereby approved by the Boulder Canyon Project Engineering and Operating Committee on this ____ day of _____, 2015, as documented on the Attached Exhibit.

EXHIBIT B

Audit Subcommittee Members

CA: SCPPA Katie Ellis, Member; Steve Homer, Alternate
LADWP James Tan, Member; _____Alternate
USBR: Rick Leavitt, Member; Christina Chavez, Alternate
NV: Doug Beatty, Member; _____Alternate
AZ: Gary Kern, Member; _____Alternate

**CITY COUNCIL AGENDA
REPORT OF DIRECTORS
INFORMATIONAL REPORT**

DATE: April 28, 2015
TO: Honorable Mayor and City Council
FROM: Alex Diaz, Chief of Police
SUBJECT: Review of Banning Police Department

BACKGROUND:

My time as Chief of Police for the Banning Police Department has been a time of productive change, fresh visions and new beginnings.

The Banning Police Department is a full service law enforcement agency, providing police services twenty-four hours a day, seven days a week. The goal of our department is to meet the highest ethical and professional standards, and prides itself on the quality of law enforcement services provided to the citizens of Banning. The Banning Police Department continues to strengthen its relationship with the community by establishing a partnership of law enforcement, citizens, community agencies, civic leaders, and public information services. The programs outlined in this report stand out as valuable resources toward implementing the changes we envision for our future. No police department can solve crime or quality of life issues alone. Effective police community interactions, communication, and engagement are critical components to our success.

Our goals in our first year of transition are to continue providing the best customer service to our citizens and visitors alike, to actively recruit the best employees to fill future sworn and non-sworn positions, and to build partnerships with our community, our businesses, and our leaders in order to attract business to our city.

Departmental Reorganization

In the past year, the Banning Police Department has gone through a transformation period, with a change in leadership and a change in direction.

Administration

During the departmental reorganization, and due to patrol staffing shortages, our department transitioned from a Chief of Police-two Lieutenant model to a Chief of Police-one Lieutenant model. The goal of the department is to return to a Chief of Police-two Lieutenant model in the near future. During the same time frame, our department established an Executive Assistant position, to handle numerous administrative functions previously handled by the Department's long-time Executive Secretary who retired then returned part-time (and also volunteered) in the department, up until the time we established the Executive Assistant position. This position serves as the primary point of contact for the Chief's office and is in frequent contact with public officials, representatives from various agencies, executives, managers, employees and members

of the community. This position provides advanced administrative support for responding and handling issues received both internally and externally and is vital to the department's administration in ensuring workflow continues smoothly and without interruption.

Sworn Personnel

Police Officers comprise the largest number of sworn officers in the Department. The Police Officer rank is divided into four advancement ranks: Police Officer, Corporal, Sergeant and Lieutenant. A Police Officer may be assigned to a patrol car, a motor traffic bureau or a specialized unit such as the Gang Task Force or the Investigations Bureau. A Police Officer assigned to a patrol unit performs basic duties such as: Responding to the scene of a crime or an accident, Interviewing suspects, witnesses, writing crime reports, responding to radio calls, monitoring any suspicious activity of ongoing crimes, coordinating vehicular traffic, visiting open businesses such as banks, markets, department stores, service stations, and other types to establish a rapport with owners.

The Police Department is staffed by twenty-six police officers with two of those positions currently out on medical leave. The twenty-six officers currently comprise three positions in Administration (chief, lieutenant, administrative sergeant), four positions in Investigations (detective sergeant and three detectives), Gang Unit (one detective), Patrol (a sergeant, and two officers on Team 1, a sergeant and three officers on Team 2, a corporal and four officers on Team 3, and a sergeant and three officers on Team 4); and a School Resource Officer. The twenty-six officers equate to approximately .83 officers per 1000 inhabitants, significantly below the national average of 1.2 officers. Our goal before the end of our first year of reorganization is to have a fully staffed, sworn force of twenty-seven police officers; the number budgeted for the police department. Within the next three years, our goal is to increase our sworn personnel levels to 30, effectively giving us a ratio of 1 officer per 1,000 residents. The 30 position goal would allow us to implement a fully staffed, three-officer, Problem Oriented Policing (P.O.P.) specialized team within the department which deals with a range of community problems and crime prevention, i.e. issues dealing with narcotics, human trafficking and any other problems dealing with quality of life issues.

The goal of increasing the Department from 27 sworn to 30 sworn is in part a recommendation based on new laws (AB109, and Prop 47) voted into effect by California residents. As of March 2015, our state prison system has released approximately 27,000 inmates under AB109; over 2500 inmates have been released under Prop 47. Property crime has increased throughout the state as well as in our city. In a comparison of Part 1 crimes for the month of March 2014 and March 2015, our city has seen an increase of 56% (18 in March 2014, 28 in March 2015) in burglaries. During the same time frame, our city has had a 36% increase in vehicle theft (11 in March 2014, 15 in March 2015).

AB 109 is a bill that shifts responsibility of housing and supervising a wide variety of inmates from the state to the local level. These changes were required by a federal ruling requiring California to reduce its prison population. The population has been described by the state as non-violent, non-serious and non-sexual offenders. As these felons return from state prison, they will now be supervised by the local county probation departments instead of a state parole officer. In addition, many felons who would have been sent to state prison will now be housed locally. In January 2014, we implemented a software mechanism, allowing us to monitor contacts related to

AB109. To date, our department has had contact with approximately 256 AB109 registrants, dealing with casual contacts, drug related arrests, and criminal related arrests.

Prop. 47 allows inmates serving sentences for crimes affected by the reduced penalties to apply to be resentenced and released early. Those crimes include shoplifting, grand theft and writing bad checks, among others. About 150 inmates a week are being released under the relaxed laws. Initially, 250 to 300 inmates a week were being let out.

Police Reserve Program

Police Reserve Officers are civilians who volunteer their time to a police department and do not receive financial compensation. They perform a variety of functions for a police department, some of which include assisting at fire scenes, medical emergencies, and traffic accidents; patrolling the city via the use a squad car; enforcing parking violations, and assisting police officers with a variety of other tasks; reserve officers have arrest authority and are armed. During our reorganization period, we increased our non-paid Police Officer Reserve positions from one to four; our goal is to increase this program to five before the end of the year. Our future goal is to increase our program to ten active non-paid Police Reserve positions.

Dispatch

The Dispatch Center at the Banning Police Department is staffed 24 hours a day. It is the responsibility of the police dispatcher to accurately and as quickly as possible, identify the nature of a call and assist in solving the problem. The dispatcher is the critical link between the citizen and the police officer, as they are responsible for screening calls and transferring that information to the police officer. Because each incoming call may vary from a request for general information to a report of a life threatening incident, the dispatcher must ask specific questions (or control the conversation) to accurately prioritize the call and assign it to a police officer. The faster this information is obtained often determines how quickly an officer is able to respond. During the reorganization period we fully staffed our dispatch center. A recent retirement has opened a dispatch position which we are diligently looking to fill. Our Dispatch Center is currently staffed by one Lead Dispatcher position, five full-time dispatch positions, and one part-time position. Recently, we transitioned one full-time dispatch position to the Code Enforcement team. We are currently looking at alternatives to offset the cost of a Code Enforcement Officer position to free a full time dispatch position allowing us to once again fully staff our dispatch center with 8 full-time positions.

Code Enforcement

The goal of Code Enforcement Division is to improve the quality of life in the City of Banning through strategic application of civil code regulation; permitting, inspection, enforcement, and abatement practices; and local government oversight of property use/safety and maintenance, business, event, professional, and construction industries. The City of Banning has a comprehensive code enforcement program, which helps to protect property owner investment, promote general health and welfare; enhance the quality of life and overall appearance of the city. The Code Enforcement Division is currently staffed by one Code Enforcement Officer and a dispatch position. We are currently working to transition the dispatch position to a Code Enforcement position.

Records Bureau

Records personnel perform a variety of specialized clerical and technical duties involved in processing various police records and reports; receive, enter, and research data in a records management system; identify and maintain crime activity and known offender information and statistics; and, perform a variety of related duties involved in the maintenance of highly confidential records. Other duties assigned to our Records personnel include Live Scan fingerprint services as well as disseminating reports to our citizens. During the reorganization phase we fully staffed our Record's Bureau, allowing us to open our lobby to the public, Monday through Thursday from 8:00 am to 5:00 pm, Fridays from 8:00 to 12:00 pm; our Records Bureau is currently staffed by three non-sworn personnel.

Property/Evidence Room

The Property/Evidence program is one of the most essential programs within the department. The handling of evidence is of paramount importance to the mission of the Police Department. Our Evidence Room is currently staffed by one non-sworn personnel. This staff member has received specific training focusing on procedures dealing with the storage and disposal of property/evidence. Future goals for our property/evidence room include partnerships with accredited schools to implement a training/externship program.

Chaplain Program

The Police Chaplain Program creates a partnership with various faith-based leaders of a community to respond and assist police and other law enforcement agencies providing faith-based outreach to the citizens of cities and communities. The goal is that by having the Police and Clergy working together during times of crisis or incidents, that a more comprehensive response will be given to those in need. Recently, we added a second Chaplain to our program, bringing the program to a total of two. Our goal is to increase the program to three chaplains before the end of the year.

Citizen Volunteer Program

The Citizen Volunteer Program offers a variety of interesting assignments throughout the Department. To date, many volunteers have served the Banning Police Department in a wide range of administrative functions. Citizen Volunteers may serve during the day, at night, or during weekends. The Department may utilize their present skills, or train them in new skills which benefit the Department and the community. Volunteers are recognized as an integral part in assisting the Department in ensuring public safety, and in strengthening our relationship with the community who we serve. The members of the Citizen Volunteer Program help support our officers so that they can remain focused on providing efficient police service to the community. Our Citizen Volunteer Program had a dramatic increase in membership during this transition year; our program grew from ten to twenty volunteers. Our future goal is to increase the program to 30-40 citizen volunteers.

Community Outreach Programs

The Banning Police Department is committed to strengthening the community's trust and confidence, and to partner with residents, business owners and other stakeholders to reduce

crime. A welcomed and effective community presence is one of our top priorities. These highlights are in addition to the numerous meetings that the Police Department participated in, which included Neighborhood Watch meetings, Fraud Prevention meetings, Disaster Preparedness meetings, faith-based outreach meetings and meetings with school faculty and administrators.

Banning Police Activities League (BPAL)

The Banning Police Activities League (BPAL) is a 501(c)(3) non-profit organization comprised of police officers and citizens from the City of Banning joining together to provide the youth of our city the tools necessary to succeed in life. This objective is met by involving the youth in sports and other activities by surrounding them with positive influences.

Safe Streets Now!

Safe Streets Now! Is a community driven program that relies heavily on citizens working together to resolve nuisance and criminal activity in their neighborhoods. The department provides a facilitator to assist neighbors in accessing resources and, if needed, guiding them through the civil process.

Neighborhood Watch

Neighborhood Watch is a program in which citizens directly participate in the detection and prevention of crime. Police personnel mobilize neighborhoods to be more aware of criminal activity in their areas and to provide them with the means to report this information to the police department.

WeTip

The basic purpose of WeTip is to provide an absolutely anonymous crime reporting source to residents, students and businesses throughout the nation. WeTip was created as an effective tool for law enforcement, not to circumvent law enforcement but to help law enforcement. This tool is for the segment of the population that will not contact the law enforcement agency directly.

Technology

PSEC Communications System

Public Safety Enterprise Communication (PSEC) is a standards-based digital radio system that will provide greater geographic coverage, greater reliability, access to data, and enhanced interoperability. Our goal this year is to implement the PSEC system in our city, to this measure we have acquired grants that have fully funded the purchase of our handheld and vehicle based radio systems. These radio systems are interoperable with the PSEC communication system. Our next goal is to upgrade our Dispatch center with equipment interoperable with the PSEC system, allowing us unparalleled communication with other regional law enforcement agencies and full implementation of the system by August 2015.

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Body-Worn Cameras


Among police executives whose departments use body-worn cameras, there is an overall perception that the cameras are a useful tool. These reported benefits include the following:

Strengthening police accountability by documenting incidents and encounters between officers and the public; preventing confrontational situations by improving officer professionalism and the behavior of people being recorded; resolving officer-involved incidents and complaints by providing a more accurate record of events; improving agency transparency by allowing the public to see video evidence of police activities and encounters; identifying and correcting internal agency problems by revealing officers who engage in misconduct and agency-wide problems; strengthening officer performance by using footage for officer training and monitoring; and improving evidence documentation for investigations and prosecutions.

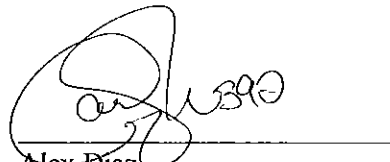
It is our goal to implement body-worn cameras within the next six (6) months utilizing Supplemental Law Enforcement Services Allocation (SLESA) Grant Funds.

FISCAL DATA: N/A

RECOMMENDED BY:


James E. Smith
Interim City Manager

PREPARED BY:


Alex Diaz
Chief of Police