

AGENDA
CITY OF BANNING
BANNING, CALIFORNIA

• January 8, 2008
Council Chambers
6:30 p.m. Banning Civic Center
99 E. Ramsey St.

The following information comprises the agenda for a regular meeting of the City Council and a Joint Meeting of the City Council and the Banning Utility Authority.

Per City Council Resolution No. 1997-33 matters taken up by the Council before 10:00 p.m. may be concluded, but no new matters shall be taken up after 10:00 p.m. except upon a unanimous vote of the councilmembers present and voting.

I. CALL TO ORDER

- . Pledge of Allegiance
- . Invocation
- . Roll Call – Councilmembers Botts, Franklin, Hanna, Machisic, Mayor Salas

II. CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to the following personnel issue:
Public employment – Appointment of City Manager

**III. PUBLIC COMMENTS/CORRESPONDENCE/PRESENTATIONS
ANNOUNCEMENTS/APPOINTMENTS**

Report by City Attorney

PUBLIC COMMENTS – *On Items Not on the Agenda*

A three-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 three minutes with any other member of the public. (Usually, any items received under this heading are referred to staff for future study, research, completion and/or future Council Action.) See last page. PLEASE STATE YOUR NAME AND ADDRESS FOR THE RECORD.

Our Mission as a City is to provide a safe, pleasant and prosperous community in which to live, work and play. We will achieve this in a cost effective, citizen friendly and open manner.

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

PRESENTATIONS

1. Recycling All-Stars Presentation – Waste Management
2. Waste Watch Program – Waste Management

ANNOUNCEMENTS/COUNCIL REPORTS:

(Upcoming Events/Other Items and Reports if any) (ORAL)

1. Report on Reunion Island Participative Democracy Conference and Implication for Banning" (Oral)

APPOINTMENTS

1. Review of City Council Committee Assignments 1

IV. A. CONSENT ITEMS

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

Motion: That the City Council approve Consent Item 1 through 14.

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

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

1. Approval of Minutes – Regular Meeting – 12/11/07.....	3
2. Approval of Minutes – Special Meeting – 12/18/07.....	19
3. Ordinance No. 1378 – 2 nd Reading: An Ordinance of the City of Banning Amending Chapter 6A of the Banning Ordinance Code Relating to Disaster Operations and Relief	20
4. Adopt Resolution No. 2008-03, Imposing a Nuisance Abatement Lien in the Amount of \$8,447.75 on the Property Known as APN 538-300-001 for Costs Related to An Administrative Proceeding to Abate a Public Nuisance	29
5. Adopt Resolution No. 2008-05, Approving a Capital Improvement Program for for Fiscal Years 2007-2012	55
6. Adopt Resolution No. 2008-06, Implementing a Voluntary Employee Benefit Association Trust and Authorizing the City Manager or his designee to negotiate employee contributions to the trust and sign any related documents	69
7. Adopt Resolution No. 2008-07, Supporting Regulatory Changes to the Low Income Housing Tax Credit Program creating consistency with the Regional Housing Needs assessment	99
8. Public Improvements acceptance and Faithful Performance/Labor and Material/Monumentation Bond Release for Tract Nos. 28252, 31822,	

31834 and 31835	105
9. Accept the Grant of Easement Dedication from James H. Didion and Sylvia M. Didion, Trustees of the Didion Family Trust dated February 10, 1992, located on Parcels APN 538-340-003 & a portion of 004	107
10. Accept the Grant of Easement Dedication from Rickey L. Pippenger and Linda Lou Pippenger, Trustees, located on Parcel APN 538-240-004.	112
11. Accept the Right-of-Way Dedication from Henry C. Rutherford and Jean A. Rutherford for Street Improvements at APN 538-032-042.	116
12. Execute a Professional Services Contract with Laurin and Associates to Update the Housing Element	120
13. Adopt Resolution No. 2008-01, Request for a One-Year Extension of Time for Tentative Tract Map No. 33798 (Rafai): The subdivision of a 4.960 acre site into 19 single family lots. The proposed project site is generally located at the southwest corner of Indian School Lane and Hargrave Street. APN: 534-152-002, -023, -024, - 025.	122
14. Approval of Accounts Payable and Payroll Warrants for Month of November 2007.	149

- 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. Ordinance No. 1380 – 2 nd Reading. An Ordinance of the City Council of the City of Banning, Amending Chapter 8, Article II, Section 8-16 of the Banning Municipal Code Adopting the California Fire Code, 2007 Edition and Appendices as Amended, as the Uniform Fire Code of the City of Banning and Repealing Chapter 8, Article II, Section 8-17 of the Banning Municipal Code.	
Staff Report	152
Recommendation: That the City Council adopt Ordinance No. 1380.	

Mayor asks the City Clerk to read the title of Ordinance No. 1380:

“An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8, Article II, Section 8-16 Repealing Sections 8-17 of the Banning Ordinance Code Adopting the 2007 California Fire Code in its Entirety for 1) Regulating and Governing the Safeguard of Life and Property from Fire and Explosion Hazards (Arising from the Storage, Handling and Use of Hazardous Substances, Material and Devices) and from Conditions Hazardous to Life or Property in the Occupancy of Buildings and Premises in the city of Banning, and 2) Providing for the Issuance of Permits and the Collections of Fees Therefor.”

Motion: I move to waive further reading of Ordinance No. 1380
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1380 pass its second reading and be adopted.

2. Subdivision of 7.96 Acres into 15 Parcels, 12 Residential Lots and 3 Remainder Industrial Parcels, and Approval of Six Facades.

Staff Report 175

Recommendation:

- 1) Approve Resolution No. 2008-04, approving Lot Split #07-4504 (Tentative Tract Map 35694), based on the findings and conditions of approval (attached hereto as Attachment "1" and incorporated by reference); and
- 2) Approve Resolution No. 2008-09, approving Design Review #07-7015, based on the findings and conditions of approval (attachment "1" and incorporated by reference)

Alternatives:

Continuance:

- 1) I move the City Council continue the public hearing for Lot Split #07-4504 (Tentative Tract Map 35694) to its January 22, 2008 meeting; and
- 2) Design Review #07-7015, to its January 22, 2008 meeting.

Denial: I move the City Council deny Resolution No. 2008-04 for Lot Split #07-4504 (Tentative Tract Map 35694, based on the following findings (the City Council will need to make its findings); and Resolution No. 2008-09, for Design Review #07-7015 based on the following findings (the City Council will need to make its findings).

3. Amendment to the Municipal Code Regarding Penalties for Public Nuisances (Zone Text Amendment #07-97505)

Staff Report 238

Recommendation: That the City Council adopt Ordinance No. 1381.

Mayor asks the City Clerk to read the title of Ordinance No. 1381:

"An Ordinance of the City Council of the City of Banning, California, Modifying Title 1, Chapter 1.28 and Title 8, Chapter 8.48, Article I of the Banning Municipal Code Regarding General Penalties and Penalties for Public Nuisances." (Zone Text Amendment #07-97505)

Motion: I move to waive further reading of Ordinance No. 1381.
(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1381 pass its first reading.
(A minimum of three votes required)

Alternatives:

Continuance:

- 1) I move the City Council continue the public hearing to its January 22, 2008 meeting.

Denial: I move the City Council deny Zone Text Amendment #07-97505 on the following basis (the City Council will need to make its findings).

4. Amendment to the Municipal Code Establishing Provisions for Murals

Staff Report..... 245

Recommendation: That the City Council adopt Ordinance No. 1382.

Mayor asks the City Clerk to read the title of Ordinance No. 1382:

"An Ordinance of the City Council of the City of Banning, California, Approving Zone Text Amendment #07-97502, An Amendment to the Zoning Code to Establish Provisions for Murals".

Motion: I move to waive further reading of Ordinance No. 1382.

(Requires a majority vote of Council)

Motion: I move that Ordinance No. 1382 pass its first reading.

(A minimum of three votes required)

Alternatives:

Continuance:

- 1) I move the City Council continue the public hearing to its January 22, 2008 meeting.

Denial: I move the City Council deny Zone Text Amendment #07-97502 on the following basis (the City Council will need to make its findings).

VI. RECESS CITY COUNCIL MEETING TO A JOINT MEETING OF THE CITY COUNCIL, and the BANNING UTILITY AUTHORITY.

Call to Order Joint Meeting

A. CONSENT ITEMS

A-1. IBEW-Utility Unit (International Brotherhood of Electrical Workers) Memorandum of Understanding.

- 1) Adopt Resolution No. 2008-02, Approving a Memorandum of Understanding (MOU) with the IBEW-Utility Unit which covers the City's Electric Utility and Water and Wastewater Utility employees.

2) Adopt Banning Utility Authority Resolution No. 2008-01UA,
 Amending the 2007-08 Budget to Incorporate Necessary
 Changes.
 Staff Report 271

B. Open for Public Comments
 C. Make Motion

Adjourn Joint Meeting

VII. ITEMS FOR FUTURE AGENDAS

New Items –

Pending Items –

1. Review of “Green Plan” in All Departments (*Machisic-10/9/07*) (*Earhart*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*)
4. Schedule Special Meeting with the Beaumont City Council (*Salas- 11/27/07*)
5. Schedule Special Jt. Meeting the Banning United School District Board – (*Botts – 11/27/07*)
6. Schedule Special Jt. Meetings with the City’s Various Committees (Planning Commission, Economic Development Committee, Parks & Recreation) – (*Franklin – 11/27/07*)
7. Review of Development Fees (*Hanna – 12/11/07*) (*Orci*)
8. Report on Potential Ordinances in Regards to Skateboarding (*Franklin – 12/11/07*)
9. Time Frames for Demolition of Buildings (*Franklin – 12/11/07*)
10. Ordinances in Regards to Group Homes (*Botts – 12/11/07*)

FUTURE MEETINGS

1. Special City Council Meeting –Thursday, January 17, 2008 at 9:00 a.m. with Banning Heights Mutual Water Company and the San Gorgonio Pass Water Agency to be held in the Council Chambers.
2. Special Council Meeting with Supervisor Marion Ashley - January 17, 2008 at 11:30 a.m. in the Large Conference Room
3. Special Council Meeting - February 12, 2008 – meeting to discuss delivery of State Water Project to Banning (*this would be meeting with SGPWA*)

VIII. CLOSED SESSION

1. The City Council will meet in closed session Pursuant to Government Code Section 54957.6 Conference with Labor Negotiators.
Employee organizations: BPOA (Banning Police Officers Association)
Agency Designated Representatives: Randy Anstine, Julie Hayward Biggs, Bonnie Johnson and Chris Paxton
2. Potential Litigation:
That the City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) to confer with legal counsel with regard to one matter of significant exposure to litigation.
3. That the City Council will meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) to confer with legal counsel with regard to one matter of significant exposure to potential litigation.

- A. Opportunity for Public to Address Closed Session Items.
- B. Convene Closed Session

IX. ADJOURNMENT

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 and Council. 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 three-minute limitation shall apply to each member of the public, unless such time is extended by the Mayor and Council. A thirty-minute time limit is placed on this section. No member of the public shall be permitted to "share" his/her three 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 (909) 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
CITY OF BANNING
BANNING, CALIFORNIA

• January 8, 2008
Council Chambers
6:30 p.m. Banning Civic Center
99 E. Ramsey St.

ADDENDUM

Call to Order a Joint Meeting of the City Council and the Banning Community Redevelopment Agency.

VIII. CLOSED SESSION

1. That the City Council and Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.9(b) to confer with legal counsel with regard to one matter of potential litigation.

(This item was posted on January 4, 2008 after agenda posting of 01/03/08.)

COMMITTEE ASSIGNMENTS - 2007

CITY COUNCIL CITY OF BANNING

NAME OF COMMITTEE	DAY & TIME OF MEETING	ASSIGNMENT	ALTERNATE	STAFF MEMBER
Western Riverside Council of Governments (WRCOG)	1 st Monday of each month.	J. Machisic	B. Botts	Randy Anstine, City Manager
Riverside Transit Agency (RTA)	4 th Thurs. of each month – 2:00 p.m. (Nov. & Dec. 3 rd . Thursday)	D. Franklin	B. Salas	Duane Burk, Public Works Director
Riverside County Transportation Commission (RCTC)	2 nd Wednesday of each month - 10:00 a.m.	B. Hanna	B. Salas	Duane Burk, Public Works Director
Pass Area Transportation NOW Committee	1 st Friday of each month at Noon	B. Botts	D. Franklin	Duane Burk, Public Works Director.

Assignments - 2007 (Continued)

Regional Conservation Authority	Tribal Distribution Fund Committee (County Appt.)	ECONOMIC DEVELOPMENT COMMITTEE LIAISONS	GOVERNMENT ACCESS CHANNEL COMMITTEE (as needed)	PUBLIC UTILITY ADVISORY COMMITTEE FOR CITY OF BANNNG (as needed)
J. Machisic B. Hanna, Alt.	J. Machisic	B. Botts B. Hanna	B. Botts B. Salas	B. Hanna

TUMF ZONE COMMITTEE	SOUTHERN CALIF. ASSOC. OF GOVERNMENTS (SCAG)	LEAGUE OF CALIF. CITIES – Contact and Executive Board Representative	LEAGUE OF CALIF. CITIES – HOUSING & ECONOMIC DEVELOPMENT	
B. Salas J. Machisic, Alt.	B. Botts B. Hanna, Alt.	D. Franklin	B. Hanna	

CHAMBER OF COMMERCE (External Group)	LEAGUE OF CALIFORNIA CITIES (External Group)	SAN GORGONIO PASS WATER AGENCY (External Group)	COMMUNITY ACTION AGENCY (External Group)	WRCOG MULTI-SPECIES HABITAT CONSERVATION PLAN COMMITTEE
D. Franklin B. Hanna, Alt.	City Council	B. Botts B. Hanna, Alt.	D. Franklin B. Hanna, Alt.	B. Hanna D. Franklin, Alt.

(5/8/07)

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MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

12/11/07

REGULAR MEETING

A regular meeting of the Banning City Council was called to order by Mayor Salas on December 11, 2007 at 6:30 p.m. and a Special Meeting of the Community Redevelopment Agency; and a Special Joint Meeting of the City Council and the Community Redevelopment Agency at the Banning Civic Center Council Chambers, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Hanna
Councilmember Machisic
Mayor Salas

COUNCIL MEMBERS ABSENT: None

OTHERS PRESENT: Randy Anstine, City Manager
Bonnie Johnson, Finance Director
Julie Hayward Biggs, City Attorney
Oscar Orci, Community Development Director
Duane Burk, Public Works Director
Jim Earhart, Electric Utility Director
Chris Paxton, Human Resources Manager
Leonard Purvis, Deputy Police Chief
Phil Holder, Lieutenant
Heidi Meraz, Recreation Director
Ted Yarbrough, Fire Marshal/Fire Prevention Officer
Jeff Stowells, Battalion Chief
George Thacker, Asst. Public Works Dir., Water/Wastewater
Marie A. Calderon, City Clerk

Mayor Salas invited the audience and public to join her in the Pledge of Allegiance to the Flag. The invocation was given by the Mayor Pro Tem Debbie Franklin.

PUBLIC COMMENTS – *On Items Not on the Agenda*

Ellen Carr, 471 W. George thanked the Council for the honor to be named Citizen of the Year but she cannot take all the credit without the help of Tender Loving Critters and she will dedicate this award to them. She also thanked Code Enforcement for all their help.

Charlene Sakurai, 43000 Dillon Road complimented the Mayor on the State of the City held last on Friday and thanked the Council for serving them the meal and it was great. She thanked the various departments and volunteers involved with making the Phineas

Festival a success. Also thank you from the Banning Cultural Alliance for the award that they received on Friday and they will keep working to revitalize the downtown.

Carolyn Johnson, 246 Marion Way invited the Council to their Annual Kwanzaa Celebration to take place on January 1, 2008 at 3:00 p.m. at the First Missionary Baptist Church, 332 N. Allen. She also stated that she hopes to the City will bring lights to the east end of the city and not stop at Alessandro.

Paula Schoen stated that she was the artist that lives and conducts business at 42 W. Ramsey Street. That is the building that is now being redeveloped as the Haven Building. There are tenants in that building and she is here because she wanted to let the Council know of the personal and financial impacts that project is having on her. She said that she has leased the second floor of that building for the last 12 years and has two years left on her lease. She went over her efforts to get relocation assistance. Others in the building received assistance and she was denied assistance. She is facing the prospect of six months of noise, disruption, health risks and loss of income. She has not been able to get answers of how this project will affect her physical space and has been offered no assistance or relief so that she can leave during construction. She is asking the City Council to please consider her position and would like temporary relocation assistance. She would also like some straight answers about exactly how the remodel of the building will affect the space where she lives and works.

Mayor Salas asked Ms. Schoen to get a copy of her letter to the City Clerk to make copies for the Council. She asked the City Manager and the Planning Director to exchange information so that the City could work with her on this issue.

Patty Hanley, Banning Library Director announced that on Saturday, Dec. 15th the Friends of the Banning Public Library will have a Use Book Sale from 10 a.m. to 1:30 p.m. Also on the same date from 10:30 to 11:30 a.m. they will have story time, craft time and the kids can visit with Santa.

Chief Purvis made special presentations to those that were involved in helping to reunite a child that was recently abduction from a school here in Banning. Through their efforts a child was saved. Community Service Awards were given to Clancy McCafferty, resident of Banning; Community Service Award to Greg Phillips, KCAL News Reporter and Chief's Commendation to Officer Vincent Avila.

Report by City Attorney - None

CORRESPONDENCE: None

ANNOUNCEMENTS/COUNCIL REPORTS:

Councilmember Hanna stated that she was out of the country because of an invitation to speak at a conference on democracy and at the January meeting she will share a little bit about the conference and what she learned.

Councilman Machisic:

- reported that TUMF has now appropriated \$420 million for various transportation projects; reported on the Clean Cities Coalition 9th Annual Advancing the Choice Expo to be held on February 6, 2008 and the Keynote speaker will be Ed Begley, Jr.; the New York Times reported on a dog named "Oleander" who was reunited with its family here in Banning; and Banning Police Activities League (BPAL) will have an event on Saturday, 12/15 called Shop with a Cop.

Mayor Pro Tem Franklin:

- said in regards to BPAL it is good to note that because of the programs that they have been working on in our community our kids are active all year round and in regards to the "Shop With a Cop Program" these kids were selected based on their participation in the community, volunteering at different events, their citizenship and their willingness to come out and participate not only to help but to be entertainment and the Shop with a Cop is a good highlight to show what they have done. If you want to sponsor a child you can do this for a \$100 donation; she thanked staff for their two meetings held last week where they met with Senator Battin and Assemblyman Cook; she commended the Mayor on the State of the City; in regards to transit they should be back with a proposal by the end of the month; on Martin Luther King Day (1/21/08) they will have a Blood Drive with Riverside and San Bernardino counties at the Living Hope Christian Center from 9:00 a.m. to 4:00 p.m. and 120 people are needed.

Councilman Botts thanked the Banning Cultural Alliance on the Phineas Festival held Saturday and it was well organized. Also thanked those that attended the Pass Chorale event at the Lutheran Church.

Mayor Salas said that she was proud of staff in the various departments and she has been hearing nothing but positive reports; over 200 people attended the State of the City and the Council and staff served the public their meal. She thanked everyone who was involved.

RESOLUTIONS

1. Resolution No.2007-145, Approving the Professional Services Agreement for Project No. 2007-06, Drainage Study and Design of Drainage Improvements at Banning Municipal Airport.
(Staff Report – Duane Burk, Public Works Director)

Mr. Burk gave the staff report as contained in the agenda packet. He asked for approval of this resolution.

Mayor Salas opened the item for comments from the public. There were none.

Motion Machisic/Franklin to I) Adopt Resolution No. 2007-145, Approving the Professional Services Agreement for Project No. 2007-06, Drainage Study and

Design of Drainage Improvements at Banning Municipal Airport with SD Engineering & Associates of San Bernardino, CA in the amount not to exceed \$149,850.00. An approximate 10% contingency, totaling \$15,000.00, would cover additional unforeseen design work; and II) Authorize the Director of Finance to appropriate the approved \$150,000.00 Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant to cover the costs of the Contract. Motion carried, all in favor.

2. Resolution No. 2007-155, Authorizing Staff to Submit a Grant Application to the California Transportation Commission (CTC) Through the Riverside County Transportation Commission (RCTC) For a Trade Corridors Improvement Fund (TCIF) Grant to Fund the Sunset Avenue Underpass.

Mr. Burk gave the staff report as contained in the agenda packet. He asked for approval of this resolution.

Mayor Salas opened the item for comments from the public. There were none.

Motion Hanna/Franklin that the City Council I) Adopt Resolution No. 2007-155, Authorizing Staff to Submit a Grant Application to the California Transportation Commission (CTC) for a Trade Corridors Improvement fund (TCIF) Grant to Fund the Sunset Avenue Underpass Project; II) Authorize City of Banning staff to prepare and execute the application and submit it to RCTC; and III) Authorize the Director of Finance to certify that the City of Banning has matching funds that will be available to finance the project. Motion carried, all in favor.

CONSENT ITEMS

Councilmember Machisic pulled Consent Item No. 10 and Councilmember Hanna pulled Consent Item No. 4 for discussion.

1. Approval of Minutes – Regular Meeting – 11/27/07

Recommendation: That the minutes of the regular meeting of November 27, 2007 be approved.

2. Approval of Minutes – Special Meeting – 12/05/07

Recommendation: That the minutes of the special meeting of December 12, 2005 be approved.

3. Resolution No. 2007-151, Authorizing Staff to Submit Two Grant Applications for 2009 Measure "A" Western County Regional Arterial Funds, for the Sunset Avenue Underpass and Ramsey Street Extension Projects; Authorize the City to Execute the Applications that staff has prepared for Riverside County Transportation Commission (RCTC); and Authorize the Finance Director to certify that the City of Banning has

matching funds that will be available to finance the project.

Recommendation: That the City Council adopt Resolution No. 2007-151.

5. Resolution No. 2007-153, Amending the Professional Services Agreement with Traffic Safety Engineers to Include the Traffic Signals Designs for the Westward Avenue and San Gorgonio Avenue Intersection in an amount Not to Exceed \$10,750.00.

Recommendation: That the City Council adopt Resolution No. 2007-153.

6. Resolution No. 2007-154, Declaring that an Emergency Condition exists for the Removal and Disposal of an Underground Storage Tank Located at the Corner of Alessandro Street and Ramsey Street and Award the Emergency Remediation Contract Required to Mitigate the Existing Conditions; Award the Emergency Remediation Contract to Asbury Environmental Services of Compton, California; and Authorize the Director of Finance to make the necessary budget appropriations to Account No. 470-2200-413.90-10.

Recommendation: That the City Council adopt Resolution No. 2007-154.

7. Resolution No. 2007-156, Authorizing the Purchase of a New 2007 Ford E450 Glaval Universal 16 Passenger Van for the Banning Dial-A-Ride Department from A-Z Bus of Colton, Calif. in an amount not to exceed \$69,114.25.

Recommendation: That the City Council adopt Resolution No. 2007-156.

8. Notice of Completion for Project No. 2007-01, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets.

Recommendation: That the City Council accept Project No. 2007-01, A. C. Overlay, Pavement Rehabilitation and Sidewalk Improvements on Various Streets as complete and direct the City Clerk to record the Notice of Completion.

9. Notice of Completion for Project No. 2006-06, Rehabilitation of Wilson St. from Highland Springs Avenue to Highland Home Road.

Recommendation: That the City Council accept Project No. 2006-06, Rehabilitation of Wilson Street from Highland Springs Avenue to Highland Home Road as complete and direct the City Clerk to record the Notice of Completion.

11. Report on the Expansion of the Wastewater Treatment Plant (WWTP).

Recommendation: That the City Council receive and place this report on file.

12. Approval of Accounts Payable and Payroll Warrants for the Month of Oct. 2007.

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

Motion Machisic/Hanna to approve Consent Items 1 through 3, 5 through 9, and 11 through 12. Mayor Salas opened the item for public comments. There were none. Motion carried, all in favor.

4. Resolution No. 2007-152, Awarding the Professional Services Agreements for the Sunset Avenue Grade Separation and I-10 Interchange Improvements Project to Impact Sciences, Urban Crossroads, L.D. King, and LandMark Geotechnical for a total amount not to exceed \$1,384,760.00,

Councilmember Hanna said that this work on the Sunset Grade Separation was started under Lennar and they have since dropped and so now the City is picking up contracts. There is a letter from Urban Crossroads referencing one of the other companies as though they were going to do what L.D. King was to do. On page 54 of the agenda package is a letter from Urban Crossroads that says in the second paragraph, "As noted above, the preliminary traffic analysis was previously performed under a sub-contract to L. D. King, which contracted directly with Lennar. Since L. D. King is no longer obligated to Lennar regarding this analysis, neither is Urban Crossroads, Inc., which allows us to contract with the City of Banning to complete the necessary analysis." But L. D. King is part of is proposal and could staff explain.

Mr. Burk said basically they are going to move the TUMF money and take on these contracts and get the project shelf ready and build able and then at a later date create some type of fair sharing mechanism for whoever the developer is at the time. There will be different assignments and no duplication of work as a part of this project.

Councilmember Hanna said that at a workshop held earlier with the Council there was discussion about a hook-ramp and right now the Sunset/I-10 configuration for on and off traffic is referred to a diamond and Caltrans has apparently proposed a hook-ramp as a possibility and what is that. Mr. Burk said that this would be something similar to what you see at the Waterman/Hospitality off-ramp in San Bernardino.

Councilmember Hanna asked what is the budget amount for this project at this time. Mr. Burk said for total construction it would be \$36 million and that is because of the hook-ramp.

There was some further Council discussion regarding the Lennar Development Committee and opportunities for matching funds and/or funds from the state or federal government.

Mayor Salas opened the item for public comments. There were none.

Motion Hanna/Machisic that the City Council approve Consent Item No. 4, adopting Resolution No. 2007-152, Awarding the Professional Services Agreements for

the Sunset Avenue Grade Separation and I-10 Interchange Improvements Project to Impact Sciences, Urban Crossroads, L.D. King, and LandMark Geotechnical for a total amount not to exceed \$1,384,760.00. Motion carried, all in favor.

10. Public Improvements Acceptance and Faithful Performance/Labor and Material/ Monumentation Bond Release for Tract Numbers 28252, 31833, 31834 and 31835.

Mr. Burk said that this was ten percent of the total dollar amount. A year ago staff came before the Council and released 90% of all the bonds. This would represent about \$100,000.

Councilmember Machisic said that several weeks ago there was a lady that came forward at a public session and indicated some concerns about a housing project and asked if this was the same housing project that she lived in. Mr. Burk said that was correct.

Councilmember Machisic addressed his next question to the City Attorney and said because the residents are having difficulty with some thing and Councilmember Hanna met with them and he has met with them and Councilmember Franklin has met with them and they have concerns about their project. One of the functions as the City Council is to represent the residents and he is wondering if it is legal for them to hold up the \$100,000 pending some satisfaction with the residents concerns.

City Attorney said that it was not legal. These bonds are not for the housing; they are for the pubic improvements. And if they have met the conditions of these bonds then those are conditions that the City imposed and if they have been met, you have an obligation to relieve. If you withhold release of the bonds, you would have liability to the owner and potentially you would have to pay interest on them at the rate of 10% a month.

Councilmember Hanna said that she would like to consider asking staff to look into this a little further. She thinks that there are some issues regarding water in the public areas that has not been designed properly. She is not qualified to judge if this is relevant to this particular landscape area but she would like staff to at least look at it if the Council agrees.

Councilmember Machisic said that one of the concerns that he has and the reasons he asks these questions is that these people have concerns and his position is to find out if they have a concern about the house the first person they go to under a warranty would be the developer. So, that is where they need to go if the house is faulty or the foundation is cracked or the roof leaks, etc. their first plan of recourse is to the developer. City Attorney said that was correct and the reason for her comment is that the staff report does say that this is in compliance with the conditions and the design and everything that was required. So your staff has looked at that presumably and has determined that they are in compliance with the terms of the bond. You are looking at a small portion of the issue but if they built according to the design and it was approved and they met those conditions there is not a legitimate ground to withhold the bonds.

Councilmember Hanna said that she doesn't mean to be critical she would just like a little further regard into this. It may have been a perfunctorily look rather than an in depth look. If one were to look in depth, there may be issues here regarding it and then there may not be.

She said she is not qualified to judge that but would like to recommend that staff look into it a little further to insure that all of the standards were in fact met and it is functioning properly.

Mayor Pro Tem Franklin said that having met with the residents also she would like to ask that we not necessarily withhold the funds as much as postpone making a decision on this because some of the questions that came up from the residents had to do with part of the public area also. And she would just like to have from them, the residents, in writing specifically what their concerns are because everything they had was oral. But for the Council to be able to talk with staff about what their concerns are the Council asked that the residents give the list in writing so that staff would be able to check on anything they say has validity or not.

Councilmember Botts said that the Council did receive in writing about 50 pages of every complaint that they put forth and 99% dealt with their homes and everything within the bedroom being too hot in the summer and cool in the winter. It seems like and he doesn't know who developed the form was a very extensive form which was signed by everyone.

Councilmember Hanna said that they held an open space technology meeting with them and there were two groups totaling 50 people and they came up with all of their concerns.

Mayor Pro Tem Franklin said that the meeting that she and Councilmember Machisic had with them was subsequent to that meeting and they gave several comments that were not included in those documents. So they asked the residents to give them a chronology of every report that they said they had asked for, everything that had happened so that the Council would know a little bit better of what they were talking about. The Council would then be able to share this with staff and see what we would need to do, if anything, and so she would like to see this postponed.

City Attorney said that to the extent that the Council is not satisfied with the staff report in terms of its verifying that all of these are in order she supposes that the Council certainly has the authority to ask staff to look at it more closely. But she can clearly tell the Council to the extent that they have complied with what was required whether or not what was required worked; if they have complied we don't have authority to not ultimately release the bonds. She doesn't know whether a month will make a difference to the developer.

Mr. Burk said he also saw the 50-page document as it relates to what he would consider warranty issues. He has not had any complaints as it relates to the drainage. This subdivision is somewhat of an anomaly and has what is called "cross lot" drainage across people's yards. One yard drains across another and he is pretty sure that in their title report when they bought their house, possible their covenants and restrictions, it is very clear that they are responsible for the drainage going across the back of their lots and not the City.

Mayor Salas directed her questions to the City Attorney stating hat she does own a home in this subdivision and should she abstain. City Attorney said that she should reclude herself.

Mayor Salas handed the meeting over to Mayor Pro Tem Franklin and left the room.

Mr. Burk said that he doesn't think that one more month would hurt. He said as it relates to the bonds these bonds will have nothing to do with the cross lot drainage.

City Manager asked Mr. Burk for clarification for the City Council is he able to itemize exactly what this bond covered in the way of the actual work that was completed.

Mr. Burk said the itemization would be basically a performance bond, material/labor bond and a monumentation bond and of those have the detailed information. 90% of all of those bonds were released a year ago and what is left is the residual for warranty for the City so within a year's time the infrastructure that is out there now, covers our infrastructure, so the City would go back to them with a punch list and staff has done that with them and they have fulfilled that. The infrastructure would be curb, gutter, sidewalk, all the electrical underground, storm drain issues, landscaping and anything to do with the right of way such as street lights, stop signs, stripping, and pavement.

There was further Council discussion.

Mayor Pro Tem Franklin opened the item for public comments.

Jack Bullock, West Ramsey asked for clarification of where these tracks were located.

Mayor Pro Tem Franklin said that they are off of Charles Street between Hathaway and Hargrave and the area around Charles heading south.

Motion Hanna/Franklin to table the recommendation for one month. Motion was tied 2/2 and motion did not pass.

Motion Machisic/Botts to approve Consent Item No. 10 to accept the public improvements and release the final portion 10% of the Faithful Performance/Labor and Material/ Monumentation Bond Release for Tract Numbers 28252, 31833, 31834 and 31835. Motion was tied 2/2 and motion did not pass.

Mayor Pro Tem Franklin asked City Attorney what the next step would be on this item.

City Attorney said that this would probably come back to the Council at the next meeting. No motion has been passed to approve or deny it and therefore no action is being taken on the matter and it will be up to staff to bring it back to the Council again.

ORDINANCES - INTRODUCTION

1. **Ordinance No. 1378, An Ordinance of the City of Banning Amending Chapter 6A of the Banning Ordinance Code Relating to Disaster Operations and Relief.**
(Staff Report – Ted Yarbrough, Fire Marshal/Fire Prevention Officer)

Fire Marshal gave the staff report as contained in the agenda packet and recommended adoption of this ordinance.

Mayor Salas opened the item for public comments. There were none.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1378: City Clerk read: **An Ordinance of the City of Banning Amending Chapter 6A of the Banning Ordinance Code Relating to Disaster Operations and Relief.**

Motion Machisic/Franklin to waive further reading of Ordinance No. 1378. Motion carried, all in favor.

Motion Machisic/Franklin that Ordinance No. 1378 pass its first reading. Motion carried, all in favor.

There was some Council discussion regarding standby officers and training.

2. **Ordinance No. 1380, An Ordinance of the City Council of the City of Banning, Amending Chapter 8, Article II, Section 8-16 of the Banning Municipal Code Adopting the California Fire Code, 2007 Edition and Appendices as Amended, as the Uniform Fire Code of the City of Banning and Repealing Chapter 8, Article II, Section 8-17 of the Banning Municipal Code.**
(Staff Report – Ted Yarbrough, Fire Marshal/Fire Prevention Officer)

Fire Marshal gave the staff report as contained in the agenda packet and recommended adoption of this ordinance.

Mayor Salas opened the item for public comments. There were none.

Mayor Salas asked the City Clerk to read the title of Ordinance No. 1380: City Clerk read: **An Ordinance of the City Council of the City of Banning, California, Amending Chapter 8, Article II, Section 8-16 Repealing Sections 8-17 of the Banning Ordinance Code Adopting the 2007 California Fire Code in its Entirety for 1) Regulating and Governing the Safeguard of Life and Property from Fire and Explosion Hazards (Arising from the Storage, Handling and Use of Hazardous Substances, Material and Devices) and from Conditions Hazardous to Life or Property in the Occupancy of Buildings and Premises in the City of Banning, and 2) Providing for the Issuance of Permits and the Collections of Fees Therefor.**

Motion Franklin/Machisic to waive further reading of Ordinance No. 1380. Motion carried, all in favor.

Motion Franklin/Machisic that Ordinance No. 1380 pass its first reading. Motion carried, all in favor.

(This item passed its first reading and will come back at the next meeting as a Public Hearing to be adopted. This is needed because you are adopting a code by reference.)

Motion Hanna/Machisic to set the public hearing on Ordinance No. 1380 for January 8, 2008. Motion carried, all in favor.

PUBLIC HEARINGS

1. Resolution No. 2007-150, Adopting the Projects for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program.
(Staff Report - Duane Burk, Public Works Director)

Mr. Burk gave the staff report on this item as contained in the agenda packet.

Mayor Pro Tem Franklin said that she wanted to confirm that it is her understanding that even though she sits on the Board for two of these agencies that it is okay for her to participate in discussion and voting. City Attorney said that if she was uncompensated that it would be okay. Mayor Pro Tem Franklin said that she was not compensated.

Councilmember Machisic said that this is always a difficult thing to do to divide up money and as you can see on the list there was \$198,000 requested and only \$45,000.00 as far as a recommendation. All of these groups are certainly needed and he commended the Ad Hoc Committee for the job that they did.

Councilmember Botts gave some background on how they came up with the selected choices.

Mayor Salas opened the public hearing for comments from the public.

Cindy Oma Gray, Soroptimist House of Hope thanked the Council for continued support. They do a good job at the House of Hope and she is glad to see that the Council sees that.

Marion Johnson, San Gorgonio Child Care Consortium thanked the Council for what they are doing for them and they are very appreciative of that because the money goes a long way and they need it very much.

Officers Doug Monte and Alex Diaz, Banning Police Activities League thanked the Council and said that this will make a difference to a lot of these kids. The money will start up a lot of projects that they had in mind and didn't have the funding for. The Council will notice a big difference in the kids giving back to the community.

Patty Hanley stated that on behalf of the Banning Library District thank you very much. She is looking forward to putting on programs for the entire community.

Carol Newkirk, 905 Twin Hills Drive, said thank you very much for allowing us to share the wealth here. The Banning Cultural Alliance continues to look forward to working with the City on many different project and bringing art and culture to downtown Banning.

Mayor Salas said to please note that sometimes it is not as much as they would like to give but their token of support shows that we do notice what you are doing out there and appreciate that. Also, these grant funds will have to be approved by the County of Riverside and there shouldn't be any problem but just wanted it noted.

Motion Hanna/Machisic that the City Council adopt Resolution No. 2007-150, Approving the Projects for Fiscal Year 2008-2009 Community Development Block Grant (CDBG) Program, and Authorize staff to submit said applications to the Riverside County Economic Development Agency. Motion carried, all in favor.

ITEMS FOR FUTURE AGENDAS

New Items -

Councilmember Hanna said that a few months ago there was a proposed increase in various fees which the Council had stated in previous years that we want to look at every year. They may not need to be increased every year but based on actual cost those development fees based on new housing were delayed at the request of the Building Industry Association for discussion and so forth. She would like to put that on pending items and make sure that it comes back in a timely manner.

Councilmember Machisic said at the last meeting he indicated that a review of the Water Conservation Plan and he mentioned other kinds of conservation in all the departments. He thinks that item needs to be expanded so that we get a report at some point and time or a plan "Green Plan" in all the departments whether it be planning or automotive or the airport, etc. He knows that there are a number of things going on but it is just not publicized and he thinks that the City needs to be a leader. These things need to be shared with the public.

Mayor Pro Tem Franklin would like to keep the Armory Lease issue on the Pending Items list. Also would like a report on some potential ordinances in regards to skateboarding in certain areas of the city especially in front of City Hall and she is concerned about liability with them doing that and whether or not it can even be enforced if it is not posted. Also an ordinance in regards to the demolition time once building are at the point of where they look like they are time frames for demolition.

Councilmember Botts would like to have the mural ordinance at the next meeting. He said that we have a number of issues with "group homes" and the City of Norco forged ahead and passed an ordinance regarding group homes and he would like to see us move forward in regards to ordinances for group homes. Neighborhoods are being disruptive by crime coming from some of these homes and would like it on an early agenda. Also we need to put on the January agenda committee assignments.

There was Council consensus to these items.

Pending Items –

1. Review of Water Conservation Plan (*Machisic-10/9/07*) (*Toor*)
2. Annual Review of General Plan (*Hanna- 10/9/07*) (*Orci*)
3. Review of Lease with Armory by end of the year. (*Franklin- 10/9/07*)

City Attorney addressed Mayor Salas stating that before she adjourns this meeting on Item No. 2 under Ordinances where there was the first reading of the ordinance with regards to the Fire Code. This is an incorporation of a Code by reference and as a result the first reading is appropriate which was done but the Council also needs to set a public hearing for a second reading. It is a little different procedure from the usual ordinances and there will have to be publication of the ordinance during the interim time and it needs to be a date certain. She asked the Council to return to that item.

ORDINANCES – INTRODUCTION (revisited)

2. Ordinance No. 1380, An Ordinance of the City Council of the City of Banning, Amending Chapter 8, Article II, Section 8-16 of the Banning Municipal Code Adopting the California Fire Code, 2007 Edition and Appendices as Amended, as the Uniform Fire Code of the City of Banning and Repealing Chapter 8, Article II, Section 8-17 of the Banning Municipal Code.
(Staff Report – Ted Yarbrough, Fire Marshal/Fire Prevention Officer)

Motion Hanna/Machisic to set the public hearing on Ordinance No. 1380 for January 8, 2008. Motion carried, all in favor.

FUTURE MEETINGS

1. Special City Council Meeting – Wednesday, December 12, 2007 with Norm Roberts (Closed Session) starting at 4:00 p.m. – Large Conf. Room
2. City Council Meeting Workshop – January 8, 2008 at 5:00 p.m. to discuss the Airport Master Plan.
3. Special City Council Meeting – Thursday, January 17, 2008 at 12:30 p.m. with Banning Heights Mutual Water Company
Would like this changed to 9:00 a.m. and also include SGPWA. This would be regarding the flume.
4. Special City Council Meeting - Thursday, January 17, 2008 at 2:00 to 3:30 p.m. to meet with Supervisor Marion Ashley (*this needs to be rescheduled*)
5. Special Council Meeting - February 12, 2008 – meeting to discuss delivery of State Water Project to Banning (*this would be meeting with SGPWA*)

City Council Meeting scheduled for December 25, 2007 canceled per Council action taken on October 9, 2007.

Mayor Salas adjourned the Regular Meeting of the City Council to a Special Meeting of the Community Redevelopment Agency.

**CALL TO ORDER A SPECIAL MEETING OF THE COMMUNITY
REDEVELOPMENT AGENCY**

Chairman Botts called the special meeting to order.

CONSENT ITEMS

1. Approval of Minutes – Regular Meeting – 11/27/07

Recommendation: That the minutes of the regular meeting of November 27, 2007 be approved.

2. CRA Resolution No. 2007-24, Amending the Professional Services Agreement with Traffic Safety Engineers to Include the Traffic Signals Design for the Westward Avenue and San Gorgonio Avenue Intersection for an amount not to exceed \$10,750.00.

Recommendation: That CRA Resolution No. 2007-24 be adopted.

3. CRA Resolution No. 2007-25, Approving a Purchase and Sale Agreement with Joint Escrow Instructions for the Purchase of APN Nos. 541-146-003, 541-150-023, and 541-150-024.

Recommendation: That CRA Resolution No. 2007-25 be adopted.

Motion Machisic/Franklin to approve Consent Item 1 through 3.

Chairman Botts opened the item for public comments. There were none.

Boardmember Franklin asked in regards to Item No. 3, if for some reason the liens cannot be cleared will the deposit be returned in full.

Finance Director said that with regard to the deposits no they are not refundable. Per the agreement we are required to make a deposit into escrow and that deposit is accessible by the seller to clear encumbrances that are against the property. If the property for some reason falls out of escrow and this deal does not go through, those deposits are not refundable back to the Agency.

Boardmember Hanna said that since this is being discussed perhaps it would be worthwhile to say where this property is and why we are buying it.

Finance Director said that this site to her understanding is being considered for the mid-county courthouse and it is 7.6 acres located at the northeast corner of Ramsey St and Martin Street.

Boardmember Franklin asked if we had an indication that the liens are curable because the property has fallen out of escrow many times and she is concerned if it has to do with the liens or is it just other issues.

Finance Director said that their expectation is that the liens are curable. The property owner has been in touch with the lien holders and anyone that has encumbrance against the property and we are hopeful that once the deposits are made into escrow that the liens can be cleared relatively quickly. There was one other section that the City Manager asked that she point out to the Board and it is in the agenda package beginning on page 207, Article 10.3 of the agreement. It talks about an "as is, where is" sale. We will be taking this property as is with no recourse against the seller. The City Manager had indicated that there could be possible remediation that maybe needed to this site due to underground storage tanks that are located on the site. We don't know at this point what that remediation may involve but he wanted the Board to be aware that it is an "as is" purchase and there will be no recourse against the seller.

Boardmember Hanna asked if there has been any research as to any other issues. If this is not developable, then it is a problem. If we, as a Redevelopment Agency, are particularly positioned to cure, then that is a great move. Do we know what the possible problems are and have we done any assessment.

Finance Director said that she was not aware of the details.

Chairman Botts said that he has had some discussion with Jae Von Klug and he doesn't think that we are aware of anything but it doesn't mean that it doesn't exist other than the drainage issue which we understand has to be dealt with by the Agency.

Motion carried, all in favor.

Chairman Botts adjourned the Special CRA Meeting.

CALL TO ORDER A SPECIAL JOINT MEETING OF THE BANNING CITY COUNCIL AND THE COMMUNITY REDEVELOPMENT AGENCY OF THE CITY OF BANNING

REORGANIZATION OF CITY COUNCIL

Mayor Pro Tem Franklin nominated Brenda Salas as Mayor. City Clerk took a roll call vote of the Council and it was unanimous for Brenda Salas as Mayor for a one-year term.

Councilmember Machisic nominated Deborah Franklin as Mayor Pro Tem. City Clerk took a roll call vote of the Council and it was unanimous for Deborah Franklin as Mayor Pro Tem for a one-year term.

REORGANIZATION OF COMMUNITY REDEVELOPMENT AGENCY

Boardmember Machisic nominated Bob Botts as Chairman. City Clerk took a roll call vote of the Board and it was unanimous for Bob Botts as Chairman for a one-year term.

Boardmember Franklin nominated John Machisic as Vice-Chairman. City Clerk took a roll call vote of the Board and it was unanimous for John Machisic as Vice Chairman for a one-year term.

CITY COUNCIL AND CRA CLOSED SESSION ITEMS

City Attorney stated that the Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real estate property negotiator Randy Anstine on the price and terms of the acquisition of property located at APN: 540-165-006 with the property owner; The Agency Board will meet in closed session pursuant to the provisions of Government Code Section 54956.8 to confer with its real property negotiator Randy Anstine on the price and terms of the acquisition of property at APNs: 541-141-002 and 541-141-003 with the property owner.

City Attorney said that the City Council will meet in closed session pursuant to Government Code Section 54957.6 to confer with its labor negotiators with regard to the BPOA (Banning Police Officers Association) and the designated representative are Randy Anstine, Julie Biggs, Bonnie Johnson and Chris Paxton.

Mayor Salas opened the item for public comments. There were none.

Meeting went into Closed Session at 8:35 p.m. and returned to regular session at 9:10 p.m. with no reportable action.

Mayor Salas adjourned the Special Joint Meeting of the City Council and the Redevelopment Agency.

ADJOURNMENT

By common consent the meeting adjourned at 9:10 p.m.

Marie A. Calderon, City Clerk

THE ACTION MINUTES ARE A SUMMARY OF ACTIONS TAKEN BY THE CITY COUNCIL.
AUDIOTAPES OF THE ACTUAL MEETING ARE AVAILABLE FOR LISTENING IN THE
OFFICE OF THE CITY CLERK OR A COPY OF THE MEETING CAN BE REQUESTED IN
WRITING.

MINUTES
CITY COUNCIL
BANNING, CALIFORNIA

12/18/07
SPECIAL MEETING

A special meeting of the Banning City Council was called to order by Mayor Salas on December 18, 2007 at 1:32 p.m. at the Banning Civic Center, City Manager's Office, 99 E. Ramsey Street, Banning, California.

COUNCIL MEMBERS PRESENT:

Councilmember Botts
Councilmember Franklin
Councilmember Machisic
Mayor Salas

COUNCIL MEMBERS ABSENT:

Councilmember Hanna

OTHERS PRESENT:

Julie Hayward Biggs, City Attorney
Norm Roberts, Consultant
Marie A. Calderon, City Clerk

PUBLIC COMMENTS

There were none.

CLOSED SESSION

1. The City Council will meet in Closed Session pursuant to Government Code Section 54957 with regard to the following personnel issue: Public employment – Appointment of City Manager

Meeting went into closed session at 1:33 p.m. and returned to regular session at 2:05 p.m. with no reportable action.

ADJOURNMENT

By common consent the meeting adjourned at 2:05 p.m.

Marie A. Calderon, City Clerk

2nd Read.

**AN ORDINANCE OF THE CITY OF BANNING
AMENDING CHAPTER 6A OF THE BANNING
ORDINANCE CODE RELATING TO DISASTER
OPERATIONS AND RELIEF**

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

SECTION 1. Chapter 6A of the Banning Ordinance Code is hereby deleted in its entirety and replaced by the following:

**"CHAPTER 6A
DISASTER OPERATIONS AND RELIEF"**

Sec. 6A-1. Purpose

The purpose of this chapter is to provide for the preparation and carrying out of plans for the protection of persons and property within the City in the event of an emergency, including the direction of the emergency organization and the coordination of the emergency functions of this City, with all other public agencies, corporations, organizations and affected private persons.

Sec. 6A-2. Definitions

As used in this chapter, "emergency" shall mean the actual or threatened existence of conditions of disaster or of extreme peril to the safety of persons and property within this City caused by such conditions as air pollution, fire, flood, storms, epidemic, riot, earthquake, or other conditions, including conditions resulting from a labor controversy, which conditions are or likely to be beyond the control of the services, personnel, equipment, and facilities of this city, requiring the combined forces of other political subdivisions to combat.

Sec. 6A-3. Disaster Council powers and duties

A non-emergency committee, to be known as the City of Banning Disaster Council, is hereby created.

It shall be the duty of the City of Banning Disaster Council, and it is hereby empowered, to develop and recommend for adoption by the City Council, emergency and mutual aid plans and agreements and such ordinances, resolutions, rules and regulations as are necessary to implement such plans and agreements.

The Disaster Council shall meet upon call of the Chairperson or, in his or her absence from the City or inability to call such meeting, upon call of the Vice-Chairperson or his designee. All meetings of the Disaster Council shall be held and conducted in accordance with the provisions of the Ralph M. Brown Act, Government Code Sections 54950 et seq.

Sec. 6A-4. Emergency Services Division

Hereby created are the Office of Director of Emergency Services, who shall be the City Manager; the Office of Assistant Director of Emergency Services, who shall be the first alternate City Manager as designated in the latest City Manager's "Letter of Authority"; and the Office of Emergency Services Coordinator, who shall be appointed by the City Manager.

Sec. 6A-5. Disaster Council membership

The membership of the Disaster Council shall include:

- (1) The Mayor, who shall be Chairperson;
- (2) The Director of Emergency Services, who shall be Vice-Chairperson;
- (3) The Assistant Director of Emergency Services;
- (4) Chief of Police;
- (5) Human Resource Director;
- (6) Public Works Director;
- (7) Finance Director;
- (8) Electric Utility Director
- (9) Water/Wastewater Utility Director
- (10) Community Development Director
- (11) Parks and Recreation Director
- (12) Emergency Services Coordinator;
- (13) One member from the Superintendent's office of the Banning Unified School District; and
- (14) Such additional citizens of this City, as the City Council may appoint to be "members at large."

Sec. 6A-6. Powers and duties of the Director, Assistant Director of Emergency Services and the Emergency Services Coordinator

(1) The Director is hereby empowered to:

- a. Request the City Council to proclaim the existence or threatened existence of a "local emergency" if the City Council is in session, or to issue such proclamation if the City Council is not in session;
- b. Request the Governor to proclaim a "state of emergency" when, in the opinion of the Director, locally available resources are inadequate to cope with the emergency;
- c. Control and, direct the effort of the emergency organization of the City for the accomplishment of the purposes of this chapter;
- d. Direct cooperation between and coordination of services and staff of the emergency organization of this City and resolve questions of authority and responsibility that may arise between them;
- e. Represent the City in all dealings with public or private agencies on matters pertaining to emergencies as defined herein;
- f. In the event of the proclamation of a "local emergency," or the proclamation of a "state of emergency" by the Governor or the Director of the State Office of Emergency Services, or the existence of a "state of war emergency," the Director is hereby empowered:
 - i. To make and issue rules and regulations on matters reasonably related to the protection of life and property affected by such emergency; provided, however, such rules and regulations shall be ratified at the earliest practicable time by the City Council,
 - ii. To obtain vital supplies, equipment, and such other necessities found lacking and needed for the protection of life and property and to bind the City for the fair value thereof and, if required immediately, to commandeer the same for public use,
 - iii. To require emergency services of any City officer or employee and to command the aid of as many citizens

of this community as he deems necessary in the execution of his duties; such persons shall be entitled to all privileges, benefits, and immunities as are provided by state law for registered disaster service workers,

- iv. To requisition necessary personnel or material of any City department, and
- v. To execute all of his ordinary power as City Manager, conferred upon him by the Banning Ordinance Code or by resolution or emergency plan adopted pursuant to this chapter by the City Council, all powers conferred upon him by a statute, by any agreement approved by the City Council and by any other lawful authority.

- (2) The following order of succession shall take effect in the event the Director of Emergency Services is unavailable to attend meetings and otherwise perform his duties during an emergency:
 - a. Assistant Director of Emergency Services
 - b. The department director named as 2nd alternate City Manager in the latest City Manager's "Letter of Authority"
 - c. Chief of Police
- (3) The Assistant Director of Emergency Services shall have such other powers and duties as may be assigned by the Director.
- (4) The Emergency Services Coordinator shall, under the supervision of the Director of Emergency Services, develop emergency plans and manage the emergency programs of this City and shall have such other powers and duties as may be assigned by the Director.

Sec. 6A-7. Appointment of Standby Officers

- (1) To provide for the continuance of legislative and executive functions in the City during a state of war emergency, a state of emergency or a local emergency the City Council shall appoint three Standby Officers for each of its members. In case a Standby Office becomes vacant because of removal, death, resignation, or other cause, the City Council shall appoint another person to fill said office. Standby Officers shall be designated Nos. 1, 2, and 3 as the case may be.

(2) The qualifications of each Standby Officer should be carefully investigated, and the City Council may request the Chief of Police to aid in the investigation of any prospective appointee. No examination or investigation shall be made without the consent of the prospective appointee.

(3) Consideration shall be given to places of residence and work, so that for each office for which Standby Officers are appointed there shall be the greatest probability of survivorship. Standby Officers may be residents or Officers of a city other than the City of Banning.

(4) Each Standby Officer shall take the oath of office required of the person occupying the office for which he/she stands by. Persons appointed as Standby Officers shall serve in their posts as Standby Officers at the pleasure of the City Council and may be removed and replaced at any time with or without cause.

(5) Each Standby Officer shall have the following duties:

- a. To inform himself/herself of the duties of the office for which he/she stands by. Employees of the City shall assist him/her and shall provide each Standby Officer with a copy of this chapter.
- b. To keep informed of the business and affairs of the City to the extent necessary to enable him/her to fill his/her post competently. For this purpose, the City may arrange information meetings and require attendance.
- c. To immediately report himself/herself ready for duty in the event of a state of war emergency or in the event of a state of emergency or a local emergency at the place and in the method previously designated in the City's emergency plan.
- d. To fill the post for which he/she has been appointed when the regular Council member is unavailable during a state of war emergency. Standby Officer No. 2 and 3 shall substitute in succession for Standby Officer No. 1 in the same way that said Standby Officer is substituted in place of the regular Council member. He/she shall serve until the regular Council Member becomes available or until the election or appointment of a new regular Council Member.

(6) Should all members of the City Council, including all Standby members be unavailable, temporary officers shall be appointed to serve until a regular member or a Standby member becomes available or until election or appointment of a new regular or

Standby member. Temporary officers shall be appointed as follows:

- a. By the Chairperson of the Board of Supervisors of Riverside County, and if he/she is unavailable.
- b. By the Chairperson of the Board of Supervisors of any other County within one hundred fifty miles of the City, beginning with the nearest and most populated County and going to the farthest and least populated, and if he/she is unavailable.
- c. By the Mayor of any city within one hundred-fifty miles of the City, beginning with the nearest and most populated city and going to the farthest and least populated.

(7) As used in this article, "unavailable" means that a Council Member is either killed, missing or so seriously injured as to be unable to attend meetings and otherwise perform his/her duties. Any question as to whether a particular member is unavailable shall be settled by the City Council or any remaining available members of said body (including Standby Officers who are on the City Council).

(8) The Office of Mayor shall be filled by the normally elected Mayor Pro Tempore should the Mayor be unavailable. Should both the Mayor and Mayor Pro Tempore be unavailable, the Mayor shall be selected by the City Council from among the ranks of remaining elected Council Members. Standby Officers serving on the City Council shall participate in the selection of a Mayor.

The selected person shall serve until the elected Mayor becomes available or until the election of a new Mayor.

Sec. 6A-8. Emergency organization

The emergency management organization shall consist of the following:

- (1) City Manager/acting City Manager
- (2) Emergency Services Coordinator/acting Emergency Services Coordinator
- (5) Chief of Police/acting Chief of Police
- (4) Human Resource Director/acting Human Resource Director
- (5) Public Works Director/acting Public Works Director

- (6) Finance Director/ acting Finance Director
- (7) Electric Utility Director/acting Electric Utility Director
- (8) Water/Wastewater Utility Director/acting Water/Wastewater Utility Director
- (9) Community Development Director/acting Community Development Director
- (10) Parks and Recreation Director/acting Parks and Recreation Director

All officers and employees of the City, together with those volunteer forces enrolled to aid them during an emergency, and all groups, organizations, and persons who may by agreement or operation of law, including persons impressed into service under provisions of this chapter, be charged with duties incident to the protection of life and property in the City during such emergency, shall constitute the emergency organization of the City.

Sec. 6A-9. Emergency plan

The City of Banning Disaster Council shall be responsible for the development of the City's emergency plan, which shall provide for the effective mobilization of all of the resources of this City, both public and private, to meet any conditions constituting a local emergency, state of emergency, or state of war emergency; and shall provide for the organization, powers and duties, services, and staff of the emergency organization. Such plan shall take effect upon adoption by resolution of the City Council.

Sec. 6A-10. Designation of the Emergency Operations Centers

It is hereby designated that, in the event of an emergency, the city building located at 3900 W. Wilson Street shall be designated as the primary Emergency Operations Center (EOC) for the City.

Should that building be deemed unsafe to occupy, then the alternate EOC will be the City building at 176 E. Lincoln Street. The building at 176 E. Lincoln Street is also hereby designated as a Department Operations Center (DOC), to be utilized to help control City activities in conjunction with the EOC.

Sec. 6A-11. Expenditures

Any expenditure made in connection with emergency activities, including mutual aid activities, shall be deemed conclusively to be for the direct protection and benefit of the inhabitants and property of the City.

Sec. 6A-12. Punishment for violation

It shall be a misdemeanor, punishable by a fine of not to exceed one thousand dollars, or by imprisonment for not to exceed six months, or both, for any person, during an emergency, to:

- (1) Willfully obstruct, hinder, or delay any member of the emergency organization in the enforcement of any lawful rule or regulation issued pursuant to this chapter, or in the performance of any duty imposed upon him by virtue of this chapter;
- (2) Do any act forbidden by any lawful rule or regulation issued pursuant to this chapter, if such act is of such a nature as to give or be likely to give assistance to the enemy or to imperil the lives or property of inhabitants of this City, or to prevent, hinder, or delay the defense or protection thereof;
- (3) Wear, carry, or display, without authority, any means of identification specified by the emergency agency of the state.

Sec. 6A-13. Severability

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such action shall not affect other provisions of this chapter or applications, and to this end the provisions of this chapter are declared to be severable.

Section II.

The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon this ordinance shall take effect 30 days after adoption and be in force and effect according to law.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor

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

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1378 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of December, 2007, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

**CITY COUNCIL
CONSENT CALENDAR**

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: **Imposition of a Nuisance Abatement Lien in the amount of \$8,447.75
on the property located at Assessor's Parcel Number 538-300-001.**

RECOMMENDATION: The City Council: "Adopt Resolution No. 2008-03 (Exhibit "1"), imposing a nuisance abatement lien in the amount of \$8,447.75 on the property known as Assessor's Parcel Number 538-300-001 for costs related to an administrative proceeding to abate a public nuisance".

JUSTIFICATION: The City, as the prevailing party in the administrative proceeding, is authorized to recover it's fees and costs relating to the abatement of the public nuisances pursuant to Banning Municipal Code section 11C-48; and.

BACKGROUND: On December 20, 2006, based on a complaint received by the City of Banning, a Code Enforcement Officer inspected the vacant lot known as Assessor's Parcel Number 538-300-001 ("the vacant lot"). The record owners of the property are Neal and Roberta Duffy ("the property owners"). At that time, the Officer found multiple violations of the Banning Municipal Code, including junk, trash, debris, discards, trailers, vehicles, motor homes and large storage containers stored on the unpaved vacant lot.

By letter dated December 27, 2006, the City notified the property owners of the municipal code violations at the vacant lot, and requested that the conditions be corrected within thirty days. The property owners were informed in this correspondence that "[a]s the property owner you will be liable for all costs incurred by the City in the abatement of this nuisance."

A follow-up inspection was conducted on January 29, 2007, and the violations remained on the vacant lot.

On January 31, 2007, the City issued a Notice to Abate Public Nuisance pursuant to Banning Municipal Code Section 11C-31, which was served on the property owners. The property owners requested a hearing before a nuisance abatement hearing officer pursuant to Banning Municipal Code Section 11C-36.

On July 23, 2007, a hearing was held before Donald P. Cole, an Administrative Law Judge with the State of California Office of Administrative Hearings. At the time of the hearing, two cargo containers and miscellaneous junk and debris remained on the vacant lot.

After a lengthy hearing, Judge Cole took the matter under submission, issuing a decision on August 20, 2007 (See Exhibit "2"). The decision found and declared multiple conditions at the property to be public nuisances, and ordered the abatement of the public nuisances. The property owners did not appeal the decision within fifteen days of the issuance of the decision as required by Banning Municipal Code section 11C-46. Additionally, the property owners are abating the public nuisances based on Judge Cole's ruling.

Despite notification that they would be required to pay any costs incurred by the City, the property owners failed to voluntarily abate the public nuisances without the necessity of a hearing before a nuisance abatement hearing officer. Accordingly, the property owners are responsible to reimburse the City for all costs, including reasonable attorney's fees, incurred by the City in this administrative proceeding.

Fees and costs incurred by the City in this action total \$8,447.75. This figure includes the following, for which itemized reports are attached:

- \$66.00 for fees incurred in filing this matter with the State of California Office of Administrative Hearings (see Exhibit "3");
- \$4,254.25 for costs incurred for 22.75 hours spent by Administrative Law Judge Donald P. Cole on this administrative proceeding, consisting of 9 hours attending the hearing, and 13.75 hours reviewing evidence and preparing the decision (see Exhibit "4");
- \$4,127.50 for 22.5 hours of reasonable attorney's fees incurred relating to this administrative proceeding (see Exhibit "5").

ANALYSIS: Banning Municipal Code Section 11C-48(a) states that "[t]he abatement of any public nuisance by the city as prescribed in this Code shall be at the sole expense of the persons creating, causing, committing or maintaining such nuisance. The cost of abatement of any public nuisance and related administrative costs shall include, but not be limited to: inspection costs; investigation costs; attorneys' fees and costs; and costs to repair and eliminate all substandard conditions. All such fees and costs shall be a personal obligation against any person held responsible for creating, causing, committing or maintaining a public nuisance."

(Emphasis added).

Banning Municipal Code section 11C-48(b) further states that "[t]he prevailing party in any action, administrative proceeding or special procedure to abate a public nuisance pursuant to this section may recover its reasonable attorneys' fees in those individual actions or proceedings wherein the City elects, at the initiation of that individual action or proceeding, to seek recovery of its own attorneys' fees. In no action, administrative proceeding, or special proceeding shall an award of attorneys' fees to any prevailing party exceed the amount of reasonable attorneys' fees incurred by the City in the action or proceeding." (Emphasis added). Accordingly, the City, as the prevailing party in the administrative proceeding, has the right to

recover its attorney's fees and costs from the property owners. Additionally, the City may recover its costs to hold the hearing itself as a cost of abatement of the public nuisances.

As set forth above, the property owners received notice on or about December 27, 2006 that the City was initiating proceedings to abate the public nuisances at the vacant lot. Further, the property owner had several opportunities thereafter to abate the public nuisance voluntarily, without the necessity of an administrative proceeding, but failed to do so.

City Council is recommended to direct staff to personally serve a Notice of Recordation of a Nuisance Abatement Lien pursuant to Banning Municipal Code Section 11C-49, and record such lien in the Riverside County Recorder's Office.

FISCAL DATA: The proposed nuisance abatement lien is anticipated to cover the costs incurred by the City to abate the public nuisances at the vacant lot.

RECOMMENDED BY:

Oscar W. Orci *by JS*
Julie Hayward Biggs, City Attorney
Oscar W. Orci, Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by RJ*
Randy Anstine
City Manager

Exhibits:

- 1) Resolution No. 2008-03
- 2) August 20, 2007 order of Administrative Law Judge
- 3) Itemized Written Invoice from State re Filing Fees
- 4) Itemized Written Invoice from State re cost for Judge
- 5) Itemized Written Report from City Attorney

NUISANCE
ABATEMENT LIEN

RESOLUTION
NO. 2008-03

EXHIBIT “1”

RESOLUTION NO. 2008-03

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, IMPOSING A NUISANCE ABATEMENT LIEN IN THE AMOUNT OF \$8,447.75 ON THE PROPERTY KNOWN AS ASSESSOR'S PARCEL NUMBER 538-300-001 FOR COSTS RELATED TO AN ADMINISTRATIVE PROCEEDING TO ABATE A PUBLIC NUISANCE

WHEREAS, on December 20, 2006, based on a complaint received by the City of Banning, a Code Enforcement Officer inspected the vacant lot known as Assessor's Parcel Number 538-300-001 ("the vacant lot"), finding multiple violations of the Banning Municipal Code, including junk, trash, debris, discards, trailers, vehicles, motor homes and large storage containers stored on the unpaved vacant lot; and

WHEREAS, by letter dated December 27, 2006, the City notified the property owners of the municipal code violations at the vacant lot, and requested that the conditions be corrected within thirty days. The property owners were informed in this correspondence that "[a]s the property owner you will be liable for all costs incurred by the City in the abatement of this nuisance"; and

WHEREAS, the property owners requested a hearing before a nuisance abatement hearing officer, which took place on July 23, 2007; and

WHEREAS, the nuisance abatement hearing officer issued a decision on August 20, 2007, finding that the conditions at the vacant lot constitute public nuisances, and ordering the abatement thereof; and

WHEREAS, the City, as the prevailing party in the administrative proceeding, is authorized to recover it's fees and costs relating to the abatement of the public nuisances pursuant to Banning Municipal Code section 11C-48; and

WHEREAS, total fees and costs associated with the abatement of the public nuisances at the vacant lot are \$8,447.75, which are recoverable as a nuisance abatement lien on the property pursuant to Banning Municipal Code section 11C-49; and

WHEREAS, the City Council desires to place a nuisance abatement lien be imposed against the vacant lot known as Assessor's Parcel Number 538-300-001, to reimburse the City for the costs and expenses of the administrative proceeding to abating the public nuisances at the vacant lot.

NOW, THEREFORE, the City Council of the City of Banning now finds, determines, and resolves as follows:

SECTION 1. RECITALS

The above recitals are all true and correct

SECTION 2. NUISANCE ABATEMENT LIEN

The City Council hereby orders a nuisance abatement lien be imposed against the vacant lot known as Assessor's Parcel Number 538-300-001, to reimburse the City for the costs and expenses of the administrative proceeding to abating the public nuisances at the vacant lot.

SECTION 3. DIRECTION TO STAFF

The City Council hereby directs and authorizes staff to personally serve A Notice of Recordation of a Nuisance Abatement Lien pursuant to Banning Municipal Code section 11C-49, and record such lien in the Riverside County recorder's office.

SECTION 4. CERTIFICATION

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

PASSED, APPROVED AND ADOPTED this 8th day of January 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-03, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

*NUISANCE
ABATEMENT LIEN*

*ADMINISTRATIVE
LAW JUDGE*

EXHIBIT “2”

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

CITY OF BANNING,

Agency,

and

NEAL E. DUFFY and ROBERTA N.
DUFFY,

Respondents.

OAH No. L2007060497

DECISION

Donald P. Cole, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on July 23, 2007, in Banning, California.

Phillip A. Kraft, Deputy City Prosecutor, Burke, Williams & Sorensen, LLP, represented the City of Banning (the City).

Respondents Neal and Roberta Duffy represented themselves and were present throughout the hearing.

The matter was submitted on July 23, 2007.

FACTUAL FINDINGS

1. By letter dated December 27, 2006, the Code Enforcement Division of the City of Banning Community Development Department (the City)¹ notified respondents that certain violations of the City's Municipal Code and Zoning Ordinance had been substantiated with regard to Riverside County Assessor's Parcel Number 538 300 001, located within the City. On January 31, 2007, the City issued to respondents a "Notice to Abate Public

¹ "The City" refers in this Decision to either the municipality itself, or to the Code Enforcement Division, as required by the context.

Nuisance." On or about March 12, 2007, respondents requested a hearing. By letter dated July 10, 2007, the City notified respondents of the date, time, and location of the hearing.

2. In August 2004, respondents purchased a vacant, unpaved lot ("the lot" or "the property") bearing Riverside County Assessor's Parcel Number 538 300 001 and located within the City. The lot is 6,534 square feet in size. The assessed value of the lot is \$3,570. The property is zoned for "very low density residential."²

3. Arthur Chacon is a code enforcement officer for the City, a position he has held for two years. Chacon has a total of nine years' experience as a code enforcement officer.

4. Chacon testified³ that in late December 2006, he was assigned to investigate a complaint pertaining to alleged illegal storage on the lot. On December 20, 2006, Chacon conducted an inspection of the property, and there observed "junk, trash, debris, discards, trailers, vehicles, motor homes, [and] containers stored off pavement."

5. Chacon testified that he conducted a second inspection on January 29, 2007. Chacon noted that "removal of some outside storage has begun. The motor home has been removed and storage of other items." Nonetheless, according to Chacon, respondent in other respects remained in violation of the Municipal Code and the Zoning Ordinance.

6. Chacon testified that he conducted a third inspection on February 15, 2007. Chacon noted that "much of the . . . storage has been removed," but that "two sea containers, a utility trailer, the Dodge truck, plastic barrels . . . and other outside storage remain on the property," in violation of the Municipal Code and the Zoning Ordinance.

7. Chacon testified that he conducted a fourth inspection on February 21, 2007. Chacon noted that the two sea containers, "a truck, and barrels" remained on the lot, in violation of the Municipal Code and the Zoning Ordinance.

8. Chacon testified that on the day of (but prior to) the hearing, he drove by the property one more time. The two sea containers were still on the lot, as was an old hot tub, two metal trash drums, a gas can, and some "household discards." Chacon also observed a tractor mower and an unregistered car, which were being stored on unpaved land, as well as "concrete spoil," i.e., hardened concrete that had apparently been dumped or left over from a construction project.

Respondents did not deny the presence on the property of any of these items. Accordingly, it is found that each of these items was present on the property as of the date of the hearing.

² Pursuant to the Banning Zoning Ordinance, "very low density residential" refers to "detached single-family houses at a density of up to 2 units per acre." (Banning Zon. Ord., § 9102.01, subd. 2(f).)

³ Factual Findings 4 through 8 are based on Chacon's testimony and on the several investigative reports he prepared with regard to this matter.

9. Respondent Roberta Duffy testified⁴ that in 2003 respondents moved from Hemet to Banning. In Hemet, respondents lived in a 2,600-square-foot house on a two-acre lot. In Banning, they live in a 1,300-square-foot house on a half-acre lot. Because of their relocation, respondents needed a place to store various items which their newer, smaller residence could not accommodate, i.e., they "needed a place to store quite a bit of personal belongings." They rented a storage unit for about a year, when they learned that a vacant lot "just around the corner from" their home had become available. Respondent Neal Duffy asked a City clerk (he did not recall the name of the individual with whom he spoke) whether the storage of two sea containers on the vacant lot would be permitted. He was told that it would. Respondents then purchased the lot for \$3,500. Respondents also purchased two sea (i.e., large storage) containers, at an additional cost of \$3,500. Respondents maintain that they purchased the lot and the storage containers only because the City⁵ had approved the storage of the two sea containers on the lot. According to respondents, the lot "is virtually unusable for anything else."

Roberta testified that respondents have observed cargo containers stored on about 50 properties throughout the City, apparently without the City having taken any enforcement action. Respondents also introduced numerous photographs, which they testified depicted properties located within the City, and in which storage units can be seen. In most instances, the photographs depict what are clearly public or commercial property (e.g., public schools, an airport, a county parking lot, a retail establishment). In some instances, the nature of the property cannot be discerned from the photographs. Several of the photographs depict storage containers that appear possibly to be on residential property. Respondents thus feel that they have been "picked on."

Roberta testified that "we do not have room on our home property for storage and simply cannot afford to pay for storage at a storage facility."

Roberta testified that the metal drums contain trash generated by adjacent businesses, which is blown by the wind onto their own property.

Roberta testified that the two sea containers were placed on the property in 2004, under an earlier version of the City ordinance.

10. In a March 19, 2007 letter, Art Villalobos, respondents' next-door neighbor, stated that "before [respondents] purchased the vacant property next door to me, Neal personally came to me and asked me if I would have any problem with him placing cargo containers used for storage on that property. I informed him that I had no problem with the containers being next door and I still have no problem with the containers being there."

⁴ This Factual Finding is based on Roberta's testimony and on documents prepared by respondents, received in evidence, and which were consistent with Roberta's testimony.

⁵ Respondents also spoke to the County of Riverside, who told them that the County had no jurisdiction over this matter.

Villalobos characterized the vacant lot as "neater and in better shape than many of the surrounding homes and businesses. . . ."

11. Respondents introduced two photographs, which Roberta testified depicted the vacant lot as it appeared at the time of the hearing. The two sea containers can be seen in the photographs, along with two metal trash drums and a pile of materials (the exact composition of which cannot be discerned from the photographs) next to one of the two drums.

12. Respondents are in agreement that all items presently on their vacant land, other than the two sea containers, are in violation of the ordinance. They stated that they would have all items⁶ aside from the sea containers removed from the property.

13. Richard De La Cruz is the City's senior code enforcement officer. He oversees the day-to-day operation of the City's code enforcement activities throughout the City. De La Cruz testified that the City operates a complaint-based code enforcement. He explained that the City has limited resources, and thus conducts code-violation investigations only on the basis of complaints that are made to the office.⁷ Generally speaking, therefore, the City does not conduct an inspection absent a complaint. Storage container violations are not among those about which complaints are most commonly made. When storage container violations have arisen, the typical response the City receives from the parties under investigation is that they should be permitted to do the same thing that others are doing.

LEGAL CONCLUSIONS

Burden and Standard of Proof

1. Absent a statute to the contrary, the burden of proof in administrative disciplinary proceedings rests upon the party making the charges. (*Parker v. City of Fountain Valley* (1981) 127 Cal.App.3d 99, 113; Evid. Code, § 115.) The burden of proof in this proceeding is thus on the City.

2. This proceeding is brought pursuant to Chapter 11C ("Nuisance Abatement") of the Banning Municipal Code. Chapter 11C does not specify the burden of proof.⁸ In matters governed by the California Administrative Procedure Act, which seems to provide an

⁶ Respondents stated that they did not feel it was wrong for them to have the metal trash drums on their property. It was thus unclear whether or not they conceded the presence of those drums to be in violation of the Municipal Code and the Zoning Ordinance.

⁷ In contrast, a "proactive code enforcement system," which some larger municipalities with greater resources may use, involves officers patrolling an area for violations, apart from any citizen complaints.

⁸ Instead, section 11C-41 simply states that "the nuisance abatement hearing officer shall consider the evidence presented and shall, make written findings of fact, based upon the evidence, to support his or her decision and shall make his or her determination and conclusion with respect to the alleged public nuisance."

appropriate analogy, the standard of proof is generally by a preponderance of the evidence,⁹ unless a professional license or other license requiring substantial education or training is involved, in which case the clear and convincing evidence standard is applied.¹⁰

It is concluded that the preponderance of evidence standard applies to this proceeding. "The phrase 'preponderance of evidence' is usually defined in terms of probability of truth, e.g., 'such evidence as, when weighed with that opposed to it, has more convincing force and the greater probability of truth.' (BAJI (8th ed.), No. 2.60.)"¹¹ (1 Witkin, *Evidence, Burden of Proof and Presumptions*, § 35 (4th ed 2000).)

Banning Municipal Code Chapter 11C

3. Banning Municipal Code section 11C-1 provides in pertinent part as follows:

"'Public nuisance' means an act or condition, as specifically set forth herein or otherwise, which poses a danger to the health, welfare or safety of the community or neighborhood, or is indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property, or unlawfully obstructs the free passage or use in a customary manner of any public park, street, stream or highway."

4. Banning Municipal Code section 11C-3 provides in pertinent part as follows:

"'Refuse and waste matter' is defined for the purpose of this chapter as unused or discarded matter or material, and which consists of such matter and material as rubbish, debris, and matter of any kind, including but not limited to rubble, asphalt, concrete, plaster, tile, rocks, bricks, soil, building materials, crates, cartons, containers, boxes, machinery or parts thereof, scrap metal and other pieces of metal, ferrous or nonferrous, furniture or parts thereof, trimmings from plants or trees, cans, bottles and barrels. Refuse and waste matter as defined, which by reason of its location and character is unsightly, or poses a threat of fire or vermin infestation and interferes with the reasonable enjoyment of property by neighbors, detrimentally affects property values in the surrounding neighborhood or community, or which would materially hamper or interfere with the prevention or suppression of fire upon the premises is declared a public nuisance."

⁹ *Mann v. Department of Motor Vehicles* (1999) 76 Cal.App.4th 312, 318-319; *San Benito Foods v. Feneman* (1996) 50 Cal.App.4th 1889, 1892-1895.

¹⁰ *Ettinger v. Board of Medical Quality Assurance* (1982) 139 Cal.App.3d 853, 856-857; *Furman v. State Bar* (1938) 12 Cal.2d 212, 229.

¹¹ BAJI 2.60 has since been replaced by CACI 200, which does not use the phrase "preponderance of the evidence," but instead refers to proof that a matter is "more likely to be true than not true."

5. Banning Municipal Code section 11C-8 provides in pertinent part as follows:

“Any buildings, sign or other structure set up, erected, constructed, altered, enlarged, converted, moved or maintained contrary to the provisions of the city’s zoning ordinance, as amended, and any use of land, building, or premises established, conducted or operated or maintained contrary to the provisions of the city’s zoning ordinance, as amended, is declared a public nuisance.”

6. Banning Municipal Code section 11C-19 provides in pertinent part as follows:

“It is unlawful and it is declared to be a public nuisance for any person owning . . . any . . . property within the city to maintain such property in such a manner that any of the following conditions are found to exist thereon:

* * *

1. Temporary service bins or construction debris storage bins stored in excess of fifteen days on a public street or any front or side yard setback area without the express approval of the community development director.”

7. Banning Municipal Code section 11C-22 provides as follows:

“Any lumber, junk, trash, debris, refuse, matter, waste matter or other salvage materials, visible from a public right-of-way or adjoining property is declared a public nuisance.”

8. Banning Municipal Code section 11C-23 provides as follows:

“It is unlawful and it shall be a public nuisance for any person owning . . . any . . . property in the city to maintain on any such . . . property any condition that constitutes an attractive nuisance, including but not limited to abandoned, broken, or neglected equipment and machinery, pools, ponds, excavations, abandoned wells, shafts, basements, or other holes, abandoned refrigerators or other appliances, abandoned motor vehicles, any unsound structure, or accumulated lumber, trash, garbage, debris, or vegetation which may reasonably attract children to such abandoned or neglected conditions.”

Banning Zoning Ordinance

9. Banning Zoning Ordinance sections 9102.02 (residential) and 9103.02 (commercial) set forth permitted, conditional and prohibited uses of property within the City. Pursuant to these sections, “cargo/storage containers”¹² are prohibited in all residential

¹² The City’s present Zoning Ordinance went into effect in 2006. Under prior section 9171.1, cargo/storage containers were only permitted in certain non-residential zones, and only in connection with a building permit.

zoning classifications, including very low density residential. Such containers are permitted in certain commercial zoning areas, but "only . . . for temporary (seasonal) storage, and [they] require a Temporary Use Permit."¹³

10. Banning Zoning Ordinance section 9106.03, subdivision 13 provides as follows:

"There shall be no visible storage of motor vehicles, trailers, airplanes, boats, or their composite parts; loose rubbish, garbage, junk, or building or manufacturing materials in any portion of a lot, except as allowed under the provisions of this Zoning Ordinance. Building materials for use on the same premises may be stored on the parcel during the time that a valid building permit is in effect for construction."

No storage shall occur on any vacant parcel.

No vehicles may be stored or displayed for sale on any public street, vacant lot or at any business locations."

11. Banning Zoning Ordinance section 9107.03, subdivision 7, provides as follows:

"All parking, including recreational vehicle parking in residential zones, shall occur on paved surfaces."

Analysis

12. Pursuant to the Banning Municipal Code, a public nuisance refers, among other things, to a condition that is indecent or offensive to the senses or an obstruction to the free use of property, so as to interfere with the comfortable enjoyment of life or property. (Banning Muni. Code, § 11C-1.)

In particular, a public nuisance includes the following: (a) Refuse and waste matter, which by reason of its location and character is unsightly; (b) the unapproved presence of temporary service bins or construction debris storage bins stored in excess of 15 days on a public street or front or side yard setback; (c) any trash or debris visible from a public right-of-way or adjoining property; (d) an attractive nuisance; or (e) any land use that is contrary to the City's zoning ordinance. (Banning Muni. Code, §§ 11C-3, 11C-8, 11C-19, 11C-22, and 11C-23.)

The City's Zoning Ordinance in turn prohibits: (a) The presence of cargo/storage containers in all residential zoning areas; (b) the visible storage of loose rubbish, garbage, junk and building or manufacturing materials in any portion of a lot; and (c) storage on a

¹³ See also Banning Zoning Ordinance section 9127.02, subdivision 3, regarding the length of time during which "commercial cargo/storage containers" are permitted.

vacant parcel; (d) storage of vehicles on a vacant lot; and (e) parking of vehicles on unpaved surfaces. (Banning Zon. Ord., §§ 9106.02, 9106.03, and 9107.03.)

13. As of the hearing date, present on respondents' unpaved vacant lot were two sea (storage) containers, an old hot tub, two metal trash drums, household discards, a gas can, a tractor mower, an automobile, and concrete spoil.

14. By reason of Factual Findings 1 through 13 and Legal Conclusions 1 through 13, it is concluded that the following matters, to the extent specified in this Legal Conclusion 14, constitute a public nuisance on respondents' property, parcel number 538 300 001, pursuant to Banning Municipal Code, Chapter 11C:

a. Presence of the sea containers, and the trash within that visibly protrudes over the top thereof, constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1, 11C-8, and 11C-22, and Banning Zoning Ordinance sections 9102.02 and 9106.03. Presence of the sea containers does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-3, 11C-19, and 11C-23, because it was not established that the sea containers constitute or contain refuse and waste matter that is unsightly or interferes with the reasonable enjoyment of property by neighbors (11C-3), are stored on "any front or side yard setback area" (11C-19), or constitute an attractive nuisance (11C-23).

b. Presence of the old hot tub constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1, 11C-3, 11C-8, and 11C-22, and Banning Zoning Ordinance section 9106.03. Presence of the old hot tub does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-19 and 11C-23 because it was not established that the hot tub is a service or storage bin (11C-19) or is an attractive nuisance (11C-23).

c. Presence of the two metal trash drums constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1 and 11C-8, and Banning Zoning Ordinance section 9106.03. Presence of the two metal trash drums does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-3, 11C-19, 11C-22, and 11C-23 because it was not established that the trash drums themselves constitute refuse and waste matter, or debris or trash (11C-3 and 11C-22), are on any front or side yard setback area (11C-19), or are an attractive nuisance (11C-23).

d. Presence of the household discards and the gas can constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1, 11C-3, 11C-8, and 11C-22, and Banning Zoning Ordinance section 9106.03. Presence of the household discards and the gas can does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-19 and 11C-23 because it was not established that these materials are service or storage bins (11C-19) or are an attractive nuisance (11C-23).

e. Presence of the tractor mower and the automobile constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1 and 11C-8, and Banning

Zoning Ordinance sections 9106.03 and 9107.03. Presence of the tractor mower and the automobile does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-3, 11C-19, 11C-22, and 11C-23 because it was not established that items constitute refuse and waste matter, trash or debris (11C-3 and 11C-22), are service or storage bins (11C-19), or are an attractive nuisance (11C-23).

f. Presence of the concrete spill constitutes a public nuisance pursuant to Banning Municipal Code sections 11C-1, 11C-3, 11C-22, and 11C-8, and Banning Zoning Ordinance section 9106.03. Presence of the concrete spill does not constitute a public nuisance pursuant to Banning Municipal Code sections 11C-19 and 11C-23 because it was not established that the spill is on any front or side yard setback area (11C-19), or is an attractive nuisance (11C-23).

15. Respondents contend that they should be permitted to maintain the sea containers on the property because an employee of the City advised them that they could do so, and they relied on that representation when they purchased the land. In essence, respondents have raised an equitable estoppel argument. However, equitable estoppel may not be asserted to perpetuate a public nuisance. (*City and County of San Francisco v. City Investment Corp.* (1971) 15 Cal.App.3d 1031, 1037.)

16. By reason of Factual Findings 1 through 13 and Legal Conclusions 1 through 15, cause exists to issue an order to abate public nuisance pursuant to Banning Municipal Code section 11C-42.

Accordingly, there is hereby issued the following:

ORDER

Pursuant to Legal Conclusions 1 through 16:

1. Respondents Neal and Roberta Duffy shall abate the public nuisance that exists on parcel number 538 300 001 in the City of Banning, California.

2. The matters constituting a public nuisance on parcel number 538 300 001 are the presence on the property of two sea containers, a hot tub, two metal trash drums, household discards, a gas can, a tractor mower, an automobile, and concrete spill.

3. In order to abate the public nuisance described above in this order, respondents shall remove from parcel number 538 300 001 all of the matters identified in paragraph 2 of this order.

4. Respondents shall commence the work required to abate the public nuisance within 30 days after the date of this Decision.

5. Respondents shall complete the required abatement as follows:

a. The sea containers shall be removed within 180 days after the date of this Decision.

b. All of the other matters identified in paragraph 2 of this Order shall be removed within 60 days after the date of this Decision.

6. Any occupant, lessee, or other person in possession or charge, or any mortgagee, beneficiary under any deed of trust, or other person having interest or estate in such premises, may at his own risk, abate the nuisance.

7. Appeal to the City Planning Commission, if desired, must be sought by filing a notice of appeal with the City Clerk within fifteen days from the date of this Decision in accordance with Banning Municipal Code section 11C-53.

DATED: F-20-07



DONALD P. COLE
Administrative Law Judge
Office of Administrative Hearings

CERTIFICATION OF MAIL

I, Kathleen Browder, declare as follows: I am over 18 years of age and I have no interest in the above matter herein; my place of employment and business address is:

Office of Administrative Hearings

1350 Front Street, Room 6022

San Diego, CA 92101

On August 21, 2007, I served a copy of the following entitled action:

DECISION, OAH CASE NO. I2007060497; CITY OF BANNING v. NEAL AND ROBERTA DUFFY

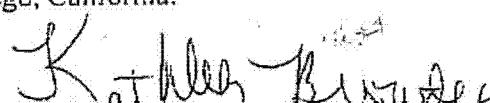
By enclosing the action in a sealed envelope and placing the envelope for collection and mailing on that date and at the Office of Administrative Hearings, City of San Diego, County of San Diego, State of California, following ordinary business practices. I am readily familiar with the Office of Administrative Hearings' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

This action was sent by regular mail, as indicated below, addressed to each of the person(s) named below, at the address set out below each name.

PHILIP A. KRAFT, ESQ.
BURKE, WILLIAMS & SORENSEN, LLP
3403 TENTH ST STE 300
RIVERSIDE, CA 92501

NEAL E. DUFFY
ROBERTA N. DUFFY
619 S 16th ST
BANNING, CA 92220

I certify and declare under penalty of perjury the foregoing is true and correct and this document was executed on August 21, 2007 San Diego, California.


Kathleen Browder

47

NUISANCE
ABATEMENT LIEN

INVOICE
STATE FILING FEES

EXHIBIT “3”



d 91

8/17

Office Name : ADMINISTRATIVE HEARINGS
Type of Service : OAH Services-Non-State
Fund : SRF-Office of Administrative Hearings.

Account Number	Customer Name and Address	Invoice Date	Invoice Number
0R4119	CITY OF BANNING 3403 TENTH ST, STE 300 RIVERSIDE CA 92501	30-JUL-2007	2438366
5120 OAH Services-Non-State		Service Period:	06-2007 to 06-2007

Page # 1 OF 1

1 Case Filings, ALJ Services 062.7 = \$62.7 (L2007060497) DUFFY, NEAL & ROBERTA
1 Case Filing, Rpt. Services 03.3 = \$3.3 (L2007060497) DUFFY, NEAL & ROBERTA

Total Amount Due: \$66.00

Paid by check	
Date	Acct. 4710-0018 (APN 538-300-001)
Approved by	

If there are any questions concerning this invoice, please contact:
OFFICE OF ADMINISTRATIVE HEARINGS
Phone: (916) 263-0681 Calnet N/A

Cut Here

Please return this portion with payment:
Payable to: DEPARTMENT OF GENERAL SERVICES
Mail to: P O Box 989053
West Sacramento, CA 95798-9053

Fund SRF-Office of Administrative Hearings
Please pay this amount----->66.00
Amount paid _____
Invoice Date: 30-JUL-2007 Invoice Number: 2438366

Account Number : 0R4119 Customer Name : CITY OF BANNING

For Credit card use only: Complete the information below indicating invoice(s) and amount(s). Remit to the address above.

Print Name: (As appears on card) _____ Authorized Signature: _____
Type of credit card: (Circle one) MC Visa Discoverer AMEX Phone Number including area code () _____
Credit Card Number: _____ Exp. Date _____

2/9

NUISANCE
ABATEMENT LIEN

INVOICE
STATE COST FOR JUDGE

EXHIBIT “4”



Office Name : ADMINISTRATIVE HEARINGS
Type of Service : OAH Services-Non-State
Fund : SRF-Office of Administrative Hearings

9/13

Account Number	Customer Name and Address	Invoice Date	Invoice Number
0R4119	CITY OF BANNING 3403 TENTH ST, STE 300 RIVERSIDE CA 92501	30-AUG-2007	2441771
5120 OAH Services-Non-State		Service Period:	07-2007 to 07-2007

Page # 1 OF 1

9 ALJ Hours @187 = \$1683 (L2007060497) DUFFY, NEAL & ROBERTA

Total Amount Due: \$1,683.00

04710-0018 (Duffy)

Paid by check
Date _____ Acct. _____
Approved by <u>EMB</u>

If there are any questions concerning this invoice, please contact:

OFFICE OF ADMINISTRATIVE HEARINGS

Phone: (916) 263-0681 Calnet N/A

Cut Here

Please return this portion with payment:
Payable to: DEPARTMENT OF GENERAL SERVICES
Mail to: P O Box 989053
West Sacramento, CA 95798-9053

Fund SRF-Office of Administrative Hearings
Please pay this amount----->1,683.00
Amount paid _____
Invoice Date: 30-AUG-2007 Invoice Number: 2441771

Account Number : 0R4119 Customer Name : CITY OF BANNING

For Credit card use only: Complete the information below indicating invoice(s) and amount(s). Remit to the address above.

Print Name: (As appears on card) _____ Authorized Signature: _____
Type of credit card: (Circle one) MC Visa Discoverer AMEX Phone Number including area code () _____
Credit Card Number: _____ Exp. Date: _____

51

DGS

Office Name : ADMINISTRATIVE HEARINGS
 Type of Service : OAH Services-Non-State
 Fund : SRF-Office of Administrative Hearings

Account Number	Customer Name and Address	Invoice Date	Invoice Number
0R4119	CITY OF BANNING 3403 TENTH ST, STE 300 RIVERSIDE CA 92501	27-SEP-2007	2452982
5120 OAH Services-Non-State		Service Period:	08-2007 to 08-2007
		Page #	1 OF 1

Description

13.75 ALJ Hours

0 187.00 = \$ 2571.25 (2007060497) DUFFY, NEAL & ROBERT

Total Amount Due: \$2,571.25

Paid by check
Date 9/27/07 Acct. 04710-0018
Approved by SB

If there are any questions concerning this invoice, please contact:

OFFICE OF ADMINISTRATIVE HEARINGS

Phone: (916) 263-0681 Calnet N/A

Cut Here

Please return this portion with payment: Payable to: DEPARTMENT OF GENERAL SERVICES Mail to: P O Box 989053 West Sacramento, CA 95798-9053	Fund SRF-Office of Administrative Hearings Please pay this amount-->2,571.25 Amount paid Invoice Date: 27-SEP-2007 Invoice Number: 2452982
-----------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------

Account Number : 0R4119 Customer Name : CITY OF BANNING

For Credit card use only: Complete the information below indicating invoice(s) and amount(s). Remit to the address above.

Print Name: (As appears on card) _____ Authorized Signature: _____

Type of credit card: (Circle one) MC Visa Discoverer AMEX

Credit Card Number: _____

Phone Number including area code () _____

Exp. Date _____

52

*NUISANCE
ABATEMENT LIEN*

*REPORT FROM
CITY ATTORNEY*

EXHIBIT “5”

53

BWS TIME BILLED FOR DUFFY PROPERTY (APN NO. 538-300-001)

Date	Timekeeper	Hours	Amount	Description
6/1/2007	PAK	1.4	\$280.00	(DUFFY - APN 538-300-001)
6/12/2007	TAB	0.5	\$50.00	(DUFFY - APN 538-300-001)
6/21/2007	TAB	1	\$100.00	(DUFFY - APN 538-300-001)
7/10/2007	PAK	0.9	\$189.00	(DUFFY - APN 538-300-001)
7/12/2007	PAK	0.7	\$147.00	(DUFFY - APN 538-300-001)
7/12/2007	TAB	0.4	\$40.00	(DUFFY - APN 538-300-001)
7/22/2007	PAK	2.5	\$525.00	(DUFFY - APN 538-300-001)
7/23/2007	PAK	6.2	\$1,302.00	(DUFFY - APN 538-300-001)
9/4/2007	PAK	0.8	\$168.00	(DUFFY - APN 538-300-001)
9/5/2007	TAB	1.9	\$190.00	(DUFFY - APN 538-300-001)
9/5/2007	CGS	0.3	\$73.50	(DUFFY - APN 538-300-001)
10/18/2007	TAB	0.3	\$30.00	(DUFFY - APN 538-300-001)
10/23/2007	PAK	1.3	\$273.00	(DUFFY - APN 538-300-001)
10/25/2007	TAB	0.7	\$70.00	(DUFFY - APN 538-300-001)
10/30/2007	TAB	0.1	\$10.00	(DUFFY - APN 538-300-001)
10/31/2007	TAB	0.5	\$50.00	(DUFFY - APN 538-300-001)
11/15/2007	PAK	3	\$630.00	(DUFFY - APN 538-300-001)
TOTAL		22.5	\$4,127.50	

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**CITY COUNCIL
CONSENT CALENDAR**

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: **CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FISCAL
YEARS 2007-2012**

RECOMMENDATION: "That the City Council adopt Resolution No. 2008-05 approving a Capital Improvement Program for Fiscal Years 2007-2012".

JUSTIFICATION: Government Code §65401 requires that the Capital Improvement Program be reviewed by the legislative body.

BACKGROUND: The Capital Improvement Program (CIP) is a roadmap that provides direction and guidance for planning, managing, and financing the City's capital and infrastructure assets. The 5-year CIP is used by the City to review the funding of desired capital improvements that compete for scarce financial resources. **This document is dynamic and, consequently, must be revised on a regular basis to address the changing needs, priorities, and financial conditions of the City.** The capital improvements presented in this document are the City's major projects, those that exceed \$25,000 in cost, have long-term life spans, and are generally non-recurring. The projects include land and right-of-way acquisition; design, planning, and engineering services for capital projects; construction or rehabilitation of public buildings or facilities; utility and transportation infrastructure construction; park construction; and, economic and redevelopment projects. The project costs and revenue amounts listed are strictly estimates. The actual project costs and revenue amounts available will vary based on the state of the economy and other factors not easily predictable.

On July 24, 2007, a preliminary list of capital improvement projects was presented to City Council by an oral report presented by City staff.

A draft copy of the CIP was presented to City Council at a workshop held August 22, 2007. At that meeting the proposed CIP was reviewed by City Council and comments were received and addressed by City staff. Additionally, City staff reviewed the individual projects listed for conformance with the policies, programs, and requirements of the General Plan as well as those specific plans adopted by the City including any individual master plans or programs.

On October 2, 2007, the Planning Commission made the finding by adopting Resolution No. 2007-35 that the Capital Improvement Program and list of proposed public works projects for

fiscal years 2007-2012 is consistent and conforms with the City's General Plan in accordance with Government Code §65401 and §65403.

Additionally, at another City Council workshop held November 13 and December 11, 2007, the City Council reviewed the draft document and provided input on the individual project category rankings. Priority rankings in each major category (e.g. circulation, water-wastewater, electric, parks, public facility, other infrastructure, and Community Redevelopment Agency) are assigned in accordance with the guidelines listed below:

PRIORITY I: The project is urgent and must be completed as soon as feasible. Failure to address the project may impact the health, safety, or welfare of the community; or have a significant impact on the financial well being of the City. The project must be initiated or financial opportunity losses may result.

PRIORITY II: The project is important and addressing it is necessary. The project impacts safety, law enforcement, health, welfare, economic base, and/or quality of life.

PRIORITY III: The project will enhance quality of life and will provide a benefit to the community. Completion of the project will improve the community by providing cultural, recreational, and/or aesthetic value.

PRIORITY IV: The project will be an improvement to the community but does not necessarily need to be completed within the capital improvement program time frame.

PRIORITY A: Sequenced ahead of any other projects in category.

PRIORITY B: Sequenced as secondary of any other projects in category.

PRIORITY C: Sequenced third of any other projects in category.

PRIORITY D: Sequenced fourth of any other projects in category.

IP: Project in progress.

Each year it is anticipated that a revised and updated CIP will be presented to City Council for review and approval. The table below summarizes the various CIP sections for fiscal years 2007-2012. For further details, please refer to Exhibit 2 enclosed with this report.

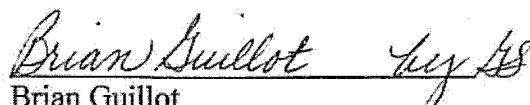
Capital Improvement Program Summary by Program Section		
CIP Program Section	Estimated Projects Cost	Funding Available
Circulation Projects	\$ 130,612,000	\$ 21,475,625

56

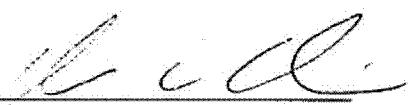
Water-Wastewater Projects	\$ 85,050,000	\$ 40,950,000
Electric Projects	\$ 51,400,000	\$ 51,400,000
Parks Projects	\$ 1,825,000	\$ 325,000
Public Facility Projects	\$ 15,760,000	\$ 16,135,000
Community Redevelopment Agency Projects	\$ 3,900,000	\$ 3,400,000
Total-Capital Improvement Program	\$288,547,000	\$133,685,625

FISCAL DATA: Adoption of a capital improvement program does not authorize any projects. The Capital Improvement Program FY2007-2012 is strictly a planning document. The CIP identifies a total of \$288,547,000 of planned projects with funding available in the amount of \$133,685,625. The CIP also identifies \$154,861,375 in "unfunded" project costs. The City will need to identify potential funding sources to bridge this gap. Potential funding sources may include financing the improvements through various financial mechanisms, the sale of surplus property, designating additional General Funds for capital projects, and the leveraging of public funds and/or assets. Additionally, the Capital Improvement Plan does not currently identify the funds required to maintain and operate the future improvements.

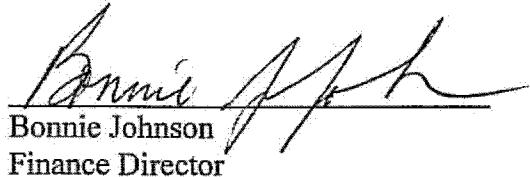
PREPARED BY:


 Brian Guillot
 Associate Engineer-Planning

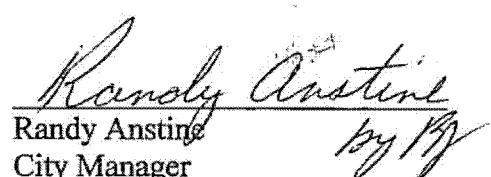
RECOMMENDED BY:


 Oscar W. Orci
 Community Development Director

REVIEWED BY:


 Bonnie Johnson
 Finance Director

APPROVED BY:


 Randy Anstine
 City Manager

Exhibits:

1. Resolution No. 2008-05
2. Capital Improvement Program FY 2007-2012 (Under Separate Cover)
3. Copy of Planning Commission Resolution No. 2007-35

*CAPITAL IMPROVEMENT
PROGRAM*

*RESOLUTION
NO. 2008-05*

EXHIBIT “1”

58

RESOLUTION NO. 2008-05

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING THE CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FISCAL YEARS 2007-2012

WHEREAS, the City of Banning requires public improvements in the areas of traffic circulation, utilities, parks, public facilities, and redevelopment; and, a capital improvement program allows for the planning, financing, and prioritizing of said improvements; and,

WHEREAS, the City Council at the workshop held August 22, 2007, reviewed and commented on the draft copy of the Capital Improvement Program and list of proposed public works projects for fiscal years 2007-2012; and,

WHEREAS, on October 2, 2007, the Planning Commission adopted Resolution No. 2007-35 finding that the proposed Capital Improvement Program for fiscal years 2007-2012 is consistent with the City of Banning General Plan;

NOW, THEREFORE, the City Council of the City of Banning does Resolve, Determine, Find, and Order as follows:

SECTION 1. That the Capital Improvement Program (CIP) for Fiscal Years 2007-2012 is hereby approved. A copy of the CIP FY 2007-2012 is incorporated herein by reference and will be kept on file in the Office of the City Clerk.

SECTION 2. That by adoption of the City of Banning Capital Improvement Program for Fiscal Years 2007-2012, it is the intent of the City Council to revise the five-year plan each year by continuing to identify capital projects five-years into the future and re-prioritizing existing capital projects based on community needs.

SECTION 3. That the City Clerk shall certify the adoption of this resolution.

PASSED, APPROVED AND ADOPTED this 8th day of January 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM AND
LEGAL CONTENT:

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-05, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th of January, 2008 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

*CAPITAL IMPROVEMENT
PROGRAM*

*PLANNING COMMISSION
RESOLUTION
NO. 2007-35*

EXHIBIT “3”

RESOLUTION NO. 2007-35

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF BANNING, CALIFORNIA FINDING THAT THE CAPITAL IMPROVEMENT PROGRAM (CIP) FOR FISCAL YEARS 2007-2012 IS CONSISTENT AND CONFORMS WITH THE GENERAL PLAN IN ACCORDANCE WITH GOVERNMENT CODE §65401

WHEREAS, the City Council at the workshop held August 22, 2007, reviewed and commented on the draft copy of the Capital Improvement Program and list of proposed public works projects for fiscal years 2007-2012; and,

WHEREAS, the proposed Capital Improvement Program (CIP) fiscal years 2007-2012 has been referred to the Planning Commission for review as to its consistency and conformance with the City of Banning General Plan (adopted by City Council on January 31, 2006, by Resolution No. 2006-13), any applicable specific plans, and all elements and parts of the plans; and,

WHEREAS, on the 21st day of September 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Press Enterprise newspaper of the holding of a public hearing at which the project would be considered; and

WHEREAS, on October 2, 2007, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the proposed Capital Improvement Program (CIP) fiscal years 2007-2012; and,

WHEREAS, the Planning Commission has reviewed the Capital Improvement Program (CIP) and list of proposed public works projects for fiscal years 2007-2012 as outlined in the staff report dated October 2, 2007;

NOW, THEREFORE, the Planning Commission of the City of Banning does Resolve, Determine, Find, and Order as follows:

SECTION 1. ENVIRONMENTAL FINDINGS.

The Planning Commission, in light of the whole record before it including but not limited to the City's local California Environmental Quality Act (CEQA) Guidelines, the recommendation of the Community Development Department as provided in the staff report dated October 2, 2007, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record, or provided at the public hearing of this matter, hereby finds and determines as follows:

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CEQA

That the activity of determining that the proposed Capital Improvement Program is consistent with the General Plan is not a "project" as defined by Public Resources Code §21065 and California Code of Regulations §15378. A "project" means an activity which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment. A finding that the Capital Improvement Program is consistent and conforms with the City's General Plan, any applicable specific plans, and all elements and parts of the plans does not cause a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment as it does not authorize or involve any commitment to any specific "project" but is simply a planning tool. Therefore, CEQA review is not required.

SECTION 2. REQUIRED FINDINGS.

Pursuant to Government Code §65401 and in light of the record before it including the staff report dated October 2, 2007, and all evidence and testimony heard at the public hearing for this item, the Planning Commission hereby finds that the Capital Improvement Program and list of proposed public works projects for fiscal years 2007-2012 as shown in Exhibit 2 is consistent and conforms with the City's General Plan (adopted by City Council on January 31, 2006, by Resolution No. 2006-13), any applicable specific plans, and all elements and parts of the plans. In making this finding the Planning Commission has identified the following points of consistency:

1. **Circulation Projects.** These projects consist of improvements to roadways and large maintenance projects including the construction of facilities such as sidewalks and traffic signals as shown in Exhibit 2. The identified projects are consistent with the Goals, Policies, and Programs of the Circulation Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Circulation Element)

Goal

A safe and efficient transportation system.

Policy 1

The City's Recommended General Plan Street System shall be strictly implemented.

Program 1.A

Street rights of way shall be 134 feet for Urban Arterial Highways, 110 feet for Arterial Highways, 100 feet for Major Highways, 88 feet for Secondary Highways, 78 feet for Divided Collectors, 66 feet for Collectors, and 60 feet for Local Streets.

Policy 3

The City shall establish and maintain a 5-Year Capital Improvement Program for streets.

Program 3.A

The Public Works Department shall establish a Capital Improvement Program for 5 years, and update it annually.

2. **Water-Wastewater Projects.** These projects consist of improvements to the water distribution system including the construction of new wells and water storage facilities, wastewater collection system, and water and wastewater treatment system including the construction of recycled water systems as shown in Exhibit 2. The identified projects are consistent with Goals, Policies, and Programs of the Water Resources Element and Water, Wastewater, and Utilities Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Water Resources Element)

Goal

A balance of development which assures the maintenance of the water supply and its continued high quality.

Policy 1

New development projects proposing 50 units on property whose General Plan Land Use designation would allow 50 units, and/or 10 acres of commercial/industrial/other development, or more, whether through a tract map, Specific Plan or other planning application, shall be required to fund the provision of its entire water supply, either through SWP, recycled water or other means, as a condition of approval.

Program 1.A

In accordance with the 2003 Determination of Maximum Perennial Yield for the City of Banning, the City shall implement an annual ground water audit. This process involves evaluating groundwater level trends, production rates, ground water quality or other aquifer/well/pump considerations from the previous year (the water audit should be performed six months prior to the start of the water accounting year) and using this information to make recommendations for pumping in the following year.

Program 1.B

The City shall develop construction plans and cost estimates for the construction of recycled water facilities for both Phase I and II, and make them available to the development community.

Program 1.C

The City shall coordinate with the San Gorgonio Pass Water Agency and other appropriate agencies to assure that the City's SWP water can be delivered.

Policy 3

The City shall require the use of recycled wastewater for new development, or where it is unavailable, the infrastructure for recycled water when it becomes available, as a means of reducing demand for groundwater resources.

Program 3.A

Coordinate with the Banning Heights Mutual Water Company regarding the future expansion of recycled wastewater treatment facilities to serve existing and new development projects in the City.

Program 3.B

Aggressively pursue all sources of funding to allow for the installation of a comprehensive recycled water distribution system throughout the City.

Program 3.C

The City shall study the potential of providing incentives to developers and property owners for the installation of on-site recycled water reclamation systems. Recycled water systems include the reuse of water from sources such as sink drains, dishwashers and washing machines for irrigation purposes.

GOALS, POLICIES, AND PROGRAMS (Water, Wastewater, and Utilities Element)

Goal

A comprehensive range of water, Wastewater and utility services and facilities that adequately, cost-effectively and safely meet the immediate and long-term needs of the City.

Policy 1

The City shall coordinate between the City Utility Department-Water Division, Banning Heights Mutual Water Company, Beaumont/Cherry Valley Water Agency, San Gorgonio Pass Water Agency, California Regional Water Quality Control Board and Riverside County Environmental Health to protect and preserve local and regional water resources against overexploitation and contamination.

Program 1.A

Support the efforts of the City Utility Department-Water Division, San Gorgonio Pass Water Agency, Banning Heights Mutual Water Company and Beaumont/Cherry Valley Water Agency to develop alternative resources for groundwater recharge, and to expand and construct facilities for the treatment and distribution of reclaimed and/or recycled water.

Program 1.B

The City, its Utility Department-Water Division, San Gorgonio Pass Water Agency, and Banning Heights Mutual Water Company shall continue and extend their efforts to increase

domestic water conservation by expanding efforts to promote the use of water efficient landscaping in all development, and the installation of efficient water-using technologies in new and substantially remodeled structures.

Program 1.C

The City, its Utility Department-Water Division and Banning Heights Mutual Water Company shall evaluate and, as appropriate, implement actions and regulations that facilitate residential and business retrofits of landscaping/irrigation and water-using appliances/processes that significantly increase water use efficiencies.

Policy 4

The City shall make every effort to assure and assist in facilitating the timely and cost-effective extension and expansion of services that support community development and improved quality of life.

Program 4.A

The City shall coordinate its Capital Improvement Program with those of local utility and service providers to assure cost-effective and adequate capacity of services and facilities for future growth and development.

Program 4.B

The City shall coordinate with appropriate public and quasi-public agencies and utilities in conducting on-going assessments of infrastructure capacity and evaluating expansion and improvements needed to carry out responsible growth management.

3. **Electric Projects.** These projects consist of improvements to the electric utilities system including substation construction and upgrades, construction of transmission and distribution lines and various system improvements as shown in Exhibit 2. The identified projects are consistent with the Goals, Policies, and Programs of the Water, Wastewater, and Utilities Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Water, Wastewater, and Utilities Element)

Goal

A comprehensive range of water, Wastewater and utility services and facilities that adequately, cost-effectively and safely meet the immediate and long-term needs of the City.

Policy 4

The City shall make every effort to assure and assist in facilitating the timely and cost-effective extension and expansion of services that support community development and improved quality of life.

Program 4.A

The City shall coordinate its Capital Improvement Program with those of local utility and service providers to assure cost-effective and adequate capacity of services and facilities for future growth and development.

Program 4.B

The City shall coordinate with appropriate public and quasi-public agencies and utilities in conducting on-going assessments of infrastructure capacity and evaluating expansion and improvements needed to carry out responsible growth management.

Policy 5

To ensure the timely expansion of facilities in a manner that minimizes environmental impacts and disturbance of existing improvements, the City shall confer and coordinate with service and utility providers in planning, designing and siting of supporting and distribution facilities.

Program 5.A

The City shall encourage the consolidation of underground utility lines and other subsurface transmission facilities to limit the impacts of these facilities on the disruption of traffic and roadways.

4. **Park Projects.** These projects consist of improvements to existing facilities as well as construction of new facilities such as the Dysart Park Soccer Fields as shown in Exhibit 2. The identified projects are consistent with the Goals, Policies, and Programs of the Parks and Recreation Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Parks and Recreation Element)

Goal

A high quality public park system with adequate land and facilities to provide recreational facilities and activities for the City's residents.

Policy 2

The City will distribute parks and recreation facilities in a manner that is convenient to City neighborhoods and balanced within population concentrations.

Program 2.A

The location and design of neighborhood parks shall consider neighborhood suggestions and input regarding facility needs, vehicular and pedestrian access, noise and lighting impacts, and public safety.

Program 2.B

City staff shall identify and prioritize park development projects based upon need, land availability, neighborhood suggestions and funding, and shall encourage the planting of trees as in parks and open spaces.

Program 2.C

Investigate and identify the broad range of sources of financing and operating revenue, including Development Impact Fees, Mello Roos special districts, public/private ventures, state and federal grant opportunities, developer fees and inter-agency joint use agreements to supplement revenues collected for parks and recreation purposes.

Program 2.D

Investigate and identify sources of development financing and revenue, including charitable organizations, state and federal grant opportunities to supplement revenues collected for development of parks and recreation facilities and programs.

5. **Public Facilities Projects.** These projects consist of improvements to existing facilities and construction of new facilities such as the proposed new police station as shown in Exhibit 2. The identified projects are consistent with the Goals, Policies, and Programs of the Public Buildings and Facilities Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Public Buildings and Facilities Element)

Goal

The provision of a full range of dependable, cost-effective, and conveniently located public buildings, services and facilities that meet the functional, social and economic needs of the entire community.

Policy 2

Continue to identify and evaluate viable, long-term funding mechanisms that provide for the construction, maintenance and operation of existing and future public buildings and facilities, including assuring that new development funds its fair share of these facilities.

Program 2.A

The City shall explore the possibility of establishing a New Construction tax for the purpose of establishing an on-going funding source for adequate provision of public buildings and utilities associated with new development.

Program 2.B

The City shall pursue and encourage joint-use facilities with other local agencies.

Policy 3

Coordinate with public utility providers and other public/quasi-public agencies to assure that utility buildings and facilities are compatible with the surrounding landscape.

Program 3.A

The City shall establish and maintain close working relationships with utility purveyors and other public and quasi-public agencies serving the City to assure the least intrusive integration of related buildings and facilities into the community.

Program 3.B

All new maintenance and utility facilities (and their signage) shall be integrated into the surrounding environment using landscape treatments, architectural elements, and/or other appropriate design mechanisms. Whether as a regulatory or advisory function, design plans shall be reviewed by the Community Development Department.

Policy 4

All public buildings and facilities shall comply with the same development standards as private development.

Policy 5

Encourage the undergrounding of all utility lines and the undergrounding or screening of transformers/facilities.

Policy 6

Critical structures and facilities (including the civic center, hospitals, fire stations, police stations, schools and major communications facilities) shall be restricted from geologically and hydrologically hazardous areas.

Policy 7

The Zoning Ordinance shall be reviewed to facilitate the location of public buildings and offices in a centralized location near the Civic Center.

6. **CRA Projects.** These projects consist of improvements to existing and new facilities to encourage and promote economic development in the City as shown in Exhibit 2. The identified projects are consistent with the Goals, Policies, and Programs of the Economic Development Element of the General Plan. More particularly,

GOALS, POLICIES, AND PROGRAMS (Economic Development Element)

Goal

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

Policy 2

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

Program 2.B

Aggressively pursue retail commercial developments which reduce the current retail sales leakage.

Policy 3

Encourage and promote infill development in orderly and logical development patterns that decrease the costs, and increase the efficiency of new utilities, infrastructure, and public services.

Program 3.A

The City shall maintain a package of economic incentive programs that benefit developers of infill projects.

Program 3.B

The City shall contribute to the financing of tertiary treatment facilities as an economic development tool.

Program 3.C

Use the Downtown Charette as a guideline for the Downtown Commercial area, for the development of high quality, pedestrian oriented retail locations.

PASSED, APPROVED AND ADOPTED this 2nd day of October 2007.

Betty DeSantis, Chairperson
Banning Planning Commission

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

Burke, Williams & Sorensen, LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2007-35, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 2nd of October, 2007 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Virginia Sorenson, Recording Secretary
City of Banning, California

**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: January 8, 2008

TO: Honorable Mayor and City Council

FROM: Chris Paxton, Director of Human Resources

SUBJECT: Adopt Resolution No. 2008-06 Implementing a Voluntary Employee Benefit Association

RECOMMENDATION: The City Council adopt Resolution No. 2008-06.

- I. Implement the California Government Voluntary Employee Beneficiary Association (VEBA) Trust.
- II. Authorize the City Manager or his designee to negotiate employee contributions to the trust and sign any related documents.

JUSTIFICATION: One of the single largest expenses for both the City and its employees is the cost of health care. The provision of a mechanism whereby employees can set aside pre tax funds during their working years to be used to pay for both pre- and post- retirement health care costs is becoming a desirable benefit. One of the most flexible vehicles for these purposes is the Voluntary Employee Benefit Association or VEBA.

BACKGROUND: The City of Banning has historically provided a comprehensive program of benefits that addresses many of the health and welfare needs of employees and their families. Periodically, additions and/or modifications to the benefit structure are made to comply with negotiated labor agreements or to provide an improved benefit for employees which is cost neutral. Toward that end, staff has recommended approval of the attached resolution providing for the establishment of a VEBA Trust. A VEBA Trust is a tax exempt benefit plan qualifying under Section 501(c)(9) of the Internal Revenue Code. This plan is similar, in many respects, to the Section 125 Flexible Spending Account the City currently offers. Under these plans accumulated assets are utilized for the payment of eligible health and other expenses for employees and their families. Unlike the 125 plan, however, accumulated assets in a VEBA Trust can be used to make premium payments. Additionally the assets can be accessed by employees after they leave the city or retire. Funds also earn interest and there are no "use it or lose it" restrictions as there are under the existing plan. However, staff suggests that we retain the existing plan as it provides for reimbursement of child care expenses where the VEBA does not. The combination of these two plans provides the greatest amount of flexibility for our employees.

The recommendation to implement a VEBA Trust is based on a number of factors. The first is the significant positive impact the benefit will have on employees during and after their retirement from service. By establishing a VEBA Trust, employees will be able to plan for future as well as current health care expenses not covered through the City's

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benefit programs. Expenses such as long term care, unreimbursed medical premiums, copays and pharmacy charges are all eligible expenses under a VEBA Trust arrangement. Employees will realize a significant benefit since eligible contributions to a VEBA Trust are tax exempt and the reimbursed expenses from the VEBA Trust are also tax exempt.

Another factor is the flexibility of a VEBA over any other alternative available. VEBA's can be tailored to fit the needs of any employer and their employee base. One of the more significant benefits of a VEBA is that it allows for levels of contribution and participation based on employee group. Additionally, VEBA's, by law, require that they are collectively bargained. Thus we must meet and confer with the various employee groups before we can offer the VEBA plan. As a result, employees have a mechanism for structuring a program that meets their needs. By establishing the VEBA Trust, employees will be able to make health care choices that address their specific circumstances and have more money available for health care expenses via the tax savings realized through the program.

The final, and more significant factor, is that a VEBA Trust provides a more comprehensive approach to assisting with the greatest challenge for employers and employees, the rising cost of health care. A VEBA Trust is permitted to receive employer and employee contributions into an interest bearing account, the benefit being the opportunity to grow significantly greater assets for health care expenses in a shorter period of time. While employer contributions are an option, staff is not recommending that at this time. All contributions would come from employees.

We are aware of a number of public agencies who have implemented VEBA Trusts for their employees. The proposed VEBA Trust was developed as a multi-agency Trust in order that other public agencies may provide similar benefits to their employees. The benefit of joining this particular VEBA Trust is that it was developed by a public agency with our issues in mind. This Trust is also governed by a committee of Trustees formed from the list of participating agencies. Should the City of Banning choose to participate in the California Government VEBA, we would hold representation on the Board of Trustees as well.

The costs anticipated with the implementation of this program come from two sources, Plan Administration (provided by Administration Resources Corporation, out of Minnesota) and Trust Administration which is provided through Brentwood LLC. All costs will be paid out of interest earnings.

It is also anticipated that investment fees may be a cost as well. However, several options exist for investment one of which is no-cost guaranteed fee program through MetLife. Other investment options are available and are tailored to the employer's requirements.

Staff is available this evening to answer any questions you may have regarding the proposed action.

FISCAL DATA:

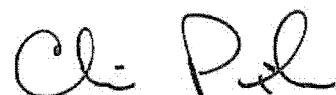
The costs associated with the VEBA trust are as follows:

Plan Administration
Fee (processing of reimbursements, etc.) \$4.55 per enrollee per month

Trust Administration Service
Fee (management of assets, etc.) 50 basis points of assets on deposit

These fees will be deducted from interest earned on deposits.

RECOMMENDED BY:



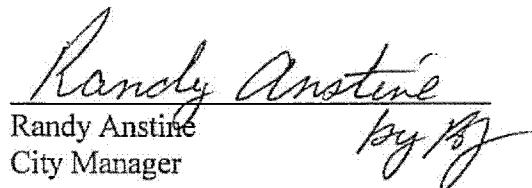
Chris Paxton
Director of Human Resources

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:


Randy Anstine
City Manager

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RESOLUTION NO. 2008-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING PARTICIPATION IN THE CALIFORNIA GOVERNMENT VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION TRUST.

WHEREAS, the City maintains a comprehensive health and welfare benefit program for its employees and their families; and,

WHEREAS, periodic modifications and or additions are made to the benefit programs; and

WHEREAS, the rising cost of health care is the single most important cost containment issue for employers and employees; and

WHEREAS, the tax advantages of a Voluntary Employee Beneficiary Association Trust will provide employees with more assets for health care and related costs; and

WHEREAS, the California Governmental Voluntary Employee Beneficiary Association is a governmental multi employer plan that permits employees to accumulate assets for this purpose pursuant to the provisions of Internal Revenue code section 501 (c)(9); and

WHEREAS, the California Governmental Voluntary Employee Beneficiary Association provides for participation pursuant to collective bargaining agreements;

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

1. The City Council adopts the California Governmental Voluntary Employee Benefit Association Trust, a copy of which is attached hereto and by this reference made a part hereof.
2. The City Manager or his designee is authorized to meet and confer with employee groups in order to negotiate employee contributions to the Trust
3. The City Manager is authorized to execute the City's Plan Document, a copy of which is attached hereto and by this reference made a part hereof.

PASSED, APPROVED, AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorenson LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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**CALIFORNIA GOVERNMENT
VOLUNTARY EMPLOYEES BENEFICIARY ASSOCIATION
MASTER TRUST**

TRUST made as of the 2nd day of July, 2002 by and between the City of Foster City/Petano Municipal Improvement District, a public agency in the State of California (hereinafter referred to as the "Participating Agency"), and ALLFIRST TRUST COMPANY, N.A., a national banking association (hereinafter referred to as the "Trustee").

WITNESSETH:

WHEREAS, the Participating Agency maintains the City of Foster City/Esterio Municipal Improvement District VEBA Plan (hereinafter referred to separately as the "Plan", and

WHEREAS, the Plan is one of the plans constituting the California Government Voluntary Employees Beneficiary Association ("California Government VEBA"); and

WHEREAS, under the Plan, funds will from time to time be contributed to the Trustee, which funds, as and when received by the Trustee will constitute a trust fund to be held for the benefit of the Members and retirees of the Plan of the Participating Agency having a right to benefits, pursuant to the provisions of the Plan, and such funds will be invested by the Trustee pursuant to directions by the Participating Agency and/or Investment Manager as provided herein; and

WHEREAS, other Participating Agencies may adopt this Trust, subject to the provisions of this Trust, to hold assets for the purpose of funding plans that are a part of the California Government VEBA; and

JUL. 26. 2005 3:00PM MAT CUSTODY ADMIN +7175652405

NO. 5186 P. 2 003

WHEREAS, the Participating Agency now desires to enter into this Master Trust with the Trustee for the purpose of holding the assets under the Master Trust attributable to the Plan and other amounts contributed thereunder; and

WHEREAS, the assets and funds to be held in the Master Trust established hereby, as and when received by the Trustee, will constitute a trust fund to be held for the benefit of the members of the Plan and their beneficiaries; and

WHEREAS, the Participating Agency desires the Trustee to hold such assets and funds and the Trustee is willing to hold such assets and funds pursuant to the terms of this trust; and

WHEREAS, the Master Trust is intended to qualify as a "Voluntary Employees Beneficiary Association" within the meaning of Section 501(c)(9) of the Internal Revenue Code, and

WHEREAS, the Master Trust is intended for the purpose of creating a fund to provide for the payment of benefits that qualify under Section 501(c)(9) of the Internal Revenue Code to participating Members, including their dependents, and their designated beneficiaries.

NOW, THEREFORE, in consideration of the premises and of the mutual covenants herein contained, the Participating Agency and the Trustee do hereby agree as follows:

1. The Participating Agency hereby adopts the California Government Voluntary Employees Beneficiary Association Trust (the "Master Trust") as a trust to fund the benefits provided by the Plan. All such money and property, all investments made therewith and proceeds thereof and all earnings and profits thereon, less the payments or other distributions which, at the time of reference, shall have been made by the Trustee, as authorized herein, are referred to herein as the "Fund" and shall be held by the Trustee, in trust, and dealt with in accordance with the provisions of this Trust.

2. Any other California public agency may become a Participating Agency and adopt the Master Trust to fund a plan or plans from the Master Trust if the Participating Agency adopts the Master Trust, the Participating Agency's plan or plans provide benefits that are funded from the Master Trust and the Trustee agrees to such adoption. The assets of each Participating

Agency and the investment earnings thereon shall be available only to pay benefits to employees of that Participating Agency.

3. It is intended that the Master Trust shall meet the requirements of Internal Revenue Code section 501(c)(9). All contributions hereunder and all assets and earnings of the Master Trust are solely and irrevocably dedicated to the payment of benefits that qualify under section 501(c)(9) of the Internal Revenue Code.

4. Participating Agency appoints Public Agency Retirement Planning, Inc. as Trust Administrator and directs that Public Agency Retirement Planning, Inc. shall have the authority to act for the Participating Agency in all matters relating to the establishment and maintenance of the Plan and Trust except those relating to the investment and management of the assets of the Trust and such other matters as are reserved to the Participating Agency under the provisions of this Trust. Without limiting the generality of the foregoing, Public Agency Retirement Planning, Inc. shall have the following specific powers:

- A. To self-administer, or to contract for and delegate the administration of the Plan to one or more administrators.
- B. To determine from time to time the benefits to be provided for participants under the Plan.
- C. To retain professional advisors, including auditors and legal advisors to provide services to the Trust.
- D. To prepare necessary filing with the state and federal government.

5. Responsibility for the management and control of the assets of the Plans which are held under the Master Trust as a funding medium (including the power to acquire or dispose of such assets) is vested in the Participating Agency, and/or in such one or more investment managers described in Article 13 who are appointed by the Participating Agency. That portion of the Fund for which the Participating Agency shall have such responsibility is hereinafter referred

to as the "Participating Agency-Directed Fund." Any portion of the Fund over which an Investment Manager shall have such responsibility is hereinafter referred to as an "Investment Manager-Directed Fund." Allocations of assets of the Fund between or among any Participating Agency-Directed or Investment-Manager Directed Funds shall be determined by the Participating Agency. For efficiency or convenience of investment or administration, the Fund or any such Participating Agency-Directed or Investment Manager-Directed Fund may be divided into such one or more sub-funds as the Participating Agency or the Trustee may deem advisable.

6. The Participating Agency or its designee shall maintain a separate account reflecting the equitable share in the Fund of each participating Plan. For this purpose, the Trustee shall determine the value of the assets of the Fund as of the last day of each calendar quarter and as of such other dates as the Trustee may deem appropriate or on which the Participating Agency and the Trustee may agree. Assets shall be valued at their market values at the close of business on the date of valuation, or, in absence of readily accessible market values, at such values as the Trustee shall determine in accordance with methods consistently followed and uniformly applied. Anything herein to the contrary notwithstanding, with respect to assets constituting part of a Directed Fund hereunder, the Trustee may rely, for all purposes of this Trust, including for the purpose of determining the value of such assets as of any quarterly or other valuation date, on any certified appraisal or other form of valuation submitted to it by the Investment Manager(s). The Trustee may also rely on Assets reported by an Insurer in conjunction with contracts issued by that Insurer. Any amount paid from the Master Trust which is specifically allocable to a particular participating Plan shall be charged by the Participating Agency or its designee against the equitable share of such participating Plan; any amount paid from the Master Trust which is allocable to all of the participating Plans shall be charged against the Fund as a whole.

7. The Trustee shall not be required to maintain any separate records or accounts with respect to any participating plan or any participant in (or beneficiary of) any participating Plan, and any such records or accounts required to be maintained pursuant to the terms of any such Plan shall be maintained by the Participating Agency or by the appropriate committee directly charged with such responsibility.

8. By entering into this Trust, the Trustee does not assume any responsibility or undertake any duty to enforce payment of any contribution under any participating Plan, any responsibility for the adequacy of the Fund or the funding standards adopted by the sponsor of any participating Plan to meet or discharge any liabilities under such Plan, or any responsibility under the terms of this Trust for the management or control of any Discretionary or Directed Funds. Except as may otherwise be required by law, no duties or obligations shall be imposed upon the Trustee unless they have been specifically undertaken by the express terms of this Trust.

9. The Trustee shall receive any contributions paid to it in cash or in other property acceptable to it. All contributions so received, together with the income therefrom and any other increment thereon, shall be held by the Trustee pursuant to the terms of this Trust without distinction between principal and income. The Trustee shall not be responsible for the collection of any contributions to the Plans.

10. The Trustee may from time to time consult with counsel, who may be counsel to the Participating Agency, with respect to any question arising as to the construction of this Trust or any action to be taken hereunder and the Trustee shall be fully protected, to the extent permitted by law, in acting in good faith upon the advice of counsel.

11. Subject to the provisions of Article 11 hereof, the Trustee from time to time at the written direction of the Trust Administrator may make payments out of the Trust Fund to such persons, in such manner, in such amounts and for such purposes, including the payment of expenses of the Plan and the purchase of life insurance and/or annuity contracts, as may be specified in the directions of the Trust Administrator. Except as may otherwise be required by law, the Trustee shall be under no liability for any payment made by it pursuant to a written direction of the Trust Administrator and shall be under no duty to make inquiries as to whether any payment directed by the Trust Administrator is made pursuant to the provisions of the Plan.

12. Notwithstanding anything to the contrary contained in this Trust or in any amendment thereto, it shall be impossible, at any time prior to the satisfaction of all liabilities with respect to the members under the Plans or their beneficiaries, for any part of the Fund, other than such part as is required to pay taxes and expenses of administration, to be used for or

diverted to purposes other than for the exclusive benefit of the members under the Plans or their beneficiaries.

13. Unless otherwise prohibited by law or otherwise specified herein, the Trustee shall have the following powers and authority with respect to the Trust Fund:

(a) To invest and reinvest, as directed by the Participating Agency and/or the Investment Manager, the principal and income of the Fund and keep the Fund invested without distinction between principal and income, in such securities or in such property, real or personal (whether or not income producing), wherever situated, including, but not limited to, life insurance contracts, stocks, common or preferred; any mutual or other funds maintained or established by the Trustee or any affiliate thereof; bonds and mortgages and other evidence of indebtedness or ownership or in any common, collective or commingled trust fund maintained by the Trustee, as the same may be amended from time to time, and during any period when such funds are used, the instrument establishing such fund shall constitute a part of this Trust. In making such directed investments, the Trustee shall not be restricted to securities or other property of the character authorized or required by applicable law from time to time for Trust investments. The Participating Agency and/or Investment Manager shall direct the Trustee in writing as to the asset allocation or percentage mix of types of investments to be used by the Trustee for the investment of the Trust Fund, and as to specific investments to be made by the Trustee of amounts in the Trust Fund. To the extent permitted by law, the Trustee shall not be liable and shall be held harmless and indemnified by the Participating Agency for any losses incurred in connection with the Trust Fund caused by its reliance thereon. Such losses may be either actual realized losses or losses in the nature of "lost investment opportunity."

(b) To settle, compromise or submit to arbitration any claims, debts or damages, due or owing to or from the Master Trust, to commence or defend suits or legal proceedings and to represent the Master Trust in all suits or legal proceedings in any court of law or before any other body or tribunal.

(c) To exercise any conversion privilege and/or subscription right available in connection with any securities or other property at any time held by its; to oppose or to consent to

the reorganization, consolidation, merger or readjustment of the finances of any corporation, company or association, or to the sale, mortgage, pledge or lease of the property of any corporation, company or association any of the securities of which may from time to time be held by it and do any act with reference thereto, including the exercise of options, the making of trusts or subscriptions, and the payment of expenses, assessments or subscriptions, which may be deemed necessary or advisable in connection therewith, and to hold and retain any securities or other property which it may so require.

(d) To exercise, personally or by general or by limited power of attorney, any rights, including the right to vote, appurtenant to any securities or other property held by it at any time.

(e) To hold part or all of the Fund uninvested.

(f) To employ suitable agents and counsel and to pay from the Trust Fund their reasonable expenses and compensation.

(g) To register any securities held by it hereunder in its own name or in the name of a nominee with or without the addition of words indicating that such securities are held in a fiduciary capacity and to hold any securities in bearer form.

(h) To make, execute and deliver, as Trustee, any and all deeds, leases, mortgages, conveyances, waivers, releases or other instruments in writing necessary or desirable for the accomplishment of any of the foregoing powers.

(i) To deposit any part of the Fund in interest bearing account deposits maintained by or savings certificates issued by the Trustee, in its separate corporate capacity, or in any other banking institution affiliated with the Trustee.

(j) Generally to do all acts, whether or not expressly authorized, which the Trustee may deem necessary or desirable for the protection of the Trust Fund.

14. The Participating Agency reserves the right to retain the services of one or more persons or firms for the management of (including the power to acquire and dispose of) all or any part of the Fund, provided that each of such persons or firms is registered as an investment

advisor under the Investment Advisors Act of 1940, is a bank (as defined in that Act), or is an insurance company qualified to manage, acquire or dispose of trust assets under the laws of more than one state, and provided that each of such persons or firms has acknowledged in writing that he is a fiduciary with respect to the Plan; in such event, the investment manager or managers so retained (the "Investment Manager(s)") shall have the same investment powers and duties as the Trustee, and the Trustee shall not be liable for the acts or omissions of such Investment Manager(s), nor shall it be under any obligation to invest or otherwise manage any Trust Fund assets which are subject to the management of such Investment Manager(s).

15. In the event that any investment is made by an Investment Manager in real property, then the Trustee shall have the right to request as a condition precedent to its executing any documents or paying over any trust assets in connection with such transaction, that it receive a certified appraisal that the property has a value at least equal to the transaction price and that the property is in the form and condition described in such documents, and further, that it receive an opinion of counsel (who may be counsel to the Investment Manager) that such documents are in proper form for execution by the Trustee, that such deed or document has been or will be properly recorded under all applicable Recording Acts, and that appropriate policies adequately insuring the trust against loss for any reason (including a defect in title) have been procured in the name of the Trustee. In addition, the Investment Manager shall provide the Trustee, upon request, with current appraisals of such property which shall be relied upon by the Trustee for all valuation and accounting purposes under this Trust.

Prior to investment in real property, any Investment Manager shall notify the Trustee of the intended investment and the Trustee shall have the right to perform or engage an environmental assessment or audit. Dependent upon its findings, the Trustee shall have the right to withhold acceptance of the investment, to condition its acceptance of the investment on a hold harmless basis, or to condition acceptance of the investment on such other terms as in the discretion of the Trustee may be necessary to protect the assets of the Fund. The Investment Manager shall immediately notify the Trustee of any proposed, intended, or actual change in use(s), operation(s), or tenant(s) of any real property that is currently, has become, or is intended

to become an asset of the Fund if such change could materially affect the environmental compliance obligations or liability exposure of the property owner (e.g., a change from retail to industrial use). Upon such information, the Trustee shall have the right to withhold acceptance of the investment if it is not yet an asset of the Fund, to forbid any change in use(s), operation(s), or tenant(s) or divest the Fund of any interest in real property that has become the subject of such a change, or to condition its acceptance of any such change on a hold harmless basis. The Trustee may require at any time that any interest in real property that is or is intended to become an asset of the Fund be held as an interest in a corporation, limited partnership, or in any other form which the Trustee concludes may be necessary to protect the assets of the Fund. However, no right enumerated in this paragraph obligates the Trustee to reject or place conditions upon the acceptance of, divest the Fund of, or otherwise act upon the rights enumerated herein that pertain to the holding of real property interests, unless any such failure to act is the result of bad faith.

16. The Trustee shall pay out of the Fund all personal property taxes, income taxes and other taxes of any and all kinds levied or assessed under existing or future laws against the Trust Fund.

17. The Trustee shall be paid reasonable compensation as shall from time to time be agreed upon by the Trust Administrator and the Trustee. Such compensation and all reasonable expenses of administration of the Trust, including reasonable counsel fees, and including property appraisals, environmental assessments or audits, and related costs incurred from time to time in connection with investments or potential investments in real property, shall be withdrawn by the Trustee out of the Trust Fund unless paid by the Trust Administrator.

18. The Trustee shall, within 90 days after the close of each calendar year, and within 90 days after the removal or resignation of the Trustee or the termination of the Trust or any participating Plan, render accounts of its transactions to the Trust Administrator and the Trust Administrator may make exceptions to such accounts by an instrument in writing delivered to the Trustee. In the absence of the filing in writing with the Trustee by the Trust Administrator or exceptions or objections to any such account within ninety (90) days of the rendering, the Trust Administrator shall be deemed to have approved such account, the Trustee shall be released,

relieved and discharged with respect to all matters and things set forth in such account as though such account had been settled by the decree of a court of competent jurisdiction. The Trustee shall keep accurate and detailed accounts of all investments, receipts, disbursements and other transactions hereunder for the Fund (including any Discretionary or Directed Fund) and all accounts, books and records relating thereto shall be open to inspection and audit at all reasonable times by any persons designated by the Trust Administrator. Except as the Retirement Security Act of 1974, as amended ("ERISA"), provides otherwise, no person other than the Participating Agency may bring any action against the Trustee with respect to the Trust or its actions as Trustee. The Trustee shall from time to time permit an independent public accountant selected by the Plan Administrator (except one to whom the Trustee has reasonable objection) to have access during ordinary business hours to such records as may be necessary to audit the Trustee's accounts.

19. The Trustee shall be fully protected in relying upon notice from the Trust Administrator with respect to any instruction, direction or approval of the Trust Administrator, and protected also in relying upon a notice from the Trust Administrator as to the person or persons who are authorized to direct payments from the Trust Fund and in continuing to rely upon such notice until a subsequent notice is filed with the Trustee.

The Trustee shall be fully protected in acting upon any instrument, certificates or paper believed by it to be genuine and to be signed or presented by the proper person or persons, and the Trustee shall be under no duty to make any investigation or inquiry as to any statement contained in writing, but may accept the same as conclusive evidence of the truth and accuracy of the statements therein contained.

The Trustee shall not be liable for the application of any part of the Fund if payments are made in accordance with the written directions of the Trust Administrator as herein provided, nor shall the Trustee be responsible for the adequacy of the Fund to meet and discharge any and all payments and liabilities under the Plan. All persons dealing with the Trustee are released from inquiry into the decision or authority of the Trustee and from seeing to the application of any moneys, securities or other property paid or delivered to the Trustee.

The Trust Administrator and Participating Agency hereby agree to hold the Trustee harmless from and against all taxes, expenses (including counsel fees), liabilities, claims, damages, actions, suits or other charges incurred by or assessed against it as a successor Trustee, as a direct or indirect result of any act or omission of a predecessor Trustee or any other person charged under any trust affecting Fund assets for investment responsibilities with respect to such assets.

The Participating Agency agrees to hold harmless and indemnify the Trustee, to the fullest extent permitted under applicable law, for any and all liabilities of any kind incurred by the Trustee in connection with the Plans and Trust (a) relating to periods of time prior to the Trustee's becoming Trustee, or (b) relating to periods of time while the Trustee is Trustee if such liability is not due to the Trustee's gross negligence, willful misconduct, or breach of its fiduciary duties.

20. The Trustee may resign at any time by giving sixty (60) days written notice to the Trust Administrator. The Trust Administrator may remove the Trustee upon sixty (60) days written notice, and in the case of the resignation or removal of the Trustee, the Trust Administrator immediately shall appoint a successor Trustee. If for any reason the Trust Administrator cannot or does not act in the event of the resignation or removal of the Trustee, as hereinabove provided, the Trustee may apply to a court of competent jurisdiction for the appointment of a successor Trustee. Any expenses incurred by the Trustee in connection therewith shall be paid from the Fund as an expense of administration. Any successor Trustee shall have the same powers and duties as those conferred upon the Trustee named in this Trust. The removal of the Trustee and the appointment of a new Trustee shall be by written instrument delivered to the Trustee.

21. This Trust, subject to the provisions of Article 11 may be amended by the Participating Agency at any time or from time to time and in any manner and the provisions of any such amendment may be made applicable to the Fund as constituted at the time of the amendment as well as to the part of the Fund subsequently acquired; provided, however, that no

such amendment shall increase the duties or change the compensation of the Trustee without its consent. Any amendment shall be by a written instrument delivered to the Trustee.

22. This Trust and the trust created hereby may be terminated at any time by the Trust Administrator, and upon such termination, the Fund shall be paid out by the Trustee as and when directed by the Trust Administrator in accordance with the provisions of Article 10 hereof.

23. The Trust Administrator shall provide the Trustee with copies of all documents constituting the participating Plans at the time the Trust is executed by the Participating Agency or adopted under any other plan, as provided in Article 2, and all other documents amending or supplementing the participating Plans promptly upon their adoption. The Trustee shall be entitled to rely upon the Trust Administrator's attention to this obligation and shall be under no duty to inquire of the Trust Administrator as to the existence of any documents not provided by the Trust Administrator hereunder.

24. The Trustee acknowledges that it is a fiduciary with respect to the Master Trust and the participating Plans and is bound by the fiduciary responsibility provisions of ERISA. The provisions of ERISA are expressly made applicable to the provisions of this Master Trust in order to ensure that the Master Trust meets the control requirements for a VEBA under the provisions of 501(c)(9) of the Internal Revenue Code.

25. To the extent consistent with the provisions of ERISA, this Agreement and the trust created hereby shall be construed, regulated and administered under the laws of the State of California, and the Trustee shall be liable to account only in the courts of the State. All contributions to the Trustee shall be deemed to take place in the State of California. Unless the provisions of ERISA provide otherwise, the Trustee may at any time initiate an action or proceeding for the settlement of its accounts or for instructions, and the only necessary party defendant to such action or proceeding shall be the Participating Agency except that the Trustee may, if it so elects, bring in as parties defendant any person or persons.

IN WITNESS WHEREOF, this instrument has been executed as of the day and year first above written.

SPONSOR

ATTEST:

Doris Palmer

Doris L. Palmer
Secretary Deputy City Clerk

By: James C. Hardy

Name:

James C. Hardy

Title:

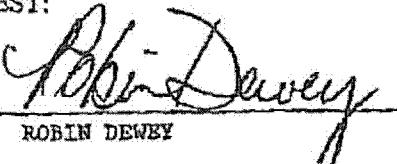
City Manager

Date:

July 2, 2005

TRUSTEE:

ATTBST:


ROBIN DEWEY

ALLFIRST TRUST COMPANY, N.A.

By:

Name

SANDRA DRAPER STEWART

Title:

VICE PRESIDENT

Date:

MARCH 14, 2003

City of Banning



VEBA Plan Document

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**CALIFORNIA GOVERNMENT VOLUNTARY EMPLOYEE
BENEFITS TRUST
PLAN DOCUMENT
City of Banning**

This Plan is adopted by the City of Banning (the "Plan Sponsor") and, together with the trust established to hold the assets of the Plan, evidences the Voluntary Employees' Beneficiary Association established by the Plan Sponsor for the benefit of its eligible employees.

RECITALS

WHEREAS, the Plan Sponsor wishes to establish a comprehensive integrated program under which the Plan Sponsor, other Plan Sponsors, and collective bargaining units can negotiate for a variety of health and welfare benefits for its employees; and,

WHEREAS, such comprehensive program, known as the California Government Voluntary Employee Benefits Association was implemented to effect economies of scale through the commingling of assets for investment purposes and centralizing of administrative services to provide the Plan Sponsors with a cost effective vehicle through which to offer benefits to their employees; and,

WHEREAS, it is the intent of the Plan Sponsor to establish a Voluntary Employees' Beneficiary Association ("VEBA") Plan as an integral part of California Government Voluntary Employees' Beneficiary Association Trust; and,

WHEREAS, the Plan Sponsor will provide for a Trust to hold the funds of the VEBA for the benefits specified in this Plan under and in accordance with this Plan and,

WHEREAS, the Plan Sponsor intends that the Plan hereby established, when taken together with the Trust, shall constitute a Voluntary Employees' Beneficiary Association under Section 501(c)(9) of the Internal Revenue Code of 1986, as amended (the "Code");

NOW, THEREFORE, in consideration of the foregoing, the Plan Sponsor adopts the following Plan:

Article I Name & Documents

1.1 Name. The name of this Plan shall be the City of Banning California Government VEBA Plan (the "Plan"). It is established pursuant to the provisions of Code Section 501 (c)(9), and together with the Trust adopted to fund the benefits evidences the Plan Sponsor's intent to form a VEBA.

1.2 Plan Documents. This Plan, together with the Trust Agreement shall constitute the entire Plan. This Plan document together with such documents attached as Schedule A, shall compose the entire plan.

Article II Definitions

2.1 "Beneficiary": A person or persons who are entitled to receive benefits under the Plan following the death of the Member and who are identified in a form prescribed by the Trust Administrator.

2.2 "Contributions": Amounts deposited in the Trust pursuant to the terms of this Plan.

2.3 "Effective Date": The Effective Date shall be the date the Plan and Trust are adopted by the Plan Sponsor.

2.4 "Employee": Any employee of the Plan sponsor or adopting Plan Sponsor.

2.5 "Plan Sponsor": The City of Banning as employer.

2.6 "Individual Account": An account as described in Article VI.

2.7 "Adopting Plan Sponsor": Any public agency or political subdivision thereof which has adopted and not terminated a Plan and Trust as part of the California Government VEBA.

2.8 "Member": Any of the following persons who meet the eligibility requirements provided in the Plan:

2.8.1 An actively employed Employee.

2.8.2 An inactive Employee.

2.8.3 A retired former Employee.

2.8.4 A dependent of an active, inactive, or retired Employee who is a Member

2.8.5 "Dependental" means: The Employee's spouse; a minor child residing with the Employee; a child of the Employee who is a student within the meaning of Code Section 151(e) (4); any other person who is a dependent of the Employee within the meaning of Code Section 152(a).

2.8.6 A beneficiary of an active, inactive or retired employee who is or was a Member.

2.8.7 "Beneficiary" means a person who is entitled to receive benefits under the Plan following the death of the member.

2.8.8 "Inactive Employee" means: An Employee who, although not actively employed by the Plan Sponsor, retains eligibility for benefits.

2.9 "Plan Administrator": The individual or position designated by the Plan Sponsor to act for the Plan Sponsor in matters relating to the Plan and its Documents. If such an individual or position is named then "Plan Sponsor" as it appears hereafter shall mean the Plan Administrator.

2.10 "Trust Administrator": The entity appointed by the Trustee to perform the duties listed herein.

2.11 "Trustee": The Trust Committee appointed by the forming agency Plan Sponsor, or such other individual or entity as determined pursuant to the California Government Code.

Article III Participation

3.1 Eligibility.

3.1.1 In General. Subject to the limitations of section 3.1.2, every Employee shall be eligible to become a Member under this Plan at the time of the first Plan Sponsor contribution to this Plan on the Employee's behalf. The Plan Sponsor may contribute to the Plan on behalf of its employees on terms pursuant to the Plan Sponsor's leave conversion programs, flat rate contribution program, or any other Plan Sponsor sponsored program permitting contributions to the Plan and Trust.

3.1.2 Limitations.

3.1.2.1 Participation shall be limited to those employees by or on behalf of whom a contribution is made to the Trust.

3.1.2.2 This Plan does not permit any condition for eligibility which would limit participation to officers or highly compensated employees.

3.2 Procedure. After satisfying all eligibility requirements, an Employee shall participate in this Plan when the Trustee receives the initial contribution for the Member.

3.3 Duration of Participation. Once an employee becomes a Member in the Plan, his participation shall continue as long as funds remain or are required to be deposited in his or her Member's Individual Account.

3.4 Voluntary Participation. The participation by an Employee shall be voluntary.

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Article IV Plan Benefits

4.1 Description. The purpose of the Plan is to provide health and welfare benefits and similar benefits permitted under section 501 (c)(9) of the Internal Revenue Code, for use during periods of employment, layoff or retirement. Health Benefits may include benefits as defined by Code Section 213 and excludable from income under Code Sections 105 and 106 as amended from time to time. Such benefits may be provided through reimbursement or through the payment of premiums to a medical benefit or health insurance program. Benefits may include payment for services or benefits designed to safeguard or improve the health of Members or clinical care services by visiting nurses, nursing homes and transportation for medical care. Welfare benefits may include, but are not limited to health, severance, unemployment or education benefits.

4.2 Commencement of Benefits. Benefits commence for covered expenses incurred on or after the date an Employee becomes a Member in the Plan.

4.3 Beneficiaries. Benefits are payable for covered expenses incurred by the Member, the Member's dependents or the Member's Beneficiaries.

4.4 Designation of Beneficiaries. The Member shall have the sole right to designate the Beneficiary or Beneficiaries eligible to receive any benefit under the Plan payable by reason of the death of any Member. Such designation must be on a form or forms supplied by the Plan Administrator and shall be effective when delivered to the Plan Administrator in accordance with established procedures.

4.5 Termination of Benefits. Benefits shall terminate when there are no longer any assets available for payment.

4.6 Beneficiary Payments Individual Accounts. If an Individual Account is established, in the event of the Member's death, any funds then remaining in the Member's Individual Account shall be used for medical expenses of the Member's spouse and qualified dependents. In the event funds remain in the Member's Individual Account following the death of the Member and his or her spouse, the funds shall be paid as medical benefits to the heirs of the Member until the account is exhausted and the Member is no longer entitled to additional contributions.

4.7 Unallocated Benefits. The Plan Sponsor may participate in this Plan without establishing Individual Accounts for Members. The Plan Sponsor shall specify the employees to whom benefits are to be paid, and the amount and type of benefits. The assets contributed for such employees and earnings thereon shall be accounted for in a separate sub account of the Trust. Benefits shall then be paid to Members as prescribed by the provisions of this Plan and any other instrument that is deemed a part of this Plan for the purpose of determining benefits to be paid. When the assets in such sub account are exhausted no further benefits shall be paid.

Article V Funding of Benefits

5.1 Plan Sponsor's Contributions. Plan Sponsor contributions made to this Plan and Trust for medical benefits shall be specifically allocated to an Individual Account for each Member for the purpose of providing payment of the benefits described herein unless the Plan Sponsor is providing for Unallocated Benefits pursuant to Section 4.7.

5.2 Determination of Benefits. Unless the benefits are being provided on an Unallocated Basis pursuant to Section 4.6, amounts contributed on behalf of each Member shall be determined pursuant to the provisions of the collective bargaining agreement and Plan Sponsor personnel practices under which the benefits and compensation to be provided to the Employee under this Plan are determined. If benefits are being provided on an Unallocated Basis benefits shall be determined on the same basis.

5.3 Termination of Plan Sponsor Contributions. Contributions shall cease when the applicable bargaining agreements or Plan Sponsor policies no longer provide for contributions. The Plan Sponsor shall be responsible for informing the Plan Administrator when Plan Sponsor Contributions for any employee or employees will cease.

Article VI Allocation to Member's Accounts

6.1 Members' Individual Accounts. A separate account shall be maintained by the Plan Administrator for each Member to account for the income, gains, losses, and expenses or benefit payments attributable to his or her account unless benefits are being provided on an Unallocated Basis.

6.2 Receipt of Contributions. Contributions will be credited when received by the Trustee.

6.3 Accounting. The Plan Administrator shall develop such accounting procedures as are deemed appropriate for accurate reflection of the Members' Individual Account balance or the assets contributed, earnings thereon and benefits paid if benefits are being provided on an Unallocated Basis.

Article VII General Provisions

7.1 Source of Benefits. The Plan and Trust's liability to any Member for benefits under the Plan shall be limited to the sum of the account balance of each Member Individual Account or the amount of Plan Sponsor contributions and interest thereon if benefits are being provided on an Unallocated Basis.

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7.2 Mechanics of Payment. The Member shall, with respect to any benefit, and subject to the reasonable procedures established by the Plan Administrator, direct the Trust Administrator:

- 7.2.1 To pay benefits directly to an insurance company for qualified insurance premiums; or
- 7.2.2 To pay benefits to a Plan Sponsor for qualified Medical premium payments; or
- 7.2.3 To pay benefits to the Member for reimbursement of qualified medical expenses; or any combination of 7.2.1, 7.2.2, or 7.2.3, as allowed under the procedures adopted by the Plan Administrator.

7.3 Claims Procedure. At such time when a Member believes he/she is entitled to receive a benefit under the Plan, such Member shall deliver a request for such benefit in writing to the Trust Administrator. The Trust Administrator shall review the claimant's request for a Plan benefit and shall, within a reasonable time thereafter, notify the claimant of its decision.

- 7.3.1 If the claimant's request for a Plan benefit is approved by the Plan Administrator, proceed with the distribution of such Plan benefit pursuant to the claimant's request.
- 7.3.2 If the claimant's request for a Plan benefit is denied, in whole or in part, by the Plan Administrator, the Trust Administrator shall notify the claimant of such denial and shall provide the claimant with a reasonable procedure for review
- 7.3.3 Any claimant whose request for Plan benefits has been denied, in whole or in part, or such claimant's authorized representative, may appeal said denial of Plan benefits by submitting to the Trust Administrator a written request for a review of such denied claim. Such request for review must be delivered to the Trust Administrator within a reasonable time after the date the claimant received written notification of the Plan Administrator's initial denial of the claimant's request for Plan benefits.
- 7.3.4 The Trust Administrator shall permit the claimant to review pertinent documents and submit written issues and comments concerning the denial of claimant's request for Plan benefits.

Article VIII Administration

8.1 Trust Administrator. The Trust Administrator of the California Government Voluntary Employees Beneficiary Association Master ("Trust") shall perform such duties as directed by the Trustee and the terms of this agreement.

8.2 Trust Administrator Duties. The Trust Administrator shall have responsibility for maintaining records of the balances, claims, and contributions to the Individual Accounts as well as such records as are needed to maintain the Plan if contributions are made on an Unallocated Basis. The Trust Administrator shall enforce this Plan in accordance with its terms and those of

the Trust and shall be charged with the general administration of the Plan. In addition, the Trust Administrator, or its delegatee, shall have the following duties:

- 8.2.1 To determine all questions relating to the eligibility of Employees to participate.
- 8.2.2 To maintain all the necessary records for the Administration of this Plan other than those maintained by the Trustee.
- 8.2.3 To account for the investments made by the Trustee in a manner consistent with the objectives of the Plan and authorized by the Trust;
- 8.2.4 To make and publish such rules for the regulation of this Plan as are not inconsistent with the terms hereof.

8.3 Information. To enable the Trust Administrator to perform its functions, the Plan Sponsor shall supply it with full and timely information on all matters relating to the compensation of all Employees, their services, their retirements, deaths or the causes for terminations of employment and such other pertinent facts as the Trust Administrator may require.

8.4 Expenses. All expenses shall be paid from the earnings on the assets held in the Trust, unless otherwise authorized by the Plan Administrator.

8.5 Consultants, Advisors & Managers. The Trust Administrator may employ such consultants, advisors and investment managers as it deems necessary or useful in carrying out its duties hereunder, with the cost thereof to be paid from the Trust assets.

8.6 Funding Policy & Procedures. The Trustee, Trust Administrator and Plan Sponsor shall formulate policies, practices and procedures for contributions to, payments from, and funding of the Plan, which shall be consistent with the Plan objectives and the provisions of applicable law. Without limiting the generality of the foregoing, the Trust Administrator may, from time to time, accomplish the following:

- 8.6.1 Establish a regular and convenient schedule of planning meetings, not less often than annually.
- 8.6.2 Review short term, intermediate and long range investment goals.
- 8.6.3 Determine and project benefit liabilities.
- 8.6.4 Make plans to satisfy the liquidity needs of the Plan; and
- 8.6.5 Consult with such other advisors as may be necessary to assure the efficient payment of Plan benefits.

Article IX

Liability

9.1 No Rights. Neither the establishment of this Plan, nor any modification or amendment thereof, nor the payment of any benefits, shall be construed as giving any Member, or any person whomsoever, any legal or equitable right against the Trustee, Trust Administrator, Plan Sponsor, or the assets of the Plan.

9.2 Obligations of Plan Sponsor. Only assets in the Trust shall be available to pay the benefits and claims which arise under this Plan. No obligation of the Plan shall constitute an obligation of the Plan Sponsor, except as such Plan Sponsor is obligated to make contributions under the Plan.

9.3 Liability Limitation. Neither the Trustee, Plan Sponsor or the Trust Administrator shall be liable for the acts or omissions of any Investment Manager or other person appointed to manage the assets of the Plan and Trust if the Trustee or Trust Administrator in appointing such person acted with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent man would use in the conduct of an enterprise of a like character and with like aims.

Adopted by:
City of Banning

By: _____
Signature

Title: _____

Date: _____

Sample Schedule A attached.

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SAMPLE SCHEDULE A

The following (classes, positions, individuals, bargaining units) shall be eligible to participate in the Post Retirement Health Care Fund through contributions made on their behalf:

1. **Executive Management** ()
2. **Mid-Management** ()
3. **Utility** ()
4. **General** ()
5. **Police** ()
6. **Confidential** ()

Eligible participants shall participate through the following City contributions to:

1. **Mandatory Employee Contribution (Salary Reduction)** ()
2. **Sick Leave Conversion Plan** ()
3. **Vacation Conversion Plan** ()
4. **Management Leave Plan** ()
5. **Management Incentive Plan** ()

**CITY COUNCIL
CONSENT CALENDAR**

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Resolution to support regulatory changes to Low Income Housing Tax Credit Programs

RECOMMENDATION: "That the City Council adopt Resolution No. 2008-07, a Resolution of the City of Banning supporting regulatory changes to the Low Income housing Tax Credit Program creating consistency with the Regional Housing Needs Assessment.

JUSTIFICATION: Lending support for changes to the Low Income Housing Tax Credit Program is consistent with the General Plan Land Use Residential Goal No. 2 which encourages a broad range of housing types to fill the needs of the City's current and future residents.

BACKGROUND: Current Regulations of the Low Income Housing Tax Credit Program unjustly disadvantage the Inland Empire region with a disproportionate allocation of low income housing tax credits, by grouping Riverside with San Bernardino County, which creates competition among the two counties for the already disproportionately low allocation to the Inland Empire region.

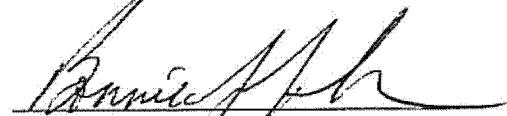
The attached resolution, which was provided by the County of Riverside Economic Development Agency via WRCOG, is provided to the City of Banning with a recommendation to support.

FISCAL DATA: None

RECOMMENDED BY:


Oscar W. Orci
Community Development Director

REVIEWED BY:


Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine
Randy Anstine
City Manager

by RJ

Exhibits:

1. Resolution No. 2008-07

*LOW INCOME HOUSING
TAX CREDIT PROGRAMS*

*RESOLUTION
NO. 2008-07*

EXHIBIT “1”

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RESOLUTION NO. 2008-07

AN RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA SUPPORTING REGULATORY CHANGES TO THE LOW INCOME HOUSING TAX CREDIT PROGRAM CREATING CONSISTENCY WITH THE REGIONAL HOUSING NEEDS ASSESSMENT

WHEREAS, the California Tax Credit Allocation Committee has established ten (10) geographic regions and allocated a percentage of available low income housing tax credits to each region; and

WHEREAS, the counties of Riverside, San Bernardino and Imperial are grouped together to form one (1) of the ten (10) regions defined as the Inland Empire region; and

WHEREAS, the current Inland Empire population is 4,186,436 residents; and

WHEREAS, the Inland Empire regional population represents 11.5% of the current statewide population; and

WHEREAS, the Inland Empire region receives only 8% of the geographic credit; and

WHEREAS, the current regulations of the Low Income Housing Tax Credit Program unjustly disadvantage the Inland Empire region with a disproportionate allocation of low income housing tax credits by geographic areas; and

WHEREAS, the United States Census ranks Riverside County with the greatest numerical increase in population over the past six years; and

WHEREAS, every other county in the state of California with a current population of 2,000,000 or more has a geographic region of its own; and

WHEREAS, the United States Census estimates the current Riverside County population to be 2,023,803 as of 1 July 2006; and

WHEREAS, the current regulations of the Low Income Housing Tax Credit Program unjustly disadvantage Riverside County by grouping it within the Inland Empire region creating competition for the already disproportionately low allocation to the Inland Empire region; and

WHEREAS, Regional Housing Needs Assessment (RHNA) assigns Riverside and San Bernardino counties with the highest per capita quantity of affordable housing in southern California; and

WHEREAS, RHNA projects housing demand based on forecasted population growth within a housing element planning period, while the California Tax Credit Allocation Committee (TCAC) assigns tax credits based on existing concentration of poverty; and

WHEREAS, the RHNA housing production obligation and the Low Income Housing Tax Credit Program allocation formula work in contradiction with each other; and

WHEREAS, the Low Income Housing Tax Credit Program is the most viable source of primary funding for the production of affordable housing; and

WHEREAS, the Western Riverside Council of Governments urges local and state legislators to support regulatory changes to the Low Income Housing Tax Credit Program so as to align the allocation of Low Income Housing Tax Credits with the RHNA requirements for the production of affordable housing

NOW THEREFORE, the City Council does resolve as follows:

The Western Riverside Council of Governments commits to supporting regulatory changes to Low Income Housing Tax Credit Program so as to align the allocation of Low Income Housing Tax Credit with the RHNA requirements for the production of affordable housing.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Resolution No. 2008-07 was approved at a regular meeting of the City Council of the City of Banning, held on the 8th day of January, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

**CITY COUNCIL AGENDA
CONSENT**

DATE: January 8, 2008

TO: City Council

FROM: Duane Burk, Director of Public Works

SUBJECT: Public Improvements Acceptance and Faithful Performance/Labor and Material/Monumentation Bond Release for Tract Nos. 28252, 31833, 31834, and 31835

RECOMMENDATION: Accept the public improvements and release the final portion (10%) of the Faithful Performance/Labor and Material/Monumentation Bonds for Tract Nos. 28252, 31833, 31834, and 31835.

JUSTIFICATION: All of the required public improvements have been inspected and completed in conformance with the approved plans.

BACKGROUND: Tract No. 28252 is located at the southwest corner of Hathaway Street and Charles Street, Tract No. 31833 is located at the northwest corner of Driftwood Circle and Charles Street, Tract No. 31834 is located at the southwest corner of Driftwood Circle and Charles Street, and Tract No. 31835 is located at the southwest corner of Hargrave Street and Charles Street. Prior to the City Council approval of each tract map, the developer was required to post Performance/Labor & Material bonds, as well as Monumentation bonds.

The original bond number for Tract No. 31834, SU5009128, was amended to SU5008032 per an executed Bond Rider dated August 2, 2004.

All of the required public off-site improvements and monumentation for said Tracts have been inspected and completed in conformance with the approved plans and specifications. The developer, Century-Vintage Homes, has also completed its one year required landscape maintenance period for the area's in the City's Landscape Maintenance District No. 1. Typically, once the improvements and required maintenance period have been completed it is prudent to release 100% of said Bonds.

This bond release request was presented to the City Council on December 11, 2007, but due to a homeowner's complaint concerning his building foundation, the City Council directed staff to work with the homeowner and developer to resolve the issue prior to releasing the bonds. Upon investigation, the nature of the complaint was not related to the requested bond release. The bonds requested for release are in place to guarantee the construction of all off-site improvements such as curb and gutter, sidewalks, street pavement, and so forth, and does not relate to on-site issues such as building foundation problems.

Staff met with the developer's representative and he has assured staff that he will work with the homeowner and those on-site building problems will be addressed under the home builder warranty. The developer's representative was requested to be present at the City Council meeting to answer any questions related to the Fair Oaks development.

FISCAL DATA: Not applicable.

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RECOMMENDED BY:

Duane Burk
Duane Burk
Director of Public Works

APPROVED BY:

Randy Anstine
Randy Anstine
City Manager

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Director of Finance

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**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: January 8, 2008

TO: City Council

FROM: George Thacker, Assistant Public Utilities Director

SUBJECT: Accept the Grant of Easement Dedication from James H. Didion and Sylvia M. Didion, trustees of the Didion Family Trust dated February 10, 1992, located on parcels APN 538-340-003 & a por. 004

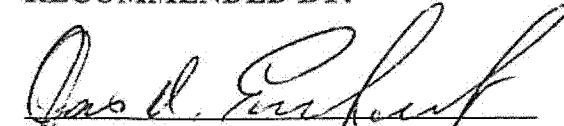
RECOMMENDED: Accept the Grant of Easement Dedication from James H. Didion and Sylvia M. Didion, trustees of the Didion Family Trust dated February 10, 1992, for water purposes, as shown on attached Exhibit "A", and direct the City Clerk to accept and record said easement.

JUSTIFICATION: It is essential that an easement be established in order for the City to gain access and egress to maintain/repair the water facilities serving this property.

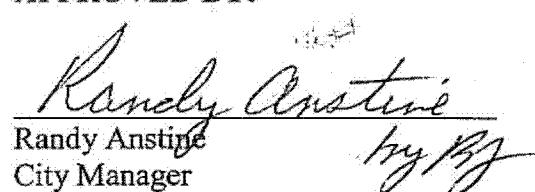
BACKGROUND: The business owners have submitted the required Grant of Easement to the Water Division as part of the conditions of the project on Ramsey Street. It is essential that the City of Banning accept the easement, as shown on the attached Exhibit "A", in order for the City to properly access and egress the required utilities and to maintain/repair the water facilities serving said property.

FISCAL DATA: Not applicable

RECOMMENDED BY:


James Earhart
Electric Utility Director

APPROVED BY:


Randy Anstine
Randy Anstine
City Manager
by PJ

RECORDING REQUESTED BY:

City of Banning

WHEN RECORDED MAIL TO:

City Engineer

City of Banning

PO Box 998

Banning, CA 92220-0998

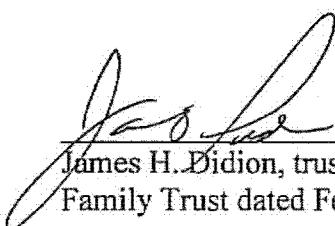
SPACE ABOVE THIS LINE FOR RECORDER'S USE

GRANT OF EASEMENT

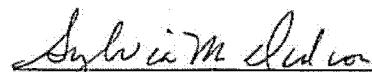
The Grantors, James H. Didion and Sylvia M. Didion, trustees of the Didion Family Trust dated February 10, 1992, do hereby grant to the CITY OF BANNING, a Municipal Corporation, its respective successors and assigns, an easement and the right to construct, use, operate, maintain, repair, replace and/or remove water supply and distribution system facilities, including pipelines, fire hydrants, metering, regulation and appurtenant equipment for the transportation of water over, under and across that certain parcel of land situated in the City of Banning, County of Riverside, State of California, as described as follows:

See Exhibit "A" Easement Plat and Exhibit "B" Legal Description.

IN WITNESS WHEREOF, the Grantors have executed this instrument this 28th day of November, 2007.



James H. Didion, trustee of the Didion Family Trust dated February 10, 1992



Sylvia M. Didion, trustee of the Didion Family Trust dated February 10, 1992

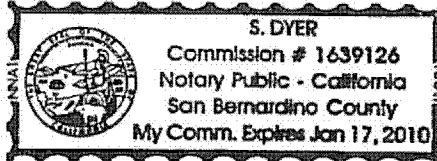
STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On November 28, 2007, before me, S. Dyer,
a Notary Public in and for said State, personally appeared James H. Diction and
Sylvia M. Diction, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person(s) whose name(s) (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.

WITNESS my hand and official seal.

S. Dyer
Notary Public in and for said State

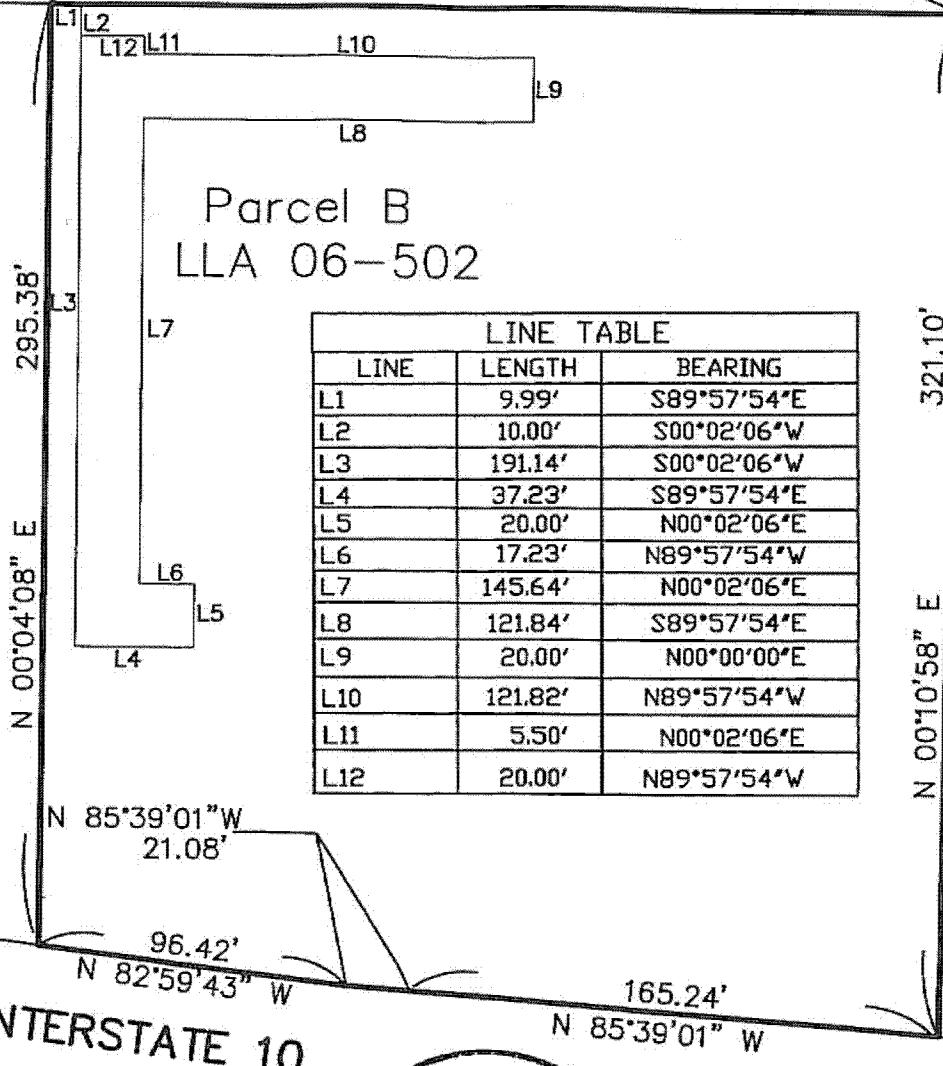
(SEAL)



RAMSEY STREET

SCALE
1"=60'

S 89°57'54" E 329.89'



HERALD STEVEN LANTIS, P.L.S. 7627

LANTIS SURVEYING
& ENGINEERING

40311 DUTTON STREET
CHERRY VALLEY, CA. 92223
(951) 769-6467

WATER EASEMENT- EXHIBIT A

OF A PORTION OF SEC. 8, T.13 S., R.1 E.
A.P.N. 538-340-003 & a por. 004

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Exhibit B
Legal Description

Water Easement Legal Description

A portion of Section 8, Township 3 South, Range 1 East, San Bernardino Base and Meridian as described in document number 2006-0249894 recorded 4-7-2006 in the County of Riverside, State of California. Said property contains Parcel B of City of Banning Lot Line Adjustment No. 06-502, approved by the City of Banning March 29, 2006 Said easement being more particularly described as follows:

Commencing at the Northwest corner of Parcel B of City of Banning Lot Line Adjustment No. 06-502, approved by the City of Banning March 29, 2006 ; thence S 89°57'54"E 9.99 feet; thence S 0°02'06" W 10.00 feet to the Point of Beginning; thence continuing S 0°02'06" W 191.14 feet; thence S 89°57'54"E 37.23 feet; thence N 0°02'06"E 20.00 feet; thence N 89°57'54"W 17.23 feet: thence N 0°02'06"E 145.64 feet; thence S 89°57'54"E 121.84 feet; thence N 0°00'00"E 20.00 feet; thence N 89°57'54"W 121.82 feet; thence N 0° 02'06"E 5.50 feet: thence N 89°57'54"W 20.00 feet, to the Point of Beginning.

All as shown on attached Exhibit A.

END DESCRIPTION



///

**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: January 8, 2008

TO: City Council

FROM: George Thacker, Assistant Public Utilities Director

SUBJECT: Accept the Grant of Easement Dedication from Rickey L. Pippenger and Linda Lou Pippenger, trustees, located on parcel APN 538-240-004

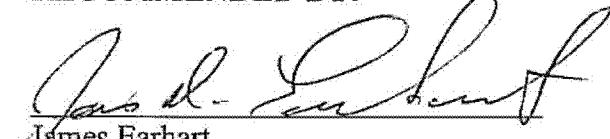
RECOMMENDED: Accept the Grant of Easement Dedication from Rickey L. Pippenger and Linda Lou Pippenger, trustees, for water purposes, as shown on attached Exhibit "A", and direct the City Clerk to accept and record said easement.

JUSTIFICATION: It is essential that an easement be established in order for the City to gain access and egress to maintain/repair the water facilities serving this property.

BACKGROUND: The business owners have submitted the required Grant of Easement to the Water Division as part of the conditions of the project on Lincoln Street. It is essential that the City of Banning accept the easement, as shown on the attached Exhibit "A", in order for the City to properly access and egress the required utilities and to maintain/repair the water facilities serving said property.

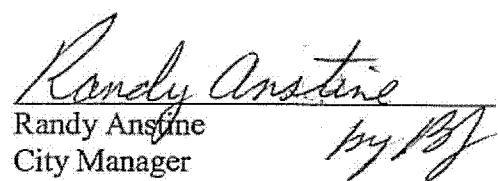
FISCAL DATA: Not applicable

RECOMMENDED BY:



James Earhart
Electric Utility Director

APPROVED BY:



Randy Anstine
Randy Anstine
City Manager
by BJ

112

RECORDING REQUESTED BY

WHEN RECORDED MAIL TO
AND MAIL TAX STATEMENTS TO

Kahono Oei
City of Banning
P. O. Box 998
99 East Ramsey Street
Banning, CA 92220

GRANT OF EASEMENT DEED

TITLE ORDER NO.

ESCBROW NO.

APN NO. 538-240-004

THE UNDERSIGNED GRANTOR(s) DECLARATE:

DESIGNED GRANTOR(S) DECLARE(S) DOCUMENTARY TRANSFER TAX IS \$ 0 NOVEM

DOCUMENTARY TRANSFER TAX is \$ 0 NONE CITY TAX is 0
sale, Computed on full value of property conveyed, or computed on full value less value of liens or encumbrances remaining at time of
 Unincorporated area: City of BANNING

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
RICKEY L. PIPPENGER AND LINDA LOU PIPPENGER, TRUSTEES OF THE PIPPENGER TRUST DATED August 7, 2002

hereby GRANT(s) to
CITY OF BANNING

the following described real property in the County of Riverside State of California:
An easement for fire access and fire hydrant and ingress and egress over, under and across the following described property: The East 20 feet of the East 1 acre of the West 3 acres of Lot 5 of C.O. Subdivision, in the city of Banning, County of Riverside, State of California, as per map recorded in Book 7, Page 21 of Maps, in the office of the County Recorder of Riverside County.

All such facilities will be located underground except the Fire Hydrant, which may be located in the area as shown as "Proposed Fire Hydrant" on Exhibit "A" attached hereto and made a part hereof.

By accepting this Deed, the City of Banning agrees that if it damages or disturbs the surface of the easement area as a result of its repair or maintenance of the facilities located in the easement area, that it will promptly restore the surface improvements to their condition immediately prior to such damage or disturbance. Also, the owners or future owners shall not construct any type of permanent structure or plant trees over the water line easement.

Dated June 14, 2007

Accepted

BY

Rickey L. Pippenger Trustee

Linda Lou Pippenger, Trustee

Trustee

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STATE OF CALIFORNIA
COUNTY OF RIVERSIDE

}
S.S.

On June 21, 2007

before me,

Judy A. Russell, Notary Public
Kickey L. Pippenger and Linda Lou Pippenger, (here insert name and title of the officer), personally appeared

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

WITNESS my hand and official seal.

Signature
GRNTDEED.DOC



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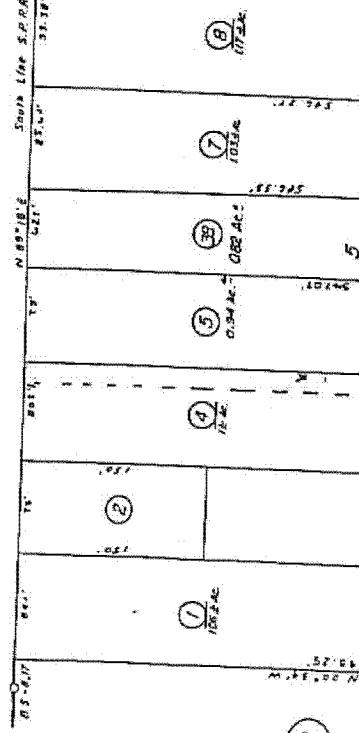
538-24

T.C.A. 100

PAR. S 1/2 SEC. 8, T.3S, R.1E.

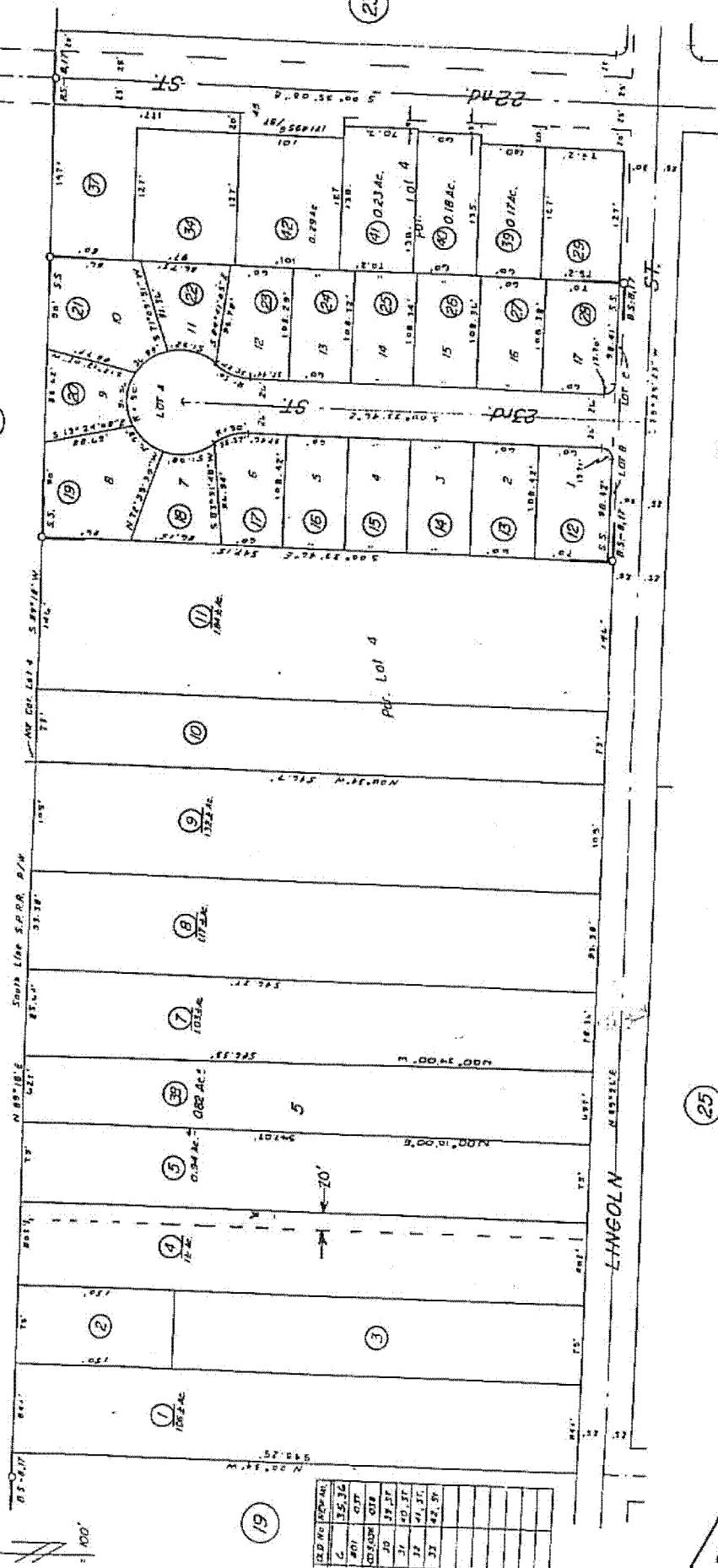
THIS MAP IS FOR
ASSESSMENT PURPOSES ONLY

(19)



(19)

(20)



(23)

(25)

(25)

M.B. 7/21 C.O. Barker's Subdivision of Par. SEC'S 8 & A 17 T.3S, R.1E
M.B. 39/48-49 Sandell Subdivision No. 1

SEPTEMBER 1969

ASSESSOR'S MAP BK. 53B PG. 24

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**CITY COUNCIL MEETING
CONSENT ITEM**

DATE: January 8, 2008

TO: City Council

FROM: Kahono Oei, City Engineer

SUBJECT: Accept the Right-of-Way dedication from Henry C. Rutherford and Jean A. Rutherford for Street Improvements at Assessor's Parcel Number 538-032-042

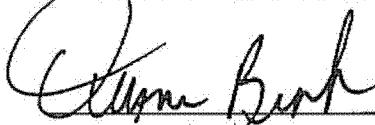
RECOMMENDATION: Accept the Right-of-Way dedication from Henry C. Rutherford and Jean A. Rutherford for Street Improvements at Assessor's Parcel Number 538-032-042, as described in Exhibit "A" and Exhibit "B", and direct the City Clerk to accept and record said dedication.

JUSTIFICATION: It is essential to obtain the right-of-way in order to construct the street improvements and meet the proposed right-of-way width requirement set forth by the adopted Circulation Element.

BACKGROUND: The property owner has recently recorded a lot line adjustment at Assessor's Parcel Number 538-032-042. As a result to the lot line adjustment a parcel was created in order to build the street improvements at the proper location, per the City's general plan.

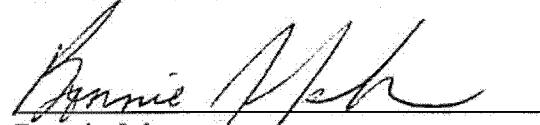
FISCAL DATA: Not applicable.

RECOMMENDED BY:



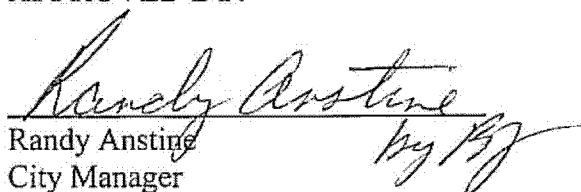
Duane Burk
Director of Public Works

REVIEWED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Randy Anstine
City Manager

EXEMPT RECORDING
REQUESTED BY
City of Banning
PER GOV'T CODE 6103
AND WHEN RECORDED
MAIL TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA 92220

MAIL TAX STATEMENTS
TO:

City of Banning - City Clerk
P.O. Box 998
Banning, CA 92220

OFFER OF DEDICATION - ROAD PURPOSES

The undersigned, being the present title owner(s) of record of the herein described parcel of land, do hereby make an irrevocable offer of dedication to the City of Banning, a political subdivision of the State of California, and its successors or assigns, for public road, street, highway and utility purposes, the real property situated in the City of Banning, County of Riverside, State of California, described in Exhibit "A" (legal description) and shown on Exhibit "B" (plat map) attached hereto and incorporated herein by this reference as though set forth in full.

It is understood and agreed that the City of Banning and its successors or assigns shall incur no liability with respect to such offer of dedication, and shall not assume any responsibility for the offered parcel of land or any improvements thereon or therein, until such offer has been accepted by appropriate action of the City Council, or of the local governing bodies or its successors or assigns.

The provisions hereof shall inure to the benefit of and be binding upon heirs, successors, assigns, and personal representatives of the respective parties hereto.

IN WITNESS THEREOF, these presents have executed this instrument this 18th day of DECEMBER, 2007.

HENRY C. RUTHERFORD
Corporation (Type Name)



HENRY C. RUTHERFORD, OWNER
Name and Title (Type)

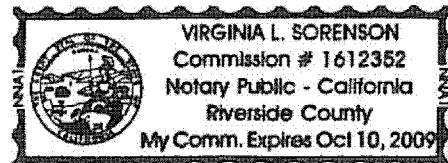
STATE OF CALIFORNIA } SS.
COUNTY OF RIVERSIDE }

On DECEMBER 18, 2007, before me, VIRGINIA L. SORENSEN a Notary Public in and for the State of CALIFORNIA, personally appeared JEAN & HENRY RUTHERFORD, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) ~~is/are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/her/~~their~~ authorized capacity(ies), and that by his/her/~~their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

Signature Virginia L. Sorenson
K:\engineering\Library\Templates\OfferOfDedicationForm-Road.doc



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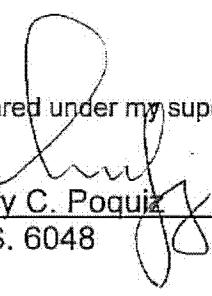
EXHIBIT "A"

LEGAL DESCRIPTION A.P.N. 538-032-042

THAT PORTION OF LOT 1, BLOCK "C", SYLVAN ACRES NO. 2, RECORDED IN MAP BOOK 15, PAGE 39, RECORDS OF RIVERSIDE COUNTY, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

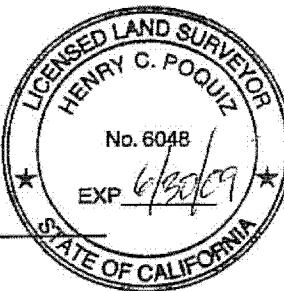
BEGINNING AT THE INTERSECTION OF THE SOUTH LINE OF SAID LOT 1, AND THE WESTERLY RIGHT-OF-WAY LINE OF GROVE STREET (60.00 FEET WIDE); THENCE NORTH 00°14'00" WEST ALONG THE NORTHERLY PROLONGATION OF SAID WESTERLY RIGHT-OF-WAY LINE OF GROVE STREET, A DISTANCE OF 30.50 FEET; THENCE NORTH 89°59'30" EAST PARALLEL WITH SAID SOUTH LINE OF LOT 1, A DISTANCE OF 60.00 FEET; THENCE SOUTH 00°14'00" EAST, A DISTANCE OF 30.50 FEET TO SAID SOUTH LINE OF LOT 1, SAID POINT BEING ON THE EASTERLY-RIGHT-WAY LINE OF SAID GROVE STREET; THENCE SOUTH 89°59'30" WEST ALONG THE SOUTH LINE OF SAID LOT 1, A DISTANCE OF 60.00 TO THE POINT OF BEGINNING.

Prepared under my supervision:


Henry C. Poquiz

L.S. 6048

12/3/07
Date:



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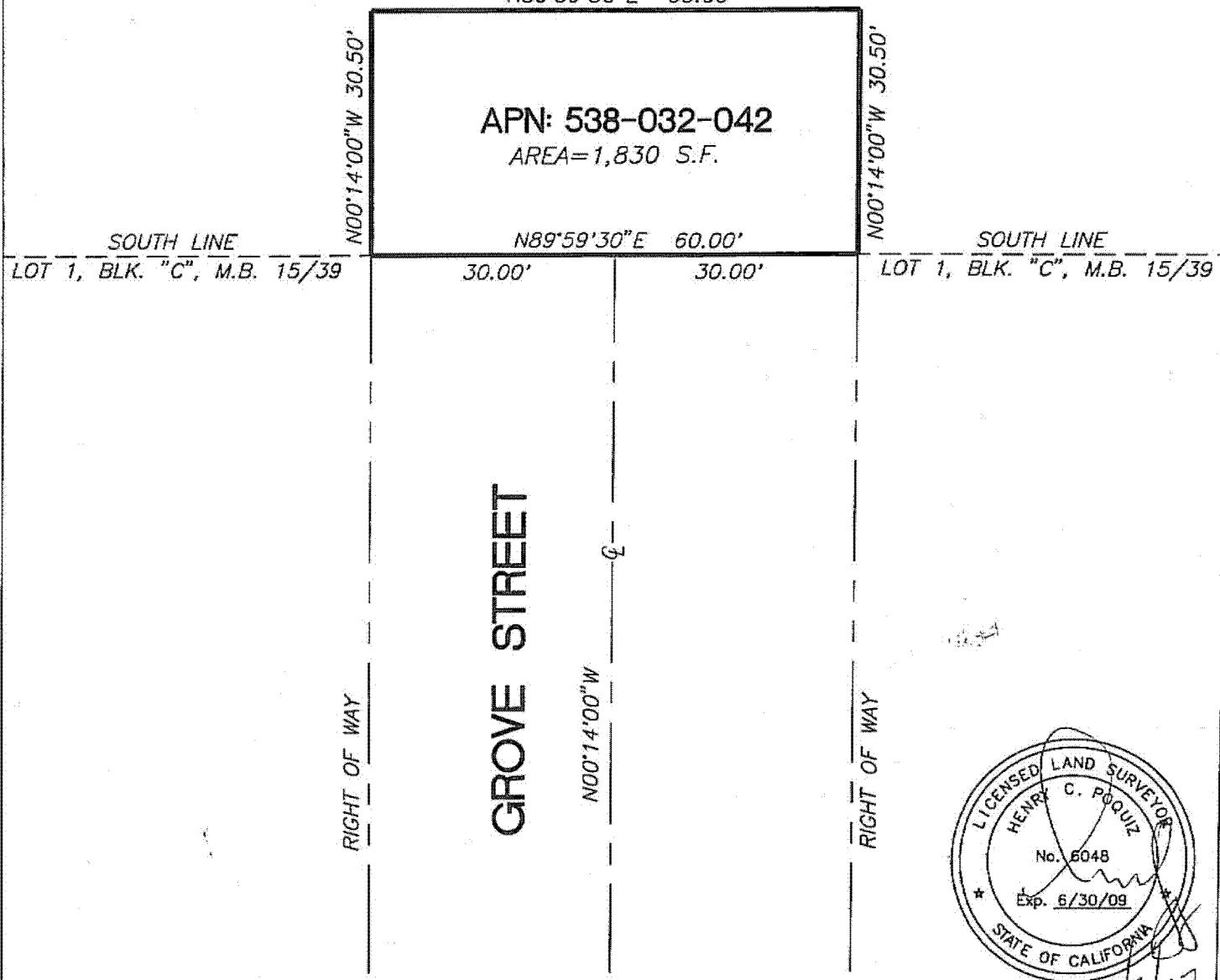
EXHIBIT "B"



SCALE: 1"=20'

LOT 1, BLOCK "C"
SILVAN ADDS NO. 2
M.B. 15/39

N89°59'30"E 60.00'



CITY OF BANNING, CALIFORNIA
DEED PLAT
GROVE STREET

DRAWN BY: HCP
CHECKED BY: _____
APPROVED BY: _____
DATE: DECEMBER 3, 2007

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**CITY COUNCIL AGENDA
CONSENT CALENDAR**

Date: January 8, 2008

TO: City Council

FROM: Kim Clinton, Senior Planner

SUBJECT: Professional Services Contract to update the Housing Element

RECOMMENDATION:

"The City Council direct the City Manager to execute a professional services contract with Laurin and Associates to update the housing element.

JUSTIFICATION: Pursuant to Assembly Bill 1233 Chapter 614, Statutes of 2005 and 2006, the General Plan Housing Element must be updated and approved by June 30, 2008.

BACKGROUND & ANALYSIS: AB 1233, Chapter 614, Statutes of 2005 amended State Housing Element laws to promote effective and timely implementation of local housing elements. This bill requires sites to be rezoned by prescribed densities. Furthermore, Government Code Section 65584.09, which took effect on January 1, 2006, requires local governments to zone or rezone adequate sites within the first year of the new planning period, to address any portion of the Regional Housing Needs Assessment (RHNA) for which the jurisdictions failed to identify or make available sites in the prior planning period. The City's current housing element has yet to be certified by the State and needs to be updated pursuant to the new requirements. The deadline for approval of the element by HCD is June 30, 2008.

Staff solicited proposals from eleven experienced, well-known firms that do this type of work and received three proposals. The consultants and their related proposal costs are summarized below:

Housing Element Update

• Laurin Associates	\$ 66,790.00
• Terra Nova	\$ 56,130.00
• The Planning Center/DRA	\$ 138,500.00

Staff reviewed the three proposals and found that the proposal from Laurin Associates was the most comprehensive and clearly delineated and was within the budget set aside for this project.

Staff feels that this firm is highly qualified and will work well with the City. This consulting firm focuses primarily on housing elements and programs and has an established relationship with HCD. Laurin Associates has been successful in producing housing elements for 32 California cities such as Agoura Hills, Placentia, Bakersfield, Costa Mesa, Coachella, Indio, Imperial Beach and many others.

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Furthermore, they have worked on other housing issues and programs in 71 cities and counties throughout the State and have 26 years of experience.

FISCAL IMPACT: Laurin and Associates proposal is \$66,790.00; \$75,000.00 has been budgeted for this project.

PREPARED BY:

Kim Clinton *by JS*
Kim Clinton
Senior Planner

REVIEWED BY:

Oscar Orci *by JS*
Oscar Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by RJ*
Randy Anstine
City Manager

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**CITY COUNCIL
CONSENT ITEM**

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Request for Extension of Time TTM 33798 (Rafai): The subdivision of a 4.96-acre site into 19 single family residential lots. The proposed project site is generally located at the southwest corner of Indian School Lane and Hargrave Street.

APN: 534-152-022, -023, -024, -025.

RECOMMENDATION: "That the City Council approves Resolution No. 2008-01, granting a one-year extension of time for Tentative Tract Map No. 33798."

JUSTIFICATION: A tentative map expires 24 months after its initial approval unless extensions are granted by the legislative body. The City Council approved Tentative Tract Map 33798 on November 22, 2005 (expires January 22, 2008). The subdivider indicates an inability to develop the site because of the slow housing market and has submitted an application for an extension of time in accordance with Section 6642.6(e) of the Subdivision Map Act.

BACKGROUND: The project site is generally located at the southwest corner of Indian School Lane and Hargrave Street. The site is bounded by Indian School Lane to the north; Hargrave Street to the east, previously developed single family residential to the south, and previously developed single family residential to the west.

The project consists of 19 single family lots, and 3 lettered lots to provide interior circulation. Primary access to the project site is available both through Indian School Lane and Hargrave Street. "Street A" will provide interior access to the project via Indian School Lane, "Street B" will provide interior access to the project site via Hargrave Street and access to "Street C".

The subdivision meets or exceeds the Zoning Ordinance development standards for the R-1 zone, as demonstrated in the table below. Please note that this application is for the Tentative Tract Map only. No specific houses have been proposed, therefore, it is not possible to determine conformance with the Zoning Ordinance on such items as setbacks and building height. This conformance will be required at the time of application for design review.

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Table 1 Development Standards		
Development Standard	Zoning Ordinance	Proposed Map
Minimum Lot Width	70	70' or more
Minimum Lot Depth	80'	85' or more
Front yard setback	25'	N/A
Side yard setback (interior lot)	5'	N/A
Side yard setback (corner lot)	15'	N/A
Rear yard	20'	N/A
Maximum Height	35'	N/A

The applicant proposes to improve streets A, B, and C to their full width of 60 feet, including paving, curb, gutter, sewer and water infrastructure. Indian School Lane and Hargrave Streets will be improved to their ultimate half width including the addition of handicap ramps where Street A intersects Indian School Lane, and where Street B intersects Hargrave Street.

On November 22, 2005, the City Council also determined that the project is exempt from CEQA under CEQA Guidelines Section 15332 In-Fill Development in that the staff report submitted by the Planning Department and other findings made in this Resolution No. 2005-123 demonstrate that: the TTM 33798 is consistent with the Low Density Residential (3-5 du/ac) land use General Plan designation and all applicable General Plan policies as well as with applicable zoning designation; TTM 33798 is located within the boundaries of the City of Banning; the area within TTM 33798 comprises less than five acres and has no value as habitat for endangered, rare or threatened species; there is no substantial evidence in the record that TTM 33798 will result in significant effects related to traffic, noise, air quality, or water quality; and the site is or can be adequately served by all required utilities and public services. As such, the project meets the criteria for application of a Class 32 Categorical Exemption under the CEQA Guidelines. This request for an extension of time does not propose changes to the approved project; therefore, a subsequent/supplemental environmental document is not required.

A copy of the original Resolution (refer to Exhibit 2) documenting conditions imposed on the project by the City Council along with the corresponding findings is attached for reference. The applicant states that the time extension is necessary in order to comply with the conditions of approval for the subdivision and complete the construction, engineering, and design for the project.

The request for time extension was routed to the same agencies and departments that previously reviewed the tentative tract map. The reviewing agencies did not identify any change in circumstances and did not express concerns with the proposed request for extension of time. Therefore, staff believes the first one-year time extension for the tentative tract map should be approved, based on the factors cited herein. Approval of this time extension will extend the expiration date to November 22, 2008.

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A request for an extension of time for a tentative tract map automatically extends the expiration date for 60 days; therefore, the subject map will expire on January 22, 2008, unless this request for extension is approved by the legislative body. The Subdivision Map Act allows the map to be extended for five additional years after the initial approval; if approved this will be the first one year extension. If the City Council denies the request for a time extension, or continues the matter until after the 60 day automatic extension lapses, the tentative map will expire and the applicant would be required to resubmit the project for tentative map approval.

FISCAL DATA: The construction of the proposed subdivision will generate revenues to the City in the form of one-time building permit fees as well as annual property taxes.

PREPARED BY:

Brian Guillot by GS

Brian Guillot
Associate Engineer-Planning

RECOMMENDED BY:

Oscar W. Orci by GS

Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson

Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine by RJA

Randy Anstine
City Manager

Exhibits:

1. Resolution No. 2008-01
2. Copy of Resolution No. 2005-123 (Approving TTM 33798, Subject to Conditions)
3. Map TTM 33798

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TTM 33798
EXTENSION

RESOLUTION
NO. 2008-01

EXHIBIT “1”

125

RESOLUTION NO. 2008-01

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING A ONE-YEAR EXTENSION OF TIME FOR TENTATIVE TRACT MAP 33798 (TTM 33798) PREVIOUSLY APPROVED BY CITY COUNCIL ON NOVEMBER 22, 2005.

WHEREAS, an application for time extension for Tentative Tract Map No. 33798 has been duly filed by:

Applicant / Owner:	Mr. Mousa Rafai
Project Location:	Generally located at the southwest corner of Indian School Lane and Hargrave Street.
APN Number:	534-152-022, -023, -024, -025
Project Area:	4.96-acres
Application Complete:	September 20, 2007

WHEREAS, the City Council of the City of Banning, on November 22, 2005, approved Tentative Tract Map 33798, to allow the subdivision of approximately 4.96-acre site into 19 lots for single-family residential use; and,

WHEREAS, Mr. Mousa Rafai, owner, submitted a request for a time extension for Tentative Tract Map 33798 in accordance with Section 66452.6(e) of the Subdivision Map Act; and,

WHEREAS, On November 22, 2005, the City Council determined that the project is exempt from CEQA under CEQA Guidelines Section 15332 In-Fill Development; therefore, a subsequent/supplemental environmental document is not required;

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Banning hereby approves a one-year time extension for Tentative Tract Map No. 33798 in accordance with Government Code Section 66452.6(e). Therefore, said tentative tract map shall expire on November 22, 2008, unless said map has been recorded, or a request has been filed with the City for an extension of time in accordance with law.

The above action is final unless an appeal is filed pursuant to Section 9117.10 of the Banning Municipal Code within fifteen (15) calendar days following City Council action.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution, No. 2008-01, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

TTM 33798
EXTENSION

COPY OF
RESOLUTION
NO. 2005-123

EXHIBIT “2”

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RESOLUTION NO. 2005-123

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING OF A CATEGORICAL EXEMPTION AND TENTATIVE TRACT MAP NO. 33798/LOT SPLIT 05-4504 PERTAINING TO THE SUBDIVISION OF 4.96 ACRES INTO 19 SINGLE FAMILY LOTS AND COMMON AREA LOTS; LOCATED AT THE SOUTH WEST CORNER OF INDIAN SCHOOL LANE AND HARGRAVE STREET. APN: 534-152-022; 534-152-023; 534-152-024; 534-152-025.

WHEREAS, an application for Tentative Tract Map No. 33798/Lot Split 05-4504 pertaining to the subdivision of 4.96 acres into 19 single family lots and common area lots; generally located at the southwest corner of Indian School Lane and Hargrave Street has been duly filed by:

Applicant / Owner: Mousa Yasin Rifai

Project Location: Southwest corner of Indian School Lane and Hargrave Street

APN Number: 534-152-022; 534-152-023; 534-152-024; 534-152-025

Lot Area: 4.96 acres

Application Complete: August 13, 2005

WHEREAS, the Municipal Code allows for the subdivision of 4.96 acres into 19 single family lots with a minimum 7,000 square foot lot size, subject to the approval of a Tentative Tract Map; and

WHEREAS, the Community Development Department has evaluated the project's potential effects on the environment as required under the California Environmental Quality Act ("CEQA") and has recommended that the project is categorically exempt under CEQA Guidelines Section 15332 In-Fill Development.

WHEREAS, on September 23, 2005 the City gave public notice as required under Government Code Section 66451.3 by advertising in the Record Gazette Newspaper, and mailing notices to all property owners within 300 feet of the project site of the holding of a public hearing for the Planning Commission's review, at which time the project would be considered; and

WHEREAS, on October 4, 2005 the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the Planning Commission approved Resolution No. 05-157 recommending approval of the Tentative Tract Map.

WHEREAS, on November 10, 2005 the City gave public notice as required under Government Code Section 66451.3 by advertising in the Record Gazette Newspaper, and mailing notices to all property owners within 300 feet of the project site of the holding of a public hearing at which the project would be considered; and

WHEREAS, on November 22, 2005 the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the City Council considered the Tentative Tract Map.

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant and each tenant on the subject property with a copy of the Planning Department's report and recommendation to the Planning Commission at least three (3) days prior to the below referenced noticed public hearing; and

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Planning Director as provided in the Staff Report dated November 22, 2005 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA:** The project is exempt from CEQA under CEQA Guidelines Section 15332 In-Fill Development in that the staff report submitted by the Planning Department and other findings made in this Resolution demonstrate that: the TTM 33798 is consistent with the Low Density Residential (3-5 du/ac) land use General Plan designation and all applicable General Plan policies as well as with applicable zoning designation; TTM 33798 is located within the boundaries of the City of Banning; the area within TTM 33798 comprises less than five acres and has no value as habitat for endangered, rare or threatened species; there is no substantial evidence in the record that TTM 33798 will result in significant effects related to traffic, noise, air quality, or water quality; and the site is or can be adequately served by all required utilities and public services. As such, the project meets the criteria for application of a Class 32 Categorical Exemption under the CEQA Guidelines.
2. **Wildlife Resources:** Pursuant to Title 14, California Code of Regulations Section 753.5(c), the City Council has determined, based on consideration of the whole record before it, that there is no evidence that the proposed project will have the potential for any adverse effect on wildlife resources or the habitat upon which wildlife depends. Furthermore, on the basis of substantial evidence, the City Council hereby finds that any presumption of adverse impact has adequately been rebutted. Therefore, pursuant to Fish and Game Code Section 711.4(c)(2)(B) and Title 14, California Code of Regulations, Section 753.5(a)(3), the project is not required to pay Fish and Game Department filing fees.
3. **Multiple Species Habitat Conservation Plan (MSHCP):** The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

SECTION 2. MAP ACT FINDINGS

In accordance with Banning Municipal Code Chapter 22 and Government Code § 66473.1, § 66473.5 and § 66474, the City Council, in light of the whole record before it, including but not limited to the Planning Department's staff report and all documents incorporated by reference therein, the City's General Plan, Subdivision Ordinance, Zoning Ordinance, standards for public streets and facilities, and the City's

Single Family land use designation and any other evidence within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. Tentative Tract Map 33798 is consistent and compatible with the objectives, policies, general land uses, and programs specified in the City's General Plan in that:

The General Plan land use designation for the site is Low Density Residential which allows project densities from 3 to 5 dwelling units per acre. The proposed Map will result in the development of 19 single family residential dwelling units at a density of 3.8 units per acre. This density level is within the range permitted under the General Plan land use designation for this site.

2. The design and improvement of the subdivision proposed under Tentative Tract Map 33798 is consistent with the City's General Plan in that:

The proposed subdivision has been designed to meet City standards which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access and on site improvements, such as streets, utilities, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards.

3. The site is physically suitable for the type of development proposed under Tentative Tract Map 33798, in that:

The site is generally square in shape and slopes to the south east and consists of 4.96 acres. The site is not located within a flood plain and no major geologic hazards have been reported on the site or other limited conditions that would render it unsuitable for residential development.

4. The site is physically suitable for the density of development proposed under Tentative Tract Map 33798, in that:

The site is generally square and slopes to the south east and consists of 4.96 acres. The subdivision has been designed to accommodate the development of 19 single family residential dwelling units considering the shape and topography of the site. The project as proposed has a density of 3.8 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Low Density Residential land use designation and in the City's Zoning Ordinance for the R-1 zone, a density of 3.8 is appropriate for a site of this size and configuration.

5. The design of the subdivision and improvements proposed under Tentative Tract Map 33798, is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

The site is currently vacant and does not contain any significant vegetation or habitat for wildlife. There is no evidence that any endangered, threatened or listed species of plant or animal, or its habitat, is located on the site. There is no evidence that vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. This determination is based on the Riverside County Multi-Species Habitat Conservation Plan (MSHCP). In addition, this project has been conditioned to comply with the environmental policies and regulations of the City of Banning and those of all local and regional governmental agencies having jurisdiction over the site.

6. The design of the subdivision and improvements proposed under Tentative Tract Map 33798, is not likely to cause serious public health problems in that:

The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to Stormwater runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City street and public works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. Finally, the proposed street system throughout the subdivision will improve emergency vehicular access and in the immediate neighborhood.

7. The design of the subdivision and improvements proposed under Tentative Tract Map 33798, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that:

No easements of record or easements established by judgment of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any such easements.

8. The design of the subdivision proposed Tentative Tract Map 33798, adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that:

Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of lots within the proposed subdivision have been arranged, to the greatest extent feasible, to permit orientation of structures in an east-west alignment for southern exposure, or to take advantage of natural shade, or to take advantage of prevailing breezes.

SECTION 3. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. **Notice of Exemption.** In accordance with Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062 the City Council hereby approves a categorical exemption for the project under CEQA Guidelines Section 15332 In-Fill Development and directs the Planning Director to prepare and file with the Clerk for the County of Riverside a notice of exemption as provided under Public Resources Code Section 21152(b) and CEQA Guidelines Section 15062.
2. **Approve Tentative Tract Map.** Tentative Tract Map 33798 is hereby approved subject to the Conditions of Approval attached hereto and incorporated herein by reference as Exhibit "1".

PASSED APPROVED AND ADOPTED this 22th day of November 2005.



JOHN MACHISIC, MAYOR

APPROVED AS TO FORM
AND LEGAL CONTENT:


Thomas D. Jex, Deputy City Attorney

City of Banning, California

ATTEST:


Marie A. Calderon, City Clerk

CERTIFICATION:

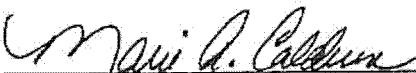
I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2005-123, was duly adopted by the City Council of the City of Banning, California at a regular meeting thereof held on the 22nd day of November, 2005, by the following vote, to wit:

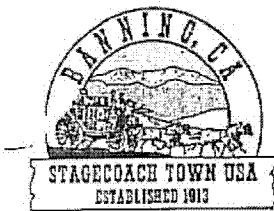
AYES: Councilmembers Hanna, Palmer, Salas, Welch, Mayor Machisic

NOES: None

ABSENT: None

ABSTAIN: None


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



FINAL CONDITIONS OF APPROVAL

PROJECT #: Lot Split 05-4504/ Tentative Tract Map 33798

SUBJECT: 19 lot single family subdivision

APPLICANT: Mousa Yasin Rifai

APN: 534-152-022; 534-152-023; 534-152-024; 534-152-025

LOCATION: Generally located at the south west corner of Indian School Lane and Hargrave Street

APPLICANT SHALL CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

Completion Date

A. General Requirements

1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action. ____/____
2. A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for plan check. ____/____

B. Time Limits

1. This tentative tract map shall expire, unless extended by the City Council, unless a complete final map is filed with the City Engineer within 2 years from the date of the approval, November 22, 2007. ____/____

C. Site Development

- The site shall be developed and maintained in accordance with the approved plan on file in the Planning Division, the conditions contained herein, and the Development Code regulations
- 2. Prior to any use of the project site being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.
- 3. Occupancy of the facilities shall not commence until such time as all Uniform Building Code and State Fire Marshal regulations have been complied with. Prior to occupancy, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. The buildings shall be inspected for compliance prior to occupancy.
- 4. Revised site plans and building elevations incorporating all Conditions of Approval shall be submitted for Community Development Director review and approval prior to the issuance of building permits.
- 5. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or prior to final map approval in the case of a custom lot subdivision, or approved use has commenced, whichever comes first.
- 6. Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.
- 7. All ground-mounted utility appurtenances such as transformers, AC condensers, etc., shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berthing, and/or landscaping to the satisfaction of the Community Development Director.
- All building numbers and individual units shall be identified in a clear and concise manner, including proper illumination.
- 9. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.
- 10. Six-foot decorative block walls with columns minimum 16-inches by 16-inches and decorative trim cap shall be constructed along the project perimeter. If a double wall condition would result, the developer shall make a good faith effort to work with the adjoining property owners to provide a single wall. Developer shall notify, by mail, all contiguous property owner at least 30 days prior to the removal of any existing walls/ fences along the project's perimeter.
- 11. For single family residential development, a 2-inch galvanized pipe shall be attached to each support post for all wood fences, with a minimum of two 1/2-inch lag bolts, to withstand high winds. Both post and pipe shall be installed in an 18-inch deep concrete footing. Pipe shall extend at least 4 feet, 6 inches above grade.
- 12. Wood fencing shall be treated with stain, paint, or water sealant.
- 13. On corner side yards, provide minimum 5-foot setback between walls/fences and sidewalk.
- 14. For residential development, return walls and corner side walls shall be decorative masonry.

D. Building Design

1. All dwellings shall have the front, side and rear elevations upgraded with architectural treatment, detailing and increased delineation of surface treatment subject to Community Development Director review and approval prior to issuance of building permits. ____/____
2. All roof appurtenances, including air conditioners and other roof mounted equipment and/or projections, shall be shielded from view and the sound buffered from adjacent properties and streets as required by the Planning Division. Such screening shall be architecturally integrated with the building design and constructed to the satisfaction of the Community Development Director. Details shall be included in building plans. ____/____

E. Landscaping

1. A detailed landscape and irrigation plan, including slope planting and model home landscaping in the case of residential development, shall be prepared by a licensed landscape architect and submitted for Community Development Director review and approval prior to the issuance of building permits or prior final map approval in the case of a custom lot subdivision. ____/____
2. The plan shall be forwarded to a Landscape Architect for review and the applicant shall pay all fees associated with the review process. The approved landscape plan shall be implemented/installed prior to the issuance of a Certificates of Occupancy for any single-family residence constructed within TTM 33798. (Submit landscape and irrigation plans as soon as possible to allow sufficient time for a Landscape Architect to review.) ____/____
3. Prior to the issuance of Building Permits for any single-family residence constructed within TTM 33798 the applicant shall submit to the City for review and approval a detailed landscape and irrigation plan (comprised of xeriscape plant material) indicating type, species and location of the following minimum number of drought tolerant, multi-branched trees on each lot adjacent to the street right-of-way (all trees shall be planted with root barriers).
 - a) Interior lot – 2 trees; one 24" box, one 15-gallon. ____/____
 - b) Corner lot – 3 trees; two 24" box, and one 15-gallon. ____/____
4. All private slopes of 5 feet or more in vertical height and of 5:1 or greater slope, but less than 2:1 slope, shall be, at minimum, irrigated and landscaped with appropriate ground cover for erosion control. Slope planting required by this section shall include a permanent irrigation system to be installed by the developer prior to occupancy. ____/____
5. All private slopes in excess of 5 feet, but less than 8 feet in vertical height and of 2:1 or greater slope shall be landscaped and irrigated for erosion control and to soften their appearance as follows: one 15-gallon or larger size tree per each 150 sq. ft. of slope area, 1-gallon or larger size shrub per each 100 sq. ft. of slope area, and appropriate ground cover. In addition, slope banks in excess of 8 feet in vertical height and 2:1 or greater slope shall also include one 5-gallon or larger size tree per each 250 sq. ft. of slope area. Trees and shrubs shall be planted in staggered clusters to soften and vary slope plane. Slope planting required by this section shall include a permanent irrigation system to be installed by the developer prior to occupancy. ____/____
6. For single family residential development, all slope planting and irrigation shall be continuously maintained in a healthy and thriving condition by the developer until each individual unit is sold and occupied by the buyer. Prior to releasing occupancy for those units, an inspection shall be conducted by the Planning Division to determine that they are in satisfactory condition. ____/____

- 7. The final design of the perimeter parkways, walls, landscaping, and sidewalks shall be included in the required landscape plans and shall be subject to Community Development Director review and approval and coordinated for consistency with any parkway landscaping plan which may be required by the Engineering Division. _____
- 8. All walls shall be provided with decorative treatment. If located in public maintenance areas, the design shall be coordinated with the Engineering Division. _____
- 9. Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape. _____

F. Other Agencies

- 1. The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. Multi-family residential developments shall provide a solid overhead structure for mail boxes with adequate lighting. The final location of the mail boxes and the design of the overhead structure shall be subject to Community Development Director review and approval prior to the issuance of building permits. _____

APPLICANT SHALL CONTACT THE FIRE MARSHAL AT, (951) 922-3210, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

G. Fire Department Development Fees

- 1. Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.
 - a) Residential Dwelling Units - \$543.00 per unit +
\$ 5.00 per unit Disaster Planning
 - b) Plan Check and Inspection- \$ 84.00 per unit

H. Fire Hydrants

- 1. Prior to construction or renovation, fire hydrants shall be provided when any portion of any structure exceeds 150 feet from a water supply on a public street. _____
- 2. All hydrants must be installed, working and inspected by the public works department before any combustible materials can be placed at the worksite. _____
- 3. Spacing of fire hydrants shall comply with UFC Appendix III B and the City of Banning Public Works Standards. (Maximum 300 feet between hydrants.) _____
- 4. Minimum 6-inch riser, street valve, approved shear valve and blue dot identification marker shall be provided for each fire hydrant. _____
- 5. The City standard fire hydrant is the Residential, James Jones #J3700, or an equivalent approved by the Fire Marshal. _____
- 6. Fire Hydrants are to be painted by the developer, contractor, etc., prior to the final inspection, (EOS Standard W714) Rustoleum Red, damp proof #769 and two (2) coats of Rustoleum semi-gloss yellow #659, or an approved equivalent. _____

I. Water Supply

1. Fire flow shall be established by the Fire Department using the information provided in the UFC Appendix III A. Fire Flow may be adjusted upward where conditions indicate an unusual susceptibility to fire. (1000 gallons/minute for 2 hours)

J. Fire Department Access

1. Shall be required when any portion of the first story of any structure is more than 150 feet from Fire Department apparatus access.

2. Minimum clearances or widths may be increased when the minimum standards are not adequate for Fire Department access.

3. Surfaces shall be designed and maintained to support the imposed loads of fire apparatus (65,000 gvw). Surfaces shall have all-weather driving capabilities, including bridges. All roads must be placed and meet the above standard before any combustible materials can be delivered to the site.

4. Minimum unobstructed width shall be 20 feet.

5. Minimum unobstructed vertical clearance shall not be less than 13 feet 6 inches.

6. Minimum turning radius shall be 42-feet.

7. All dead-end roads in excess of 150 feet shall have approved provisions for turning around of fire apparatus.

8. Cul-de-sacs shall not exceed 600 feet in length.

9. Maximum grade shall be established by the Fire Department.

10. Vehicles shall not be parked or otherwise obstruct the required width of any fire apparatus access.

11. Two means of ingress/egress shall be provided for emergency vehicles and fire apparatus.

The requirements for this segment are covered in UFC Article 9.

K. Premises Identification

1. Approved numbers or addresses shall be placed on all new and existing buildings in such a positions as to plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.

2. Minimum size for residential unit premises identification shall be 3-1/2" in size.

L. Spark Arrestors

1. Chimneys used in conjunction with fireplaces or heating appliances in which solid or liquid fuel is used shall be maintained with an approved spark arrestor.

M. Inspections

- 1. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.
- 2. Fee for each inspection is \$84.00 hour per person.

Engineering Conditions of Approval

- 1. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.
- 2. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:

- Fire Marshal
- Public Works Department (Grading Permit, Improvement Permit)
- Community Development Department
- Riverside County Environmental Health Department
- Banning Unified School District
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
- South Coast Air Quality Management District (SCAQMD)

The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.

- 3. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:

- Fire Marshal
- Public Works Department (Grading Permit, Improvement Permit)
- Community Development Department
- Riverside County Environmental Health Department
- Banning Unified School District
- California Regional Water Quality Control Board Colorado River Basin (RWQCB)
- South Coast Air Quality Management District (SCAQMD)

The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.

4. The following improvement plans shall be prepared by a civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

A. On-Site Rough Grading Plan 1" = 40' Horizontal

B. SWPPP 1" = 40' Horizontal

Note: A & B shall be processed concurrently.

C. Storm Drain Plan 1" = 40' Horizontal

D. Off-Site Street Improvement Plan 1" = 40' Horizontal

1" = 4' Vertical

E. Off-Site Landscaping Plan 1"=20' Horizontal

F. Off-Site Signing & Striping Plan 1" = 40' Horizontal

G. On-Site Street Improvement/ Signing & Striping Plan

1" = 40' Horizontal

1" = 4' Vertical

H. On-Site Residential Precise Grading Plan

1" = 30' Horizontal

Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines, and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

- Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City

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Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions.

6. All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City Codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired in the residence. ____/____

Rights of Way:

7. Prior to issuance of any permit(s), the applicant shall acquire or confer property rights necessary for the construction or proper functioning of the proposed development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements. ____/____

8. The applicant shall offer for dedication on the Final Map all public street right-of-ways in conformance with the City's General Plan, Municipal Code, applicable precise plans, standard plans, and/or as required by the City Engineer. ____/____

9. Offer to dedicate for public purposes an additional 10 feet of right-of-way along Hargrave Street, including the corner cut-off, for a half street width of 40 feet to centerline fronting the proposed subdivision ____/____

10. Offer to dedicate for public purposes the right-of-way for "A" Street, "B" Street, and "C" Street as a general local streets; 60 foot width. The geometrics for the knuckle shall be in accordance with City of Banning Standard No. G-806. The geometrics for the cul-de-sac shall be in accordance with City of Banning Standard No. G-800. Offers of dedication shall include corner cut-off at intersections ____/____

11. It is recommended that the applicant dispose of the narrow portion of land (24 foot width) at the southerly limit of the development (formerly a flag lot) to the two adjoining property owners. ____/____

12. Grant slope easements to the City of Banning for road maintenance purposes for the slopes adjoining Indian School Lane. The easements shall extend 5 feet from the toe of slope for adequate access. ____/____

13. Grant cross lot drainage easements along Lots 16 through 19 for the benefit of the respective property owners. Record deed restrictions requiring property owners to maintain the drainage facilities to the benefit of the upstream property owner. Prior to recordation, submit the deed restrictions to the City Engineer for review and approval. ____/____

Public Improvements:

- 14. Construct half street improvements in accordance with City standards fronting **Hargrave Street** including street lighting, curb and gutter, access ramps, sidewalk, and asphalt concrete paving, street name signs, traffic signs and striping, and any transitions. Where the transverse slope of the existing pavement exceeds 3% the applicant shall remove pavement and join the existing pavement surface. Remove and reconstruct the cross gutter at Indian School Lane including both curb returns and spandrels in accordance with Standard No. C-212. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
- 15. Construct half street improvements in accordance with City standards fronting **Indian School Lane** including street lighting, curb and gutter, access ramps, sidewalk, and asphalt concrete paving, street name signs, traffic signs and striping, and any transitions. Where the transverse slope of the existing pavement exceeds 3% the applicant shall remove pavement and join the existing pavement surface. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
- 16. Construct full street improvements for **"A" Street, "B" Street, and "C" Street** in accordance with City Standards including street lighting, curb and gutter, cross gutters and spandrels, access ramps, drive approaches, sidewalk, and asphalt concrete paving, street name signs, traffic signs and striping, and any transitions. Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.
- 17. All street improvement design shall provide pavement transitions per Caltrans standards for transition to existing street sections.
- 18. All required public improvements for each tract shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.

Grading and Drainage:

- 19. Submit a Drainage/Hydrology Study and Hydraulic Analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis must be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC) and RCFC Hydrology Manual. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.
- 20. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Note: An identified floodway exists immediately north of the intersection of Theodore Street and Hargrave Street as identified in Flood Boundary and Floodway Map dated October 17, 1978

21. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The project shall accept and convey storm flows from the adjacent developed property to the west. ____/____

22. The applicant shall comply with Chapter 34 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code Appendix Chapter 33 "Excavation and Grading"; and the State Water Resources Control Board's Order No. 99-08-DWQ. ____/____

a. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board. ____/____

b. The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any on-site or off-site grading being done in relation to this project. ____/____

c. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through, and including acceptance of all improvements by the City. ____/____

d. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"): ____/____

- i. Temporary Soil Stabilization (erosion control).
- ii. Temporary Sediment Control.
- iii. Wind Erosion Control.
- iv. Tracking Control.
- v. Non-Storm Water Management.
- vi. Waste Management and Materials Pollution Control.

1. All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project. ____/____

23. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City. ____/____

24. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California. ____/____

25. A rough grading plan and a precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity. Rough grading plans shall include perimeter walls with top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, or sufficient cover to clear any obstructions. / /

26. Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil. The data shall be organized by lot number, and listed cumulatively if submitted at different times. / /

27. All lot drainage shall be directed to the driveway by side yard drainage swales independent of any other lot. / /

28. Obtain clearance or approval from the U.S. Army Corps of Engineers, California Department of Fish and Game, Regional Water Quality Control Board, and Riverside County Flood Control and Water Conservation District as required. Comply with all conditions and mitigation measures if so determined and submit copies of all correspondence with the agencies to the Engineering Division. / /

Public Landscaping:

29. An automatic sprinkler system and landscaping shall be installed, prior to occupancy of the first dwelling unit of the development, within the parkway fronting Indian School Lane and Hargrave Street. The system shall include a landscape controller, a separate water meter and electric meter, and plantings as approved by the Community Development Director. Landscaping plans and specifications shall be reviewed and approved by the City Engineer. / /

30. The Developer shall record a written offer to participate in, and waive all rights to object to the formation or annexation to the Landscape Maintenance District for the perpetual maintenance of the proposed parkway landscaping along Indian School Lane and Hargrave Street. The developer shall provide written consent from all property owners within the development waiving the notice, hearing, and right of protest and consenting to the annexation and zone formation, if any (Streets and Highways Code §§ 22608, 22608.2). The form of the offer shall be subject to the approval of the City Engineer and City Attorney. Additionally, the developer shall provide to the City an Assessment Engineer's Report prepared by an assessment engineer pursuant to California Streets and Highways Code Sections 22500 et seq. and California Constitution Article XIID. The developer shall agree to maintain the parkway landscaping for a period of 24 months after acceptance of the improvements, or deposit funds to administer and maintain the parkway landscaping until the assessments placed on the tax roll are collected. / /

Traffic:

31. Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer. / /



Final Map:

32. Prior to approval of any Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.

33. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows:

Faithful Performance Bond	100% of estimated cost
Labor and Material Bond	100% of estimated cost
Monumentation Bond.....	\$5,000.00

Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.

34. All street centerline monument ties shall be submitted to the Engineering Division upon completion of improvements or prior to release of Monumentation Bond.

35. Submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division prior to final map approval.

36. A map of the proposed subdivision drawn at 1"=200' showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.

37. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.

38. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler for disposal of construction debris.

Fees:

39. Plan check fees for final map review, professional report review (geotechnical, drainage, etc.), and all improvement plans review, shall be paid prior to submittal of said documents for review and approval in accordance with the Fee Schedule in effect at the time of submittal.

40. Public Works Inspection fees shall be paid prior to the scheduling the final map for approval by City Council in accordance with the Fee Schedule in effect at time of scheduling.

41. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.

42. A plan storage fee shall be paid prior to approval of the final map and improvement plans in accordance with the Fee Schedule in effect at the time the fee is paid. / /

43. A Traffic Signal Mitigation fee shall be paid on a per lot basis prior to issuance of building permits for each lot within the subdivision. / /

44. A fee shall be paid to Riverside County Flood Control and Water Conservation District in the amount specified by them to perform plan checking for drainage purposes for the proposed subdivision. / /

Water and Wastewater

Water

45. Submit Water Improvement Plans to the Engineering Division for review and approval. Design and construct a water line to be looped from Indian School Lane on proposed Streets "A" and "B" to Hargrave Street. Also, construct an 8" water line on proposed "C" Street. / /

46. All water lines and fitting shall be a minimum of 8" diameter and shall be 10-gauge steel pipes, cement mortar lined and wrapped. Water line easements shall be a minimum width of 20 feet. / /

47. Fire hydrants shall be installed within and on the tract boundaries as per the approved plans, at a 300' maximum spacing. / /

48. A backflow device must be installed for each irrigation water connection and in compliance with the State of California Department of Health Regulations. Contact the City of Banning, Water Operations Division, prior to the installation. / /

Sewer

48. Submit Sewer Improvement Plans to the City Engineer for review and approval. Design and construct sewer lines on proposed "A", "B", and "C" streets connected into the existing Hargrave Street sewer line. The sewer line on proposed "S" Street to be construed starting from centerline of Indian School Lane. / /

49. All sewer lines shall be extra strength Vitrified Clay Pipe and the sewer mains shall be a minimum of 8" diameter. Sewer line easements to be a minimum of 20' wide and shall have an all weather access cover. / /

50. A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole. / /

Fees

51. Water and Sewer Connection Fees and Water Meter Installation charges shall be paid on a per lot unit basis, at the time of issuance of building permits, for each lot within this subdivision in accordance with the fee schedule in effect at the time the fees are paid. Also, pay all water and sewer frontage fees, if applicable, and in accordance with the fee schedule in effect at the time plans are submitted, prior to plan check proceeding. / /

TTM 33798
EXTENSION

MAP 33798

EXHIBIT “3”

**CITY COUNCIL AGENDA
CONSENT ITEM**

Date: **January 8, 2008**

TO: **City Council**

FROM: **Bonnie Johnson, Finance Director**

SUBJECT: **Approval of Accounts Payable and Payroll Warrants for Month of
November 2007**

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 November 2007.

The reports are:

Expenditure approval lists

November 01, 2007	617,524.96
November 13, 2007	101,596.93
November 15, 2007	217,175.88
November 15, 2007	-238.55 ⁽¹⁾
November 21, 2007	641,360.30
November 29, 2007	1,406,523.08
December 6, 2007	4,327,239.79 (November Month End)

Payroll check registers

November 9, 2007	7,464.30
November 23, 2007	6,144.78

Payroll direct deposits*

November 9, 2007	399,024.69
November 23, 2007	383,998.09

149

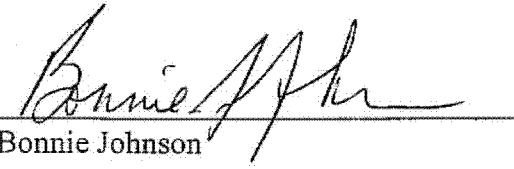
As you review the reports, if you have any questions please contact the Finance Department so that we can gather the information from the source documents and provide a response.

* Included on the NOVEMBER month end expenditure approval list of 12/06/2007.

⁽¹⁾ Due to the new Positive Pay reporting, manual checks must be recorded in the accounting system separately from the weekly check register.

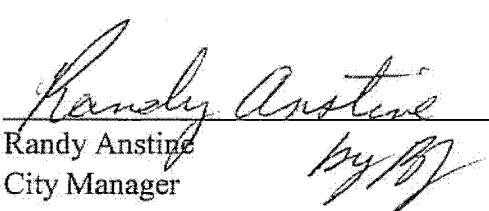
Report Prepared by: Michelle Green, Accounting Manager

RECOMMENDED BY:



Bonnie Johnson
Finance Director

APPROVED BY:



Randy Anstine
City Manager

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Fund/Department Legend:

General Fund – 001

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
2300 – Animal Control

2400 – Fire
2700 – Building Safety
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

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
144 – Local Law Enforcement Block Grant
145 – COPS MORE Grant Fund
146 – San Gorgonio Gang Task Force
148 – Supplemental Law Enforcement
149 – Public Safety Sales Tax Fund
150 – State Park Bond Fund
170 – Peacock Valley II
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 Facility Development
420 – Traffic Control Facility Fund
421 – Ramsey/Highland Home Road Signal
430 – General Facilities 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
666 – Water Participation CTF 86
667 – Water Participation CTF 89
669 – BUA - Water Debt Service
670 – Electric Fund
671 – Electric Capital Facility Fund
672 – Rate Stability Fund
673 – Electric Improvement Fund
674 - '07 Elec Revenue Bond Project Fund
675 – Public Benefit Fund
678 - '07 Elec Revenue Bond Debt Service Fund
680 – Wastewater Fund
681 – Wastewater Capital Facility Fund
683 – BUA Wastewater Capital Project Fund
685 – State Revolving Loan Fund
687 – Wastewater Participation CTF 89
689 – BUA Wastewater Debt Service Fund
690 – Refuse Fund
700 – Insurance Fund
702 – Fleet Maintenance
703 – Information Systems Services
761 – Utility Billing Administration
810 – CRA – Low/Mod Fund
830 – CRA – Debt Service Fund
850 – CRA - Administration Fund
854 – CRA Low/Mod Bond Fund
855 - 2007 TABS Bond Proceeds
856 – 2003 TABS Bond Proceeds
857 – 2003 TABS Bond Proceeds Low/Mod
860 – CRA - Project Fund

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ORDINANCE NO. 1380

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING,
CALIFORNIA AMENDING CHAPTER 8, ARTICLE II, SECTION 8-16 REPEALING
SECTIONS 8-17 OF THE BANNING ORDINANCE CODE ADOPTING THE 2007
CALIFORNIA FIRE CODE IN ITS ENTIRETY FOR 1) REGULATING AND
GOVERNING THE SAFEGUARD OF LIFE AND PROPERTY FROM FIRE AND
EXPLOSION HAZARDS [ARISING FROM THE STORAGE, HANDLING AND USE OF
HAZARDOUS SUBSTANCES, MATERIALS AND DEVICES] AND FROM
CONDITIONS HAZARDOUS TO LIFE OR PROPERTY IN THE OCCUPANCY OF
BUILDINGS AND PREMISES IN THE CITY OF BANNING, AND 2) PROVIDING FOR
THE ISSUANCE OF PERMITS AND THE COLLECTION OF FEES THEREFOR.**

An Ordinance of the City of Banning adopting the 2007 Edition of the California Fire Code in its entirety to be referred to as the Fire Code of the City of Banning, regulating and governing the safeguarding of life and property from fire and explosion hazards arising from the storage, handling and use of hazardous substances, materials and devices, and from conditions hazardous to life or property in the occupancy of buildings and premises in the City of Banning providing for the issuance of permits and collection of fees. The above-referenced codes are adopted in its entirety as amended herein below.

Section 1. FINDINGS AND ADOPTION OF THE INTERNATIONAL AND STATE CODES.

A. FINDINGS. The City Council of the City of Banning hereby finds as follows:

- (1) That the International Code Council is a private organization which has been in existence for at least three (3) years.
- (2) That the California Fire Code, 2007 Edition, and the California Fire Code Standards published by International Code Council, are nationally recognized compilations of proposed rules, regulations, and standards of said organization.
- (3) That the International Fire Code has been printed and published as a code in book form within the meaning of Section 50022.2 et seq., of the California Government Code and said code has been adopted and amended by the California Building Standards Commission into the California Code of Regulations (CCR) as Title 24, Part 9, titled the California Fire Code, 2007 Edition.
- (4) That the sections of the California Fire Code and California Fire Code Standards may be referred to by the same number used in said published compilation preceded by the words "City of Banning Fire Code Section" or "International Fire Code Section" or "Fire Code Section."

(5) That added protection from new development is necessary to supplement normal Fire Department response resources available in areas impacted by new development to provide immediate fire protection for life and safety of single family residential and multiple occupancy occupants during fire occurrence. The additional requirements and standards herein, including, but not limited to, enhanced on-site protection of property and occupants, are necessary to properly protect the health, safety, and welfare of the existing and future residents and workers of the City of Banning based upon the following:

(6)

- (a) Climatic Conditions: Generally, the City of Banning has an arid climate. Annual rainfall averages about 15 inches. Hot, strong, dry Santa Ana winds are common to areas within the City. These winds constitute a contributing factor that causes small fires originating in high density development presently being constructed in the City of Banning, that spread quickly and create the need for an increased level of fire protection. This added protection, including, but not limited to, on-site protection, will supplement normal Fire Department response available in new development, and provide immediate fire protection for life and safety of multiple occupancy occupants during fire occurrence;
- (b) Geologic and Topographic:
 1. The City of Banning includes mountainous, brush covered wildlands, and agricultural lands. Elevation ranges from twenty-two hundred (2200) feet above sea level to over six thousand (6000) feet high. Topography extends from flat to 25% slope for habitable land. Travel distances in rural and wildland areas often place Fire Department response times to emergencies at risk. This condition makes the need for enhanced on-site protection for property occupants necessary; and.
 2. There is a major earthquake fault that bisects the City, the San Andreas. In addition, there are numerous minor faults. There are numerous areas within the City that are subject to earthquakes, landslides, wind erosion, blown sand, flooding, and wildfires. Placement of multiple occupancy buildings, location of arterial roads, and Fire Department staffing constraints due to revenue limiting State legislation, have made it difficult for the Fire Department to locate additional fire stations and provide staffing sufficient to concentrate fire companies and personnel to control fires in single and multi-story retail, commercial and industrial buildings, making enhanced built-in protection necessary.

Section 2. Section 8-16(b) of the Banning Ordinance Code is hereby amended to read as follows:

Sec. 8-16.

(b) Amendments to the International Fire Code. The following amendments to the 2007 Edition of the California Fire Code are hereby adopted and together with said fire code shall constitute the uniform fire code for the City.

B. ADOPTION OF INTERNATIONAL AND STATE FIRE CODES. The City Council of the City of Banning hereby adopts as amended, revised and supplemented: 1) the California Fire Code Edition 2007, California Code of Regulations Title 24 Part 9, Appendices Chapter A, B, C, E, F, G, and H, each in its entirety, with the exception of Appendix D of the California Fire Code. The provisions of the above referenced codes, standards and appendices together with Chapter 7A of the California Fire Code regarding materials and construction methods for exterior wild fire exposure, as appropriate, shall apply to all of the City of Banning.

The provisions of the above-referenced codes, chapters, standards, and appendices adopted shall include any amendments, revisions, and supplements made subsequent to the adoption of this ordinance.

CHAPTER 1 ADMINISTRATION PERMITS.

Section 101.4 of the California Fire Code is hereby amended to read as follows:

Section 101.4. SEVERABILITY. If any section, subsection, paragraph, sentence, clause or phrase of this ordinance is for any reason held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portions of this ordinance, it being expressly declared that this ordinance and each section, subsection, paragraph, sentence, clause and phrase thereof would have been adopted, irrespective of the fact that one or more other section, subsection, paragraph, sentence, clause or phrase be declared invalid or unconstitutional.

Section 103.4 of the California Fire Code is hereby amended to read as follows:

Section 103.4. LIABILITY. Any liability against the City of Banning or any officer or employee shall be as provided for in California Government Code and case law.

Fire suppression, investigation and rescue or emergency medical costs are recoverable in accordance with California Health and Safety Code Sections 13009 and 13009.1. Any person who negligently or intentionally, or in violation of law, causes an emergency response, including but not limited to, a traffic accident or spill of toxic or flammable fluids or chemicals, is liable for the costs of securing such emergency, including those

costs set out in Government Code Section 53150, et seq. Any expense incurred by the fire department for securing such an emergency situation shall constitute a debt of such person and shall be collectable by the City of Banning, or political subdivision thereof if incorporated, in the same manner as in the case of an obligation under contract, expressed or implied.

Section 104.1 of the California Fire Code is hereby amended to read as follows:

Section 104.1. AUTHORITY OF THE FIRE CHIEF AND THE FIRE DEPARTMENT. The chief is authorized to administer, interpret and enforce the California Fire Code. Under the chief's direction, the Riverside County Fire Department is authorized to enforce all ordinances of the City of Banning pertaining to:

- (1) The prevention of fires.
- (2) The suppression or extinguishment of dangerous or hazardous fires.
- (3) The storage, use and handling of hazardous materials.
- (4) The installation and maintenance of automatic, manual and other private fire alarm systems and fire extinguishing equipment.
- (5) The maintenance and regulation of fire escapes.
- (6) The maintenance of fire protection and the elimination of fire hazards on land and in buildings, structures and other property, including those under construction.
- (7) The maintenance of means of egress.
- (8) The investigation of the cause, origin and circumstance of fire and unauthorized releases of hazardous materials.

Section 104.2.1 of the California Fire Code is hereby added to read as follows:

Section 104.2.1. INSPECTION AND PERMIT FEES. A fee shall be charged for each inspection and permit issued. The fee schedule shall be established by the City Council and reviewed annually.

Section 104.3. FIRE DEPARTMENT PERSONNEL AND PEACE OFFICERS.

- (1) The chief and his or her designees are authorized and directed to enforce all applicable State fire laws and the provisions of this code and he shall perform such related duties as may be fixed by the City Council, and for such purposes, he or she shall have the power of a peace officer.

(2) The following persons are hereby authorized to interpret and enforce the provisions of this Code (except as provided in Section 101.4) and to make arrests and issue citations as authorized by law:

1. The Unit Chief and peace officers and public officers of the California Department of Forestry and Fire Protection.
2. The Fire Chief, Peace Officers and Public Officers of the Riverside County Fire Department.
3. The Riverside County Sheriff and any Deputy Sheriff.
4. The Police Chief and any Police Officer of any city served by the County Fire Department.
5. Officers of the California Highway Patrol.
6. Peace Officers of the California Department of Parks and Recreation.
7. The law enforcement officers of the Federal Bureau of Land Management.

Section 104.6.5 of the California Fire Code is hereby amended to read as follows:

Section 104.6.5. Records and Reports requests for copies of public and legal documents, photographs, etc., relating to department activities are available as authorized by law through the Fire Department's Custodian of Records. All document requests shall be in writing, accompanied by a check made payable to the Riverside County Fire Department, in the amount(s) set forth in Section 104.2.1

Add Section 105.5.6

Section 105.5.6. Beginning work prior to approval of plans will result in a triple permit fee and/or inspection being charged.

Section 105.6.14 of the California Fire Code is hereby amended to read as follows:

Section 105.6.14. EXPLOSIVES. An operating permit is required for the manufacture, storage, handling, sale or use of any quantity of explosive material, fireworks or pyrotechnic special effects. The determination of the Fire Chief with concurrence of Sheriff, or Chief of Police, shall be obtained and is final. The chief may impose conditions and procedures as to protect the public health and safety based upon the blasting operation. The chief, shall provide the blaster with the additional conditions or procedures in writing and the blaster shall comply with them until the blasting permit expires or the Sheriff is satisfied they are no longer required and cancels the additional requirements.

The blaster shall permit the chief or his designee, to inspect the blast site, blast materials, explosives or explosive storage magazines at any reasonable time.

CHAPTER 2 DEFINITIONS.

Section 202 of the California Fire Code is hereby amended to add the following to the list of definitions:

FIRE CHIEF or **CHIEF** shall mean the Fire Chief of the County of Riverside or his authorized representative.

HAZARDOUS FIRE AREA is land other than State designated fire hazard severity zone of FHSZ or local designation of FHSZ which is covered with grass, grain, brush, or forest, whether privately or publicly owned, which is so situated or is of such inaccessible location that a fire originating upon such land would present an abnormally difficult job of suppression or would result in great and unusual damage through fire or resulting erosion.

HIGH-RISE BUILDING or **HIGH-RISE STRUCTURE** means every building of any type of construction or occupancy located more than 75 feet above the lowest floor level of fire department vehicular access.

MID-RISE BUILDING or **MID-RISE STRUCTURE** means buildings measured from 55 feet to 75 feet above the lowest floor level of fire department vehicular access.

MODEL ROCKET shall mean any toy or educational device which weighs no more than 500 grams, including the engine and any payload that is propelled by model rocket engine.

MODEL ROCKET ENGINE shall mean a commercially manufactured, non-reusable rocket propulsion device which is constructed of a nonmetallic casing and solid propellant, wherein all of the ingredients are self-contained so as not to require mixing or handling by the user and which have design and construction characteristics determined by the State Fire Marshal to provide a reasonable degree of safety to the user.

CHAPTER 4 EMERGENCY PLANNING AND PREPAREDNESS.

Section 404 of the California Fire Code is hereby amended to add:

Section 404.2. #14 Fire Safety and Evacuation Plans. Where Required. An approved fire safety and evacuation plan shall be prepared and maintained for the following occupancies and buildings:

14. Windowless buildings having an occupant load of 50 or more.

CHAPTER 5 FIRE SERVICE FEATURE.

Section 501.2 of the California Fire Code is hereby amended to add:

Section 501.4. Timing of Installation. Fire apparatus access roads and a permanent water supply for fire protection shall be installed and made serviceable prior to and during the time of construction. Temporary street signs shall be installed at each intersection when construction of new roadways allows passage by vehicles in accordance with Section 505.2 set forth hereinbelow.

Section 503.1 of the California Fire Code is hereby amended to add:

503.1 Where Required. Fire apparatus access roads shall be provided and maintained in accordance with Section 503.1.1 through 503.1.3 set forth hereinbelow. The Riverside County Fire Department shall be the only authority authorized to designate fire lanes.

Section 503.1.1 of the California Fire Code is hereby amended to add:

503.1.1 Exception. Delete provision #3 in its entirety. Add Sections 503.1.1.2, and 503.1.1.3 as follows:

503.1.1.2 FENCES. When fences are installed that cause the distance from an approved fire department access road to exceed the maximum distance allowed in Section 503 herein, a gate shall be provided in the fence to maintain the required fire department access. The gate shall be a minimum four (4) feet in width and be equipped with a key box and or lock accessible from both sides in accordance with Section 506 herein.

503.1.1.3 Other obstructions to access. When other obstructions are installed that cause the distances from an approved fire department access road to exceed the maximum distance allowed in Section 503 herein, the Fire Chief is authorized to require additional fire protection as specified in Section 901.4.3 herein.

Section 503.2.1.1 of the California Fire Code is hereby amended to add:

503.2.1.1 Loading areas and passage drop-off areas. On private property, where fire apparatus access roads are utilized for loading or unloading or are utilized for passenger drop-off or pick-up, an additional eight (8) feet of width shall be added to the fire apparatus access road. This width is in addition to the minimum required access road width.

Section 503.2.7 of the California Fire Code is hereby amended to add:

503.2.7 The grade of the fire apparatus access road shall be within the limits established by the Fire Chief based on the fire department's apparatus, however, no grade will exceed 15 percent.

At the end of the first paragraph, add: Grade transitions shall not exceed Riverside County Fire Department apparatus maximum approach and departure angles as determined by the Fire Chief.

Section 503.3 of the California Fire Code is hereby amended to add:

503.3 Fire apparatus access roads shall be identified by curbs painted red on both the top and face along the entire length of the fire apparatus access road. Where no curb exists or a rolled curb is installed, a 6 inch wide red strip or approved posted signs applied the full length of the fire apparatus access road shall be installed. (See Riverside County Fire Department standard that is incorporated herein by reference).

Exception: On school grounds this requirement shall be implemented as approved by the Chief.

Section 202 of the California Fire Code is hereby amended to add:

504.1 Key boxes and padlocks required for fire department access shall be in accordance with Section 506.

504.1 shall be further amended by adding the following sentence at the end of the first paragraph: "Finished grade to be flat and accessible on all sides of the building where ground ladder access is the only means to reach the highest point on the building from the exterior. Distance from building for finish grade shall be flat as required by the Fire Chief. Obstructions will not be placed as to interfere with ground ladder placement."

Section 505.3 of the California Fire Code is hereby amended to add:

505.3 Multiple buildings at a single address. Each building shall display its specific alphabetic or numerical designation that shall be clearly distinguishable from the fire apparatus access road.

Section 505.4 of the California Fire Code is hereby amended to add:

505.4 Illuminated Directory. Condominiums, apartment complexes, townhouses and mobile home parks shall have installed at points of entry, an illuminated directory consisting of a plot plan showing private drives, access roads, building locations with unit number and addresses, and fire hydrant locations. The directory shall also include the name of the complex, a reference point on the plot plan indicating the location of the directory, and a north direction indicator. The developer or the property owner shall submit to the Fire Department for review and approval, a detailed plan showing size, materials, methods of construction, electrical components, and wiring, and location of installation. Drawings indicating the minimum dimensions are available at the Fire Department.

Section 508.1 of the California Fire Code is hereby amended to add:

Section 508.1 Required Water Supply. An approved permanent water supply capable of supplying the required fire flow for fire protection shall be provided by the developer prior to the commencement of construction to all premises upon which buildings or portions of buildings are hereafter constructed or moved into or within the jurisdiction of Riverside County. Water supplies for fire protection and hydrants shall be in accordance with Appendix B and Appendix C of the California Fire Code.

Section 508.2.1 of the California Fire Code is hereby amended as follows:

508.2.1 Private Fire Service Mains. Private fire service mains and appurtenances shall be installed in accordance with NFPA 24, and the applicable provisions of NFPA 13.

Section 508.3 of the California Fire Code is hereby amended as follows:

Section 508.3 Fire flow requirements for buildings or portions of buildings and facilities shall be determined by an approved method acceptable to the Fire Chief or Appendix B of the California Fire Code.

Section 508.4 of the California Fire Code is hereby amended as follows:

508.4 Water Supply Test. The Fire Chief shall be notified, when required, prior to the water supply test. Water supply tests shall be witnessed by the Fire Chief or by the City Water Department when required by the Fire Chief. Documentation shall be provided to the Fire Chief prior to plan review.

Section 509.1 of the California Fire Code is hereby amended to add:

509.1 Features. Where required by other sections of this code and in all buildings classified as high-rise buildings by the CBC and as amended by this code for buildings between 55 to 75 feet in height, a Fire Command Center for Fire Department operations shall be provided. The Fire Command Center shall be located adjacent to the main lobby and shall be accessible from Fire Department vehicular access or as approved by the Fire Chief.

The Fire Command Center shall be separated from the remainder of the building by not less than a (delete 1) 2-hour fire barrier constructed and in accordance with section 706 of the California Building Code or horizontal assembly constructed in accordance with section 711 of the California Building Code, or both.

The room shall provide direct access from the building exterior at the lowest level of Fire Department access and be a minimum of 96 square feet with a minimum dimension of eight feet. A layout of the Fire Command Center and all features required by this section to be contained therein shall be submitted for approval prior to installation. The Fire Command Center shall comply with NFPA 72 and the applicable provisions of the Electrical Code, and shall contain the following features:

1. The emergency voice/alarm communication units shall comply with section 907.2.12.2 of the California Fire Code.

2. Survivability. Interconnecting cables between the Fire Command Center and the remote control equipment within evacuation signaling zones, and notification appliance control equipment within notification zones shall be protected from attack by fire.

Section 509.1.1.

Mid-rise buildings shall be enhanced with high-rise provisions as set forth in Section 509.1 of the California Fire Code. The Fire Command Center located inside of enhanced buildings shall contain the following features:

1. An emergency voice/alarm communication system unit.
2. A fire detection and alarm annunciator system.
3. Status indicators and controls for air-handling systems.
4. The firefighter's control panel required by Section 909.16 herein for smoke control systems installed in the building.
5. Controls for unlocking stairwell doors simultaneously.
6. Sprinkler valve and water-flow detector display panels.
7. Emergency and standby power status indicators.
8. Fire pump status indicators, and
9. Schematic building plans indicating the typical floor plan and detailing the building core, means of egress, fire protection systems, firefighting equipment and Fire Department access.

Section 509.2 of the California Fire Code is hereby amended to add:

509.2 Fire Command Center Identification. The Fire Command Center shall be identified by a permanent and easily visible sign stating "Fire Department Command Center" located on all doors to the Fire Command Center (see Fire Department Standards).

Sections commencing with 511.01 of the California Fire Code are hereby added:

511.01.1 Radio Coverage. Except as otherwise provided in this article, no person shall erect, construct or modify any building or structure or any part thereof, or cause the same to be done which fails to support adequate voice and/or data radio coverage for any emergency response personnel within the structure or the area immediately surrounding

the structure or building. A final inspection shall not be approved for any building or structure that fails to comply with this requirement.

511.01.2 When required by the Fire Chief, approved radios, repeaters, relays, signal amplifiers, antennas, coaxial cables, passive signal conductors, conduits and access, secondary power source and other equipment as determined shall be provided within buildings to ensure emergency response personnel radio and data communications to and from surrounding buildings and structures and emergency communications centers (see Fire Department Standards).

Section 511.02 of the California Fire Code is hereby amended as follows:

511.02 Scope

511.02.1 The provisions of this article shall apply to any new residential or commercial buildings or structures or any commercial tenant improvements that affect more than twenty five percent (25%) of the square footage of the existing building or structure, that are determined to be within Riverside County Fire Department established marginal or non-existent radio coverage areas. Any construction as defined above will be subject to review by the Riverside County Fire Department Planning and/or Communications Division and the developer and/or building owner may be responsible for improving Fire Department communications in the affected area. Any construction performed in these areas will be subject to the addition of new communications facilities, if needed, and/or the addition of public safety radio system enhancement equipment in the building, to enhance radio coverage to and from existing communications facilities (see Fire Department Standards).

Section 511.03.2 of the California Fire Code is hereby amended to add:

511.03.2 At the time the building permit is issued, the Riverside County Fire Department's Communication and Technology units, in cooperation with appropriate fire and law enforcement departments, shall determine the frequency range or ranges that must be supported. For the purpose of this section, adequate radio coverage shall constitute a successful communications test between the building and the communications centers for all appropriate emergency service providers for the building.

Section 512 of the California Fire Code is hereby amended to add:

512 Fire Department Breathing Apparatus Air Systems. All buildings having floors used for human occupancy located five (5) stories or more above or below the lowest level of Fire Department vehicular access shall be equipped with an approved breathing apparatus air refilling system. Such system shall provide an adequate pressurized air supply through a permanent piping system for the replenishment of self contained breathing apparatus carried by fire suppression, rescue and other personnel in the performance of their duties. Location and specification of access stations, and the installation of such breathing apparatus air refilling system shall be made in accordance with the requirements and standards of the Fire Chief (see Fire Department Standards).

CHAPTER 6 BUILDING SERVICES AND SYSTEMS.

Section 606.8 of the California Fire Code is hereby amended as follows:

606.8 Machinery rooms that use refrigerant shall have a detector with audible and visual alarms. The alarm signaling devices shall comply with the audible and visual requirements from NFPA 72. The detector, or a sampling tube that draws air into the detector, shall be located in an area where a refrigerant leak may be expected to concentrate. The alarm shall be actuated at a value not greater than the corresponding TLV-TWA values shown in the California Mechanical Code for the refrigerant classification. Detectors and alarms shall be placed in one or more locations to insure maximum notification to all occupants.

Section 609.2 of the California Fire Code is hereby amended to add:

Added 609.2

Exception: Fire Stations where the use of the commercial appliance is by station personnel and not for the intention of a commercial cooking facility as defined by the California Mechanical Code.

CHAPTER 9 FIRE PROTECTION SYSTEMS.

Section 901.3.1 of the California Fire Code is hereby amended to add:

901.3.1 Modifications. No person shall remove or modify any fire protection system installed or maintained under the provisions of the California Fire Code without approval by the Fire Chief.

Section 901.6 of the California Fire Code is hereby amended as follows:

901.6 Inspection, testing and maintenance. Fire detection, alarm and extinguishing systems shall be maintained in an operative condition at all times, and shall be replaced or repaired where defective. It shall be the responsibility of the owner to insure that these requirements are met. Non-required fire protection systems and equipment shall be inspected, tested and maintained at reasonable intervals of time or removed. Prior to the removal of any fire protection system, a permit shall be obtained from the Fire Chief.

Section 902 of the California Fire Code is hereby amended to add:

902 Common Area.

For the purposes of ADA compliance for visual notification, a common area shall be a room, space, or element made available for use of a restricted group of people (example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants). Common areas shall include restrooms, hallways, lobbies, meeting and conference rooms, classrooms, cafeterias, filing and photocopy rooms, employee break

rooms, open office areas exceeding 300 square feet, examination and treatment rooms, and similar areas that are not used solely as employee work areas. Mechanical, electrical and telephone closets, janitor closets, and similar non-occupied spaces that are not common areas or assigned work areas are not required to have visual alarm devices.

Section 202 of the California Fire Code is hereby amended as follows:

903.2 All occupancies.

1. All new occupancies which exceed a fire flow of one thousand-five hundred (1500) gallons per minute, in any new building so located that response time by the Fire Department exceeds ten (10) minutes from the receipt of an alarm, in any Group A occupancy which has a floor area of 5,000 square feet or more, or when the floor area of any building is 10,000 square feet or more. All fire sprinkler or automatic fire extinguishing system requirements are based on actual square footage, regardless of separations.

Section 903.2.10.1 of the California Fire Code is hereby amended as follows:

903.2.10.1 Stories and basements without openings. An automatic sprinkler system shall be installed in every story or basement of all buildings where the fire flow exceeds 1500 gpm and where there is not provided at least one of the following types of exterior openings: An automatic sprinkler system shall be installed in every story or basement where the floor area exceeds 1500 gpm fire flow regardless of the exterior openings.

Section 903.2.10.1.1 of the California Fire Code is hereby amended as follows:

903.2.10.1.1 Underground Buildings. Opening dimension and access. Openings shall have a minimum dimension of not less than (delete 30) 36 inches (762 mm). Such openings shall be accessible to the Fire Department from the exterior and shall not be obstructed in a manner that the fire fighter or rescue cannot be accomplished from the exterior.

Section 903.4.3 of the California Fire Code is hereby amended as follows:

903.4.3 Floor Control Valves. Approved supervised indication control valves shall be provided at the point of connection to the riser on each floor (delete High-rise buildings) in buildings five or more stories in height unless otherwise approved by the Fire Chief. Valve locations will be determined and approved by the Fire Chief.

Section 905.3 of the California Fire Code is hereby amended to add section 905.3.11:

905.3.11 High-rise Building Standpipes. Standpipe risers shall be a combination of standpipe and sprinkler risers using a minimum pipe size of 6 inch. Shut-off valves and water-flow devices shall be provided on each floor at the sprinkler system connection to each standpipe. Two, four-way fire department connections serving combination systems shall be separated from each other and located at opposite sides of the building or as

determined by the Fire Chief. At least one of the fire department connections shall be connected to the riser above a riser isolation valve.

Section 907.2.2.1 of the California Fire Code is hereby amended as follows:

907.2.2.1 A minimum number of listed smoke detectors shall be installed in residential aircraft hangers as defined in the California Building Code and shall be placed with a spacing as per NFPA 72. The smoke detectors shall be interconnected into the residential smoke alarms or an audible device shall be used in all sleeping areas of the dwelling if hangers are attached to a residence. A separate audible fire protection device shall be provided when the residential aircraft hanger is not attached to a residence.

Section 907.2.19 of the California Fire Code is hereby amended as follows:

907.2.19 All underground buildings shall be equipped throughout with a manual fire alarm system, including an emergency voice/alarm communication system installed in accordance with section 907.2.12.2 herein.

Section 907.9.1 of the California Fire Code is hereby amended as follows:

907.9.1 Zoning indicator/fire alarm enunciator panel. A zoning indicator panel and the associated controls shall be provided in an approved location. This visual zone indication shall lock in until the system is reset and shall not be canceled by the operation of an audible alarm silencing switch. The fire alarm enunciator panel shall be installed in a location that is visible from the lobby or area adjacent to the primary Fire Department response entrance. It shall be permissible to locate the fire alarm panel in a room immediately adjacent to a lobby provided the door to the lobby room is accessible to the Fire Department, visible from the lobby and is provided with a permanent, visible placard noting the location of the fire alarm control panel.

Section 907.10.1.2 of the California Fire Code is hereby amended as follows:

907.10.1.2 Employee Work Areas. Where employee work areas have audible alarm coverage, the notification appliance circuits serving the employee work areas shall be initially designed with a minimum of 20 percent spare capacity to account for the potential of adding visible notification appliances in the future to accommodate hearing impaired employees.

Section 908.3 of the California Fire Code is hereby amended as follows:

908.3 Highly toxic and toxic materials. Where required by Section 3704.2.2.10 of the California Fire Code, for indoor storage and use of highly toxic and toxic compressed gases, a gas detection system shall be provided to detect the presence of gas at or below the permissible exposure limit (PEL) or ceiling limit of the gas for which detection is provided. The system shall be capable of monitoring the discharge from the treatment system at or below one-half the immediately dangerous to life and health (IDLH) limit.

Exception: A gas detection system is not required for toxic gases when the physiological warning threshold level for the gas is at a level below the accepted PEL for the gas.

Section 908.3.1 of the California Fire Code is hereby amended as follows:

908.3.1 Alarms. The gas detection system shall initiate a local alarm and transmit a signal to a constantly attended control station when a short-term hazard condition is detected. The alarm shall be both visible and audible and shall provide warning both inside and outside the area where gas is detected. The audible alarm shall be distinct from all other alarms.

Exception: Signal transmission to a constantly attended control station is not required when not more than one cylinder of highly toxic or toxic gas is stored.

Section 908.3.2 of the California Fire Code is hereby amended as follows:

908.3.2 Shutoff of gas supply. The gas detection system shall automatically close the shutoff valve at the source on gas supply piping and tubing related to the system being monitored for whichever gas is detected.

Exception: Automatic shutdown is not required for reactors utilized for the production of highly toxic or toxic compressed gases where such reactors are:

1. Operated at pressures less than 15 pounds per square inch gauge (psig) (103.4 kPa).
2. Constantly attended.
3. Provided with readily accessible emergency shut-off valves.

Section 908.3.3 of the California Fire Code is hereby amended as follows:

908.3.3 Valve closure. The automatic closure of shutoff valves shall be in accordance with the following:

1. When the gas detection sampling point initiates the gas detection system alarm is within a gas cabinet or exhausted enclosure, the shutoff valve in the gas cabinet or exhausted enclosure for the specific gas detected shall automatically close.

2. Where the gas detection sampling point is initiating the gas detection system alarm is within a gas room and compressed gas containers are not in gas cabinets or exhausted enclosures, the shutoff valves on all gas lines for the specific gas detected shall automatically close.

3. Where the gas detection sampling point initiating the gas detection system alarm is within a piping distribution manifold enclosure, the shutoff valve for the compressed container of specific gas detected supplying the manifold shall automatically close.

Exception: When the gas detection sampling point initiating the gas detection system alarm is at a use location or within a gas valve enclosure of a branch line down-stream of a piping distribution manifold, the shutoff valve in the gas valve enclosure for the branch line located in the piping distribution manifold enclosure shall automatically close.

Section 909.2 of the California Fire Code is hereby amended to add section 909.2.1

909.2

Add Section 909.2.1 High-rise Buildings. When required by the Fire Chief an approved smoke control system shall be installed for high-rise buildings in accordance to Section 909.

Section 912.2 of the California Fire Code is hereby amended as follows:

912.2 Location. With respect to hydrants, driveways, buildings and landscaping, Fire Department connections shall be so located that fire apparatus and hoses connected to supply the system will not obstruct access to the buildings for other fire apparatus. The Fire Chief shall approve the locations, number of inlets and size of Fire Department connections.

Section 912.2.1 of the California Fire Code is hereby added:

912.2.1 Visible location. Fire department connections shall be located on the front access side of buildings, fully visible and recognizable from the street or nearest point of Fire Department vehicle access or as otherwise approved by the Fire Chief. The location of Fire Department connections shall be approved and installed as follows:

1. Within 50 feet of an approved roadway or driveway and arranged so that hose lines can be readily attached to the inlets without interference from any nearby objects including buildings, fences, posts, plantings, or other Fire Department connections and/or otherwise approved by the Fire Chief.
2. Within 200 feet of an approved hydrant.
3. So that the inlet height shall not be less than 18 inches or more than 48 inches above grade.
4. Guard posts or other approved means may be required to protect Fire Department inlet connections from vehicular damage.
5. Fire Department connection shall not be allowed in the rear of any building.

Section 912.4 of the California Fire Code is hereby amended as follows:

912.4 Signs. A metal sign with raised letters at least 1 inch (25 mm) in size or approved method as determined by the Fire Chief shall be located on all Fire Department connections serving automatic sprinkler, standpipes or fire pump connections. Such signs shall read: AUTOMATIC SPRINKLERS or STANDPIPES or TEST CONNECTION or as required and approved by the Fire Chief.

Section 914.5 of the California Fire Code is hereby amended as follows:

914.5 Underground (insert "and Windowless buildings."). Underground buildings shall comply with sections 914.5.1 through 914.5.6 herein (insert: "and windowless buildings with a total floor area of 5000 square feet shall comply with sections 914.5.2 through 914.5.6 of the California Fire Code.")

CHAPTER 22 MOTOR FUEL DISPENSING FACILITIES AND REPAIR GARAGES.

Section 2201.0 of the California Fire Code is hereby amended as follows:

2201.1 Scope. Automotive motor fuel-dispensing facilities, marine motor fuel-dispensing facilities, fleet vehicle motor fuel-dispensing facilities and repair garages shall be permitted, constructed and maintained in accordance with this chapter and the California Building Code, California Plumbing Code and the California Mechanical Code. Such operations shall include operations that are both accessible to the public and private operations.

For provisions relating to the transfers of flammable and combustible liquids directly from tank vehicles into the fuel tanks of motor vehicles located at commercial, industrial, governmental or manufacturing establishments, see Section 3406.5.4.5 of the California Fire Code

2202.1 Definition of Motor Vehicle. "Motor Vehicle" includes, but is not limited to, a vehicle, machine, tractor, trailer or semi-trailer, or any combination thereof, propelled or drawn by mechanical power and used upon the highways in the transportation of passengers or property. It does not include a vehicle, locomotive or car operated exclusively on a rail or rails, or a trolley bus operated by electric power derived from a fixed overhead wire, furnishing local passenger transportation similar to street-railway service. The term "motor vehicle" also includes freight containers or cargo tanks used, or intended for use, in connection with motor vehicles. (As per 49 CFR Pt. 171.8 (October 2002).)

Motor Vehicle, Unattended is defined as a motor vehicle where the driver cannot see the motor vehicle or hear noises in or near the motor vehicle.

Exceptions:

1. Necessary absence in connection with loading and unloading the motor vehicle.
2. Stops for meals during the day or night, if the point of parking is well lighted.
3. When in case of accident or emergency, the driver must leave to obtain assistance.

CHAPTER 23 HIGH PILED COMBUSTIBLE STORAGE.

Section 2301.3 of the California Fire Code is hereby amended as follows:

2301.3 Construction Documents. (Add to item #7): location and classification of commodities in accordance with Section 2303 and NFPA 13.

Section 2306.4.1.4 of the California Fire Code is added:

2306.4.1.4 Minimum Requirements for Client Leased or Occupant Owned Warehouses. Designs of an automatic sprinkler system for client leased or occupant owned buildings containing high pile storage shall be based on the requirements of NFPA 13. The responsible Fire Protection Engineer shall perform a survey of the building to determine commodity classification, storage configuration, building height and other information related to the development of an appropriate sprinkler system design. The Engineer shall also make reasonable efforts to meet with the building owner or operator to understand seasonal or customer related fluctuations to the stored commodities, storage height, and configuration. The sprinkler design shall be based on the most demanding requirements determined through the onsite survey and discussions with the building owner or operator. The technical report shall clearly define the basis for determining the commodity and sprinkler design selection, along with how the commodities will be isolated or separated, and the referenced design document(s), including NFPA 13 or the current applicable Factory Mutual Data Sheets. If a specific fire test is used as the basis of design, a copy of the fire test report shall be provided at the time of plan review.

CHAPTER 25

TIRE REBUILDING AND TIRE STORAGE.

Section 2505.8 of the California Fire Code is hereby added:

2505.8 Dead-End Aisles. No dead-end aisles shall be allowed within any buildings, structures or facilities.

CHAPTER 33

EXPLOSIVES AND FIREWORKS.

Section 3308.1 of the California Fire Code is hereby amended as follows:

Section 3308.1 Displays. Permits are required to conduct a fireworks display. Permit application shall be made to the Fire Chief and the Riverside County Sheriff not less than 14 days prior to the scheduled date of the display. The permit application shall include a diagram of the grounds on which the display is to be held showing the point at which the fireworks are to be discharged, the location of buildings, highways and other lines of communication, the lines behind which the audience will be restrained, and the location of nearby trees, telegraph or telephone lines and other overhead obstructions. At the time of permit application, the Fire Chief shall be consulted regarding the requirements for standby fire apparatus.

Section 3308.2 of the California Fire Code is hereby amended to read as follows:

3308.2 Pyrotechnic special effects material. A permit is required to manufacture, compound, store or use pyrotechnic special effects material. Permit application shall be

made to the Fire Chief and the Riverside County Sheriff. A permit for use shall be granted only to a California State Fire Marshal licensed pyrotechnic operator.

Section 3308.3 of the California Fire Code is hereby amended as follows:

3308.3 Manufacturing. The manufacturing of fireworks is prohibited except under special permits as required by local and state regulations by the Fire Chief and the Riverside County Sheriff.

Section 3308.4 of the California Fire Code is hereby amended to add the following to the list of definitions:

For the purposes of Chapter 33 only, the Sheriff of Riverside County designee shall, represent the Fire Chief.

BLASTING PERMIT shall mean a permit issued by the Sheriff pursuant to Chapter 33 and shall apply to a specific site. This permit shall be valid for a period not to exceed one (1) year.

BLAST SITE shall mean a geographically defined area where blasting may occur. It shall be shown on a project map or plot plan. Blasting operations shall be conducted only within such defined areas.

Section 3308.5 of the California Fire Code is hereby amended as follows:

Chapter 33 Required. Permits shall be obtained from, and be issued by the Riverside County Sheriff:

- (1) To manufacture, possess, store, sell or otherwise dispose of explosives, blasting agents, or phosphoric compounds.
- (2) To transport explosives or blasting agents.
- (3) To use explosives or blasting agents.
- (4) To operate a terminal for handling explosives or blasting agents.
- (5) To deliver to or receive explosives or blasting agents from a carrier at a terminal between the hours of sunset and sunrise.
- (6) To transport blasting caps or electric blasting caps on the same vehicle with explosives.

Section 3308.6 of the California Fire Code is hereby amended as follows:

Chapter 33 Section 3308.6 Magazines Required. Explosive materials shall be stored in magazines in accordance with Chapter 33.

A competent person shall be in charge of magazines. The person shall be at least 21 years of age, possesses a valid explosive-storage permit, and responsible for compliance with all safety precautions.

Magazines or temporary magazines used for storage purposes in any area where blasting is required shall, when the need for such storage no longer exists and the explosives have been removed or disposed of, be removed or demolished. The Sheriff, or his/her designee, that issued the explosive-storage permit shall be notified immediately of the action taken.

Section 3308 of the California Fire Code is hereby amended as follows:

3308. Storage with Other Materials. Magazines shall be used exclusively for the storage of explosive materials and other blasting agents approved by the Sheriff. Tools, other than approved conveyors, shall not be stored in magazines. Items of hardware, which contain igniters, detonators, propellants or explosives, shall not be stored in the same magazines with other explosives.

SECTION TO BE ADDED

Section 3308.8 of the California Fire Code is hereby amended as follows:

Section 3308.8 Personnel Qualifications. The person in charge of the handling and use of explosive materials shall be at least 21 years of age, licensed by the State of California as a blaster, and possesses a valid explosives-use permit issued by the Sheriff.

Exception. Persons 18 years or older are allowed to use and handle explosive materials under the direct personal supervision of a person who is licensed by the State of California as a blaster and possesses a valid explosive-use permit.

Section 3308.9 of the California Fire Code is hereby amended as follows:

Section 3308.9 Other Regulations. Blasting operations shall be conducted in accordance with federal, state and local regulations. Blasters are required to comply with blasting regulations of neighboring jurisdictions for blasting operations outside the unincorporated area of the County, but conducted in conjunction with projects within unincorporated areas of the County of Riverside.

CHAPTER 35 FLAMMABLE GASES.

Section 3502.1 of the California Fire Code is hereby amended to add the following to the list of definitions:

3502.1 METAL HYDRIDE STORAGE SYSTEM: A system for the storage of hydrogen gas absorbed in solid material.

Section 3503.1.7 of the California Fire Code is hereby added:

3503.1.7 Hydrogen gas absorbed in solids. The hazard classification of the metal hydride storage system, as required by Section 2701.2.2 of the California Fire Code, shall be based on the hydrogen stored without regard to the metal hydride content.

Section 3503.1.7.1 of the California Fire Code is hereby added:

3503.1.7.1 Listed system. Metal hydride storage systems shall be Listed for the application and designed in a manner that prevents the removal of the metal hydride.

CHAPTER 38 LIQUIFIED PETROLEUM GASES.

Section 3801.2.1 of the California Fire Code is hereby amended as follows:

3801.2.1 Permits. Distributors shall not fill an LP-Gas container for which a construction permit is required until the installation has been inspected and approved by the Fire Chief.

Section 3801.2.3 of the California Fire Code is hereby added:

3801.2.3 Operational Permit. An operational permit is required to operate an LP-Gas installation with an aggregate water capacity of more than 2,000 gallons or to use an open flame (flare) to dispose of LP-Gas from a container.

Section 3803.2.3.7 of the California Fire Code is hereby added:

3803.2.3.7 Idle Cylinders. Cylinders in storage awaiting use shall be stored outside of Group A occupancies.

APPENDICES

All Appendices to the California Fire Code are adopted in their entirety except as follows:

Appendix B

Section B-104.2 Area Separation.

Add: "Section B-104.2 Portions of buildings which are separated by fire walls without openings, constructed in accordance with the California Building Code, may be considered as separate for fire flow area calculations."

Section B-105.1 last sentence

Shall not be less than that specified in table B 105.1, of the California Fire Code and less than the minimum of 1500 gpm.

Section B- 105.2 exception first sentence

A reduction in required fire flow of up to 50 percent as approved, is allowed when the building is provided with an approved automatic sprinkler system installed in accordance with Section 903.3.1.1 or 903.3.1.2, of the California Fire Code.

APPENDICES

Add 508.5.7

508.5.7 Fire Hydrants Size and Outlets. Fire Hydrant size and number of outlets shall be required as determined by the fire code official.

Appendix C Table C105.1 Footnotes C.

Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, fire hydrants shall be provided at spacing not to exceed 1000 feet to provide for transportation hazards.

Appendix C Table C105.1 Footnotes C.

Where new water mains are extended along streets where hydrants are not needed for protection of structures or similar fire problems, serving one and two-family residential developments, standard fire hydrants shall be provided at spacing not to exceed 1000 feet along the tract boundary for transportation hazards. When serving multi-family, commercial and industrial developments, super or enhanced fire hydrants as determined by the Fire Chief shall be provided at spacing not to exceed 500 feet of frontage for transportation hazards.

PENALTIES

Section 9 Penalties. It shall be unlawful for any person, firm, corporation or association of persons to violate any provision of this ordinance, or to violate the provisions of any permit granted pursuant to this ordinance. Any person, firm, corporation or association of persons violating any provision of this ordinance or the provisions of any permit granted pursuant to this ordinance, shall be deemed guilty of an infraction or misdemeanor as hereinafter specified. Such person or entity shall be deemed guilty of a separate offense for each and every day or portion thereof during which any violation of any of the provisions of this ordinance or the provisions of any permit granted pursuant to this ordinance, is committed, continued, or permitted.

Any person, firm, corporation or association of persons so convicted shall be: (1) guilty of an infraction offense and punished by a fine not exceeding two hundred dollars (\$200.00) for a first violation; (2) guilty of an infraction offense and punishable by a fine not exceeding three hundred dollars (\$300.00) for a second violation on the same site. The third and any additional violations on the same site shall constitute a misdemeanor offense and shall be punishable by a fine not exceeding one thousand dollars (\$1,000.00) or six months in jail, or both. Notwithstanding the above, a first offense may be charged and prosecuted as a misdemeanor. Payment of any penalty herein shall not relieve a person or entity from the responsibility for correcting the violation.

Section 3. Sections 8-17 of the Banning Ordinance Code is hereby repealed.

Section 4. The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it, or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon this ordinance shall take effect 30 days after adoption and be in force and effect according to law.

PASSED, APPROVED AND ADOPTED this 8th day of January, 2007.

Brenda Salas, Mayor

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

Burke, Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1380 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 11th day of December, 2007, and was duly adopted at a regular meeting of said City Council on the 8th day of January, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

STAFF REPORT
PUBLIC HEARING

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Subdivision of 7.96 Acres into 15 Parcels, 12 Residential Lots and 3 Remainder Industrial Parcels, and Approval of Six Facades. APN's: 540-250-006 & 007

RECOMMENDATION: "That the Council:

1. Approve Resolution No. 2008-04 approving Lot Split #07-4504 (Tentative Tract Map 35694), based on the findings and conditions of approval (attached hereto as Attachment "1" and incorporated by reference); and
2. Approve Resolution No. 2008-09, approving Design Review #07-7015, based on the findings and conditions of approval (Attachment "1" and incorporated by reference)."

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing for:

1. Lot Split #07-4504 (Tentative Tract Map 35694) to its January 22, 2008 meeting; and
2. Design Review #07-7015, to its January 22, 2008 meeting".

Denial:

"I move the City Council deny:

1. Resolution No. 2008-04 for Lot Split #07-4504 (Tentative Tract Map 35694), based on the following findings (the City Council will need to make its findings); and

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2. Resolution No. 2008-09, for Design Review #07-7015, based on the following findings (the City Council will need to make its findings)."

JUSTIFICATION: The proposed land division is consistent with Zoning and the General Plan Land Use designations assigned to the subject property. All development related issues associated with the subject proposal are addressed in the report and or recommended in the conditions of approval.

BACKGROUND:

Project Location:

The project site is 7.96 acres in size and is between Barbour and Lincoln Streets, approximately 230 feet west of San Gorgonio Avenue. Approximately 130 feet abut San Gorgonio Avenue. The subject site is vacant and relatively flat. Multifamily homes (apartments) are located west of the site; single family homes are located to the east; and industrial zoned properties are located to the north.

Project Description:

The project proponent is requesting approval of Lot Split #07-4504 to subdivide the 7.96 acre property into 15 parcels; 12 residential parcels and 3 remaining parcels. Parcel 1, 2, and 3 are zoned Industrial and will range in size from .81 acres to 2.16 acres. Ten residential parcels are 11,017 square feet in size; two residential parcels (immediately adjacent to Barbour Street) are 18,427.50 square feet in size. Triplexes are proposed within the residential parcels and nothing is proposed on the Industrial zoned parcels.

Approval of Design Review #07-7015 is required to construct up to 36 two-story attached single-family homes (triplexes) on the 12 residential lots in the Medium Density Residential Zone. Each lot will include three 2,134 square foot homes (including a 618 square foot three car garage), two guest spaces, a built-in barbecue (per unit) and be fully landscaped. Each unit will have three bedrooms and two and one half bathrooms. Two of the three units in each lot will be attached. The project will take access from a single gated common area driveway located on Barbour Street. The internal drives are private, 26' wide and capable of accommodating two-way traffic. The Cape Cod architectural style will include six façade variations that will incorporate stone accents, simulated wood and stucco siding, front yard porches, patios and three-tab shingle roofs.

Environmental:

The project has been determined to be exempt from California Environmental Quality Act (CEQA) pursuant to Section 15332 which consists of projects characterized as In-fill development meeting the following conditions: (a) The project is consistent with the applicable General Plan designation and all applicable General Plan policies as well as with applicable Zoning designations and regulations, (b) The proposed development occurs within the city limits on a project site of no more than five acres substantially surrounded by urban uses, (c) The project site has no value as habitat for endangered, rare or threatened species, (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality, (e) The site can be adequately served by all required utilities and public services.

The project complies with the provision of Section 15332 in that the use is allowed in the General Plan's Medium Density Residential Land Use designation and complies with the related policies; the project is located within the City and is 3.63 acres in size (the residential portion); The site has no value as habitat because it is surrounded by development, devoid of vegetation, has no bodies of water and has been graded/disked; the project proponent will contribute to a master circulation plan for the area that will maintain safe vehicular and pedestrian circulation; and the development will be served from the existing street (Barbour Street will be improved).

Findings:

Findings can be made to approve the Lot Split and Design Review applications which are included in the Resolutions of Approval.

Public Notice:

This proposal was advertised in the Record Gazette newspaper on December 28, 2007. All property owners within 300 feet of the site were mailed a public hearing notice. To date, no written comments have been received. Any comments received prior to the meeting will be incorporated into the appropriate documents.

Analysis:

Land Use: Table 9102.A allows multi-family uses in the Medium Density Residential zone. Table 9103.A allows Industrial uses.

Density: The Code allows up to 10 units per acre in the Medium Density Residential zoned parcels; thus, the proposed 36 units on 3.64 acres yield 10 units per acre density, which is consistent with the Code.

Lot Coverage: Maximum building coverage permissible in the Medium Density Residential zone is 40%. Each lot with three dwelling units will create maximum lot coverage of 32%, which is below the Zoning Code requirement.

Access: The project will be served by a single driveway located on Barbour Street.

Parking requirements: Table 9107.A ("Residential Parking Requirements") requires three covered parking spaces per unit, plus one uncovered guest parking space for every 4 units. At 36 units the project provides 108 covered spaces and 24 uncovered guest spaces (9 spaces required). The project provides 15 additional uncovered guest spaces.

Setbacks: No development is proposed on the remnant lots. With the exception of the rear yard setback, the project meets or exceeds all setback requirements. The project will be conditioned to meet the setback requirements. Please refer to the table below:

Setbacks (per unit per Lot)

	Proposed	Required
Front Setback	15'	15' min.
Rear Setback	9'	10' min.
Side Yard Setbacks	10'	5' min.

Architecture: As indicated previously, the applicant proposes a Cape Cod architectural style with six façade variations that will include stone accents, wood and stucco siding, and three-tab shingle roofs.

Landscape Plan: A conceptual landscape plan has been submitted illustrating landscape on each residential lot, including patios. If the project is approved it will be conditioned to comply with the City's requirements, including drought-tolerant landscape.

Utilities: The project will be served by the City's utilities. These utilities are located on the adjacent streets.

Tentative Tract Map 35694: The project proponent is requesting approval of Lot Split #07-4504 to subdivide the 7.96 acre property into 15 parcels; 12 residential parcels and 3 remaining parcels. Parcel 1, 2, and 3 are zoned Industrial and will range in size from .81 acres to 2.16 acres. Ten residential parcels are 11,017 square feet in size; two residential parcels (immediately adjacent to Barbour Street) are 18,427.50 square feet in size. Triplexes are proposed within the residential parcels.

In accordance with Banning Municipal Code § 22-27 and Government Code § 66473.1, § 66473.5 and § 66474, the following findings can be made in support of this project:

1. Tentative Tract Map 35694 is consistent and compatible with the objectives, policies, general land uses, and programs specified in the City's General Plan in that:

Findings of Fact: The General Plan Land Use Element designations for this property are Medium Density Residential (MDR) and Industrial (I), which allow the development of 36 attached dwelling units on the 12 residential lots and the creation of the three industrial remnant lots. The project will be required to improve and/or dedicate the required right-of-way for Barbour Street, Lincoln Street and San Gorgonio Avenue in accordance with the General Plan provisions. Residential Goal No. 1 of the Land Use Element of the General Plan prescribes the preservation and enhancement of the City's neighborhoods. This project will enhance and promote the existing single family homes located to the east and the apartment complex to the west by incorporating multiple family units with the appearance of single family homes. The subdivision has been designed to accommodate the development of 12 residential lots considering the shape and topography of the site. The project, as proposed, has a density of 10 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Medium Density Residential land use designation, a density of 10 units per acre is appropriate for a site of this size and configuration.

2. The design and improvement of the subdivision proposed under Tentative Tract Map 35694 are consistent with the City's General Plan in that:

Findings of Fact: The proposed subdivision has been designed to meet City standards which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access. On site improvements, such as streets, utilities, landscaping, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards. The internal drives shown on the site plan are private, approximately 26 feet wide and provide adequate width for two-way vehicle traffic. Curbside parking will be available on the public streets. The access points will provide adequate width for one inbound and one outbound lane.

3. The site is physically suitable for the type of development proposed under Tentative Tract Map 35694, in that:

Findings of Fact: The site is flat and gently slopes downward from the northwest to the southeast. The site is not located within an MSHCP special linkage and criteria area, Yucaipa Onion Survey Area or Burrowing Owl Survey Area. Although not over a fault line, the site may be subject to liquefaction during an earthquake, but no major geologic hazards have been reported on the site or other limited conditions that would render it unsuitable for this development. The site is prone to flooding and as such will be conditioned to develop improvements to limit/prevent flooding.

4. The site is physically suitable for the density of development proposed under Tentative Tract Map 35694, in that:

Findings of Fact: The overall site is 7.96 acres in size and is relatively flat, sloping downward from the northwest to the southeast. The subdivision has been designed on 3.63 acres to accommodate the development of 12 residential lots that will contain three dwelling units on each lot at a density of 10 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Medium Density Residential land use designation and in the City's Zoning Ordinance for the Medium Density Residential zone, a density of 0-10 units per acre is appropriate for a site of this size and configuration.

5. The design of the subdivision and improvements proposed under Tentative Tract Map 35694 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

Findings of Fact: The development is in an area that is already developed and is not in a Burrowing Owl, Los Angeles Pocket Mouse, or Yucaipa Onion Area. The Western Riverside Multiple Species Habitat Conservation Plan has not identified any portion of the project area for preservation. The development of dwelling units on these lots will reduce the amount of area available for habitat; however, this vacant area is not connected to any other open space habitat, so it has already been isolated ecologically. No impacts to biological resources are expected.

6. The design of the subdivision and improvements proposed under Tentative Tract Map 35694 is not likely to cause serious public health problems in that:

Findings of Fact: The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to Storm water runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City Street and Public Works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. Finally, the proposed street system throughout the subdivision will improve emergency vehicular access in the immediate neighborhood.

Domestic water is supplied to the project site by the City of Banning. The eventual development of the site will result in the need for domestic water service for 36 residential units. Expected water demand from this development will not substantially deplete groundwater supplies, or interfere with groundwater recharge. The project site occurs in the Banning Hydrologic Subunit and is between the Banning Bench Storage Unit and the East Banning Storage Unit.

The project will be required to implement the City's water efficient landscaping and construction provisions, which will ensure that the least amount of water possible is utilized within the homes.

The applicant will also be required to comply with the City's NPDES standards, requiring that potential pollutants not be allowed to enter surface waters. These City standards will assure that impacts to water quality and quantity will be less than significant.

The applicant is required, in designing site hydrology, to detain the incremental increase in storm flows caused by development on site, and to assure that the flows leaving the site do not exceed the quantity or speed of flows currently exiting the site in the natural condition.

Prior to any development occurring on the site, the City Engineer will approve the drainage analysis for the site, including analysis to demonstrate that flows leaving the site will not increase from the undeveloped condition. These City requirements are expected to lower potential impacts to a less than significant level.

The street improvements will improve emergency vehicular access in the immediate neighborhood.

7. The design of the subdivision and improvements proposed under Tentative Tract Map 35694, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that:

Findings of Fact: No easements of record or easements established by judgment of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any such easements.

8. The design of the subdivision of proposed Tentative Tract Map 35694 adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that:

Findings of Fact: Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of lots within the proposed subdivision have been arranged, to the greatest extent feasible, to permit orientation of structures in an east-west alignment for southern exposure, or to take advantage of natural shade, or to take advantage of prevailing breezes.

Design Review: The Design Review application focuses on community design principles which, per the Zoning Ordinance Section 9103.05 (3) (A), result in creative, imaginative solutions which establish quality design for the City.

Approval of Design Review #07-7015 is required to construct up to 36 two-story attached single-family homes (triplexes) on the 12 residential lots in the Medium Density Residential Zone. Each lot will include three 2,134 square foot homes (including a 618 square foot three car garage), two guest spaces, a built-in barbecue (per unit) and be fully landscaped. Each unit will have three bedrooms and two and one half bathrooms. Two of the three units in each lot will be attached. The project will takes access from a single gated common area driveway located on Barbour Street. The internal drives are private, 26' wide and capable of accommodating two-way traffic. The Cape Cod architectural style will include six façade variations that will incorporate stone accents, simulated wood and stucco siding, front yard porches, patios and three-tab shingle roofs.

In accordance with Section 9114.00 ("Design Review") of the Banning Zoning Code, the Planning Commission must determine that the project complies with the following findings:

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

Findings of Fact: The General Plan Land Use Element designation is Medium Density Residential which allows multi-family uses. This development proposes twelve triplex lots; a land use permitted by the General Plan.

Policy 3 of the General Plan Land Use Element indicates that development be of high quality projects. This project, as designed, will include Cape Cod architectural style,

with stone accents, wood-like and stucco siding, porches, patios, and built-in barbeques for each unit that will result in a high quality design that is consistent with this Policy.

Finding No. 2: The proposed project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

Findings of Fact: The Zoning District designation is Medium Density Residential which allows the development of this project. With the exception of the rear yard setback, the project meets or exceeds the development standards for this district, including:

- Minimum required front yard setback is 15' versus 15' provided;
- Minimum required rear yard setback is 10' versus 9' provided;
- Minimum required side yard setback is 0' versus 10' provided;
- Maximum lot coverage is 32% provided versus 40% maximum permitted;
- Maximum height is 2-story/ 35' versus 2-story/ 24 provided;
- 108 parking space are required versus 108 provided; and
- 9 guest spaces required versus 24 spaces provided.

As conditioned herein, the project will be required to comply with the 10' rear yard setback.

Finding No. 3: The design and layout of the proposed project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.

Facts of Fact: The design and layout of the proposed project will not unreasonably interfere with future development, and will not result in vehicular and or pedestrian hazards because of the following:

- As designed, the project will have a single point of access from Barbour Street thereby limited turning movements into and out of the subject site;
- As conditioned the project's illumination will not spill over onto adjacent properties;
- The project provides ample parking (132 provided versus 117 required); and
- As conditioned, the project will be required to improve the surrounding streets in accordance with the applicable City standards.

Finding No. 4: The design of the proposed project is compatible with the character of the surrounding neighborhood.

Findings of Fact: The project proponent proposes a Cape Cod architectural style with a three-tab shingle roof, stone accents and wood-like and stucco siding. This style is similar to the adjacent apartment complex.

Planning Commission Action:

On December 4, 2007 the Planning Commission reviewed this project, accepted public testimony and discussed the merits of the project, including: 1) compatibility with the adjacent residential and non-residential uses; and 2) the development of the 36 triplexes (apartments). At the conclusion of this review the Commission approved (with conditions) Resolution Nos. 2007-43 and 2007-44 recommending approval of Lot Split #07-4504 & Design Review #07-7015, respectively, to the City Council.

FISCAL DATA: The construction of the proposed Tract will generate revenues to the City in the form of one-time building permit fees as well property tax.

SUBMITTED BY

Oscar W. Orci by JS
Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine
Randy Anstine
City Manager

Exhibits:

1. Resolution No. 2008-04 (Tract Map 35694), with Conditions of Approval
2. Resolution No. 2008-09 (Design Review), with Conditions of Approval
3. Tentative Tract Map 35694 and Plans for Design Review # 07-7015 (separate cover)
4. Large Version of Tract Map 35694 (separate cover).

*LOT SPLIT #07-4504 /
TTM 35694 AND
DESIGN REVIEW #07-7015*

*RESOLUTION
NO. 2008-04*

EXHIBIT “1”

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RESOLUTION NO. 2008-04

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING LOT SPLIT #07-4504 (TENTATIVE TRACT MAP NO. 35694), FOR THE SUBDIVISION OF A 7.96-ACRE SITE INTO 12 RESIDENTIAL LOTS AND 3 REMNANT INDUSTRIAL LOTS, APN: 540-250-006 & 007.

WHEREAS, an application for TTM 35694 to subdivide a 7.96 acre vacant site, into 15 lots has been duly filed by:

Applicant / Owner:	San G. Konsolidated Development, LLC
Authorized Agent:	Darwin Manuel
Project Location:	Between Barbour and Lincoln Streets, approximately 230 feet west of San Gorgonio Avenue, portions of the property (130 lineal feet) abut San Gorgonio Avenue
APN Number:	540-250-006 & 007.
Lot Area:	7.96 Acres

WHEREAS, the Municipal Code allows for the subdivision of a 7.96 acre vacant site, into 15 lots, subject to the approval of a Tentative Tract Map; and

WHEREAS, in accordance with Government Code Section 66452.3, the City has provided the applicant with a copy of the Planning Department's report and recommendation to the Planning Commission at least three (3) days prior to the below referenced noticed public hearing; and

WHEREAS, on December 4, 2007, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the Planning Commission considered and approved Resolution No. 2007-43 recommending approval of said Tentative Tract Map; and

WHEREAS, on December 28, 2007, the City gave public notice by mailing notices to property owners within 300 feet of the project site and advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, of the holding of a public hearing at which the project would be considered; and

WHEREAS, on January 8, 2008, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Tentative Tract Map and at which the City Council considered the Tentative Tract Map; and

WHEREAS, the Community Development Director has reviewed the project's potential effects on the environment and has recommended that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15332 "In-fill Development" and the exceptions to the categorical exemptions contained in CEQA Guidelines Section 15300.2 are not applicable to the project.

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

SECTION 1. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Community Development Department as provided in the Staff Report dated January 8, 2008, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA:**

(a) The project is exempt from CEQA as stipulated by CEQA Guidelines Section 15332 in that the staff report submitted by the Planning Department and other findings made in this Resolution demonstrate that: the Lot Split #07-4504 is consistent with the Medium Density Residential and Industrial General Plan designations and all applicable General Plan policies as well as with applicable zoning designations; Lot Split #07-4504 is located within the boundaries of the City of Banning; overall the property is 7.96 acres in size, but the project area proposed for development is less than five acres (3.64 acres) and has no value as habitat for endangered, rare or threatened species; there is no substantial evidence in the record that Lot Split #07-4504 will result in significant effects related to traffic, noise, air quality, or water quality; and the site is or can be adequately served by all required utilities and public services. As such, the project meets the criteria for application of a Class 32 Categorical Exemption under the CEQA Guidelines.

(b) None of the exceptions to the categorical exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15322 from exempting the project for the following reasons:

(i) The project is not a Class 3, 4, 5, 6, or 11 project, and therefore is not subject to the exception pertaining to projects located in particularly sensitive environments

(ii) The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The proposed use is allowed, and will not impair the integrity and character of the land use district in which it is to be located because it is surrounded by other Medium Density Residential uses and Industrial properties (existing and pending residential and industrial projects). Single family homes do exist to the east, but are oriented along San Gorgonio Avenue.

(iii) There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment. There is no evidence that the proposed project will have the potential for any adverse effect on wildlife resources or the habitat upon which wildlife depends. The site was found to contain no suitable habitat for threatened or endangered species. There is no evidence of a vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The site is devoid of vegetation and it is flat (unable to support bodies of water).

(iv) The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

(v) The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 659625.

(vi) The project will not cause a substantial adverse change to the significance of a historical resource. The site is vacant, and no historical resource exists on the site; the immediate surroundings will not be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.

2. **Multiple Species Habitat Conservation Plan (MSHCP):** The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

SECTION 2. MAP ACT FINDINGS.

In accordance with Banning Municipal Code § 22-27 and Government Code § 66473.1, § 66473.5 and § 66474, the Planning Commission, in light of the whole record before it, including but not limited to the Planning Department's staff report and all documents incorporated by reference therein, the City's General Plan, Subdivision Ordinance, Zoning Ordinance, standards for public streets and facilities and any other evidence within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. Tentative Tract Map 35694 is consistent and compatible with the objectives, policies, general land uses, and programs specified the City's General Plan in that:

Findings of Fact: The General Plan Land Use Element designations for this property are Medium Density Residential (MDR) and Industrial (I), which allow the development of 36 attached dwelling units on the 12 residential lots and the creation of the three industrial remnant lots. The project will be required to improve and/or dedicate the required right-of-way for Barbour Street, Lincoln Street and San Gorgonio Avenue in accordance with the General Plan provisions. Residential Goal No. 1 of the Land Use Element of the General Plan prescribes the preservation and enhancement of the City's neighborhoods. This project will enhance and promote the existing single family homes located to the east and the apartment complex to the west by incorporating multiple family units with the appearance of single family homes. The subdivision has been designed to accommodate the development of 12 residential lots considering the shape and topography of the site. The project, as proposed, has a density of 10 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Medium Density Residential land use designation, a density of 10 units per acre is appropriate for a site of this size and configuration. No development is proposed on the remnant lots.

2. The design and improvement of the subdivision proposed under Tentative Tract Map 35694 are consistent with the City's General Plan in that:

Findings of Fact: The proposed subdivision has been designed to meet City standards which provide satisfactory pedestrian and vehicular circulation, including emergency vehicle access. On site improvements, such as streets, utilities, landscaping, and drainage facilities have been designed and are conditioned to be constructed in conformance with City standards. The internal drives shown on the site plan are private, approximately 26 feet wide and provide adequate width for two-way vehicle traffic. Curbside parking will be available on the public streets. The access points will provide adequate width for one inbound and one outbound lane.

3. The site is physically suitable for the type of development proposed under Tentative Tract Map 35694, in that:

Findings of Fact: The site is flat and gently slopes downward from the northwest to the southeast. The site is not located within an MSHCP special linkage and criteria area, Yucaipa Onion Survey Area or Burrowing Owl Survey Area. Although not over a fault line, the site may be subject to liquefaction during an earthquake, but no major geologic hazards have been reported on the site or other limited conditions that would render it unsuitable for this development. The site is prone to flooding and as such will be conditioned to develop improvements to limit/prevent flooding.

4. The site is physically suitable for the density of development proposed under Tentative Tract Map 35694, in that:

Findings of Fact: The overall site is 7.96 acres in size and is relatively flat, sloping downward from the northwest to the southeast. The subdivision has been designed on 3.63 acres to accommodate the development of 12 residential lots that will contain three dwelling units on

each lot at a density of 10 units per acre. According to the density ranges provided in the Land Use Element of the City's General Plan for the Medium Density Residential land use designation and in the City's Zoning Ordinance for the Medium Density Residential zone, a density of 0-10 units per acre is appropriate for a site of this size and configuration.

5. The design of the subdivision and improvements proposed under Tentative Tract Map 35694 is not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat in that:

Findings of Fact: The development is in an area that is already developed and is not in a Burrowing Owl, Los Angeles Pocket Mouse, or Yucaipa Onion Area. The Western Riverside Multiple Species Habitat Conservation Plan has not identified any portion of the project area for preservation. The development of the dwelling units on these lots will reduce the amount of area available for habitat; however, this vacant area is not connected to any other open space habitat, so it has already been isolated ecologically. No impacts to biological resources are expected.

6. The design of the subdivision and improvements proposed under Tentative Tract Map 35694 is not likely to cause serious public health problems in that:

Findings of Fact: The design of the subdivision is in conformance with the City's General Plan, Zoning Ordinance, and Subdivision Ordinance, the construction of all units on the site has been conditioned to comply with all applicable City of Banning ordinances, codes, and standards including, but not limited to, the California Uniform Building Code, the City's Ordinances relating to Storm water runoff management and controls. In addition, the design and construction of all improvements for the subdivision has been conditioned to be in conformance with adopted City Street and Public Works standards. The City's ordinances, codes, and standards have been created based on currently accepted standards and practices for the preservation of the public health, safety and welfare. Finally, the proposed street system throughout the subdivision will improve emergency vehicular access in the immediate neighborhood.

Domestic water is supplied to the project site by the City of Banning. The eventual development of the site will result in the need for domestic water service for 36 residential units. Expected water demand from this development will not substantially deplete groundwater supplies, or interfere with groundwater recharge. The project site occurs in the Banning Hydrologic Subunit and is between the Banning Bench Storage Unit and the East Banning Storage Unit.

The project will be required to implement the City's water efficient landscaping and construction provisions, which will ensure that the least amount of water possible is utilized within the homes.

The applicant will also be required to comply with the City's NPDES standards, requiring that potential pollutants not be allowed to enter surface waters. These City standards will assure that impacts to water quality and quantity will be less than significant.

The applicant is required, in designing site hydrology, to detain the incremental increase in storm flows caused by development on site, and to assure that the flows leaving the site do not exceed the quantity or speed of flows currently exiting the site in the natural condition.

Prior to any development occurring on the site, the City Engineer will approve the drainage analysis for the site, including analysis to demonstrate that flows leaving the site will not increase from the undeveloped condition. These City requirements are expected to lower potential impacts to a less than significant level. The street improvements will improve emergency vehicular access in the immediate neighborhood.

7. The design of the subdivision and improvements proposed under Tentative Tract Map 35694, will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision in that:

Findings of Fact: No easements of record or easements established by judgment of a court of competent jurisdiction for public access across the site have been disclosed in a search of the title records for the site and the City does not otherwise have any constructive or actual knowledge of any such easements.

8. The design of the subdivision of proposed Tentative Tract Map 35694 adequately provides for future passive or natural heating and cooling opportunities in the subdivision in that:

Findings of Fact: Taking into consideration local climate and the existing contour and configuration of the site and its surroundings, the size and configuration of lots within the proposed subdivision have been arranged, to the greatest extent feasible, to permit orientation of structures in an east-west alignment for southern exposure, or to take advantage of natural shade, or to take advantage of prevailing breezes.

SECTION 3. CITY COUNCIL ACTIONS.

The City Council hereby takes the following actions:

1. Approval of Tentative Tract Map 35694 subject to the Conditions of Approval attached hereto and incorporated herein by reference.

PASSED, APPROVED AND ADOPTED this 8th day of January 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-04, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CONDITIONS OF APPROVAL

PROJECT #:	LOT SPLIT #07-4504 (TENTATIVE TRACT MAP 35694) AND DESIGN REVIEW #07-7015
SUBJECT:	SUBDIVISION OF 7.96 ACRES INTO 15, 12 RESIDENTIAL LOTS AND 3 REMAINDER INDUSTRIAL PARCELS, AND APPROVAL OF SIX FACADES
APPLICANT:	SAN G. KONSOLIDATED DEVELOPMENT, LLC
LOCATION:	APPROXIMATELY 230 FEET WEST OF SAN GORGONIO AVENUE BETWEEN BARBOUR AND LINCOLN STREETS, APN's: 540-250-006 & 007

APPLICANT SHALL CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

I. General Requirements	<u>Completion Date</u>
<p>1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.</p>	____/____/____
<p>B. The issuance of these Conditions of Approval do not negate the requirements of the Engineering/Public Works Department or submittal, review, and approval of Street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the City Engineer.</p>	____/____/____

C. Tentative Tract No. 33603 is recommended for approval by the Planning Commission. Full approval is subject to City Council action.	/ /
D. A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for plan check.	/ /
II. Time Limits	
5. This tentative tract map shall expire within 2 years from the date of the final approval unless extended by the City.	/ /
6. Development/Design Review approval shall expire if building permits are not issued or approved use has not commenced within 2 years from the date of final approval. In addition, if after commencement of construction, work is discontinued for a period of one year, the Design Review shall become null and void. The Community Development Director may, upon an application being filed 30 days prior to expiration and for good cause, grant one time extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Design Review complies with all current Ordinance provisions.	/ /
III. Site Development	
G. With the exception of the rear yard setback (along the northern property line) the site shall be developed and maintained in accordance with the approved plans which include site plans, architectural elevations, exterior materials and colors, landscaping, sign program, and grading on file in the Planning Division, the conditions contained herein, Development Code regulations. The dwelling units shall maintain a 10 rear yard setback (along the northern property line).	/ /
H. Prior to use of the project site, the applicant shall submit to the City a Design Review application for all home unit designs. Said application must be reviewed and approved by the Planning Commission prior to development of the site, including grading activities.	/ /
I. Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.	/ /
J. The Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the Final Map or prior to the issuance of building permits, whichever occurs first. A recorded copy shall be provided to the City Engineer.	/ /
K. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.	/ /

L. Occupancy of the facilities shall not commence until such time as all Uniform Building Code and State Fire Marshal regulations have been complied with. Prior to occupancy, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. The buildings shall be inspected for compliance prior to occupancy.	/ / /
M. Revised site plans and building elevations incorporating all Conditions of Approval shall be submitted for Community Development Director review and approval prior to the issuance of building permits.	/ / /
N. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or prior to final map approval in the case of a custom lot subdivision, or approved use has commenced, whichever comes first.	/ / /
O. Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.	/ / /
P. A detailed on-site lighting plan, including a photometric diagram, that illustrates "0" lumens at the property line, shall be reviewed and approved by the Community Development Director (922-3125) prior to the issuance of building permits. Such plan shall indicate style, illumination, location, height, and method of shielding so as not to adversely affect adjacent properties.	/ / /
Q. A detailed "As-Built" lighting plan, including a photometric diagram, shall be prepared and submitted after the lighting has been erected and before a certificate of occupancy is issued. Said plan must be consistent with the on-site lighting plan that illustrates "0" lumens at the property line. Prior to the issuance of a certificate of occupancy, the applicant shall work with Staff to reduce the lighting levels to "0" lumens at the property line if the "As-Built" plans demonstrate more than "0" lumens at the property line.	/ / /
R. Any portion of the site that has been graded but that has no development activity for 45 days shall be landscaped, including all parkways and open areas. Landscaping shall be permanently maintained by the property owner, homeowners' association, or other means acceptable to the City. Proof of this landscape maintenance shall be submitted for Community Development Director and City Engineer review and approved prior to the issuance of building permits.	/ / /
S. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.	/ / /
T. Return walls and corner side walls shall be decorative masonry.	/ / /

U. Six-foot decorative block walls shall be constructed along the project perimeter. If a double wall condition would result, the developer shall make a good faith effort to work with the adjoining property owners to provide a single wall. Developer shall notify, by mail, all contiguous property owners at least 30 days prior to the removal of any existing walls/ fences along the project's perimeter.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
V. No slope shall exceed five (5) feet in height.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
W. All ground-mounted utility appurtenances such as transformers, AC condensers, etc., shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berthing, and/or landscaping to the satisfaction of the Community Development Director. Transformers shall be placed in underground vaults.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
X. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
Y. Graffiti shall be removed within 72 hours.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
Z. The entire site shall be kept free from trash and debris at all times and in no event shall trash and debris remain for more than 24 hours.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
AA. All construction shall be conducted to comply with the following standards which shall be incorporated into the lease agreements for all tenants:	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
1. Noise Level - All commercial activities shall not create any noise that would exceed an exterior noise level of 60 dB during the hours of 10 p.m. until 7 a.m. and 65 dB during the hours of 7 a.m. until 10 p.m.	
BB. Textured pavement shall be provided in accordance with the City of Banning standards across circulation aisle and pedestrian walkway.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
CC. The lighting fixture design shall compliment the architectural program (as submitted). It shall include the plaza area lighting fixtures, building lighting fixtures (exterior), and parking lot lighting fixtures.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
IV. Building Design	
30. All dwellings shall have the front, side and rear elevations upgraded with architectural treatment as submitted and approved by the Planning Commission.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>
31. All roof appurtenances, including air conditioners and other roof mounted equipment and/or projections shall be shielded from view and the sound buffered from adjacent properties and streets as required by the Planning Division. Such screening shall be architecturally integrated with the building design and constructed to the satisfaction of the Community Development Director. Details shall be included in building plans.	<input type="checkbox"/> / <input type="checkbox"/> / <input type="checkbox"/>

Parking and Vehicular Access (indicate details on building plans)	
32. At least 22 parking spaces shall be 9 feet wide by 19 feet long. When a side of any parking space abuts a building, wall, support column, or other obstruction, the space shall be a minimum of 11 feet wide.	/ /
33. All parking lot landscape islands shall have a minimum outside dimension of 6 feet and shall contain a 12-inch walk adjacent to the parking stall (including curb). Said islands shall be designed to accept nuisance parking lot water flows.	/ /
34. All parking spaces shall be striped per City standards and all driveway aisles, entrances, and exits shall be striped per City standards.	/ /
35. Handicap accessible stalls shall be provided for commercial and office facilities. One in every 8 handicap parking stalls (no less than 1) shall be served by an access aisles 96" wide min. placed opposite the driver's side and shall be designated Van-Accessible.	/ /
36. If required in the future, the agrees to provide reciprocal access through the site to the adjacent (east and west of the subject site) sites. The applicant may be required to modify the parking layout to accommodate such access.	/ /
37. The parking lot shall be graded so as to discharge nuisance water into the landscape areas. Said design must also include the standard water discharge requirements.	/ /
Trip Reduction	
38. Transit improvements such as bus shelters, bus pullouts, and bus pads shall be provided, if required by the City's transit service.	/ /
Landscaping	
39. A detailed landscape and irrigation plan shall be prepared by a licensed landscape architect and submitted for Community Development Director review and approval prior to the issuance of building permits or prior final map approval in the case of a custom lot subdivision.	/ /
40. Existing trees required to be preserved in place shall be protected with a construction barrier, and so noted on the grading plans. The location of those trees to be preserved in place and new locations for transplanted trees shall be shown on the detailed landscape plans. The applicant shall follow all of the arborist's recommendations regarding preservation, transplanting, and trimming methods.	/ /
41. A minimum of 30% within commercial and office projects, shall be specimen size trees - 24-inch box or larger.	/ /
42. For single family residential development, all slope planting and irrigation shall be continuously maintained in a healthy and thriving condition by the developer until each individual unit is sold and occupied by the buyer. Prior to releasing occupancy for those units, an inspection shall be conducted by the Planning Division to determine that they are in satisfactory condition.	/ /

43. Within parking lots, trees shall be planted at a rate of one 15-gallon tree for every three parking stalls, sufficient to shade 50% of the parking area at solar noon on August 21.	<input type="checkbox"/> / <input type="checkbox"/> /
44. Trees shall be planted in areas of public view adjacent to and along structures at a rate of one tree per 30 linear feet of building.	<input type="checkbox"/> / <input type="checkbox"/> /
45. For commercial development, property owners are responsible for the continual maintenance of all landscaped areas on-site, as well as contiguous planted areas within the public right-of-way. All landscaped areas shall be kept free from weeds and debris and maintained in healthy and thriving condition, and shall receive regular pruning, fertilizing, mowing, and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days from the date of damage.	<input type="checkbox"/> / <input type="checkbox"/> /
46. The final design of the perimeter parkways, walls, landscaping, and sidewalks shall be included in the required landscape plans and shall be subject to Community Development Director review and approval and coordinated for consistency with any parkway landscaping plan which may be required by the Engineering Division.	<input type="checkbox"/> / <input type="checkbox"/> /
47. Landscaping and irrigation systems required to be installed within the public right-of-way on the perimeter of this project area shall be continuously maintained by the developer.	<input type="checkbox"/> / <input type="checkbox"/> /
48. All walls shall be provided with decorative treatment. If located in public maintenance areas, the design shall be coordinated with the Engineering Division.	<input type="checkbox"/> / <input type="checkbox"/> /
49. Tree maintenance criteria shall be developed and submitted for Community Development Director review and approval prior to issuance of building permits. These criteria shall encourage the natural growth characteristics of the selected tree species.	<input type="checkbox"/> / <input type="checkbox"/> /
50. Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape.	<input type="checkbox"/> / <input type="checkbox"/> /
Other Agencies	<input type="checkbox"/> / <input type="checkbox"/> /
51. The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. Multi-family residential developments shall provide a solid overhead structure for mail boxes with adequate lighting. The final location of the mail boxes and the design of the overhead structure shall be subject to Community Development Director review and approval prior to the issuance of building permits.	<input type="checkbox"/> / <input type="checkbox"/> /
APPLICANT SHALL CONTACT THE BUILDING AND SAFETY DIVISION, (951) 922-3120, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:	
General Requirements	<input type="checkbox"/> / <input type="checkbox"/> /
52. Submit four complete sets of plans including the following:	
i. Site/Plot Plan;	
ii. Foundation Plan;	

iii.	Floor Plan;	
iv.	Ceiling and Roof Framing Plan;	
v.	Electrical Plans (2 sets, detached) including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;	
vi.	Plumbing and Sewer Plans, including isometrics, underground diagrams, water and waste diagram, sewer or septic system location, fixture units, gas piping, and heating and air conditioning; and	
53.	Submit two sets of structural calculations, energy conservation calculations, and a soils report. Architect's/Engineer's stamp and "wet" signature are required prior to plan check submittal.	/
54.	Separate permits are required for fencing and/or walls.	/
55.	Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.	/
56.	Business shall not open for operation prior to posting the Certificate of Occupancy issued by the Building and Safety Division.	/
Site Development		
57.	Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number (i.e., CUP 98-01). The applicant shall comply with the latest adopted Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electric Code, Title 24 Accessibility requirements, and all other applicable codes, ordinances, and regulations in effect at the time of permit application. Please contact the Building and Safety Division for availability of the Code Adoption Ordinance and applicable handouts.	/
58.	Prior to issuance of building permits for a new commercial the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to: Transportation Development Fee, Drainage Fee, School Fees, Permit and Plan Checking Fees. Applicant shall provide a copy of the school fees receipt to the Building and Safety Division prior to permit issuance.	/
59.	Construction activity shall not occur between the hours of 8:00 p.m. and 6:30 a.m. Monday through Saturday, with no construction on Sunday or holidays.	/

New Structures	/
60. Provide compliance with the Uniform Building Code for the property line clearances considering use, area, and fire-resistiveness.	/
61. Provide compliance with the Uniform Building Code for required occupancy separation(s).	/
62. Roofing material shall be installed per the manufacturer's "high wind" instructions.	/
63. Plans for food preparation areas shall be approved by County of Riverside Environmental Health Services prior to issuance of building permits.	/
64. Provide draft stops in attic areas, not to exceed 3,000 square feet, in accordance with UBC Table 5-A.	/
65. Provide draft stops in attics in line with common walls.	/
66. Roofing materials shall be Class "A."	/
67. Exterior walls shall be constructed of the required fire rating in accordance with UBC Table 5-A	/
68. Openings in exterior walls shall be protected in accordance with UBC Table 5-A.	/
69. If the area of habitable space above the first floor exceeds 3,000 square feet, then the construction type shall be V-1 Hour.	/
70. Walls and floors separating dwelling units in the same building shall be not less than 1-hour fire-resistive construction.	/
71. Provide smoke and heat venting in accordance with UBC Section 906.	/
72. Provide method of airborne and impact sound transmission control between dwelling units.	/
73. Upon tenant improvement plan check submittal, additional requirements may be needed.	/

Grading	/
74. Grading of the subject property shall be in accordance with the Uniform Building Code, City Grading Standards, and accepted grading practices. The final grading plan shall be in substantial conformance with the approved grading plan.	/
75. A soils report shall be prepared by a qualified engineer licensed by the State of California to perform such work.	/
76. A geological report shall be prepared by a qualified engineer or geologist and submitted at the time of application for grading plan check.	/
77. The final grading plans shall be completed and approved prior to issuance of building permits.	/
78. All grading related reports, including but not limited to, soils report, geological report, pad certification, etc. shall be reviewed and approved by the City of Banning Engineer in accordance with all the applicable code requirements.	/
79. The following requirements shall be met: <ul style="list-style-type: none"> a. Surety shall be posted and an agreement executed guaranteeing completion of all on-site drainage facilities necessary for dewatering all parcels to the satisfaction of the Building and Safety Division prior to final map approval and prior to the issuance of grading permits. b. Appropriate easements for safe disposal of drainage water that are conducted onto or over adjacent parcels, are to be delineated and recorded to the satisfaction of the Building and Safety Division prior to issuance of grading and building permits. c. On-site drainage improvements, necessary for dewatering and protecting the subdivided properties, are to be installed prior to issuance of building permits for construction upon any parcel that may be subject to drainage flows entering, leaving, or within a parcel relative to which a building permit is requested. d. Final grading plans for each parcel are to be submitted to the Department of Public Works for approval prior to issuance of building and grading permits. This may be on an incremental or composite basis. Said approval must be included prior to permit issuance by the Department of Building and Safety. 	/
80. A separate grading plan check submittal is required for all new construction projects and for existing buildings where improvements being proposed will generate 50 cubic yards or more of combined cut and fill. The Grading Plan shall be prepared, stamped, and signed by a California Registered Civil Engineer.	/

APPLICANT MAY CONTACT THE ENGINEERING DIVISION, (951) 922-3130, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

General Requirements	Completion Date
81. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.	____/____/____
82. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies: <ul style="list-style-type: none"> • Fire Marshal • Public Works Department (Grading Permit, Improvement Permit) • Community Development Department • Riverside County Environmental Health Department • Banning Unified School District • California Regional Water Quality Control Board Colorado River Basin (RWQCB) • South Coast Air Quality Management District (SCAQMD) <p>The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.</p>	____/____/____

83. The following improvement plans shall be prepared by a civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

A. On-Site Grading Plan 1" = 40' Horizontal
(all conditions of approval shall be reproduced on last sheet of set)

B. Clearing Plan 1" = 50' Horizontal

Include construction fencing plan

C. SWPPP 1" = 40' Horizontal

(Note: A, B, & C shall be processed concurrently.)

D. Street Improvement Plan 1" = 40' Horizontal

1" = 4' Vertical

E. Landscaping Plan 1"=20' Horizontal

E. Landscaping Plan 1"=20' Horizontal

F. Signing & Striping Plan 1" = 40' Horizontal

G. Construction Traffic Control Plan 1"=40' Horizontal

(major or arterial highways only)

Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

84. Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions.	____ / ____
85. All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City Codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired in the residence.	____ / ____
Rights of Way	
86. Prior to issuance of any permit(s), the applicant shall acquire or confer property rights necessary for the construction or proper functioning of the proposed development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements.	____ / ____
87. Offer to dedicate for public purposes the right-of-way for Barbour Street as a collector highway; 66 foot width. Offers of dedication shall include corner cut-off at intersections.	____ / ____
88. Direct vehicular access along Barbour Street shall be restricted, except for those access points identified on the approved site plan, or as otherwise conditioned in these conditions of approval. The vehicular access restriction shall be recorded on the final map.	
89. Submit a copy of the Title Report to the City Engineer prior to grading plan review and approval.	
90. Prior to the issuance of any certificates of occupancy, the applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.	____ / ____
Public Improvements	
91. Construct half street plus improvements in accordance with City standards fronting Barbour Street to San Gorgonio Avenue (State Route 243) including street lighting, curb and gutter, access ramps, sidewalk, and asphalt concrete paving, traffic signs and striping, and any transitions. The minimum width of the traveled way shall be 32 feet. Street lights along Barbour Street shall be installed offset of the existing street lights.	____ / ____

Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.	
92. All street improvement design shall provide pavement transitions per Caltrans standards for transition to existing street sections.	/ /
93. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee, prior to the issuance of a certificate of occupancy.	
94. All required public improvements shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.	/ /
Grading and Drainage	
95. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC), RCFC Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.	/ /
96. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Note: An identified floodway exists onto the existing property as identified in Flood Boundary and Floodway Map dated October 17, 1978.	/ /
97. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The project shall accept and convey storm flows from the adjacent developed property to the north and west.	/ /
98. Prior to approval of the grading plan the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP's) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.	/ /

<p>99. The applicant shall comply with Chapter 34 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code Appendix Chapter 33 "Excavation and Grading"; and the State Water Resources Control Board's Order No. 99-08-DWQ.</p> <p>A. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.</p> <p>B. The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any on-site or off-site grading being done in relation to this project.</p> <p>C. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through, and including acceptance of all improvements by the City.</p> <p>D. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):</p> <ol style="list-style-type: none"> 1. Temporary Soil Stabilization (erosion control). 2. Temporary Sediment Control. 3. Wind Erosion Control. 4. Tracking Control. 5. Non-Storm Water Management. 6. Waste Management and Materials Pollution Control. <p>e. All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.</p> <p>f. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.</p>	____ / ____ / ____
<p>100. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.</p>	____ / ____ / ____
<p>101. A precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity. Rough grading plans shall include perimeter walls with top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions.</p>	____ / ____ / ____
<p>102. Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.</p>	____ / ____ / ____

Landscaping (Right-of-Way)	
103. An automatic sprinkler system and landscaping shall be installed, prior to occupancy of the first unit of the development, within the parkway fronting Barbour Street. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.	____/____/____
104. Landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.	____/____/____
Traffic	
105. Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer.	____/____/____
106. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.	____/____/____
Trash/Recycling	
107. The developer shall participate in the City's recycling program by providing two trash receptacles, one for regular trash and one for recycling, within the trash enclosure. The trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.	____/____/____
108. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler for disposal of construction debris.	____/____/____
Final Map	
109. Revisions to the approved tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in accordance with the Subdivision Map Act.	____/____/____

110. Prior to approval of any Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.	<input type="checkbox"/> / /
111. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows: Faithful Performance Bond - 100% of estimated cost Labor and Material Bond - 100% of estimated cost Monumentation Bond - \$10,000.00	<input type="checkbox"/> / /
<i>Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.</i>	
112. Submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to final map approval.	<input type="checkbox"/> / /
113. A map of the proposed subdivision drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.	<input type="checkbox"/> / /
114. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.	<input type="checkbox"/> / /
115. Public Works Inspection fees shall be paid prior to the scheduling the final map for approval by City Council in accordance with the Fee Schedule in effect at time of time of scheduling.	
116. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.	<input type="checkbox"/> / /
117. A plan storage fee shall be paid prior to approval of the final map and improvement plans in accordance with the Fee Schedule in effect at the time the fee is paid.	<input type="checkbox"/> / /
118. A Traffic Control mitigation fee shall be paid on a per lot basis prior to issuance of building permits.	<input type="checkbox"/> / /
APPLICANT SHALL CONTACT THE WATER AND WASTE WATER UTILITY AT (951) 922-3281 FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:	

<u>WATER</u>	
119. Submit Water Improvement Plans to the Water Division for review and approval. Design and construct water lines on Barbour Street from San Gorgonio Street to the west property line of the project and on the main driveway within a 20' wide easement from Barbour Street to the north property line of the project.	____/____/____
120. All water lines and fittings shall be a minimum of 8" diameter and shall be DIP or 10-gauge steel pipes, cement mortar lined & wrapped	____/____/____
121. Each unit within a triplex is to have its own water service. Water meters to be installed at a location along the main driveway into project	____/____/____
122. Fire hydrants shall be installed within and on the project boundaries as per the approval plans, at a 300' maximum spacing.	____/____/____
123. Request a Reimbursement Agreement for the construction of the water line on Barbour Street for those who benefit from the new water line.	
124. A backflow device must be installed on commercial developments and for each irrigation water connection; and in compliance with the State of California Department of Health Regulations. Contact the City of Banning, Water Operations Division, prior to the installation.	____/____/____
<u>SEWER</u>	
125. Submit Sewer Improvement Plans to the Sewer Division for review and approval. Design and construct sewer lines on Barbour Street from the east property line of project to the existing sewer line located at the west property line of project and on all the driveways within 20' wide easements for the project.	____/____/____
126. All sewer lines shall be extra strength Vitrified Clay Pipe and the sewer mains shall be a minimum of 8" diameter.	____/____/____
127. Each unit within a triplex is to have its own sewer service lateral	____/____/____
128. A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.	____/____/____
129. Request a Reimbursement Agreement for the construction of the sewer line on Barbour Street for those who benefit from the new sewer line.	____/____/____
<u>FEES</u>	____/____/____
130. Water Connection Fees shall be paid per EDU (EDU is based upon meter size), Sewer Connection Fees shall be paid per EDU (EDU for commercial types will be based upon the estimated quality and quantity of discharge into the sewerage system), and Water Meter Installation charges shall all be paid at the time of issuance of building permits, for this project in accordance with the fee schedule in effect at the time the fees are paid. Also, pay all water and sewer frontage fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted, prior to plan checking proceedings.	____/____/____
<u>APPLICANT SHALL CONTACT ELECTRICAL OPERATIONS DEPARTMENT FOR COMPLIANCE WITH THE FOLLOWING CONDITION:</u>	

<p>131. Provide electrical plans and load calculation for review.</p> <ul style="list-style-type: none"> Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. The plans are required in electronic format, we currently use AutoCad2006. Plans should consist of a plot plan, site plan signed and approved by city engineering, one line diagram of proposed electrical main service panels and a sheet showing load calculation by an electrical engineer. Additional sheets may be required upon request. Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension. Granting easement for electric facilities installation/maintenance, etc. All trenching, backfill, and compaction. All conduits, vaults, and other materials associated with their installation (except primary cables and their terminations). Installation of Streetlight poles and conduit. Developer / electrical contractor to provide and install secondary service entrance conductors spec by utility department from transformer to service panel pull section 	/ /
<p>132. The City Electric Department shall be responsible for:</p> <ul style="list-style-type: none"> Reviewing plans submitted by customer. Design an electrical utility plan for the installation of structures and conduit by developer. Providing a cost estimate for installing an underground electrical system for this project. Inspecting all trenches prior to backfilling. 24 hour prior notice is required before inspection. Installation of primary cable and terminations 	/ /
<p>APPLICANT SHALL CONTACT THE FIRE MARSHAL AT, (951) 922-3210 FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:</p>	/ /

FIRE DEPARTMENT DEVELOPER FEES:	/ /
133. Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.	
<p>Commercial, Industrial and/or Office Complex:</p> <ul style="list-style-type: none"> • \$.579 per square foot Commercial • \$.821 per square foot Dental Office + • \$ 25.00 per unit Disaster Planning <p>Plan Check and Inspection: \$ 118.00 per hour</p> <p>Exception, Sprinkler and Alarm System Plan Check</p> <p>See Number (7) for Fee Schedule.</p>	
CODE COMPLIANCE:	/ /
134. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws as applicable.	
PREMISES IDENTIFICATION:	/ /
135. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.	
Commercial: 6" mm. size	
FLAMMABLE LIQUID:	/ /
136. The storage, use, dispensing and mixing of flammable and combustible liquids shall be in accordance with UFC Article 79 and UBC Section 307.	
INSPECTIONS:	/ /
137. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.	
138. Fee for each inspection is \$118.00 per hour per person.	
139. <i>WORK BEGUN WITHOUT A PERMIT OR WITHOUT AN APPROVED SET OF PLANS AT THE JOB SITE WILL RESULT IN A TRIPLE FEE AND/OR THE WORK STOPPED.</i>	

HAZARDOUS MATERIALS:	_____ / _____ / _____
140. The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of UFC Article 80 and UBC Section 307, in addition to all federal, state and local laws or ordinances.	Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.
OTHER:	_____ / _____ / _____
141. To maintain proper distance of 150 feet from a fire hydrant to a building, a fire hydrant will have to be installed at each driveway intersection. The 150 foot requirement can be increase to 250 feet if fire sprinklers are installed as described above.	_____ / _____ / _____
142. Because of the length each east/west drive aisle and the distance of the last house on each drive aisle from the main access road, the developer must either provide a "hammerhead" turnaround on each aisle or equip the last building on the end of each aisle with an automatic fire sprinkler system.	_____ / _____ / _____

*LOT SPLIT #07-4504 /
TTM 35694 AND
DESIGN REVIEW #07-7015*

*RESOLUTION
NO. 2008-09*

EXHIBIT “2”

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RESOLUTION NO. 2008-09

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA, APPROVING DESIGN REVIEW #07-7015 TO CONSTRUCT UP TO 36 TWO-STORY ATTACHED DWELLING UNITS (TRIPLEXES) ON 12 RESIDENTIAL LOTS IN THE MEDIUM DENSITY RESIDENTIAL ZONE, APN: 540-250-006 & 007.

WHEREAS, an application for Design Review #07-7015 to construct 36 two-story attached dwelling units (triplexes) has been duly filed by:

Applicant / Owner:	San G. Konsolidated Development, LLC
Authorized Agent:	Darwin Manuel
Project Location:	Between Barbour and Lincoln Streets, approximately 230 feet west of San Gorgonio Avenue, portions of the property (130 lineal feet) abut San Gorgonio Avenue
APN Number:	540-250-006 & 007.
Lot Area:	7.96 Acres

WHEREAS, the City Council has the authority per section 9114.00 of the Banning Municipal Code to take action on Design Review #07-7015 to develop 36 two-story attached dwelling units (triplexes) with 6 facades in the Medium Density Residential zone; and

WHEREAS, on December 4, 2007, the Planning Commission held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Design Review at which the Planning Commission considered and approved Resolution No. 2007-44 recommending approval of the said Design Review application; and

WHEREAS, on December 28, 2007 the City gave public notice by advertising in the Record Gazette, a newspaper of general circulation within the City of Banning, and by mailing notices to property owners within 300 feet of the project of the holding of a public hearing at which the project would be considered; and

WHEREAS, on January 8, 2008, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Design Review at which the Planning Commission considered the Design Review; and

WHEREAS, the Community Development Director has reviewed the project's potential effects on the environment and has recommended that the project is categorically exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines Section 15332 "In-fill" Development and that the exceptions to the categorical exemptions contained in CEQA Guidelines Section 15300.2 are not applicable to the project.

NOW THEREFORE, the City Council of the City of Banning does Resolve, Determine, Find and Order as follows:

SECTION 1. REQUIRED FINDINGS.

Pursuant to Banning Municipal Code Section 9114.00 and in light of the record before it including the staff report dated January 8, 2008, all evidence and testimony heard at the public hearing of this item, the City Council hereby finds as follows:

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

Findings of Fact: The General Plan Land Use Element designation is Medium Density Residential which allows multi-family uses. This development proposes twelve triplex lots; a land use permitted by the General Plan.

Policy 3 of the General Plan Land Use Element indicates that development be of high quality projects. This project, as designed, will include Cape Cod architectural style, with stone accents, wood-like and stucco siding, porches, patios, and built-in barbeques for each unit that will result in a high quality design that is consistent with this Policy.

Finding No. 2: The proposed project is consistent with the Zoning Ordinance, including the development standards and guidelines for the district in which it is located.

Findings of Fact: The Zoning District designation is Medium Density Residential, which allows the development of this project. With the exception of the rear yard setback, the project meets or exceeds the development standards for this district, including:

- Minimum required front yard setback is 15' versus 15' provided;
- Minimum required rear yard setback is 10' versus 9' provided;
- Minimum required side yard setback is 0' versus 10' provided;
- Maximum lot coverage is 32% provided versus 40% maximum permitted;
- Maximum height is 2-story/ 35' versus 2-story/ 24' provided;
- 108 parking space are required versus 108 provided; and
- 9 guest spaces required versus 24 spaces provided.

As conditioned herein, the project will be required to comply with the 10' rear yard setback.

Finding No. 3: The design and layout of the proposed project will not unreasonably interfere with the use and enjoyment of neighboring existing or future development, and will not result in vehicular and/or pedestrian hazards.

Facts of Fact: The design and layout of the proposed project will not unreasonably interfere with future development, and will not result in vehicular and or pedestrian hazards because of the following:

- As designed, the project will have a single point of access from Barbour Street thereby limited turning movements into and out of the subject site;
- As conditioned the project's illumination will not spill over onto adjacent properties;
- The project provides ample parking (132 provided versus 117 required); and
- As conditioned, the project will be required to improve the surrounding streets in accordance with the applicable City standards.

Finding No. 4: The design of the proposed project is compatible with the character of the surrounding neighborhood.

Findings of Fact: The project proponent proposes a Cape Cod architectural style with a three-tab shingle roof, stone accents and wood-like and stucco siding. This style is similar to the adjacent apartment complex.

SECTION 2. ENVIRONMENTAL FINDINGS.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines and Thresholds of Significance, the recommendation of the Community Development Director as provided in the Staff Report dated January 8, 2008, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and § 21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CEQA:

(a) The project is exempt from CEQA as stipulated by CEQA Guidelines Section 15332 in that the staff report submitted by the Planning Department and other findings made in this Resolution demonstrate that: the Design Review #07-7015 is consistent with the Medium Density Residential and Industrial General Plan designation and all applicable General Plan policies as well as with applicable zoning designations; Design Review #07-7015 is located within the boundaries of the City of Banning; overall the property is 7.96 acres in size, but the project area proposed for development is less than five acres (3.64 acres) and has no value as habitat for endangered, rare or threatened species; there is no substantial evidence in the record that Design Review #07-7015 will result in significant effects related to traffic, noise, air quality, or water quality; and the site is or can be adequately served by all required utilities and public services. As such, the project meets the criteria for application of a Class 32 Categorical Exemption under the CEQA Guidelines.

(b) None of the exceptions to the categorical exemptions contained in CEQA Guidelines Section 15300.2 prevent CEQA Guidelines Section 15322 from exempting the project for the following reasons:

(i) The project is not a Class 3, 4, 5, 6, or 11 project, and therefore is not subject to the exception pertaining to projects located in particularly sensitive environments

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(ii) The nature of the project is such that significant cumulative impacts will not occur from successive projects of this type occurring in the same location over time. The proposed use is allowed, and will not impair the integrity and character of the land use district in which it is to be located because it is surrounded by other Medium Density Residential uses and Industrial properties (existing and pending residential and industrial projects).

(iii) There is no reasonable possibility that unusual circumstances will cause the project to have a significant effect on the environment. There is no evidence that the proposed project will have the potential for any adverse effect on wildlife resources or the habitat upon which wildlife depends. The site was found to contain no suitable habitat for threatened or endangered species. There is no evidence of a vernal pool complex, similar bodies of water, or conditions suitable for forming such bodies of water exist on the site. The site is devoid of vegetation and it is flat (unable to support bodies of water).

(iv) The project will not result in damage to scenic resources within a designated state scenic highway because there is no designated state scenic highway in the project area.

(v) The project site has not been listed as a hazardous waste and substance facility or site by the Department of Toxic Substances Control pursuant to California Government Code Section 659625.

(vi) The project will not cause a substantial adverse change to the significance of a historical resource. The site is vacant, and no historical resource exists on the site; the immediate surroundings will not be demolished, destroyed, relocated, or altered such that the significance of the historical resource would be materially impaired.

2. Multiple Species Habitat Conservation Plan (MSHCP). The project is found to be consistent with the MSHCP. The project is located outside of any MSHCP criteria area and mitigation is provided through payment of the MSHCP Mitigation Fee.

SECTION 3. CITY COUNCIL ACTIONS.

The City Council takes the following action:

1. Approval of Design Review #07-7015 subject to the Conditions of Approval attached hereto and incorporated herein by reference as Attachment "1"

PASSED, APPROVED AND ADOPTED this 8th day of January 2008.

Brenda Salas, Mayor
City of Banning

Resolution No. 2008-09

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

Burke, Williams & Sorensen
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2008-09, was duly adopted by the City Council of the City of Banning, California, at a regular meeting thereof held on the 8th day of January 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

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

CONDITIONS OF APPROVAL

PROJECT #:	LOT SPLIT #07-4504 (TENTATIVE TRACT MAP 35694) AND DESIGN REVIEW #07-7015
SUBJECT:	SUBDIVISION OF 7.96 ACRES INTO 15, 12 RESIDENTIAL LOTS AND 3 REMAINDER INDUSTRIAL PARCELS, AND APPROVAL OF SIX FACADES
APPLICANT:	SAN G. KONSOLIDATED DEVELOPMENT, LLC
LOCATION:	APPROXIMATELY 230 FEET WEST OF SAN GORGONIO AVENUE BETWEEN BARBOUR AND LINCOLN STREETS, APN's: 540-250-006 & 007

APPLICANT SHALL CONTACT THE PLANNING DIVISION, (951) 922-3125, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

I. General Requirements	<u>Completion Date</u>
<p>1. The applicant shall indemnify, protect, defend, and hold harmless, the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, from any and all claims, demands, lawsuits, writs of mandamus, and other actions and proceedings (whether legal, equitable, declaratory, administrative or adjudicatory in nature), and alternative dispute resolutions procedures (including, but not limited to arbitrations, mediations, and other such procedures), (collectively "Actions"), brought against the City, and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof, that challenge, attack, or seek to modify, set aside, void, or annul, the action of, or any permit or approval issued by, the City and/or any of its officials, officers, employees, agents, departments, agencies, and instrumentalities thereof (including actions approved by the voters of the City), for or concerning the project, whether such Actions are brought under the California Environmental Quality Act, the Planning and Zoning Law, the Subdivisions Map Act, Code of Civil Procedure Section 1085 or 1094.5, or any other state, federal, or local statute, law, ordinance, rule, regulation, or any decision of a competent jurisdiction. It is expressly agreed that the City shall have the right to approve, which approval will not be unreasonably withheld, the legal counsel providing the City's defense, and that applicant shall reimburse City for any costs and expenses directly and necessarily incurred by the City in the course of the defense. City shall promptly notify the applicant of any Action brought and City shall cooperate with applicant in the defense of the Action.</p>	1/1
<p>B. The issuance of these Conditions of Approval do not negate the requirements of the Engineering/Public Works Department or submittal, review, and approval of Street improvement plans, signing and striping plans, grading plans, storm drain improvement plans, street lighting plans, water, sewer, and electrical improvement plans, or other plans as deemed necessary by the City Engineer.</p>	1/1

C. Tentative Tract No. 33603 is recommended for approval by the Planning Commission. Full approval is subject to City Council action.	/ /
D. A copy of the signed Resolution of Approval or Community Development Director's letter of approval, and all Standard Conditions, shall be included in legible form on the grading plans, building and construction plans, and landscape and irrigation plans submitted for plan check.	/ /
II. Time Limits	
5. This tentative tract map shall expire within 2 years from the date of the final approval unless extended by the City.	/ /
6. Development/Design Review approval shall expire if building permits are not issued or approved use has not commenced within 2 years from the date of final approval. In addition, if after commencement of construction, work is discontinued for a period of one year, the Design Review shall become null and void. The Community Development Director may, upon an application being filed 30 days prior to expiration and for good cause, grant one time extension not to exceed 12 months. Upon granting of an extension, the Community Development Director shall ensure that the Design Review complies with all current Ordinance provisions.	/ /
III. Site Development	
G. With the exception of the rear yard setback (along the northern property line) the site shall be developed and maintained in accordance with the approved plans which include site plans, architectural elevations, exterior materials and colors, landscaping, sign program, and grading on file in the Planning Division, the conditions contained herein, Development Code regulations. The dwelling units shall maintain a 10 rear yard setback (along the northern property line).	/ /
H. Prior to use of the project site, the applicant shall submit to the City a Design Review application for all home unit designs. Said application must be reviewed and approved by the Planning Commission prior to development of the site, including grading activities.	/ /
I. Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.	/ /
J. The Covenants, Conditions, and Restrictions (CC&Rs) and Articles of Incorporation of the Homeowners' Association are subject to the approval of the Planning and Engineering Divisions and the City Attorney. They shall be recorded concurrently with the Final Map or prior to the issuance of building permits, whichever occurs first. A recorded copy shall be provided to the City Engineer.	/ /
K. Prior to any use of the project site or business activity being commenced thereon, all Conditions of Approval shall be completed to the satisfaction of the Community Development Director.	/ /

L. Occupancy of the facilities shall not commence until such time as all Uniform Building Code and State Fire Marshal regulations have been complied with. Prior to occupancy, plans shall be submitted to the City of Banning Fire Marshal and the Building and Safety Division to show compliance. The buildings shall be inspected for compliance prior to occupancy.	/ /
M. Revised site plans and building elevations incorporating all Conditions of Approval shall be submitted for Community Development Director review and approval prior to the issuance of building permits.	/ /
N. All site, grading, landscape, irrigation, and street improvement plans shall be coordinated for consistency prior to issuance of any permits (such as grading, tree removal, encroachment, building, etc.) or prior to final map approval in the case of a custom lot subdivision, or approved use has commenced, whichever comes first.	/ /
O. Approval of this request shall not waive compliance with all sections of the Development Code, all other applicable City Ordinances, and applicable Community or Specific Plans in effect at the time of building permit issuance.	/ /
P. A detailed on-site lighting plan, including a photometric diagram, that illustrates "0" lumens at the property line, shall be reviewed and approved by the Community Development Director (922-3125) prior to the issuance of building permits. Such plan shall indicate style, illumination, location, height, and method of shielding so as not to adversely affect adjacent properties.	/ /
Q. A detailed "As-Built" lighting plan, including a photometric diagram, shall be prepared and submitted after the lighting has been erected and before a certificate of occupancy is issued. Said plan must be consistent with the on-site lighting plan that illustrates "0" lumens at the property line. Prior to the issuance of a certificate of occupancy, the applicant shall work with Staff to reduce the lighting levels to "0" lumens at the property line if the "As-Built" plans demonstrate more than "0" lumens at the property line.	/ /
R. Any portion of the site that has been graded but that has no development activity for 45 days shall be landscaped, including all parkways and open areas. Landscaping shall be permanently maintained by the property owner, homeowners' association, or other means acceptable to the City. Proof of this landscape maintenance shall be submitted for Community Development Director and City Engineer review and approved prior to the issuance of building permits.	/ /
S. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.	/ /
T. Return walls and corner side walls shall be decorative masonry.	/ /

U. Six-foot decorative block walls shall be constructed along the project perimeter. If a double wall condition would result, the developer shall make a good faith effort to work with the adjoining property owners to provide a single wall. Developer shall notify, by mail, all contiguous property owners at least 30 days prior to the removal of any existing walls/ fences along the project's perimeter.	/ /
V. No slope shall exceed five (5) feet in height.	/ /
W. All ground-mounted utility appurtenances such as transformers, AC condensers, etc., shall be located out of public view and adequately screened through the use of a combination of concrete or masonry walls, berthing, and/or landscaping to the satisfaction of the Community Development Director. Transformers shall be placed in underground vaults.	/ /
X. The developer shall submit a construction access plan and schedule for the development of all lots for Community Development Director and City Engineer approval; including, but not limited to, public notice requirements, special street posting, phone listing for community concerns, hours of construction activity, dust control measures, and security fencing.	/ /
Y. Graffiti shall be removed within 72 hours.	/ /
Z. The entire site shall be kept free from trash and debris at all times and in no event shall trash and debris remain for more than 24 hours.	/ /
AA. All construction shall be conducted to comply with the following standards which shall be incorporated into the lease agreements for all tenants:	/ /
1. Noise Level - All commercial activities shall not create any noise that would exceed an exterior noise level of 60 dB during the hours of 10 p.m. until 7 a.m. and 65 dB during the hours of 7 a.m. until 10 p.m.	/ /
BB. Textured pavement shall be provided in accordance with the City of Banning standards across circulation aisle and pedestrian walkway.	/ /
CC. The lighting fixture design shall compliment the architectural program (as submitted). It shall include the plaza area lighting fixtures, building lighting fixtures (exterior), and parking lot lighting fixtures.	/ /
IV. Building Design	
30. All dwellings shall have the front, side and rear elevations upgraded with architectural treatment as submitted and approved by the Planning Commission.	/ /
31. All roof appurtenances, including air conditioners and other roof mounted equipment and/or projections shall be shielded from view and the sound buffered from adjacent properties and streets as required by the Planning Division. Such screening shall be architecturally integrated with the building design and constructed to the satisfaction of the Community Development Director. Details shall be included in building plans.	/ /

Parking and Vehicular Access (indicate details on building plans)		
32.	At least 22 parking spaces shall be 9 feet wide by 19 feet long. When a side of any parking space abuts a building, wall, support column, or other obstruction, the space shall be a minimum of 11 feet wide.	/ /
33.	All parking lot landscape islands shall have a minimum outside dimension of 6 feet and shall contain a 12-inch walk adjacent to the parking stall (including curb). Said islands shall be designed to accept nuisance parking lot water flows.	/ /
34.	All parking spaces shall be striped per City standards and all driveway aisles, entrances, and exits shall be striped per City standards.	/ /
35.	Handicap accessible stalls shall be provided for commercial and office facilities. One in every 8 handicap parking stalls (no less than 1) shall be served by an access aisle 96" wide min. placed opposite the driver's side and shall be designated Van-Accessible.	/ /
36.	If required in the future, the agrees to provide reciprocal access through the site to the adjacent (east and west of the subject site) sites. The applicant may be required to modify the parking layout to accommodate such access.	/ /
37.	The parking lot shall be graded so as to discharge nuisance water into the landscape areas. Said design must also include the standard water discharge requirements.	/ /
Trip Reduction		
38.	Transit improvements such as bus shelters, bus pullouts, and bus pads shall be provided, if required by the City's transit service.	/ /
Landscaping		
39.	A detailed landscape and irrigation plan shall be prepared by a licensed landscape architect and submitted for Community Development Director review and approval prior to the issuance of building permits or prior final map approval in the case of a custom lot subdivision.	/ /
40.	Existing trees required to be preserved in place shall be protected with a construction barrier, and so noted on the grading plans. The location of those trees to be preserved in place and new locations for transplanted trees shall be shown on the detailed landscape plans. The applicant shall follow all of the arborist's recommendations regarding preservation, transplanting, and trimming methods.	/ /
41.	A minimum of 30% within commercial and office projects, shall be specimen size trees - 24-inch box or larger.	/ /
42.	For single family residential development, all slope planting and irrigation shall be continuously maintained in a healthy and thriving condition by the developer until each individual unit is sold and occupied by the buyer. Prior to releasing occupancy for those units, an inspection shall be conducted by the Planning Division to determine that they are in satisfactory condition.	/ /

43. Within parking lots, trees shall be planted at a rate of one 15-gallon tree for every three parking stalls, sufficient to shade 50% of the parking area at solar noon on August 21.	____/____
44. Trees shall be planted in areas of public view adjacent to and along structures at a rate of one tree per 30 linear feet of building.	____/____
45. For commercial development, property owners are responsible for the continual maintenance of all landscaped areas on-site, as well as contiguous planted areas within the public right-of-way. All landscaped areas shall be kept free from weeds and debris and maintained in healthy and thriving condition, and shall receive regular pruning, fertilizing, mowing, and trimming. Any damaged, dead, diseased, or decaying plant material shall be replaced within 30 days from the date of damage.	____/____
46. The final design of the perimeter parkways, walls, landscaping, and sidewalks shall be included in the required landscape plans and shall be subject to Community Development Director review and approval and coordinated for consistency with any parkway landscaping plan which may be required by the Engineering Division.	____/____
47. Landscaping and irrigation systems required to be installed within the public right-of-way on the perimeter of this project area shall be continuously maintained by the developer.	____/____
48. All walls shall be provided with decorative treatment. If located in public maintenance areas, the design shall be coordinated with the Engineering Division.	____/____
49. Tree maintenance criteria shall be developed and submitted for Community Development Director review and approval prior to issuance of building permits. These criteria shall encourage the natural growth characteristics of the selected tree species.	____/____
50. Landscaping and irrigation shall be designed to conserve water through the principles of Xeriscape.	____/____
Other Agencies	____/____
51. The applicant shall contact the U.S. Postal Service to determine the appropriate type and location of mail boxes. Multi-family residential developments shall provide a solid overhead structure for mail boxes with adequate lighting. The final location of the mail boxes and the design of the overhead structure shall be subject to Community Development Director review and approval prior to the issuance of building permits.	____/____
APPLICANT SHALL CONTACT THE BUILDING AND SAFETY DIVISION, (951) 922-3120, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:	
General Requirements	____/____
52. Submit four complete sets of plans including the following:	
i. Site/Plot Plan;	
ii. Foundation Plan;	

iii.	Floor Plan;	
iv.	Ceiling and Roof Framing Plan;	
v.	Electrical Plans (2 sets, detached) including the size of the main switch, number and size of service entrance conductors, panel schedules, and single line diagrams;	
vi.	Plumbing and Sewer Plans, including isometrics, underground diagrams, water and waste diagram, sewer or septic system location, fixture units, gas piping, and heating and air conditioning; and	
53.	Submit two sets of structural calculations, energy conservation calculations, and a soils report. Architect's/Engineer's stamp and "wet" signature are required prior to plan check submittal.	/ /
54.	Separate permits are required for fencing and/or walls.	/ /
55.	Contractors must show proof of State and City licenses and Workers' Compensation coverage to the City prior to permit issuance.	/ /
56.	Business shall not open for operation prior to posting the Certificate of Occupancy issued by the Building and Safety Division.	/ /
Site Development		
57.	Plans shall be submitted for plan check and approved prior to construction. All plans shall be marked with the project file number (i.e., CUP 98-01). The applicant shall comply with the latest adopted Uniform Building Code, Uniform Mechanical Code, Uniform Plumbing Code, National Electric Code, Title 24 Accessibility requirements, and all other applicable codes, ordinances, and regulations in effect at the time of permit application. Please contact the Building and Safety Division for availability of the Code Adoption Ordinance and applicable handouts.	/ /
58.	Prior to issuance of building permits for a new commercial the applicant shall pay development fees at the established rate. Such fees may include, but are not limited to: Transportation Development Fee, Drainage Fee, School Fees, Permit and Plan Checking Fees. Applicant shall provide a copy of the school fees receipt to the Building and Safety Division prior to permit issuance.	/ /
59.	Construction activity shall not occur between the hours of 8:00 p.m. and 6:30 a.m. Monday through Saturday, with no construction on Sunday or holidays.	/ /

New Structures	/
60. Provide compliance with the Uniform Building Code for the property line clearances considering use, area, and fire-resistiveness.	/
61. Provide compliance with the Uniform Building Code for required occupancy separation(s).	/
62. Roofing material shall be installed per the manufacturer's "high wind" instructions.	/
63. Plans for food preparation areas shall be approved by County of Riverside Environmental Health Services prior to issuance of building permits.	/
64. Provide draft stops in attic areas, not to exceed 3,000 square feet, in accordance with UBC Table 5-A.	/
65. Provide draft stops in attics in line with common walls.	/
66. Roofing materials shall be Class "A."	/
67. Exterior walls shall be constructed of the required fire rating in accordance with UBC Table 5-A	/
68. Openings in exterior walls shall be protected in accordance with UBC Table 5-A.	/
69. If the area of habitable space above the first floor exceeds 3,000 square feet, then the construction type shall be V-1 Hour.	/
70. Walls and floors separating dwelling units in the same building shall be not less than 1-hour fire-resistive construction.	/
71. Provide smoke and heat venting in accordance with UBC Section 906.	/
72. Provide method of airborne and impact sound transmission control between dwelling units.	/
73. Upon tenant improvement plan check submittal, additional requirements may be needed.	/

Grading	/
74. Grading of the subject property shall be in accordance with the Uniform Building Code, City Grading Standards, and accepted grading practices. The final grading plan shall be in substantial conformance with the approved grading plan.	/
75. A soils report shall be prepared by a qualified engineer licensed by the State of California to perform such work.	/
76. A geological report shall be prepared by a qualified engineer or geologist and submitted at the time of application for grading plan check.	/
77. The final grading plans shall be completed and approved prior to issuance of building permits.	/
78. All grading related reports, including but not limited to, soils report, geological report, pad certification, etc. shall be reviewed and approved by the City of Banning Engineer in accordance with all the applicable code requirements.	/
79. The following requirements shall be met: <ul style="list-style-type: none"> a. Surety shall be posted and an agreement executed guaranteeing completion of all on-site drainage facilities necessary for dewatering all parcels to the satisfaction of the Building and Safety Division prior to final map approval and prior to the issuance of grading permits. b. Appropriate easements for safe disposal of drainage water that are conducted onto or over adjacent parcels, are to be delineated and recorded to the satisfaction of the Building and Safety Division prior to issuance of grading and building permits. c. On-site drainage improvements, necessary for dewatering and protecting the subdivided properties, are to be installed prior to issuance of building permits for construction upon any parcel that may be subject to drainage flows entering, leaving, or within a parcel relative to which a building permit is requested. d. Final grading plans for each parcel are to be submitted to the Department of Public Works for approval prior to issuance of building and grading permits. This may be on an incremental or composite basis. Said approval must be included prior to permit issuance by the Department of Building and Safety. 	/
80. A separate grading plan check submittal is required for all new construction projects and for existing buildings where improvements being proposed will generate 50 cubic yards or more of combined cut and fill. The Grading Plan shall be prepared, stamped, and signed by a California Registered Civil Engineer.	/

APPLICANT MAY CONTACT THE ENGINEERING DIVISION, (951) 922-3130, FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:

General Requirements	Completion Date
<p>81. A Public Works Permit shall be required prior to commencement of any work within the public right-of-way. The contractor working within the public right-of-way shall submit proof of a Class "A" State Contractor's License, City of Banning Business License, and Liability Insurance. Any existing public improvements, or public improvements not accepted by the City that are damaged during construction shall be removed and replaced as determined by the City Engineer or his/her representative.</p>	____/____/____
<p>82. Prior to the issuance of any grading, construction, or public works permit by the City, the applicant shall obtain any necessary clearances and/or permits from the following agencies:</p> <ul style="list-style-type: none"> • Fire Marshal • Public Works Department (Grading Permit, Improvement Permit) • Community Development Department • Riverside County Environmental Health Department • Banning Unified School District • California Regional Water Quality Control Board Colorado River Basin (RWQCB) • South Coast Air Quality Management District (SCAQMD) <p>The applicant is responsible for meeting all requirements of permits and/or clearances from the above listed agencies. When the requirements include approval of improvement plans, the applicant shall furnish proof of such approvals when submitting improvements plans to the City.</p>	____/____/____

83. The following improvement plans shall be prepared by a civil engineer or architect licensed by the State of California as allowed and submitted to the Engineering Division for review and approval. A separate set of plans shall be prepared for each line item listed below. Unless otherwise authorized by the City Engineer in writing, the plans shall utilize the minimum scale specified and shall be drawn on 24" x 36" Mylar. Plans may be prepared at a larger scale if additional detail or plan clarity is desired (Note: the applicant may be required to prepare other improvement plans not listed here pursuant to improvements required by other agencies and utility purveyors).

A. On-Site Grading Plan 1" = 40' Horizontal
(all conditions of approval shall be reproduced on last sheet of set)

B. Clearing Plan 1" = 50' Horizontal

Include construction fencing plan

C. SWPPP 1" = 40' Horizontal

(Note: A, B, & C shall be processed concurrently.)

D. Street Improvement Plan 1" = 40' Horizontal

1" = 4' Vertical

E. Landscaping Plan 1"=20' Horizontal

F. Signing & Striping Plan 1" = 40' Horizontal

G. Construction Traffic Control Plan 1"=40' Horizontal

(major or arterial highways only)

Other engineered improvement plans prepared for City approval that are not listed herein shall be prepared in formats approved by the City Engineer prior to commencing plan preparation.

All off-site plan and profile street improvement plans and signing & striping plans shall show all existing improvements for a distance of at least 200-feet beyond the project limits, or at a distance sufficient to show any required design transitions.

All on-site signing and striping plans shall show the following at a minimum: stop signs, limit lines and legends, no parking signs, raised pavement markers (including blue raised pavement markers at fire hydrants) and street name signs per Public Works standard plans and/or as approved by the City Engineer.

A small index map shall be included on the title sheet of each set of plans, showing the overall view of the entire work area.

84. Upon completion of construction, the applicant shall furnish the City with reproducible record drawings on Mylar of all improvement plans that were approved by the City Engineer. Each sheet shall be clearly marked "As-Built" or "As-Constructed" and shall be stamped and signed by the engineer or surveyor certifying the accuracy and completeness of the drawings. The applicant shall have all AutoCAD or raster-image files submitted to the City, revised to reflect the "As-Built" conditions.	____/____/____
85. All utility systems including gas, electric, telephone, water, sewer, and cable TV shall be provided for underground, with easements provided as required, and designed and constructed in accordance with City Codes and the utility provider. Telephone, cable TV, and/or security systems shall be pre-wired in the residence.	____/____/____
Rights of Way	
86. Prior to issuance of any permit(s), the applicant shall acquire or confer property rights necessary for the construction or proper functioning of the proposed development. Conferred rights shall include right-of-way dedications, irrevocable offers to dedicate or grant of easements to the City for emergency services, maintenance, utilities, storm drain facilities, or temporary construction purposes including the reconstruction of essential improvements.	____/____/____
87. Offer to dedicate for public purposes the right-of-way for Barbour Street as a collector highway; 66 foot width. Offers of dedication shall include corner cut-off at intersections.	____/____/____
88. Direct vehicular access along Barbour Street shall be restricted, except for those access points identified on the approved site plan, or as otherwise conditioned in these conditions of approval. The vehicular access restriction shall be recorded on the final map.	
89. Submit a copy of the Title Report to the City Engineer prior to grading plan review and approval.	
90. Prior to the issuance of any certificates of occupancy, the applicant shall not grant any easements over any property subject to a requirement of dedication or irrevocable offer to the City of Banning or the Riverside County Flood Control and Water Conservation District unless such easements are expressly made subordinate to the easements to be offered for dedication to the City or RCFC. Prior to granting any of said easements, the subdivider shall furnish a copy of the proposed easement to the City Engineer for review and approval. Further, a copy of the approved easement shall be furnished to the City Engineer prior to the issuance of any certificate of use and/or occupancy.	____/____/____
Public Improvements	
91. Construct half street plus improvements in accordance with City standards fronting Barbour Street to San Gorgonio Avenue (State Route 243) including street lighting, curb and gutter, access ramps, sidewalk, and asphalt concrete paving, traffic signs and striping, and any transitions. The minimum width of the traveled way shall be 32 feet. Street lights along Barbour Street shall be installed offset of the existing street lights.	____/____/____

Applicants' geotechnical engineer shall provide the design of the pavement section based upon the Caltrans method.	
92. All street improvement design shall provide pavement transitions per Caltrans standards for transition to existing street sections.	____ / ____ / ____
93. Any public improvements damaged during the course of construction shall be replaced to the satisfaction of the City Engineer, or his/her designee, prior to the issuance of a certificate of occupancy.	
94. All required public improvements shall be completed, tested, and approved by the Engineering Division prior to issuance of any Certificate of Occupancy.	____ / ____ / ____
Grading and Drainage	
95. Submit a Drainage Study with hydrologic and hydraulic analysis for developed and undeveloped (existing) conditions to the Engineering Division for review and approval. The study and analysis shall be prepared by a civil engineer licensed by the State of California. Drainage design shall be in accordance with Banning Master Drainage Plan adopted by Riverside County Flood Control and Water Conservation District (RCFC), RCFC Hydrology Manual, and standard plans and specifications. The 10-year storm flow shall be contained within the street curbs, and the 100-year storm shall be contained within the street right-of-way; when this criteria is exceeded, additional drainage facilities shall be designed and constructed.	____ / ____ / ____
96. The design of the development shall not cause any increase in flood boundaries, levels or frequencies in any area outside the development. Note: An identified floodway exists onto the existing property as identified in Flood Boundary and Floodway Map dated October 17, 1978.	____ / ____ / ____
97. The project grading shall be designed in a manner that perpetuates the existing natural drainage patterns with respect to tributary drainage areas, outlet points and outlet conditions. Otherwise, a drainage easement shall be obtained for the release of concentrated or diverted storm flows. The project shall accept and convey storm flows from the adjacent developed property to the north and west.	____ / ____ / ____
98. Prior to approval of the grading plan the applicant shall identify and include in its improvement plans those routine structural and non-structural Best Management Practices (BMP's) as outlined in Supplement A to the Riverside County Drainage Area Management Plans and any attachments or revisions.	____ / ____ / ____

<p>99. The applicant shall comply with Chapter 34 "Stormwater Management and Discharge Controls" of the Banning Municipal Code (BMC); California Building Code Appendix Chapter 33 "Excavation and Grading"; and the State Water Resources Control Board's Order No. 99-08-DWQ.</p> <p>A. For construction activities including clearing, grading or excavation of land that disturbs one (1) acre or more of land, or that disturbs less than one (1) acre of land, but which is a part of a construction project that encompasses more than one (1) acre of land, the applicant shall be required to submit a Storm Water Pollution Protection Plan (SWPPP) and file a Notice of Intent (NOI) with the Regional Water Quality Control Board.</p> <p>B. The applicant's SWPPP shall be reviewed and approved by the City Engineer prior to any on-site or off-site grading being done in relation to this project.</p> <p>C. The applicant shall ensure that the required SWPPP is available for inspection at the project site at all times through, and including acceptance of all improvements by the City.</p> <p>D. The applicant's SWPPP shall include provisions for all of the following Best Management Practices ("BMPs"):</p> <ol style="list-style-type: none"> 1. Temporary Soil Stabilization (erosion control). 2. Temporary Sediment Control. 3. Wind Erosion Control. 4. Tracking Control. 5. Non-Storm Water Management. 6. Waste Management and Materials Pollution Control. <p>e. All erosion and sediment control BMPs proposed by the applicant shall be approved by the City Engineer prior to any onsite or offsite grading, pursuant to this project.</p> <p>f. The approved SWPPP and BMPs shall remain in effect for the entire duration of project construction until all improvements are completed and accepted by the City.</p>	/ /
<p>100. Grading and excavations in the public right-of-way shall be supplemented with a soils and geology report prepared by a professional engineer or geologist licensed by the State of California.</p>	/ /
<p>101. A precise grading plan shall be submitted to the City Engineer for review and approval. A grading permit shall be obtained prior to commencement of any grading activity. Rough grading plans shall include perimeter walls with top of wall and top of footing elevations shown. All footings shall have a minimum of 1-foot of cover, and/or sufficient cover to clear any obstructions.</p>	/ /
<p>102. Prior to the issuance of a building permit for any building lot, the applicant shall provide a lot pad certification stamped and signed by a qualified civil engineer or land surveyor. Each pad certification shall list the pad elevation as shown on the approved grading plan, the actual pad elevation and the difference between the two, if any. Such pad certification shall also list the relative compaction of the pad soil.</p>	/ /

Landscaping (Right-of-Way)	
103. An automatic sprinkler system and landscaping shall be installed, prior to occupancy of the first unit of the development, within the parkway fronting Barbour Street. Landscaping plans and specifications shall be reviewed and approved by the City Engineer.	____/____/____
104. Landscape improvements shall be certified by a licensed landscape architect or licensed landscape contractor as having been installed in accordance with the approved detailed plans and specifications. The applicant shall furnish said certification, including an irrigation management report, for each landscape irrigation system and any other required implementation report determined applicable, to the City Engineer for review and approval.	____/____/____
Traffic	
105. Street name signs and traffic control devices including traffic legends and traffic striping shall be installed, or relocated in accordance with Caltrans Standards and as shown on the approved plans, and/or as directed by the City Engineer.	____/____/____
106. Prior to the issuance of any certificate of occupancy, all fire hydrants shall have a blue reflective pavement marker indicating the hydrant location on the street as approved by the Fire Marshall, and must be maintained in good condition by the property owner until the street is accepted for maintenance.	____/____/____
Trash/Recycling	
107. The developer shall participate in the City's recycling program by providing two trash receptacles, one for regular trash and one for recycling, within the trash enclosure. The trash enclosure shall be designed and constructed in such a manner to accommodate a recycling bin as well as the necessary solid waste containers.	____/____/____
108. Construction debris shall be disposed of at a certified recycling site. It is recommended that the developer contact the City's franchised solid waste hauler for disposal of construction debris.	____/____/____
Final Map	
109. Revisions to the approved tentative map during plan check including, but not limited to, lot line alignments, easements, improvement plan revisions, and similar minor changes which do not alter the design (property rights, number of lots, environmental impact, etc.) may be administratively approved through the plan check process with the mutual consent and approval of the Community Development Director and City Engineer. Final maps shall be amended in accordance with the Subdivision Map Act.	____/____/____

110. Prior to approval of any Final Map, the applicant shall construct all on-site and off-site improvements in accordance with the approved plans and satisfy its obligations for same, or shall furnish a fully secured and executed Agreement for Construction of Public Improvements guaranteeing the construction of such improvements and the satisfaction of its obligations for same, or shall agree to any combination thereof, as may be required by the City.	____ / ____ / ____
111. Security for the construction of public improvements in accordance with Government Code Section 66499 shall be as follows: Faithful Performance Bond - 100% of estimated cost Labor and Material Bond - 100% of estimated cost Monumentation Bond - \$10,000.00	____ / ____ / ____
<i>Securities for the public improvements shall be on file with the City Clerk prior to scheduling the final map for approval by City Council. Unit prices for bonding estimates shall be those specified or approved by the City Engineer.</i>	
112. Submit a copy of the title report, closure calculations, and any separate instruments or necessary right-of-way documents to the Engineering Division for review and approval of the City Engineer prior to final map approval.	____ / ____ / ____
113. A map of the proposed subdivision drawn at 1"=200' scale showing the outline of the streets including street names shall be submitted to the City to update the city atlas map.	____ / ____ / ____
114. An original Mylar of the final map (after recordation) shall be provided to the City for the record files.	____ / ____ / ____
115. Public Works Inspection fees shall be paid prior to the scheduling the final map for approval by City Council in accordance with the Fee Schedule in effect at time of time of scheduling.	
116. Water and sewer connection fees including frontage fees and water meter installation charges shall be paid on a per lot basis at the time of building permit issuance in accordance with the Fee Schedule in effect at that time.	____ / ____ / ____
117. A plan storage fee shall be paid prior to approval of the final map and improvement plans in accordance with the Fee Schedule in effect at the time the fee is paid.	____ / ____ / ____
118. A Traffic Control mitigation fee shall be paid on a per lot basis prior to issuance of building permits.	____ / ____ / ____
APPLICANT SHALL CONTACT THE WATER AND WASTE WATER UTILITY AT (951) 922-3281 FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:	

<u>WATER</u>	
119. Submit Water Improvement Plans to the Water Division for review and approval. Design and construct water lines on Barbour Street from San Gorgonio Street to the west property line of the project and on the main driveway within a 20' wide easement from Barbour Street to the north property line of the project.	____ / ____ / ____
120. All water lines and fittings shall be a minimum of 8" diameter and shall be DIP or 10-gauge steel pipes, cement mortar lined & wrapped	____ / ____ / ____
121. Each unit within a triplex is to have its own water service. Water meters to be installed at a location along the main driveway into project	____ / ____ / ____
122. Fire hydrants shall be installed within and on the project boundaries as per the approval plans, at a 300' maximum spacing.	____ / ____ / ____
123. Request a Reimbursement Agreement for the construction of the water line on Barbour Street for those who benefit from the new water line.	
124. A backflow device must be installed on commercial developments and for each irrigation water connection; and in compliance with the State of California Department of Health Regulations. Contact the City of Banning, Water Operations Division, prior to the installation.	____ / ____ / ____
<u>SEWER</u>	
125. Submit Sewer Improvement Plans to the Sewer Division for review and approval. Design and construct sewer lines on Barbour Street from the east property line of project to the existing sewer line located at the west property line of project and on all the driveways within 20' wide easements for the project.	____ / ____ / ____
126. All sewer lines shall be extra strength Vitrified Clay Pipe and the sewer mains shall be a minimum of 8" diameter.	____ / ____ / ____
127. Each unit within a triplex is to have its own sewer service lateral	____ / ____ / ____
128. A sewer check valve shall be provided for each lot with a finished pad elevation lower than the rim elevation of the immediate up-stream sewer manhole.	____ / ____ / ____
129. Request a Reimbursement Agreement for the construction of the sewer line on Barbour Street for those who benefit from the new sewer line.	____ / ____ / ____
<u>FEES</u>	____ / ____ / ____
130. Water Connection Fees shall be paid per EDU (EDU is based upon meter size), Sewer Connection Fees shall be paid per EDU (EDU for commercial types will be based upon the estimated quality and quantity of discharge into the sewerage system), and Water, Meter Installation charges shall all be paid at the time of issuance of building permits, for this project in accordance with the fee schedule in effect at the time the fees are paid. Also, pay all water and sewer frontage fees, if applicable, and in accordance with the fee schedule in effect at the time the fees are submitted, prior to plan checking proceedings.	____ / ____ / ____
<u>APPLICANT SHALL CONTACT ELECTRICAL OPERATIONS DEPARTMENT FOR COMPLIANCE WITH THE FOLLOWING CONDITION:</u>	

<p>131. Provide electrical plans and load calculation for review.</p> <ul style="list-style-type: none"> • Submitting detailed plans indicating lot lines, streets, easements, building layout, anticipated loading information, etc. The plans are required in electronic format, we currently use AutoCad2006. Plans should consist of a plot plan, site plan signed and approved by city engineering, one line diagram of proposed electrical main service panels and a sheet showing load calculation by an electrical engineer. Additional sheets may be required upon request. • Paying required fees - electrical permit, plan check fee, inspection fees, meter fee and cost of electrical apparatus for completing the underground line extension. • Granting easement for electric facilities installation/maintenance, etc. • All trenching, backfill, and compaction. • All conduits, vaults, and other materials associated with their installation (except primary cables and their terminations). • Installation of Streetlight poles and conduit. • Developer / electrical contractor to provide and install secondary service entrance conductors spec by utility department from transformer to service panel pull section 	/ / /
<p>132. The City Electric Department shall be responsible for:</p> <ul style="list-style-type: none"> • Reviewing plans submitted by customer. • Design an electrical utility plan for the installation of structures and conduit by developer. • Providing a cost estimate for installing an underground electrical system for this project. • Inspecting all trenches prior to backfilling. 24 hour prior notice is required before inspection. • Installation of primary cable and terminations 	/ / /
<p>APPLICANT SHALL CONTACT THE FIRE MARSHAL AT, (951) 922-3210 FOR COMPLIANCE WITH THE FOLLOWING CONDITIONS:</p>	/ / /

FIRE DEPARTMENT DEVELOPER FEES:	/ /
133. Fees are increased annually and may be different at the time of construction. The fee schedule at the time of plan submittal shall apply.	
<p>Commercial, Industrial and/or Office Complex:</p> <ul style="list-style-type: none"> • \$.579 per square foot Commercial • \$.821 per square foot Dental Office + • \$ 25.00 per unit Disaster Planning <p>Plan Check and Inspection: \$ 118.00 per hour Exception, Sprinkler and Alarm System Plan Check See Number (7) for Fee Schedule.</p>	
CODE COMPLIANCE:	/ /
134. All Plans, Specifications and Construction shall comply with and conform to the current edition of the California Fire Code (CFC), California Building Code (CBC), and other state and local laws as applicable.	
PREMISES IDENTIFICATION:	/ /
135. Approved numbers or addresses shall be placed on all new and existing buildings in such a position as to be plainly visible and legible from the street or road fronting the property. Said numbers shall contrast with their background.	
Commercial: 6" mm. size	
FLAMMABLE LIQUID:	/ /
136. The storage, use, dispensing and mixing of flammable and combustible liquids shall be in accordance with UFC Article 79 and UBC Section 307.	
INSPECTIONS:	/ /
137. Inspections shall be requested a minimum of forty-eight (48) hours prior to the time the required inspection is needed.	
138. Fee for each inspection is \$118.00 per hour per person.	
139. <i>WORK BEGUN WITHOUT A PERMIT OR WITHOUT AN APPROVED SET OF PLANS AT THE JOB SITE WILL RESULT IN A TRIPLE FEE AND/OR THE WORK STOPPED.</i>	

HAZARDOUS MATERIALS:	1 / 1
140. The storage, dispensing, use or handling of hazardous materials shall be in accordance with the provisions of UFC Article 80 and UBC Section 307, in addition to all federal, state and local laws or ordinances.	
Business Plans may be required per SB 2186 and 2187 including MSDS, HMMP and RMPP.	
OTHER:	1 / 1
141. To maintain proper distance of 150 feet from a fire hydrant to a building, a fire hydrant will have to be installed at each driveway intersection. The 150 foot requirement can be increase to 250 feet if fire sprinklers are installed as described above.	
142. Because of the length each east/west drive aisle and the distance of the last house on each drive aisle from the main access road, the developer must either provide a "hammerhead" turnaround on each aisle or equip the last building on the end of each aisle with an automatic fire sprinkler system.	1 / 1

**CITY COUNCIL
PUBLIC HEARING**

DATE: January 8, 2008

TO: City Council

FROM: Oscar W. Orci, Community Development Director

SUBJECT: Amendment to the Municipal Code regarding penalties for public nuisances

RECOMMENDATION: *"I move the City Council:*

Approve Ordinance No. 1381, approving Zone Text Amendment #07-97505, amending Chapter 1, Article IV, Division 1 and Chapter 11C, Article 1 of the Banning Municipal Code regarding General Penalties and Penalties for Public Nuisances.

Mayor Salas asks the City Clerk to read the Title of Ordinance No. 1381.

Motion: I move to waive further reading of Ordinance No. 1381

Motion: I move that Ordinance No. 1381 pass its first reading and be adopted."

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing to its January 22, 2008 meeting".

Denial:

"I move the City Council deny the Zone Text Amendment #07-97505 on the following basis (the City Council will need to make its findings)."

JUSTIFICATION: Amendment to the Municipal Code is needed to improve Code Enforcement activities.

BACKGROUND: Ordinance 1381 (Exhibit "1") will modify Chapter 1.28 (General Penalties) and Section 8.48.030 (Penalty) of the Banning Municipal Code. More specifically, this Ordinance will:

1. Amend the Code to change the General Penalties section of the Code from infractions to misdemeanors. The Municipal Code is structured such that code violations are infractions unless specifically stated as misdemeanors. Public Nuisances provisions, for example, are considered misdemeanors. This Ordinance will modify that provision so that violations of the Code will now be misdemeanors unless specifically stated as infractions.
2. Establish a \$1,000 fine or imprisonment or both for misdemeanors
3. In cases where the Code specifies infractions, establish infraction penalties of \$100 for the first violation, \$200 for a second violation of the same Code, and \$500 for each additional violation of the section code violation.
4. Allow enforcement for violation of City entitlements (e.g. CUP, variances, etc).
5. Allow greater/improved enforcement by the City Attorney or City Prosecutor.
6. Allow the City Attorney or City Prosecutor the ability and the opportunity to file charges as either misdemeanors or infractions.

Please note that the other previously approved changes to the Code involving such things as Administrative Citations and Public Nuisances remain the same.

FISCAL DATA: No anticipated fiscal impacts will result from the approval of this Ordinance.

PREPARED BY:

Oscar W. Orci *by BJ*
Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson *by BJ*
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by BJ*
Randy Anstine
City Manager

Exhibits:

1. Ordinance No. 1381

ZTA #07-97505
GENERAL PENALTIES

ORDINANCE
NO. 1381

EXHIBIT “1”

ORDINANCE NO. 1381

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF BANNING, CALIFORNIA, MODIFYING TITLE 1,
CHAPTER 1.28 AND TITLE 8, CHAPTER 8.48, ARTICLE I
OF THE BANNING MUNICIPAL CODE REGARDING
GENERAL PENALTIES AND PENALTIES FOR PUBLIC
NUISANCES**

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS
FOLLOWS:

SECTION 1. Existing Section 1.28.010 "General penalty—Continuing violations" is repealed in its entirety.

SECTION 2. Existing Section 1.28.020 "Violations constitute misdemeanors" is repealed in its entirety.

SECTION 3. New Section 1.28.010 "General penalty—Continuing violations" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

(a) It is unlawful for any person to violate any provision or to fail to comply with any requirement of this Code.

(b) Whenever in this Code any act or omission is made unlawful, it includes causing, permitting, aiding, abetting, maintaining, suffering or concealing the fact of such act or omission.

(c) Any person violating any of the provisions of this Code is guilty of a misdemeanor, unless the offense is specifically classified in this Code or by state law as an infraction. However, the City Attorney or City Prosecutor is authorized to file or charge any violation of this Code as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction.

(d) Each day that any condition caused or permitted to exist in violation of this Code constitutes a new and separate violation.

(e) The owner of any property, building or structure within the City is responsible for keeping such property, building or structure free of violations related to its use or condition. The owner of such property, building or structure is separately liable for violations committed by tenants or occupants relative to the use or condition of the property.

(f) The penalty provided in this section is in addition to other provisions of this Code or other law.

SECTION 4. New Section 1.28.020 "Misdemeanor penalties" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Where no specific penalty is provided, any conviction of a misdemeanor under the provisions of this Code or any other ordinance of the City shall be punished by a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months, or by both such fine and imprisonment."

SECTION 5. New Section 1.28.030 "Infraction penalties" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Whenever in this Code or in any other Ordinance of the City, any act is prohibited or is made or declared to be unlawful or an offense or the doing of any act is required or the failure to do any act is declared to be unlawful and the violation of any such provision of this Code or any other ordinance of the City is expressly made an infraction, such infraction shall be punishable by:

- (a) A fine not exceeding \$100 for a first violation;
- (b) A fine not exceeding \$200 for a second violation of the same section of this Code or ordinance within one year;
- (c) A fine not exceeding \$500 for each additional violation of the same section of this Code or Ordinance within one year."

SECTION 6. New Section 1.28.040 "Enforcement of similar clauses or sections" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"In all cases where the same offense is made punishable or is created by different clauses or sections of this Code, the City Attorney or City Prosecutor may elect under which to proceed, but not more than one recovery shall be had against the same person for the same offense."

SECTION 7. New Section 1.28.050 "Entitlement permit, other permit or license violations" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"(a) Each person or the successor of each person who holds an entitlement permit, a variance permit, or any other permit or license issued by the City shall comply with each provision of the permit or license and with each term that is imposed as a condition to the exercise of the permit or license.

"(b) Each person or the successor of each person who receives a rezoning or subdivision approval shall comply with each provision of the approval and with each term that is imposed as a condition to the approval of the rezoning or subdivision."

SECTION 8. New Section 1.28.060 "Criminal prosecution" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"Pursuant to California Government Code section 36900, the City Attorney or City Prosecutor may prosecute any violation of this Code in the name of the People of the State of California."

SECTION 9. New Section 1.28.070 "Violations deemed public nuisances" is added to Title 1, Chapter 1.28 of the Banning City Code as follows:

"In addition to other penalties provided by law, any condition caused or permitted to exist in violation of any provision of this Code or any other ordinance of the City, or any such threatened violation, shall be deemed a public nuisance and may be abated as such by the City, and each day that such condition continues shall be regarded as a new and separate offense."

SECTION 10. Existing Section 8.48.030 "Penalty" is repealed in its entirety.

SECTION 11. New Section 8.48.030 "Penalty" is added to Title 1, Chapter 8.48, Article I of the Banning City Code as follows:

"The owner, lessee, occupant, tenant or other person having charge or control over any premises, property, land or structure constituting a public nuisance as defined in this Code, shall be guilty of a misdemeanor, conviction of which shall be punished by a fine not exceeding \$1,000 or imprisonment for a term not exceeding six months, or by both such fine and imprisonment. However, the City Attorney or City Prosecutor is authorized to file or charge any such violation as either a misdemeanor or infraction or reduce any charge filed as a misdemeanor to an infraction. Every day of such violation shall constitute a separate offense."

SECTION 12. SEVERABILITY. If any section, subsection, sentence, clause, or phrase 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 hereby declares that it would have passed this Ordinance and each and every section, subsection, sentence, clause, or phrase not declared invalid or unconstitutional without regard to whether any portion of the Ordinance would be subsequently declared invalid or unconstitutional.

SECTION 13. NON-EXCLUSIVITY. Nothing in this Ordinance shall limit or preclude the enforcement of other applicable laws.

SECTION 14. EFFECTIVE. This Ordinance shall take effect thirty (30) days after its enactment in accord with California law.

SECTION 15. PUBLICATION. The City Clerk is directed to cause this Ordinance to be published within 15 days of its passage in a newspaper of general circulation published and circulated within the City of Banning.

PASSED, APPROVED, AND ADOPTED this _____ day of _____, 2008.

Brenda Salas, Mayor
City of Banning

APPROVED AS TO FORM:

Burke Williams & Sorensen, LLP
City Attorney

ATTEST:

Marie Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie Calderon, City Clerk of the City of Banning, California, do hereby certify that the foregoing Ordinance No. 1381 was introduced at a regular meeting of the City Council of the City of Banning, California, held on the 8th day of January, 2008 and was duly adopted at a regular meeting of the City Council held on the _____ day of _____, 2008, by the following roll-call vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon
City Clerk, City of Banning

**CITY COUNCIL
PUBLIC HEARING**

DATE: January 8, 2008
TO: City Council
FROM: Oscar W. Orci, Community Development Director
SUBJECT: Amendment to the Municipal Code establishing provisions for murals

RECOMMENDATION: *"I move the City Council:*

Approve Ordinance No. 1382, approving Zone Text Amendment #07-97502, establishing code provisions for murals.

Mayor Salas asks the City Clerk to read the Title of Ordinance No. 1382.

Motion: I move to waive further reading of Ordinance No. 1382

Motion: I move that Ordinance No. 1382 pass its first reading and be adopted."

ALTERNATIVES:

Continuance:

"I move the City Council continue the public hearing to its January 22, 2008 meeting".

Denial:

"I move the City Council deny the Zone Text Amendment #07-97502 on the following basis (the City Council will need to make its findings)."

JUSTIFICATION: The Council directed staff to prepare legislation that would reinstate mural regulations.

BACKGROUND: The City approved Ordinance 1272 (Exhibit "2") on October 9, 2001, which created Section 9125.C, in Article 25 (Regulation of Signs). The requirements of Section 9125.C were ministerial; meaning, that the Code did not allow much discretion in terms of the City's ability to review the mural content. According to the previous Code, a permit would be granted when the following conditions were met:

1. Completed application;

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2. Sign permit fee paid;
3. Mural did not create a pedestrian or vehicular safety hazard;
4. Mural would be applied to the wall of the building; and
5. Agreement that the mural would be well maintained.

On August 9, 2005, the City Council adopted Ordinance No. 1325 (Exhibit "3") repealing Section 9125.C of the Municipal Code.

At a meeting last year (minutes attached, Exhibit "4", the Council directed staff to prepare a resolution that would reinstate mural regulations. Specifically, the Council directed staff to establish provisions that would include some or all of the following:

1. Require an application and process to establish basic standards; and/or
2. Eliminate the need for the City to review the mural content and minimize 1st Amendment issues; and/or
3. Involve the Chamber of Commerce Mural Council in reviewing and approving murals.

Staff prepared several resolutions (Exhibit "5") for the Commission's consideration that were based upon the above-listed Council criteria. These resolutions would essentially establish a ministerial process with optional provisions that would require the approval by the Chamber of Commerce as well as comply with the following criteria:

1. Maximum Number or Murals Per Site. Murals may be located on the sides of buildings or walls within any zone district except residential zoning districts.
2. Sign Area. Mural signs shall not be calculated as business advertising signs and are not subject to the maximum wall sign area ratio. Murals can occupy an entire single wall on which the mural is applied.
3. Color Scheme. Vibrant mural colors are encouraged, but should be complimentary and harmonious with the exterior colors of the building and consistent with the surrounding properties.
4. The proposed mural, by its design, construction, and location shall not obscure or detract from the significant architectural features of the selected structure nor should the building's architecture be altered to accommodate a mural.
5. If the mural should require special lighting or other related construction, all applicable City building permits will be required as part of the installation process.
6. Advertisement Value. Words and/or images may not generally be incorporated within the proposed mural which specifically identifies or reflects the business, products and/or services provided by the business occupying the structure.
7. Construction. Paints and other materials used for murals shall be appropriate for outdoor use and artistic rendition, and shall be permanent and long-lasting. Super-bright or fluorescent colors shall be discouraged.
8. To the extent feasible, murals shall be vandal and graffiti resistant.
9. The City Council may, from time to time, by resolution, adopt additional mural design criteria and guidelines.
10. The City Council may set, by resolution, a fee for the application and/or mural permit issuance.

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The Planning Commission met numerous times to discuss the various versions of the mural legislation; ultimately the Commission approved Resolution No. 2007-31, which recommends to the City Council mural legislation that establishes a ministerial process with basic mural regulations that will require the Community Development Department and the Chamber Mural Council approvals.

CONCERNS/OPTIONS:

The City Attorney has expressed concerns with the legislation. The legislation attempts to eliminate any City regulation of mural content by transferring the authority to review and approve murals to the Chamber. Because the legislation "authorizes" the Chamber to act on the City's behalf, the Chamber would be an agent of the City and as such be subject to the same content regulation as the City.

In order for the City to avoid mural content the City may wish to establish mural guidelines rather than legislation. Guidelines can establish development criteria as well as identify the Chamber as the review authority. As with all guidelines, enforcement is difficult. The Chamber's Mural Council as well as the City Council have expressed a desire to establish a permit process.

FISCAL DATA: No anticipated fiscal impacts will result from the approval of this Ordinance.

PREPARED BY:

Oscar W. Orci *by JS*
Oscar W. Orci
Community Development Director

REVIEWED BY:

Bonnie Johnson
Bonnie Johnson
Finance Director

APPROVED BY:

Randy Anstine *by RA*
Randy Anstine
City Manager

Exhibits:

1. Ordinance No. 1382
2. Copy of Ordinance No. 1272
3. Copy of Ordinance No. 1325
4. Copy of portion of Planning Commission minutes of 12/04/07.
5. Planning Commission Resolution Options

ZTA #07-97502
MURAL ORDINANCE

ORDINANCE
NO. 1382

EXHIBIT “1”

248

ORDINANCE NO. 1382

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BANNING, CALIFORNIA APPROVING ZONE TEXT AMENDMENT #07-97502, AN AMENDMENT TO THE ZONING CODE TO ESTABLISH PROVISIONS FOR MURALS

WHEREAS, the City undertook a comprehensive General Plan and Zoning Ordinance update in 2003; and

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, on the 7th day of August 2007, the Planning Commission continued the public hearing to the 4th day of September 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 4th day of September 2007, the Planning Commission continued the public hearing to the 2nd day of October 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 2nd day of October 2007, the Planning Commission closed the public hearing and directed staff to return to the Planning Commission with new alternatives for the Zone Text Amendment, at which time the public hearing would be re-noticed and re-opened; and

WHEREAS, at this public hearing on the 4th day of December 2007, the Planning Commission considered and heard public comments on the Zone Text Amendment and approved Resolution No. 2007-31, recommending to the City Council approval of the Zone Text Amendment #07-97502, an amendment to the Zoning Code to establish provision for murals; and

WHEREAS, on the 21st day of December 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Record Gazette newspaper of the holding of the re-opened public hearing at which the project would be considered; and

WHEREAS, on the 8th day of January 2008, the City Council held the noticed public hearing at which interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, at this public hearing on the 8th day of January 2008, the City Council considered and heard public comments on the Zone Text Amendment; and

WHEREAS, the City Council has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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.

NOW THEREFORE, the City Council does resolve, determine, find, and order, and recommend as follows:

Section 1: Environmental Findings.

The City Council, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Report dated January 8, 2008, and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA**: The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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, as here, 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 amendment to the municipal code does not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 2: Zoning Ordinance Amendment Findings.

The City Council makes the following findings regarding the ~~Zoning~~ Ordinance Amendment:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Fact: The Zone Text Amendment 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 amendment will result in clarifying the goals, policies and programs of the General Plan. Program 11.A of the Banning General Plan Economic Development Element indicates that the City should encourage and promote special events and activities which strengthen the City's image and attractiveness to residents, visitors, and

businesses. Murals will enhance the City's appearance and image and make it more attractive to the residents and visitors alike.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendments will cause murals to be subject to the general standards of Section 9109 [Sign Regulations] and will establish standards for murals, but will not regulate the content of the murals. The Zoning Ordinance currently contains, in Section 9109 [Sign Regulations] an integrated program for the regulation of signage within the City. These Zone Text Amendments would allow for the placement of murals, under the auspices of the Chamber of Commerce, within commercial and industrial zones in the City. The City would have the same authority that it does to regulate all other types of signs; all content and maintenance issues would be addressed by the Chamber of Commerce.

Section 3: Zone Text Amendments.

The City Council hereby approves the following amendments to the text of the Zoning Code:

A) Section 9109.03 DEFINITIONS, is hereby amended to add the following:

“Murals. Painted wall signs which have a majority of the sign area comprised of non-commercial content, which generally have artistic, historic or cultural themes, and which are designed and painted (or supervised) by an artist who possess demonstrated knowledge and expertise in the design, materials, and execution of murals or other art. Commercial content of murals shall be subject to all applicable sign limitations of the underlying zone district.”

B) Section 9109.17 MURALS, is hereby added as follows:

“Murals shall be allowed by permit reviewed by the Beautification and Mural Council of the Banning Chamber of Commerce and permitted by the City’s Community Development Department. Applications shall be on a form devised by the Community Development Department. A permit for a mural will be granted when the following conditions have been satisfied:

- 1) Completed application;
- 2) Sign permit fee paid;
- 3) Approved by the Beautification and Mural Council of the Banning Chamber of Commerce;
- 4) The mural shall not cause a pedestrian or vehicular safety hazard;
- 5) The mural shall be applied to the wall of a building; and
- 6) The mural shall be maintained.”

Section 4: Severability.

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

PASSED, APPROVED AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorensen LLP
City Attorney
City of Banning, California

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1382 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 8th day of January, 2008, and was duly adopted at a regular meeting of said City Council on the _____ day of _____, 2008, by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Marie A. Calderon, City Clerk
City of Banning

ZTA #07-97502
MURAL ORDINANCE

*COPY OF
ORDINANCE
NO. 1272*

EXHIBIT “2”

254

ORDINANCE NO. 1272

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BANNING AMENDING THE BANNING
ORDINANCE CODE ARTICLE 25 (REGULATIONS
OF SIGNS) ADDING SECTION 9125.7C "MURALS".**

The City Council of the City of Banning does hereby ordain as follows:

Section 1.

That the Banning Ordinance Code, Article 25 (Regulations of Signs) be amended to include a new Section 9125.7C "Murals" as follows:

Section 2.

Section 9125.7C Murals.

"Murals shall be allowed by permit reviewed by the City's Sign Ad Hoc Committee and permitted by the City's Planning Department. Applications shall be on a form devised by the Planning Department. A permit for a mural will be granted when the following conditions have been satisfied:

- (A) Completed application.
- (B) Sign permit fee paid.
- (C) The mural shall not cause a pedestrian or vehicular safety hazard.
- (D) The mural shall be applied to the wall of a building.
- (E) The mural shall be well maintained."

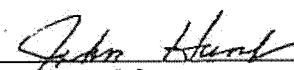
Section 3. Severability

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

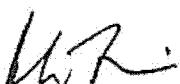
Section 4.

The Mayor shall sign this ordinance and the City Clerk shall attest thereto and shall within fifteen days of its adoption cause it or a summary of it, to be published in the Record Gazette, a newspaper published and circulated in the City. Thereupon this ordinance shall take effect 30 days after adoption and be in force and effect according to law.

PASSED, APPROVED, AND ADOPTED this 9th day of October, 2001.


John Hunt, Mayor

APPROVED AS TO FORM AND
LEGAL CONTENT:


John F. Wilson, City Attorney

ATTEST:


Marie A. Calderon, City Clerk

CERTIFICATION

I, Marie A. Calderon, City Clerk of the City of Banning, do hereby certify that the foregoing Ordinance No. 1272 was duly introduced at a regular meeting of the City Council of the City of Banning, California, held on the 25th day of September, 2001 and was duly adopted at a regular meeting of said City Council held on the 9th day of October, 2001, by the following vote, to wit:

AYES: Councilmembers Jenkins, Mediano, Salas, Wages, Mayor Hunt

NOES: None

ABSTAIN: None

ABSENT: None


Marie A. Calderon, City Clerk
City of Banning

Ord. No. 1272

ZTA #07-97502
MURAL ORDINANCE

COPY OF
ORDINANCE
NO. 1325

EXHIBIT “3”

257

ORDINANCE NO. 1325

AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF BANNING, CALIFORNIA REPEALING
SECTION 9125.7C OF THE BANNING MUNICIPAL
CODE REGARDING MURALS.

THE CITY COUNCIL OF THE CITY OF BANNING DOES HEREBY ORDAIN AS
FOLLOWS:

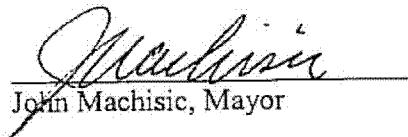
SECTION 1. Section 9125.7C of the Banning Municipal Code entitled, "Murals" is
hereby repealed.

SECTION 2. NON-EXCLUSIVITY. Nothing in this Ordinance shall limit or preclude
the enforcement of other applicable laws.

SECTION 3. PUBLICATION. The City Clerk is directed to cause this Ordinance to
be published within 15 days of its passage in a newspaper of general circulation
published and circulated within the City of Banning.

INTRODUCED at the regular meeting of the 9th day of August, 2005.

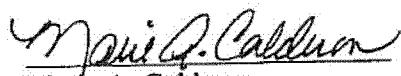
PASSED, APPROVED, AND ADOPTED this 13th day of September, 2005, at
Banning, California.


John Machisic, Mayor

APPROVED AS TO FORM
AND LEGAL CONTENT:


Julie Hayward Biggs
City Attorney

ATTEST:


Mary A. Calderon
City Clerk

CERTIFICATION:

I, Marie A. Calderon, City Clerk of the City of Banning, California, do hereby certify that Ordinance No. 1325 was duly introduced at a regular meeting of the City Council of the City of Banning, held on the 9th day of August, 2005, and was duly adopted at a regular meeting of said City Council on the 13th day of September, 2005, by the following vote, to wit:

AYES: Councilmembers Hanna, Palmer, Salas, Welch, Mayor Machisic

NOES: None

ABSENT: None

ABSTAIN: None

Marie A. Calderon

Marie A. Calderon, City Clerk
City of Banning

ZTA #07-97502
MURAL ORDINANCE

*COPY OF
PORTION OF
PLANNING COMMISSION
MINUTES OF 12/4/07*

EXHIBIT “4”

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III. PUBLIC COMMENT

No one came forward.

IV. PUBLIC HEARING:

A. New Items:

1. Resolution No. 2007-31: A Resolution recommending to the City Council the adoption of code provisions pertaining to murals.

Community Development Director Orci presented the staff report, discussed the options presented tonight and discussed the meaning of "mural expert". He stated that Option No. 1 establishes a ministerial process with basic mural regulations that would require the Community Development Department and Chamber of Commerce Mural Council approvals.

Option No. 2 establishes a ministerial process with basic mural regulations that would require the Community Development Department approval. Please note that this Option requires that the applicant consult with and receive approval from "mural experts"; the Mural Council would be considered a "mural expert". This option does not specifically designate the Mural Council; rather, it will allow the Chamber via the "non-exclusive list of mural experts" requirement the ability to review the murals without transferring the authority directly to the Chamber and thus addressing the Attorney's concerns.

Charlene Sakurai, 43000 Dillon Road, Banning CA, came forward to speak on behalf of the mural ordinance and expressed confidence in the Chamber Mural Council.

Don Smith, 1681 W. Westward Avenue, Banning CA, came forward to state that he would like to see some structure in the mural process and wants to know who will decide mural content.

Deputy City Attorney Greg Murphy discussed First Amendment rights and content. Mr. Murphy stated that the City Attorney's office prefers Option #2.

Commissioner Dickson stated he preferred Option #1 and wants to keep the process simple. Commissioner Hawkins stated he was on the Chamber Mural Council, he checked with the City Attorney as was told he did not have to recuse himself. He stated there have been no problems so far with the way the Mural Council has been doing things. Commissioner Barsh stated he would prefer Option #2 and Chairperson DeSantis stated that she liked Option #1.

ACTION (DICKSON / HAWKINS): A motion was moved, seconded and carried that the Planning Commission approve Resolution No. 2007-31 (Option 1), recommending to the City Council approval of Zone Text Amendment #07-97502.

(Motion carried 3 - 2) (Commissioners Barsh and Escandell voted "no")

ZTA #07-97502
MURAL ORDINANCE

COPY OF
***PLANNING COMMISSION
RESOLUTION OPTIONS***

EXHIBIT “5”

262

RESOLUTION NO. 2007-31

AN RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF BANNING, CALIFORNIA
RECOMMENDING TO THE CITY COUNCIL APPROVAL
OF ZONE TEXT AMENDMENT #07-97502, AN
AMENDMENT TO THE ZONING CODE TO ESTABLISH
PROVISIONS FOR MURALS

WHEREAS, the City undertook a comprehensive General Plan and Zoning Ordinance update in 2003; and

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, on the 27th day of July 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Press Enterprise newspaper of the holding of a public hearing at which the project would be considered; and

WHEREAS, on the 7th day of August 2007, the Planning Commission continued the public hearing to the 4th day of September 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 4th day of September 2007, the Planning Commission continued the public hearing to the 2nd day of October 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 2nd day of October 2007, the Planning Commission closed the public hearing and directed staff to return to the Planning Commission with new alternatives for the Zone Text Amendment, at which time the public hearing would be re-noticed and re-opened; and

WHEREAS, on the 16th day of November 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Press Enterprise newspaper of the holding of the re-opened public hearing at which the project would be considered; and

WHEREAS, at this public hearing on the 4th day of December 2007, the Planning Commission considered and heard public comments on the Zone Text Amendment; and

WHEREAS, the Planning Commission has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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.

NOW THEREFORE, the Planning Commission does resolve, determine, find, and order, and recommend as follows:

OPTION 1

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Section 1: Environmental Findings.

The Planning Commission, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Reports dated August 7, September 4, October 2 and December 4, 2007 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. CEQA: The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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, as here, 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 amendment to the municipal code does not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 2: Zoning Ordinance Amendment Findings.

The Planning Commission makes the following findings regarding the Zoning Ordinance Amendment:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Fact: The Zone Text Amendment 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 amendment will result in clarifying the goals, policies and programs of the General Plan. Program 11.A of the Banning General Plan Economic Development Element indicates that the City should encourage and promote special events and activities which strengthen the City's image and attractiveness to residents, visitors, and businesses. Murals will enhance the City's appearance and image and make it more attractive to the residents and visitors alike.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendments will cause murals to be subject to the general standards of Section 9109 [Sign Regulations] and will establish standards for murals, but will not regulate the content of the murals. The Zoning Ordinance currently contains, in Section

9109 [Sign Regulations] an integrated program for the regulation of signage within the City. These Zone Text Amendments would allow for the placement of murals, under the auspices of the Chamber of Commerce, within commercial and industrial zones in the City. The City would have the same authority that it does to regulate all other types of signs; all content and maintenance issues would be addressed by the Chamber of Commerce.

Section 3: Recommended Zone Text Amendments.

The Planning Commission hereby recommends to the City Council approval of the following amendments to the text of the Zoning Code:

A) Section 9109.03 DEFINITIONS, is hereby amended to add the following:

"Murals. Painted wall signs which have a majority of the sign area comprised of non-commercial content, which generally have artistic, historic or cultural themes, and which are designed and painted (or supervised) by an artist who possess demonstrated knowledge and expertise in the design, materials, and execution of murals or other art. Commercial content of murals shall be subject to all applicable sign limitations of the underlying zone district."

B) Section 9109.17 MURALS, is hereby added as follows:

"Murals shall be allowed by permit reviewed by the Beautification and Mural Council of the Banning Chamber of Commerce and permitted by the City's Community Development Department. Applications shall be on a form devised by the Community Development Department. A permit for a mural will be granted when the following conditions have been satisfied:

- 1) Completed application;
- 2) Sign permit fee paid;
- 3) Approved by the Beautification and Mural Council of the Banning Chamber of Commerce;
- 4) The mural shall not cause a pedestrian or vehicular safety hazard;
- 5) The mural shall be applied to the wall of a building; and
- 6) The mural shall be maintained."

Section 4: Severability.

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

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PASSED, APPROVED AND ADOPTED this 4th day of December, 2007.

Betty DeSantis, Chairperson
Banning Planning Commission

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

Burke, Williams & Sorensen LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2007-31, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 4th day of December, 2007 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Virginia Sorenson, Recording Secretary
City of Banning, California



RESOLUTION NO. 2007-31

AN RESOLUTION OF THE PLANNING COMMISSION OF
THE CITY OF BANNING, CALIFORNIA
RECOMMENDING TO THE CITY COUNCIL APPROVAL
OF ZONE TEXT AMENDMENT #07-97502, AN
AMENDMENT TO THE ZONING CODE TO ESTABLISH
PROVISIONS FOR MURALS

WHEREAS, the City undertook a comprehensive General Plan and Zoning Ordinance update in 2003; and

WHEREAS, the Municipal Code allows for Zone Text Amendments consistent with the goals and policies of the General Plan; and

WHEREAS, on the 27th day of July 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Press Enterprise newspaper of the holding of a public hearing at which the project would be considered; and

WHEREAS, on the 7th day of August 2007, the Planning Commission continued the public hearing to the 4th day of September 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 4th day of September 2007, the Planning Commission continued the public hearing to the 2nd day of October 2007, at which time interested persons had an opportunity to testify in support of, or opposition to, the Zone Text Amendment; and

WHEREAS, on the 2nd day of October 2007, the Planning Commission closed the public hearing and directed staff to return to the Planning Commission with new alternatives for the Zone Text Amendment, at which time the public hearing would be re-noticed and re-opened; and

WHEREAS, on the 16th day of November 2007, the City gave public notice as required under Zoning Code Section 9117 by advertising in the Press Enterprise newspaper of the holding of the re-opened public hearing at which the project would be considered; and

WHEREAS, at this public hearing on the 4th day of December 2007, the Planning Commission considered and heard public comments on the Zone Text Amendment; and

WHEREAS, the Planning Commission has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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.

NOW THEREFORE, the Planning Commission does resolve, determine, find, and order, and recommend as follows:

OPTION 2

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Section 1: Environmental Findings.

The Planning Commission, in light of the whole record before it, including but not limited to, the City's Local CEQA Guidelines, the recommendation of the Community Development Director as provided in the Staff Reports dated August 7, September 4, October 2 and December 4, 2007 and documents incorporated therein by reference, and any other evidence (within the meaning of Public Resources Code § 21080(e) and §21082.2) within the record or provided at the public hearing of this matter, hereby finds and determines as follows:

1. **CEQA:** The City has analyzed this proposed project and has determined that it is exempt from the California Environmental Quality Act ("CEQA") under 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, as here, 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 amendment to the municipal code does not relate to any one physical project and will not result in any physical change to the environment. Further, projects subject to this ordinance will trigger individual analysis and documentation related to CEQA. Therefore, it can be seen with certainty that there is no possibility that this ordinance may have a significant adverse effect on the environment, and therefore the adoption of this ordinance is exempt from CEQA pursuant to Section 15061(b)(3) of the CEQA Guidelines.

Section 2: Zoning Ordinance Amendment Findings.

The Planning Commission makes the following findings regarding the Zoning Ordinance Amendment:

1. The proposed Zone Text Amendment is consistent with the goals and policies of the General Plan.

Fact: The Zone Text Amendment 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 amendment will result in clarifying the goals, policies and programs of the General Plan. Program 11.A of the Banning General Plan Economic Development Element indicates that the City should encourage and promote special events and activities which strengthen the City's image and attractiveness to residents, visitors, and businesses. Murals will enhance the City's appearance and image and make it more attractive to the residents and visitors alike.

2. The proposed Amendment is internally consistent with the Zoning Ordinance.

Fact: The Zone Text Amendment is consistent with the existing provisions of the Zoning Ordinance. The amendments will cause murals to be subject to the general standards of Section 9109 [Sign Regulations] and will establish standards for murals, but will not regulate the content of the murals. The Zoning Ordinance currently contains, in Section

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9109 [Sign Regulations] an integrated program for the regulation of signage within the City. These Zone Text Amendments would allow for the placement of murals, under the auspices of the Chamber of Commerce, within commercial and industrial zones in the City. The City would have the same authority that it does to regulate all other types of signs; all content and maintenance issues would be addressed by the Chamber of Commerce.

Section 3: Recommended Zone Text Amendments.

The Planning Commission hereby recommends to the City Council approval of the following amendments to the text of the Zoning Code:

A) Section 9109.03 DEFINITIONS, is hereby amended to add the following:

"Murals. Painted wall signs which have a majority of the sign area comprised of non-commercial content, which generally have artistic, historic or cultural themes, and which are designed and painted (or supervised) by an artist who possess demonstrated knowledge and expertise in the design, materials, and execution of murals or other art. Commercial content of murals shall be subject to all applicable sign limitations of the underlying zone district."

B) Section 9109.17 MURALS, is hereby added as follows:

"Murals shall be placed on walls within a commercial or industrial zone within the city. Murals shall be allowed by permit approved by the Community Development Director. Application for a permit shall be on the same form as that required for permanent signs. The Director will grant a permit for a mural when the following conditions have been satisfied:

- (1) The applicant has submitted a completed application.
- (2) The applicant has submitted the appropriate sign permit fee.

(3) The Director is able to determine, based on the application and supporting materials submitted with the application, that the mural will not cause an unreasonable pedestrian or vehicular safety hazard.

(4) The applicant has consulted with and received approval as to non-communicative aspects of the mural, including but not limited to paint/materials, wall preparation, and proposed color scheme, from a recognized local or national mural expert (a non-exclusive list of experts shall be kept by the Director for reference by applicants).

(5) The Director is able to determine, based on the application and supporting materials submitted with the application, that the mural will be well maintained throughout its useful life."

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Section 4: Severability.

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

PASSED, APPROVED AND ADOPTED this 4th day of December, 2007.

Betty DeSantis, Chairperson
Banning Planning Commission

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

Burke, Williams & Sorensen LLP
City Attorney
City of Banning, California

CERTIFICATION:

I, Virginia Sorenson, Recording Secretary of the Planning Commission of the City of Banning, California, do hereby certify that the foregoing Resolution No. 2007-31, was duly adopted by the Planning Commission of the City of Banning, California, at a regular meeting thereof held on the 4th day of December, 2007 by the following vote, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

Virginia Sorenson, Recording Secretary
City of Banning, California

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**CITY COUNCIL AGENDA
CONSENT ITEM**

DATE: January 8, 2008

TO: Honorable Mayor and City Council

FROM: Chris Paxton, Director of Human Resources

SUBJECT: IBEW-Utility Unit Memorandum Of Understanding

RECOMMENDATION:

- I. Adopt Resolution No. 2008-02 approving a Memorandum of Understanding (MOU) with the IBEW-Utility Unit which covers the City's Electric Utility and Water and Wastewater Utility employees.
- II. Adopt BUA Resolution 2008-01UA amending the 2007-08 budget to incorporate necessary changes.

JUSTIFICATION: The City's most recent MOU with the IBEW-Utility Unit expired on September 30, 2007. A new MOU has now been negotiated.

BACKGROUND: With the expiration of its MOU with the IBEW-Utility Unit on September 30, 2007, the City entered into negotiations with IBEW.

After two months of negotiations under the provisions of the Myers-Milius-Brown Act and the City's Employer-Employee Relations Ordinance, a new three year agreement has been reached. Terms of the agreement are retroactive to September 30, 2007. This new MOU provides for an increase to health insurance contributions under the City's cafeteria plan, caps tuition reimbursement, extends the probationary period from 6 months to one year and makes other various changes to existing language.

FISCAL DATA:

The fiscal impact of this agreement over three years is \$501,840.00. All of this funding will come from the Electric and Water Enterprises thus there is no impact to the General Fund.

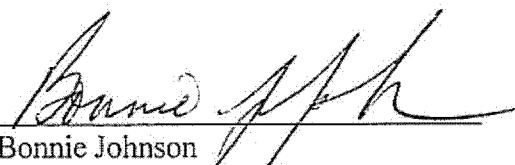
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RECOMMENDED BY:



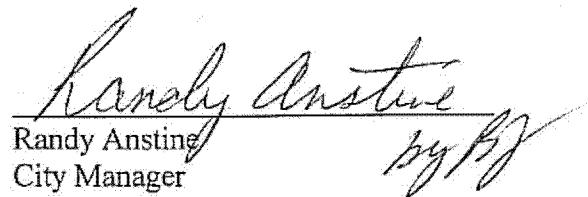
Chris Paxton
Director of Human Resources

REVIEWED BY:



Bonnie Johnson
Director of Finance

APPROVED BY:


Randy Anstine
City Manager

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RESOLUTION NO. 2008-02

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BANNING APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS UTILITY UNIT (IBEW-Utility Unit) AND THE CITY OF BANNING

WHEREAS, the City of Banning has recognized the International Brotherhood of Electrical Workers-Utility Unit (IBEW-Utility Unit) as the bargaining unit representing a group of its employees; and,

WHEREAS, the prior Memorandum of Understanding (MOU) between the City and IBEW-Utility Unit expired on September 30, 2007; and

WHEREAS, the City and IBEW-Utility Unit have successfully met and conferred under the Meyers-Milias-Brown Act (MMBA) and the City's Employer-Employee Relations Resolution to negotiate a new MOU for the period October 1, 2007 through September 30, 2010;

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

1. The City Council approves the MOU, a copy of which is attached hereto and by this reference made a part hereof.
2. The Mayor is authorized to execute the original document.

PASSED, APPROVED, AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Mayor
City of Banning

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

Burke, Williams & Sorenson LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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BUA RESOLUTION NO. 2008-01UA

**A RESOLUTION OF THE BANNING UTILITY AUTHORITY OF THE CITY OF
BANNING AMENDING THE 2007-08 BUDGET TO INCORPORATE NECESSARY
CHANGES**

WHEREAS, the City of Banning has recognized the International Brotherhood of Electrical Workers-Utility Unit (IBEW-Utility Unit) as the bargaining unit representing a group of its employees; and,

WHEREAS, the prior Memorandum of Understanding (MOU) between the City and IBEW-Utility Unit expired on September 30, 2007; and

WHEREAS, the City and IBEW-Utility Unit have successfully met and conferred under the Meyers-Milias-Brown Act (MMBA) and the City's Employer-Employee Relations Resolution to negotiate a new MOU for the period October 1, 2007 through September 30, 2010; and

WHEREAS, the above referenced MOU covers City positions funded by both the Electric Enterprise and the Water Enterprise; and

WHEREAS, the Banning Utility Authority (Authority) was created in July 2005 and the Authority must approve all budgetary and policy related issues affecting the Water and Wastewater Enterprises;

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

The Finance Director is authorized to amend the budget to include an appropriation for the funding of additional compensation pursuant to the terms of the MOU approved by the City Council. Specifically, the following funds shall be increased by the following amounts:

Fund 660	\$24,570.00
Fund 670	\$35,910.00
Fund 675	\$ 1,890.00
Fund 680	\$ 5,670.00
Fund 761	<u>\$ 9,450.00</u>
Total	\$77,490.00

PASSED, APPROVED, AND ADOPTED this 8th day of January, 2008.

Brenda Salas, Chairwoman
Banning Utility Authority

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

Burke, Williams & Sorenson LLP
City Attorney

ATTEST:

Marie A. Calderon, City Clerk
City of Banning

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MEMORANDUM OF UNDERSTANDING
THE CITY OF BANNING
AND
THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS - LOCAL 47
UTILITY UNIT

October 1, 2007 through September 30, 2010

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ARTICLE 1 - PREAMBLE

1.1- This agreement is entered into between The City of Banning, a Municipal Corporation, hereinafter known as the "CITY" and the authorized representatives of the International Brotherhood of Electrical Workers - Local 47, the recognized employee organization in the Meter Reading, Electric and Water Utility Employees Unit of representation, hereinafter known as "Union" or "the Union", relative to wages, hours, and other terms and conditions of employment as provided by Sections 3500 - 3510 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act.

1.2- Recognition. The City hereby formally recognizes IBEW as the only Recognized Employee Organization representing full time, permanent employees in the unit of representation presently or hereafter employed by the City and eligible for inclusion in the Meter Reading, Electric and Water Utility Employees Unit. It is understood that this Agreement shall constitute a bar to any petition or request for recognition of any unit which includes classifications of employees covered by this Agreement or such petitions to represent such employees at any time during the term hereof. This provision shall not preclude employees from exercising their rights as may be provided by the Meyers-Milias-Brown Act or the Employer-Employee Relations Resolution of the City.

1.3- Term. Except as otherwise provided herein, this agreement between the City and the Union relative to wages, hours, and other terms and conditions of employment shall become effective on October 1, 2007 through September 30, 2010 and thereafter shall remain in full force and effect year-by-year unless one (1) of the parties notifies the other in writing no later than June 30, 2010 of its request to amend, modify or terminate this MOU or no later than June 30th of any year after 2010 until a new agreement has been executed or the City Council acts in accordance with the terms of Article IV of the City's Employer-Employee Resolution No. 2007-41.

1.4- Represented Classifications. This agreement covers employees in the following classifications:

Apprentice Meter Test Technician
Assistant Water Superintendent
Auto Cad Technician
Electrical Service Planner
Electric Services Worker
Field Service Representative
Meter Test Technician
Powerline Apprentice
Powerline Crew Supervisor
Powerline Technician
Public Benefits Coordinator
Senior Electric Distribution System Designer
Senior Electric Services Planner
Wastewater Collection Systems Specialist

Wastewater Collection Systems Technician
Wastewater Collections Systems Supervisor
Water Crew Supervisor (Production and Distribution)
Water Services Worker
Water Meter Crew Lead
Water Valve Flushing Crew Lead
Water Construction Crew Lead

ARTICLE 2 - CONTINUATION OF RULES & POLICIES

2.1- Other Written Policies. It is understood and agreed that all such written ordinances, policies, resolutions, rules and regulations, including, but not limited to, the Personnel Rules and Regulations of the City, the Employer-Employee Relations Resolution (Resolution No. 2007-41); and the Administrative Manual of the City shall remain in effect during the course of this Agreement subject to amendment or deletions as otherwise provided herein.

2.2- Past Practice. For purposes of this MOU, "past practice" shall be defined as an unwritten policy, procedure or work rule of the City affecting wages, hours or conditions of employment, upon which the City and members of the bargaining unit have come to rely through a course of conduct and which is not inconsistent with the express terms and conditions of this MOU. As of the effective date of this MOU, all past practices preexisting this MOU shall be deemed to be void and of no further force and effect.

2.3- Meet and Confer. The Union and the City agree to meet and confer during the term of this MOU over the adoption, amendment or revision, including repeal, of City ordinances, resolutions, rules and regulations, including but not limited to, the City's Personnel Rules and Regulations, the Employer-Employee Relations Resolution (Resolution No. 2007-41) and the Administrative Policies of the City, to the extent that such documents contain mandatory subjects of bargaining pursuant to the Meyers-Milias-Brown Act. Should an impasse be reached following such meet and confer sessions, the provisions of the Employer-Employee Relations Resolution (Resolution No. 2007-41) will apply.

ARTICLE 3 - EMPLOYEE RIGHTS

3.1 Non Discrimination. The provisions of this MOU shall apply to all persons covered by this MOU without discrimination on account of race, color, ancestry, sexual orientation, sex (including pregnancy, childbirth and related medical condition) national origin, religion, creed, marital status, physical or mental disability, medical condition, age, citizenship status or any other basis protected by applicable law, nor will there be any discrimination with respect to hiring, retention or any condition of employment because of membership or activities on behalf of the Union.

3.2 Union Membership. The Union will accept into membership all eligible persons of the bargaining unit without regard to race, color, ancestry, sexual orientation, sex (including pregnancy, childbirth and related medical condition) national origin, religion, creed, marital status, physical or mental disability, medical condition, age, citizenship status or any other basis protected by applicable law.

3.3 Rights Granted By State and Federal Law. Except as otherwise provided in this MOU, the employees covered by this Agreement shall have all rights which may be exercised in accordance with state and federal law, and applicable ordinances, resolutions, rules and regulations. However, employees covered by this Agreement shall not have the right to file a grievance for violation of any such law, ordinance, resolution or rule, except as specifically set forth herein at Article 28.

3.4 Additional Employee Rights. Employees shall also have:

(a) The right to form, join and participate in activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations.

(b) The right to refuse to join or participate in the activities of employee organizations.

(c) The right to be free from interference, intimidation, restraint, coercion, discrimination, or reprisal by other employees, employee organizations, management or supervisors, as a result of their exercise of rights indicated in (a) and (b) above.

ARTICLE 4 - MANAGEMENT RIGHTS

4.1- The Union recognizes and agrees that, except as limited by this MOU, the City and its representatives have the responsibility and the authority to manage and direct all operations and activities of the City including, but not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards and the processes and the materials to be employed; the right to subcontract any work or operation; to expand or diminish services; to determine the procedures and standards of selection for employment and promotion; determine classifications; direct its employees; take disciplinary action; relieve its employees of duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted and to assign work to employees and to establish and change work schedules and assignments and to determine the days and hours when the employees shall work; take all necessary actions to carry out its mission in emergencies; and, exercise complete control and discretion over its organization and work performance technology.

4.1.1 When the decision to make the change is non-negotiable, but the effects of the decision are negotiable, the duty to provide notice and an opportunity to bargain arises at the time the decision is made and prior to taking action to implement the decision.

4.2- Subcontracting. - The City shall notify the Union Business Representative and Union Steward of its intention to subcontract work performed by employees covered by this Agreement no later than the date it notifies bidders for said contract work. Union may comment on the proposed subcontracting and may request a meeting under Article 10 to discuss it or if applicable may ask for a meet and confer on the effects.

4.3 Volunteers - The City agrees that volunteers will not perform unit work except during the recruitment process of a unit classification. Volunteers may not apply for a position within the City for one (1) year following the last day of volunteer work for the job for which they were a volunteer.

ARTICLE 5 – PROBATIONARY PERIOD

5.1 All employees appointed to a position represented by the Union shall serve a twelve month probationary period. The probationary period shall be considered a part of the examination and selection process and shall not include any time served under any limited service or provisional appointment but shall date from the time of appointment to a regular position. After serving six months in the probationary period, the employee shall be eligible for a six month merit increase based upon a satisfactory performance evaluation. This will be the employee's new anniversary date for future performance evaluations/merit increases. Employees will also receive a probationary review at the completion of their probationary period. Represented employees who have previously successfully completed a probationary period and who are subsequently promoted, shall serve a six (6 month) probationary period in the new position.

ARTILE 6 - DUES DEDUCTION; AGENCY SHOP

6.1 Agency Shop. - The City of Banning agrees to continue the agency shop in accordance with Section 3502.5 of the California Government Code. The eligible funds exempt from taxation under Section 501(c)(3) of the Internal Revenue Code shall be as agreed upon by the Union and the City, in writing, and made a part hereof.

6.2 Dues Deduction. - The City shall deduct one (1) month's current and periodic union dues from the wages and/or sick leave benefits of each employee.

6.3 Sufficient Earnings. - The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues deduction authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings.

6.4 Non Pay Status. - In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over Union dues.

6.5 Cancellation. - An employee's authorization for deduction of dues may be cancelled at any time by written notice from the employee to the City with a copy to the

Union. An employee's deduction authorization shall automatically be cancelled if the employee leaves the employ of the City or is transferred out of the representation unit.

6.6 Funds Transmission. - The aggregate amount of such deductions by the City shall be transmitted monthly to the Business Manager/Financial Secretary of the Union. The City shall provide the Business Manager/Financial Secretary with a list each month indicating the dues deducted from the pay of any represented unit employee and those employees for whom no deduction was made pursuant to the provisions of Sections 6.3, or 6.4.

6.7 Indemnification. - The Union shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of deduction of employee organization dues. In addition, Union shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

ARTICLE 7 - UNION REPRESENTATIVES

7.1- Meetings. - Two (2) employees selected by the Union may attend scheduled meetings with City management during regular hours without loss of pay, provided that such employees shall not leave their work station or assignment without first securing the approval of their Department Head. Such meetings shall be scheduled in a manner consistent with the City's operating requirements and work schedules. Nothing herein shall be deemed to preclude the scheduling of such meetings at hours other than such employee's regular working hours, in which event attendance shall be without pay.

7.2 Leave For Union Business. - Upon not less than seven (7) calendar days' notice, City may grant a leave of absence for Union business to not more than three (3) employee(s) designated by the Union. Such leave shall not be denied without legitimate reason. Such leave shall be without pay, but will not be considered a break in continuous service with the City. The total amount of all such leaves taken pursuant to this section shall not exceed ten (10) days in any calendar year, per employee.

7.3- Notification of Representatives. -Union shall notify the Human Resources Department of the name(s) of Union Stewards as such individuals are appointed by the Union from time to time.

ARTICLE 8 - BULLETIN BOARDS

8.1- Authorized Postings. - The City will continue to provide adequate bulletin board space where currently available. Only areas designated by the Department Head may be used for posting notices. Bulletin boards may be used for the following notices:

- (a) scheduled union meetings, agenda and minutes.
- (b) information on union elections and the results.
- (c) union special, recreational, credit union and related bulletins.

(d) reports of official business of the union including reports of committees or the executive board of the union.

(e) MOU, pay scales, job announcements, promotion lists, etc.

(f) such other items as may be approved by the Department Head or his/her designee upon request of the Union.

8.2 Posted Notices - Posted notices shall not be defamatory or violate any of the City's policies, nor shall they advocate election or defeat of candidates for public office. All notices to be posted may be dated and signed by an authorized representative of the Union. The Union may give notices to the represented employees through use of the City mail system and/or the City computer e-mail system.

ARTICLE 9- MEMORANDUM OF UNDERSTANDING COPIES

After it has been executed by the parties, the City shall provide the Union with thirty (30) executed copies of this MOU. Union shall be responsible for providing copies of this MOU to represented employees at Union expense. City shall also provide a copy of the executed MOU to any represented employee hired or promoted into the represented unit after the effective date of the Agreement. The City may charge for any additional copies.

ARTICLE 10- MEETINGS

10.1 Items of Mutual Concern. - Upon mutual agreement of both the City and the Union, the parties may meet to discuss items of mutual concern. A meeting conducted under this section shall not constitute a meet and confer or hearing under any grievance procedure.

10.2 Use of City Facilities. - The Union may be granted permission to use City facilities for the purpose of meeting with employees to conduct its internal affairs provided space for such meetings can be made available without interfering with City needs. Permission to use facilities must be obtained by the Union from the Department Head. The Union shall be held fully responsible for any damages to and security of any facility that is used by the Union.

10.3 Budget Oversight Committee. - The City agrees to continue the Budget Oversight Committee, with the Union entitled to appoint one (1) member. Said Committee shall have an equal number of members appointed by the City's recognized Employee Unions and the City. Said Committee shall be advisory only to the City Manager. The City shall determine the necessity of such meetings.

ARTICLE 11 - HOURS OF WORK

11.1 9/80 Schedule. - The parties agree that the City has the right to implement the nine-eighty (9/80) work schedule as set forth in the City's Administrative Policy No. A-30. The City is not required to meet and confer with the Union on any decision to

continue or discontinue a nine-eighty (9/80) work schedule. The employees' Department Head at his/her sole discretion may issue any additional rules for the nine-eighty (9/80) schedule.

11.2 Notice of Changes. - The City shall provide at least two weeks (14 days) notice of a change in work schedules.

ARTICLE 12 - LIGHT DUTY

12.1 Accommodation. - The parties agree that the City may assign employees who are unable to perform the full scope of their current job to temporary modified work consistent with the employee's functional limitations as described by his/her doctor when and where such work is available as determined by the City and where it may be accommodated without adverse consequences to the City or disruption in services or operations. This Article does not create in any employee entitlement to assignment in a light duty position.

12.2 Eligibility. - Temporary modified work will be considered on a case by case basis. Temporary modified work may involve modification of an employee's current job or assignment to work outside of an employee's current position. The Human Resources Department, in consultation with the Department Head, will determine eligibility for participation in the Temporary Modified Assignment Program and will coordinate temporary work positions/assignments.

12.3 Employee Cooperation. - It shall be the duty of every employee to cooperate fully and promptly with the coordination of temporary/modified work assignments. Notification of changes in restrictions/limitation shall be promptly communicated to the Human Resources Department along with supportive documentation, acceptable to the City. In administering the Temporary Modified Assignment Program, the Human Resources Department may communicate directly with the employee's physician(s) regarding the employee's medical limitations, functional restrictions, job requirements in the employee's regular assignment, job requirements in any modified duty assignment under consideration and return to work status. Such communication will only be done with the employee's written authorization.

12.4 Retention of Benefits. - Employees participating in the Temporary Modified Assignment Program shall retain all contractual benefits, except pay scale, not inconsistent with the objectives of the Temporary Modified Assignment Program. The City may change regular days off and work hours while the employee is in the Temporary Modified Assignment Program.

12.5 Right to Decline. - However, employees retain the right to decline any initial or subsequent assignment provided by the Temporary Modified Assignment Program.

ARTICLE 13- REST PERIOD

13.1 Rest Period. - Represented employees who work 16 (sixteen) consecutive hours shall earn an 8 (eight) hour rest period.

- (a) A rest period of 8 (eight) consecutive hours or more shall be considered an interruption of consecutive hours worked.
- (b) A rest period of less than 8 (eight) consecutive hours shall be counted as time worked but not paid.
- (c) Represented employees shall be compensated at their regular rate of pay for all regularly scheduled work time that falls while that employee is on his/her earned rest period.
- (d) Represented employees who are directed to return to work while on an earned rest period shall be compensated at the appropriate overtime rate for all time worked until the interrupted eight hour rest period is completed. Such overtime pay shall be in lieu of, and not in addition to, pay received under the provisions above.
- (e) Time paid for meals not taken shall not count toward earning a rest period. A paid meal time taken shall count toward earning a rest period.
- (f) When the rest period extends into a regularly scheduled work day, the employee may elect to use vacation time, compensatory time, floating holiday time or leave without pay for the rest of the day.
- (g) For the purpose of rest period eligibility, Sundays and holidays shall be treated as a normal work day.

ARTICLE 14- SALARIES, PERFORMANCE EVALUATIONS

14.1 Salary – Represented classifications shall be allocated according to the following salary ranges. These are open ranges wherein defined steps within salary ranges have been eliminated. All further wage increases, if available, will be given at the Salary Anniversary Date in accordance with the City's Pay for Performance Compensation Model, as set forth in Section 14.2 below.

<u>Classification</u>	<u>Salary Range</u>
Field Service Representative	49
Electric Services Worker	50
Wastewater Collection Systems Technician	50
Water Services Worker	50
Wastewater Collection Systems Specialist	52
Public Benefits Coordinator	53
Water Meter Crew Lead	54
Water Valve Flushing Crew Lead	54
Water Construction Crew Lead	54

Wastewater Collection Systems Supervisor	58 (4 ranges above WCC Lead)
Water Crew Supervisor (Prod & Distrib)	58 (4 ranges above WCC Lead)
Apprentice Meter Test Technician (Ph 1-4)	65 (Equal to Pwrln Appren)
Apprentice Meter Test Technician(Ph 5,6 & Prob)	71 (Equal to Pwrln Appren)
Assistant Water Superintendent	65
Powerline Apprentice (Ph 1-4)	65
Powerline Apprentice (Ph 5, 6 and Prob Lineman)	71
Powerline Technician	73
Meter Test Technician	73 (Equal to Pwrln Tech)
Electrical Services Planner	75 (5% above Pwrln Tech)
Powerline Crew Supervisor	77 (10% above Pwrln Tech)
Senior Electric Services Planner	77 (Equal to Crew Spvsr)
Senior Electric Distribution System Designer	N/A
Auto Cad/GIS Technician	66

(a) All incumbents, who have completed their one year probationary period in the classifications of Powerline Technician and Powerline Crew Supervisor shall be placed at maximum amount of the allocated range. Incumbents who have not completed their one year probationary period in such classifications shall be placed on the allocated range at a point which is 95% of the maximum amount of such range.

(b) All incumbents in Electric Utility Apprenticeships shall be placed at a point on the allocated range which reflects the corresponding phase of completion under their Apprentice Agreement with future wage increases pursuant to the following ratios:

- Phase 1 - 65% of Powerline Technician
- Phase 2 - 70% of Powerline Technician
- Phase 3 - 75% of Powerline Technician
- Phase 4 - 80% of Powerline Technician
- Phase 5 - 85% of Powerline Technician
- Phase 6 - 90% of Powerline Technician
- Phase 7 - 95% of Powerline Technician(= Probationary Powerline Technician).

(c) All other incumbents in represented classifications for Electric Utility shall be placed at a point on the allocated range which reflects their current salary but which is at least the amount of the minimum point on the allocated range and which reflects an appropriate relationship with the Powerline Technician, Powerline Apprentice and Meter Test Technician Apprentice classifications, as shown in Section 14.1

(d) All incumbents in represented classifications for the Water/Wastewater Utility shall be placed at a point on the allocated range which reflects their current salary but which is at least the amount of the minimum point on the allocated range.

- (e) All incumbents in represented classifications for the Water Utility shall receive education incentive pay for non-expired certifications conferred by State of California water regulatory agencies in excess of the minimum job requirements in accordance with the following sequential chart. Water Service Worker incumbents who are currently receiving education incentive pay but have not met the sequential achievement of additional certifications shown below shall be grandfathered at their current premium pay, with a cap of not more than 10% of salary.
- (f) The following sets forth the incentive pay percentages for water/wastewater classifications employed by the City on or before September 30, 2006. Under no circumstances shall the cumulative total for incentives exceed 12.5%. No incentives are paid for the classification minimum requirements. Incentives for successively higher certifications cancel incentives paid for lower certificates (Example: A 1.25% incentive paid for a D-1 is cancelled at the time the incumbent qualifies for a 2.5% incentive for a D-2) Incumbents in Water/Wastewater Utility classifications employed by the City on September 30, 2006 and receiving a 10% education incentive pay for attainment of D-3 and T-2 are grandfathered at the 10% incentive pay. Those same employees are entitled to receive an education incentive of 12.5% upon attainment of the Collections-1 certificate. Employees hired after September 30, 2006 but prior to September 30, 2007 must meet all of the achievements set forth below in order to receive education incentives in the amounts of 10% and 12.5%.

Water Services Worker (Requires T-1 or O-1)

T-1	0% (Job Requirement)
D-1	0% (Job Requirement)
D-2	5%
T-2	2.5%
D-3 & T-2	2.5%
D-3, T-2 & Collections-1	2.5%
D-4, T-2 & Collections-1	2.5%

Water Crew Leads (Requires T-1 and D-2 and Collections-1)

T-1	0% (Job Requirement)
D-2	0% (Job Requirement) CWEA-1 within 12 months
T-2	5%
D-3	2.5%
Collections 1	2.5%
D-4	2.5%

Water Crew Supervisor (Requires T-2 and O-2)

T-2	0% (Job Requirement)
D-2	0% (Job Requirement)
D-3 and Collections-1	5 %
D-4 and Collections-1	2.5%

Assistant Water Superintendent (Requires T-2 and D-4)

T-2	0% (Job Requirement)
D-4	0% (Job Requirement)
T-3, D-4 and Collections 1	5%

Wastewater Collections Systems Technician (Requires CWEA-1)

CWEA-1	0% (Job Requirement)
D-1	5%
T-1	2.5%
D-2	2.5%
T-2	2.5%
D-3 & T-2	2.5%
D-3 & Collections-1	2.5%
D-4 & Collections-2	2.5%

Wastewater Collections Systems Specialist (Requires CWEA-2)

CWEA-2	0% (Job Requirement)
D-2	5%
T-2	2.5%
D-3 & T-2	2.5%
D-3 & Collections-3	2.5%
D-4 & Collections-3	2.5%

Wastewater Collections System Supervisor

CWEA-3	0% (Job Requirement) D-1 within 12 months
D-2	5%
T-2	2.5%
D-3 & T-2	2.5%
D-3 & Collections-3	2.5%
D-4 & Collections-3	2.5%

14.2- Wage Increases/Performance Evaluations –

- (a) Salary increases are to be based upon performance, rather than market increases, within negotiated salary pay ranges. All employees shall have their performance evaluated annually on the City's Achievement Evaluation Forms in accordance with their salary anniversary date.
- (b) Pursuant to the Levels of Achievement on their annual performance evaluation, employees who have not reached within two (2) percent of the mid point of their salary range as shown on Exhibit 1 would receive the following salary

percentage increase corresponding with their Achievement Evaluation Form rating. Once an employee reaches within two (2) percent of the mid point of their salary range, then these employees would receive increases up to the maximum of their range as set forth in paragraph c, below:

2.50 - 2.99 = 4% salary increase
3.00 - 3.49 = 5% salary increase
3.50 - 3.99 = 6% salary increase
4.00 - 4.49 = 7% salary increase
4.50 - 5.00 = 9% salary increase

(c) Pursuant to the Levels of Achievement on their Achievement Evaluation Form, employees who have reached within two (2) percent or above of the mid point of their salary range would receive the following salary percentage increase corresponding with their annual Achievement Evaluation Form rating, up to the maximum of their range. Once an employee reaches the maximum of their salary range as shown on the Permanent Salary Table, then the employee will be given a one time bonus as set forth in paragraph d, below:

- i. 2.50 - 2.99 = 3% salary increase.
- ii. 3.00 - 3.49 = 3.5% salary increase
- iii. 3.50 - 3.99 = 4% salary increase
- iv. 4.00 - 4.49 = 4.5% salary increase
- v. 4.50 - 5.00 = 5% salary increase

If any percentage increase set forth above, causes an employee's base salary to exceed the maximum of their salary range as shown on the Permanent Salary Table, only the percentage increase up to the maximum of their salary range will be applied to their base salary and the remaining percentage increase will be paid as a one time bonus.

(d) Employees who have attained the maximum of their respective salary ranges may continue to receive performance pay in the form of one time annual bonuses, which is PERS reportable income. These bonuses do not become part of the employee's base salary range.

- i. 3.50 - 4.49 = 2% one-time annual bonus
- ii. 4.50 - 5.00 = 3% one-time annual bonus

(e) An Achievement Evaluation Review Committee has been established to review all annual ratings of 3.50, or above, and review employee complaints of inappropriate ratings, which are 2.49 or below. The Human Resource Director,

non evaluating Department Head (or City Manager) and an IBEW business representative will serve as the Achievement Evaluation Review Committee. Employees who have reached the maximum of their salary range are not entitled to request a review.

- i The purpose of the review of all overall ratings of 3.50 or above is to ensure that the varying departmental cultures are reconciled, that consistency and fairness occurs throughout the organization, and to make sure that organizational values are promoted through the evaluation process. Before an employee is authorized to receive a pay increase as a result of an overall rating of 3.50 or above, the Achievement Evaluation Review Committee must review and approve the rating in the Achievement Evaluation Form. The review and response of the Achievement Evaluation Review Committee must be done within fifteen (15) business days of receipt of the Achievement Evaluation Form from the evaluating department to the Department of Human Resources. The Achievement Evaluation Review Committee's decision on the overall rating will be the final decision.
- ii Employees have fifteen (15) business days after receiving their Achievement Evaluation Form with an overall rating of 2.49 or below to request a review with the Achievement Evaluation Review Committee. An employee shall not be given an overall performance rating of less than 2.50 or below, unless they have received some form of written communication during the previous twelve (12) month evaluation period outlining the supervisor's expectations for performance improvement. The employee's signature is not required to trigger the fifteen (15) business day period and if the employee refuses to sign the document, the Department Head will note and date the employee's refusal to sign. The employee must submit a written request to the Human Resources Director which details their position and must state the specific reasons for disagreement on all sections on the Achievement Evaluation Form that the employee believes are inaccurate and attach all documents that it contends the Achievement Evaluation Review Committee should consider. An employee's failure to timely submit such a written request to the Human Resources Director waives the employee's right to a review. Within fifteen (15) business days of receipt of the employee's written request, the Achievement Evaluation Review Committee will meet with the employee and provide the employee the opportunity to discuss any and all items set forth in the employee's written request for the review. The review request may be processed longer than fifteen (15) business days provided there is mutual agreement between the employee and the Achievement Evaluation Review Committee and that the IBEW business representative who serves on Achievement Evaluation' Review Committee can

coordinate a date that is acceptable to all members and the employee. The Achievement Evaluation Review Committee only has the authority to increase any rating identified by the employee in the review request or affirm the rating in the evaluation, but it has no authority to decrease any rating. The Achievement Evaluation Review Committee will, among other things, review the evaluation, the employee's position on the evaluation, and whether the employee received formal written and/or oral counseling from the evaluator during the previous twelve (12) month evaluation period. The Achievement Evaluation Review Committee shall notify the employee in writing of its decision within fifteen (15) business days of its meeting with the employee and its decision shall be final.

- iii. If during the course of administering Pay for Performance, there is mutual agreement by IBEW and the City that meet and confer is necessary, IBEW and the City shall commence the meet and confer process, pursuant to the identified Pay for Performance deficiencies.

ARTICLE 15 - OVERTIME, ON-CALL PAY

15.1 – Maximum Comp Time Accrual. All work performed by Unit members in excess of forty (40) hours in one (1) week, where such hours are required and approved by management, shall be paid at the rate of one and one half (1-1/2) times the employee's regular hourly base rate of pay. Overtime may be accrued as compensatory time to a maximum of one hundred sixty (160) hours. All overtime worked in excess of one hundred sixty (160) hours shall be paid for in the pay period in which it is earned.

15.2- Hours Worked. For purposes of overtime calculation, "hours worked" shall include time spent in required court appearances as set forth in Article 16. Hours worked shall also include approved vacation, holiday and compensatory time off. All other hours paid for but not worked, including sick leave shall not be counted as hours worked for overtime calculation.

15.3-(a) – Call Out Minimum Compensation. The City agrees to pay to the Unit Member a minimum of two (2) hours pay for any time worked during the first hour when called-out for emergencies, and time and one-half (1/2) for each hour worked thereafter. For example, should an employee be called-out to work two (2) hours of emergency duty he would be compensated with three and one-half (3-1/2) hours pay at the regular hourly base rate of pay; two (2) hours pay for the first hour worked and one and one-half (1-1/2) hours pay for the second hour worked.

(b) All certified electrical and water employees (excluding the Electrical Services Worker and Apprentice employees) of this unit are required to be placed on a Standby List by the Department Head, or his/her designee, on a rotational basis which includes alternating between both Primary and Secondary standby. The employee designated as the Primary is authorized to call the employee designated as the Secondary when the Primary determines that it is necessary to do so for safety or other legitimate reasons. The reason for the call-out of the Secondary employee shall be

documented in writing and submitted to the Department Head and attached to the time card for any call-out hours worked by the Secondary on-call person.

15.4- On-Call Pay

- (a) Compensation for all employees placed on-call for a period of one (1) week one-hundred sixty eight ((168) hours less forty (40) hour work week) shall receive additional compensation of sixteen (16) hours at the regular rate of pay.
- (b) When a holiday falls during a regularly scheduled on-call period, the employee will receive an additional four (4) hours of pay at the basic rate of pay.
- (c) On-call pay shall not be paid for an employee's scheduled work shift.
- (d) Employees shall be entitled to receive the pro rata equivalent for any partial week.
- (e) On-call assignments shall only be made by the Department Head or his authorized representative.
- (f) On-call duty shall be served pursuant to a schedule prepared by the Department Head or his/her designee.
- (g) Due to the implementation of the Alternative Work Schedule in City's Administrative Policy No. 30, Electric Department on-call pay begins and ends eleven (11) a.m. Thursday to Thursday.

15.5- On-Call Status. For purposes of this Article, an employee shall be deemed to be on On-Call status only when all of the following conditions are met:

- (h) The appropriate manager has placed the employee in on-call status by a notice in writing and said notice must be attached to the employee's time card; and,
- (i) The employee is required to respond to the City yard or other designated location within a specified time not to exceed thirty (30) minutes; and,
- (j) While on-call, the employee is prohibited from engaging in any activity which may interfere with the employee's ability to respond to a call and immediately commence the required job performance.

15.6- Communication Devices. An employee in on-call status may be required to wear a beeper, pager or other communication device. The requirement to wear a communication device shall not, absent the requirements set forth in section 15.5 constitute the placing of the employee in an on-call status.

ARTICLE 16 TEMPORARY UPGRADE PAY AND PROMOTION PAY

16.1 - Bargaining unit personnel temporarily assigned by management to work in a higher classification, including classifications outside of the bargaining unit for which they are qualified, shall receive compensation equivalent to a step on the higher classification salary range which provides a minimum of five percent (5%) above the employee's current salary or the bottom step of the range of the position to which he/she is temporarily upgraded, whichever is greater. Temporary upgrade pay shall be effective the day the assignment is made. At such time as an employee is no longer performing work out of his or her permanent classification, compensation shall be at the regular rate of pay for the permanent classification.

When assigning temporary upgrades, it is the intent of the City that such assignments shall be made in a fair and equitable manner so that all qualified employees are given an opportunity to work such assignments.

16.2- Promotions. Union personnel promoted to work in a higher classification shall be placed in the new salary range of the higher classification that pays at least five percent (5%) more than the employee received in the lower classification.

16.3- Limited Assignments. Temporary assignments to perform work out of an employee's permanent classification shall be limited in duration to six (6) months in any twelve (12) month period. A time extension to the temporary assignment beyond the initial six (6) months may be made with the written concurrence of IBEW.

ARTICLE 17- PAY FOR JURY DUTY & COURT APPEARANCES

17.1- Any employee summoned for attendance to any court for jury duty during his/her normal working hours shall be deemed to be on duty and there shall be no loss of salary, but any jury fees received by him/her shall be paid into the City treasury. Any employee, who shall be called as a witness arising out of and in the course of his/her City employment, shall be deemed to be on duty and there shall be no loss of salary, but any witness fees received by him/her shall be paid into the City treasury. An employee absent as a witness in a private matter shall not be entitled to be paid during such absence, he/she may, however, use vacation time for such absence.

ARTICLE 18- SAFETY, EQUIPMENT AND TRAINING

18.1 Safety Equipment. - The City will provide employees safety equipment in accordance with California State Law.

18.2 Uniforms. - The City shall provide uniforms for employees who are required by the City to wear a uniform.

18.3 Boot/Safety Shoe Allowance. - Effective the first full pay period in January 2008 and annually thereafter, the City shall provide a yearly boot /safety shoe allowance of \$200 to each employee who is required, by the nature of his/her work to wear a specific type/style of shoe or boot. An approved shoe/boot is one which meets the minimum standards as determined by the Department Head and approved by the Joint Safety and Training Committee. Departmental standards shall not be less than those which

may be required by CAL/OSHA. Employees shall wear approved shoes/boots during working hours where required by work conditions.

18.3 Damaged Property. - The City shall reimburse unit employees the reasonable replacement value of personal property destroyed in the course and scope of their employment. The employee shall make application for reimbursement by presenting to the Department Head the damaged or destroyed article. Personal property subject to this provision consists of personal property necessary to fulfill the employee's job duties and that is approved in advance for use on the job. Replacement for prescription eyewear is limited to \$200 per year. Replacement for watches is limited to \$100 per year. Excluded from this definition are items of clothing used by the employee in the exercise of his/her discretion in lieu of City issued uniform apparel. Replacement of items will be secondary to any applicable insurance.

18.4 Inclement Weather. - Whenever management decides not to send employees into the field during normal work hours due to inclement weather, those employees shall not suffer any loss of regular pay. When employees are not assigned to the field under this provision, they may be given other duties, assigned to training, or be held to respond to emergency calls.

18.5 Joint Safety and Training Committee. The City hereby agrees to create a Joint Safety and Training Committee. The Committee shall consist of an equal number of members appointed by the City and the Union. The Committee shall be advisory only. The Committee shall meet on a regular basis, but not less than once per quarter. The Union and City may agree to meet more frequently on a regular or special basis. The Committee may review work practices, training, procedures and rules and may recommend changes in the interest of health and safety. The Committee may review all serious accidents, injuries or fatalities, and include recommendations resulting from its review in the Committee's minutes. The Committee will also draft a safety manual for each department.

18.5.1 Reporting. Minutes of all Committee meetings shall be posted on Union bulletin boards, with copies to the City Manager, Human Resources Department, and to the Business Manager of the Union, within five (5) working days after the Committee meeting. Specific questions submitted either to the Committees or by the Committees to Management will be responded to within a reasonable time and the answers posted on Union bulletin boards.

18.5.2 Discipline. Proceedings of the Committee shall be completely independent of any disciplinary action and the Committee's findings shall not be entered into the record of any such disciplinary proceedings.

ARTICLE 19- MILEAGE, MEALS AND OTHER REIMBURSEMENT

19.1 – Personal Vehicle. Employees shall be reimbursed for use of their own vehicle for authorized City business pursuant to the administrative policies of the City. (Refer to Administrative Policy E-1 for guidelines).

19.2- DMV Testing. Employees who are certified under the State of California Department of Motor Vehicles Employer Testing Program to train and test for Class "CDL" drivers' license (truck portion) will receive \$50.00 stipend each time such training and testing is done. Payment will be authorized by the Human Resources Department only upon receipt of proper documentation that the City remains in compliance with the Employer Testing Program.

19.3 Emergency Meal Periods. Employees shall earn meals at fixed intervals during periods of call-out overtime, and during an extension of the regular or planned work day.

During call-out overtime, one thirty minute meal period and one meal compensation of \$12.00 will be earned for each consecutive four (4) hours of paid overtime completed.

During extension of the regular work day, one paid thirty minute meal period and one meal compensation of \$12.00 will be earned after two consecutive hours paid overtime completed; thereafter, meals will be earned after completion of each four (4) consecutive hour intervals as described above.

Employees that work two consecutive hours or more immediately prior to the beginning of a regularly shift will earn a thirty minute meal period and one meal compensation of \$12.00.

Employees called back within two hours after the end of their shift shall earn one thirty minute paid meal period and one meal compensation of \$12.00.

Paid meal periods will not count as time worked.

It is recognized that employees may not be able to leave an emergency situation and that the final determination of this fact shall be made by the supervisor in charge of the particular activity.

Employees shall receive pay for earned meal periods and meal compensation regardless of whether the meal period or meal is actually utilized. All meal periods will be paid at overtime rate.

ARTICLE 20 - TUITION AND BOOKS REIMBURSEMENT: EDUCATION INCENTIVE

20.1 Qualifications

(a) Reimbursement under this section shall be made for employee participation in an educational program which provides broad knowledge with respect to a subject, consistent with the requirements of subsection B immediately below. This is distinguished from "training" which relates to education in the performance of a limited task or tasks which the employee is required to perform as part of their current employment.

(b) Maximum reimbursement shall be \$3,500 per fiscal year. Tuition and cost of books actually paid will be reimbursed to all permanent employees for professional and technical courses approved by Department Head (subject to review by the Human Resources Department) and taken in an accredited educational institution provided that:

(i) The subject matter of the course relates directly to and contributes toward the employee's position with the City.

(ii) The employee has received at least a competent proficiency rating on the last evaluation report.

(iii) The employee has furnished evidence that the course has been completed with at least a 'C' grade.

(iv) Textbooks paid for by the City shall be returned to the City upon request and shall become the property of the City.

(c) Employees who are enrolled in an approved educational program as of October 1, 2007 shall not be subject to the \$3,500.00 maximum established in Section 20.1 (b). All other provisions of this article shall apply.

20.2 Reimbursement Requirements

(a) Requests for reimbursement must be completed and returned to the Human Resources Department within three (3) weeks after receipt of course completion documentation. (No reimbursement will be made without bona fide receipts or documentation).

(b) Reimbursement for textbooks will be approved only if the textbooks were not made available by City.

(c) Reimbursements will be made only after proof of completion of course with 'C' average or better and satisfactory receipts of payment for books and tuition are approved by the Human Resources Department.

20.3 Hours Worked -The City shall pay represented employees for working hours spent in City required and approved training or conferences. Travel time shall be included as time worked in accordance with FLSA standards. The City shall not pay for the costs incurred to meet minimum job requirements.

20.4 Education Incentive – A one (1) time Education Incentive shall be paid to represented employees upon successful completion of certain educational programs under the following conditions:

(a) 500.00 (five hundred dollars) shall be payable for successful completion of a certificate program requiring 80 hours or more for completion, from an accredited college or university in an area of specialization related to the duties of the position

currently held by the employee as previously approved by the Human Resources Director. An additional \$500.00 (five hundred dollars) shall be paid if the certificate is in the area of supervision of personnel.

(b) \$2,000.00 (two thousand dollars) shall payable for successful completion of an AA or AS Degree from an accredited college in an area of specialization related to the duties of the position held by the employee at the time the employee completes the program as previously approved by the Human Resources Director.

(c) \$3,000.00 (three thousand dollars) shall be payable for successful completion of a BA or BS Degree from an accredited college or university in any subject after 3 (three) years of employment with the City. An additional \$1,000.00 shall be paid if the degree is in the area of public or business administration, personnel, accounting, information management, or adult education.

(d) Programs shall be accredited by the California State Board of Education or equivalent authority. The incentive payments shall be otherwise subject to such rules and procedures as established by the City. Receipt of education incentive payments shall not be precluded by the fact that the employee may or may not have obtained tuition reimbursement by the City for all or part of the units required for the certificate or degree.

(e) Education incentive payments shall be made according to the following schedule:

25% of the total payable incentive shall be payable upon presentation of acceptable documentation (including transcripts) showing completion of certificate or degree.

The remaining 75% of the total payable incentive shall be payable one year from initial 25% payment.

It shall be the employees' sole responsibility to provide all necessary documentation, to obtain prior approval and to make the request for education incentive payment.

ARTICLE 21 - SICK AND BEREAVEMENT LEAVE

21.1 Sick Leave Accrual. -Union personnel shall accrue three and sixty-nine hundredth (3.69) hours of sick leave per pay period. Sick leave shall accrue without limit.

21.2 Use of Sick Leave.-Sick leave shall be granted only where consistent with the City's sick leave policy (currently AP-1). Except as otherwise provided in the Family Medical Leave Act and Pregnancy Leave policies of the City (currently AP-02) not more than one-half (1/2) of the employee's annual accrual of sick leave within any calendar year may be granted to an employee for the care or attendance of members of his/her immediate family.

21.3 Sick Leave Buy Out. - All represented employees may elect to receive a maximum buy-out of forty (40) hours each fiscal year of either comp time or vacation, or a combination thereof and 80 hours of sick leave, under this section provided, however, such buy-out may not reduce the employee's available sick leave bank below forty (40) hours. No such restriction shall apply to the buy-out of accrued comp time or vacation time.

21.4 Conversion. - After ten (10) years of continuous City service, the employee shall be eligible to convert one hundred percent (100%) of unused sick leave minus forty (40) hours to the City's Retiree Medical Savings Plan or deferred compensation. Alternatively, after ten (10) years of continuous City service, and upon separation the employee shall be eligible to convert the City's cash payment equivalent to thirty percent (30%) of all unused sick leave or contribute the entire remaining balance of sick leave to the employee's 457 Deferred Compensation Account (Subject to IRS maximum contributions provided by law). Such reimbursement to be computed based upon the employee's final compensation rate.

21.5 Bereavement. - Unit members, with more than 6 months of City service, shall be allowed twenty-four (24) hours with pay for bereavement leave upon the death of a member of their family. For this section family includes the following persons: mother, father, brother, sister, child, grandchild, and grandparent of the employee and the employee's spouse. The twenty-four (24) hours of bereavement shall be allowed for each death of a family member. However, an employee shall be allowed a maximum of forty (40) hours bereavement leave under this section for multiple family death occurring during the same twenty-four (24) hour period. Probationary employees may elect to use bereavement leave without pay, but upon successful completion of their probationary period they will be reimbursed for such leave at their rate of pay at the time of bereavement.

21.6 Salary Continuation. - For any work related injury, an employee shall have sixteen (16) weeks of Salary Continuation Pay for time off work authorized by the treating physician, including time for scheduled appointments with the treating physician.

21.7 Work Related Injuries. - All other aspects of employees work related injuries will be governed by the City Administrative Policy No. RM-03, Return to Work/Temporary Modified/Work Assignment Program.

ARTICLE 22 - VACATION AND HOLIDAY ACCRUALS

22.1 Vacation Leave Accruals. - For employees of the City as of date of this Agreement, Vacation benefits shall accrue in accordance with the following schedules:

- One (1) through four (4) years service :
Ten (10) days per year = three and eight one-hundredth (3.08) hours per pay period

Beginning the fifth (5th) year through the 9th year:

Fifteen (15) days per year = four and sixty-two hundredth (4.62) hours per pay period

Beginning the tenth (10th) year & thereafter:

Twenty (20) days per year = six and fifteen one-hundredth (6.15) hours per pay period

22.2 Maximum Leave Accrual. - An employee may accrue vacation leave a maximum of three-hundred twenty (320) hours. If an employee has accumulated the maximum allowed under this Article, said employee will receive no further Vacation Leave accruals until said employee uses a portion of his/her Vacation Leave and his/her Vacation Leave accruals have been reduced below the maximum. There shall be no retroactive receipt of any Vacation Leave lost as a result of this Article.

22.3 Approval Required. - Vacations shall be taken with approval of the Department Head at any time following the completion of the twelve (12) month probationary period, but the vacation leave taken shall not be in excess of that actually accrued at the time such vacation is taken. Vacations must be approved a minimum of fourteen (14) days in advance of the first day of such vacation. Exceptions may be made to the fourteen (14) day notice requirement for emergencies or at the discretion of the City by the Department Head or Division Supervisor.

22.4 Payment Upon Termination. - Any employee, who has been in continuous full-time service of the City for a period of six (6) months or more, who is about to terminate his/her employment, and has earned vacation to his credit, shall be paid for such vacation time on the effective date of such termination.

22.5 Payment In Lieu. - No more than once every three (3) years, at the request of the employee and with the approval of the Department Head and the Human Resources Department, in order to meet unusual or emergency conditions, an employee may be paid the straight time daily equivalent of forty (40) hours of his/her salary in lieu of vacation time off. Such payment shall be determined by the Human Resources Department. The balance of accrued vacation shall not be allowed to go below (forty) 40 hours as the result of a payment under this subsection.

22.6 Holidays. - Holidays for employees covered by this section shall be as follows:

New Years Day
Martin Luther King Day
President's Day
Memorial Day
Fourth of July
Labor Day
Veteran's Day
Thanksgiving
Day after Thanksgiving

Christmas
One (1) floating holiday

22.7 Holidays Falling on Weekend Days. - If the scheduled holiday falls on a Saturday the holiday will be taken on the preceding Friday. If the holiday falls on a Sunday, the holiday will be taken on the following Monday.

22.8 9/80 Schedule. - Employees on a nine-eighty (9/80) schedule as set forth in Article 10 shall be paid holiday time in accordance with the City's Administrative Policy No. A-30.

22.9 Floating Holiday. - The eight (8) hour floating holiday set forth in Article 21.6 above, shall be credited to each represented employee's account effective with the first payroll in each fiscal year.

22.10 Added Holidays. - If, during the term of this Memorandum of Understanding, the City Council recognizes an additional holiday for City employees, said holiday shall be extended to this bargaining unit.

ARTICLE 23 – MEDICAL AND DENTAL INSURANCE

23.1 City Contributions To a Cafeteria Plan. - For the period October 1, 2007 through June 30, 2008 the City shall contribute \$687.00 per month to each represented employee for a cafeteria benefits plan detailed in this section. For the period July 1, 2008 through June 30, 2009 the City shall contribute \$817.00 per month to each represented employee for the benefits detailed in this section. For the period July 1, 2009 through June 30, 2010 the City shall contribute \$947.00 per month to each represented employee for the benefits detailed in this section

(a) Said contribution shall first be used to provide for Health Insurance for employee. Employee shall be covered by Health Insurance with a City approved Health Plan unless the employee provides proof to the City that employee is covered by another acceptable health plan as determined by the City's Risk Manager.

(b) The balance may be used for any of the following or any combination thereof:

- (i) Health insurance for employee's spouse and/or dependents.
- (ii) Dental Plan for employee, spouse and/or dependents.
- (iii) Term life insurance for employee.
- (iv) Deferred compensation program.

23.2 Eye Wear Reimbursement - City will also reimburse the employee and employee's dependents a maximum of \$250 for eye wear every two years.

23.3 IRS 125 Plan. - During the term of this Agreement, the City shall maintain an Internal Revenue Section 125 program which will allow employees to allocate specified amounts of monthly pre-tax salary or wages for the reimbursement of medical care expenses or dependent care expenses or both.

23.4 Insurance Advisory Committee. - The City shall maintain the Insurance Advisory Committee to which the Union may appoint a representative.

23.4.1 Purpose. - The purpose of the Insurance Advisory Committee shall be to advise the City relative to health, life, and related insurance plans which may be provided to employees of the City of Banning including the type of plans, scope of coverage, and the selection of insurance carriers.

23.4.2 Voting. - The Insurance Committee shall determine issues by a majority vote of the members, each member having one (1) vote.

23.4.3 Selection of Members. - Insurance Committee Members shall be selected as follows:

(a) Representatives of bargaining units shall be selected in a manner to be determined by each respective unit.

(b) The City's Representatives shall be the Human Resources Director and the Finance Director.

23.4.4 Meetings. - The Insurance Committee shall meet as may be necessary to conduct the business of the committee.

23.4.5 Status. - The Advisory Insurance Committee will be advisory only, with no power or prerogative to decide on behalf of the City on issues pertaining to employee insurance coverage.

ARTICLE 24 – RETIREMENT AND MEDICARE

24.1 P.E.R.S. -

(a) Employer shall pay eight percent (8%) of the employee regular and special compensation as defined by PERS (Employer Paid Member Contribution "EPMC") the two and one-half (2.5%) at fifty-five (55) Retirement Benefit for miscellaneous employees. The amount paid under this section shall be treated as employee contributions pursuant to Section 141 (h)(2) of the Internal Revenue Code, or successor section.

(b) The City shall continue the One Year Final Compensation and Full Formula PERS plus Social Security retirement plan for members of the bargaining unit. Both employer and employee contributions under such contract amendment shall remain as set forth in (a) above.

24.2 F.I.C.A. - The Employee shall pay the employee's portion of FICA and the City shall be responsible for payment of the employer's portion.

ARTICLE 25 – MISCELLANEOUS BENEFITS

25.1- Disability Insurance - Each employee shall pay the cost of membership in the City's long term disability insurance selected by the City. City agrees to offer a short term disability program at the employees expense provided that such short term disability program can be offered in conjunction with the City's existing long term disability insurance. The City will notify the Union of this option at the City's Annual Insurance Advisory Meeting.

25.2- Computer Loan – Every unit employee who has completed the initial probationary period as an employee of the City shall be entitled to participate in an interest free loan program for the purchase of a computer. The maximum amount of any individual loan shall be equal to one (1) month of an employee's salary. The cumulative amount of loans outstanding hereunder shall not exceed \$40,000. The loan shall be upon the terms and conditions established by the City.

25.3- Direct Deposit - All employees shall be paid by direct deposit of their payroll check into an account of their choice, except those who either do not hold an account with a financial institution that offers direct deposit or who do not hold any account of any type, and such employees will be required to pay a \$10 administration fee per payroll. It shall be the responsibility of the employee to establish and maintain such account.

25.4 Utility Allowance – Any represented employee who resides within the City shall receive \$150 per month as a discount against the cost of electric and water service during the period of such residency.

ARTICLE 26 – IBEW RETIREE MEDICAL FUND

Employees agree to pay one percent (1%) of salary into the IBEW #47 Retiree Medical Fund.

ARTICLE 27 - LAYOFFS AND RE-EMPLOYMENT

27.1 Purpose. - The purpose of this section is to provide a fair and equitable basis for the reduction of full-time classified personnel due to insufficient work or funds.

27.2 Reasons For Lay Off. - The City retains the right to determine when a lack of work or lack of funds condition exists. Lack of work means that a category of work effort within the City can be fulfilled with fewer employees at an acceptable level of service. Lack of funds means that the City cannot sustain operations at the current level of employment within the funding available.

27.3 Notice Of Lay Off. - Any lay off initiated under the provisions of this document can take place at any time during the year. The City shall notify the affected employees in writing at least fourteen (14) calendar days prior to the employees last day of work. The City reserves the right to pay the employee for such fourteen (14) day period or any remaining portion thereof, and to require the employee to immediately vacate City property. A copy of any notice will be forwarded to the appropriate bargaining unit representative. Any notice of lay off shall specify the reason for the lay off and effective date. The form and timing of such notice shall be subject to the established Grievance Procedure provided however, that the City's decision to lay off is not subject to the grievance procedure. The date of layoff shall not be delayed by the pendency of a grievance.

27.4 Order Of Lay Off. The classifications of employees to be affected by any lay off shall be as determined by the City in its sole discretion. The order of lay off shall be based upon continuous seniority within the affected classification, except as provided in Section 27.4(a). With respect to the classifications which have been retitled by the City, "continuous seniority within the affected classification" shall not be limited to time in the newly titled classification but shall mean all current continuous time in full-time permanent employment with the City in whatever classification.

(a) Critical Position Function. There are various job functions set forth in the position description for each classification. Certain of these functions may be determined by the City Manager to be vital to the ongoing operations of the City. By way of further definition, a function is "critical" if the City Manager, in the exercise of his/her sole discretion determines that the City cannot best provide necessary services with the reduced work force without employees capable of performing the "critical" function. A senior employee may be selected for lay off over a more junior employee if the junior employee has demonstrated the ability to perform these critical position functions and the more senior employee has not. No person shall be deprived of the opportunity to develop his/her skills in a critical position function.

(b) For purposes of this section, "critical position function" shall be based on the skills necessary to perform the function and not on the performance of specific tasks performed by the incumbent in any position. "Skill" refers to the basic knowledge and ability necessary to perform a job function e.g. typing, welding, accounting or any recognized subcategory of such function, e.g. pipe welding, welding specialized metals, etc, or cost accounting vs. general accounting. "Tasks" refers to the elements of a position within a department e.g., typing form-A.

27.5 Reduction Off Class.

(a) Any employee who has been given a written notice of layoff may choose to be reduced in classification and compensation, to a classification in which the employee has previously established seniority while in the employ of the City, if the employee has greater continuous seniority with the City than at least one (1) person in the lower classification.

(b) Seniority for purposes of layoff shall be determined by the total continuous time served by an employee in his/her current position in addition to any time served by the employee in a position in the same job series with a pay range equal to or higher than the employee's current position. If an employee leaves the service of the City for any period of time the employee's prior service shall not be considered as service for the purpose of calculating the employee's seniority for any purpose.

(c) Alternatively, and exclusive of an election under the previous paragraph 27.5(a), an employee may choose to be reduced in classification and compensation to an existing position in a class series, if the employee has greater continuous length of service with the City than the incumbent in the lower classification in the class series. Class series is defined as a vertical succession of positions that encompass the same general set of job duties that increase in complexity and responsibility as one moves upward through the class series.

(d) Relative class standing for subparagraphs (a) and (b) shall be as determined by the salary ranges for the classifications under consideration. The classification with the highest compensated step in the salary range shall be the higher classification.

(e) Anything contained herein to the contrary notwithstanding, any employee may choose to be reduced in an entry level position if the employee meets the minimum qualifications for the position and has more seniority with the City than an incumbent in the position. For purposes of this subsection an "entry level position" is a position requiring no prior experience.

27.6 Equal Seniority. - If two (2) or more employees subject to lay off have equal class seniority, then the determination as to who has seniority shall be based upon total length of uninterrupted service with the City. If both employees were hired on same day, the employee with the lower City Employee number assigned on the date of hire shall be considered to have seniority.

27.7 Reemployment Rights. - Laid off employees will be eligible for reemployment under the provisions of the Personnel Rules. Said employee shall have right to preference as outlined in Administrative Policy AP-10 (9)(C) or its successor policy.

ARTICLE 28 - GRIEVANCE PROCEDURE

28.1 Items Subject To Grievance Procedure. - Any permanent employee in the competitive service who has a grievance based upon his/her demotion, dismissal, reduction in pay, violation of the personnel ordinance, salary resolution or this MOU, or violation of commonly accepted safety practices not resolved by the Safety Committee, shall be entitled to have the matter reviewed through the following grievance procedure outlined in this article.

28.2 Informal Step. An attempt shall be made to ascertain all facts and adjust such grievance on an informal basis between the employee and, if he desires, his/her steward, and the immediate supervisor. Presentation of such grievance shall be made

within fourteen (14) calendar days of the incident causing the grievance, or the date on which the employee first became aware of it.

28.3 Step One. - If the grievance is not adjusted to the satisfaction of the employee within fourteen (14) calendar days after presentation of the grievance to the immediate supervisor the grievance shall be submitted in writing by the employee or his/her steward to the Department Head, within the next fourteen (14) calendar days. The Department Head and the Human Resource Director shall meet with the employee, his/her steward or both within fourteen (14) calendar days of receipt of such written grievance and deliver his decision in writing to the employee, along with his reasons for such decision, within fourteen (14) calendar days after meeting.

28.4- Step Two. - If the grievance is not adjusted to the satisfaction of the employee under the procedures set forth in Sections 28.2 and 28.3 above, the employee or his/her steward may submit the grievance, in writing, to the Human Resources Director, within fourteen (14) calendar days after the completion of the last step under paragraph 28.3 above. The Human Resources Director shall meet with the employee, and his/her steward, if applicable, within fourteen (14) calendar days of receipt of such written grievance, and shall deliver his decision in writing, to the employee, along with the reasons for such decision, within fourteen (14) calendar days after the meeting.

28.5 Step Three. - If the grievance is not adjusted to the satisfaction of the employee under the procedures set forth in Sections 28.3 and 28.4 above, the employee or his/her steward may submit the grievance, in writing, to the City Manager, within fourteen (14) calendar days after the completion of the last step under paragraph 28.3 above. The City Manager shall meet with the employee, and his/her steward, if applicable, within fourteen (14) calendar days of receipt of such written grievance, and shall deliver his decision in writing, to the employee, along with the reasons for such decision, within fourteen (14) calendar days after the meeting.

28.6 Step Four. - If the grievance is not adjusted to the satisfaction of the employee under the procedures set forth in Sections 28.2, 28.3 and 28.4 above, the employee or his/her representative may submit written notice to the City Manager within fourteen (14) calendar days after the completion of the last step under paragraph 28.4 above of his/her intent to submit the matter to arbitration. In matters of interpretation of this MOU, the Union shall have the exclusive authority to determine whether a grievance shall be taken to arbitration. In disciplinary cases where the Union may be required to pay for any part of the cost of such arbitration, the Union may elect to proceed to arbitration. If the Union does not elect to do so, then the employee may do so at his/her own expense. The procedures set forth below shall be followed for arbitrations.

(a) Within seven (7) calendar days of receipt of the written notice, the parties shall request a list of seven (7) arbitrators from the Federal Mediation and Conciliation Service or any other mutually agreeable mediation service.

(b) Within fourteen (14) calendar days of receipt of the list of arbitrators the City and the Union shall attempt to reach an agreement on an arbitrator. Failing to agree on an arbitrator, the Union and the City shall take turns striking the names of arbitrators from the FMCS list until one (1) name remains. The Union shall strike the first name.

(c) The parties shall contact the arbitrator to arrange for a mutually convenient time and date for the arbitration hearing.

(d) The cost of the arbitrator shall be split equally by the City and the Union save that if the grievance arises from the administration of discipline, the City shall bear the cost.

28.7 Step Five. - Within fourteen (14) calendar days after the Union and City receives the arbitrator's recommendation the opinion of the arbitrator will be final on matters relating to the interpretation or administration of this MOU. Arbitration on discipline is advisory only. If decision relates to discipline, within fourteen (14) calendar days after the Union and/or employee and City receives the arbitrator's recommendation on disciplinary matters, the City Manager shall advise the Union and the Department Head whether the City Manager is accepting, rejecting, or modifying the recommended decision. The decision of the City Manager shall be the final decision of the City.

28.8 Change of Time Limits. - The above time limits may be changed by mutual agreement.

28.9 Mutual Agreement For Additional Mediation/Arbitration. - Upon mutual agreement of the parties, a grievance may be submitted to a representative of a mutually agreeable arbitration service for mediation and/or arbitration. Unless agreed otherwise by the parties in writing, the role of the arbitrator shall be advisory only and it shall have no power or authority to impose a result or resolution upon any of the parties.

ARTICLE 29 – SEVERABILITY CLAUSE

29.1 If any of the provisions contained in this Memorandum of Understanding are determined to be unlawful, then only such provision(s) shall be deleted from this Memorandum of Understanding with the remainder of this Memorandum of Understanding remaining in full force and effect. Upon the issuance of a decision by a Court of Competent Jurisdiction declaring any section of this Memorandum to be unlawful, unenforceable, unconstitutional, or not applicable, the parties agree to meet and confer as soon as possible concerning only those sections.

ARTICLE 30 - COMPLETE AGREEMENT

30.1 - This Agreement is the entire Agreement between the parties, terminating all prior agreements, whether written or oral, arrangements and practices, and, except as otherwise provided herein, shall conclude all meetings and conferences during the term of this Agreement.

30.2 All terms and conditions of employment not covered by this Agreement shall continue to be subject to the City's direction and control.

ARTICLE 31 - POSTING JOB VACANCIES

City agrees to post on City's website, Channel 10 and Union bulletin boards all vacant positions in the Union.

ARTICLE 32 - RE-OPENERS

32.1 During the term of this MOU, unless otherwise provided, the parties shall not meet and confer with respect to any subject or matter whether or not referred to in this MOU, unless mutually agreed to otherwise.

32.2 City agrees to meet and discuss potential organizational changes within the Water Division. These potential changes shall be considered items of mutual concern as described in Section 10.1 of this MOU.

FOR THE CITY OF BANNING:

Brenda Salas, Mayor

FOR IBEW:

Pat Lavin, Business Manager
IBEW Local 47

Monica Garcia
IBEW Committee Member

Stan Stosel
IBEW Assistant Business Manager

Pat Logan
IBEW Committee Member

Ron Bengochea
IBEW Union Representative

Jason Smith
IBEW Committee Member